
PART I
SOCIAL SECURITY AND
VULNERABLE CHILDREN

CHAPTER - 1

Social Security of Orphan Children: Needs and Government Initiatives

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“A solid family environment is essential in paving the way for the realization of future dreams and aspirations of children”

: *Nelson Mandela*

INTRODUCTION

Humans are the only living members of the genus *Homo*. They are mammals of the primate order originally from Africa, where they reached anatomical modernity about 200,000 years ago and began to exhibit full behavioral modernity around 50,000 years ago.¹ Life is often described as a journey from birth to death. On each person's journey they may encounter certain opportunities or face certain challenges.² No human is ever born with a guarantee of a happy, healthy life. However, there are a great many children who are born into loving homes in which they will have the chance that every child deserves. There has never been a single orphan child born, that chose or deserved their status as a child without parental care.³ Orphan children tend to manifest more depression, personality disorder, and anxiety/insomnia tendencies than do non-orphans.⁴ Vulnerable people often refer to orphaned or vulnerable children.⁵

Many religious texts, including the Bible and the Quran, contain the idea that helping and defending orphans is a very important and God-pleasing matter. Two of the most important religious leaders, Moses and Muhammad, were orphaned as children. Several scriptural citations describe how orphans should be treated:

Bible: (i) “*Do not take advantage of a widow or an orphan.*” (Hebrew Bible, Exodus 22:22), (ii) “*Leave your orphans; I will protect their lives. Your widows too can trust in me.*” (Hebrew Bible, Jeremiah 49:11), (iii) “*Religion that God our Father accepts as pure and faultless is this: to look after orphans and widows in their distress and to keep*

oneself from being polluted by the world." (The New Testament, James 1:27).

Quran: (i) *"And they feed, for the love of God, the indigent, the orphan, and the captive,"* - (The Quran, The Human: 8), (ii) *"Therefore, treat not the orphan with harshness,"* (The Quran, The Morning Hours: 9), (iii) *"So woe to those who do prayer, and are forgetful of their prayer, those who show off and deny help to other."* - (The Quran, Small Kindnesses: 1-7), (iv) *"(Be good to) orphans and the very poor. And speak good words to people."* (The Quran, The Heifer: 83), (v) *"Give orphans their property, and do not substitute bad things for good. Do not assimilate their property into your own. Doing that is a serious crime."* (The Quran, The Women: 2).⁶

WHO ARE ORPHAN CHILDREN?

The word "orphan" has a complex history and a variety of definitions.⁷ An orphan is a child permanently bereaved of or abandoned by his or her parents. In common usage, only a child who has lost both parents is called an orphan. However, the United Nations Children's Fund (UNICEF), Joint United Nations Programme on HIV and AIDS (UNAIDS), and other groups label any child that has lost one parent as an orphan. In this approach, a maternal orphan is a child whose mother has died, a paternal orphan is a child whose father has died, and a double orphan has lost both parents.⁸ The word orphan is derived from the Greek orphanos, meaning without parents.⁹ If children have lost one parent to AIDS, it is only a matter of time before they lose the other parent. In its *"Children on the Brink"* 2004 report, UNICEF uses the following definitions for statistical purposes in estimating the orphan subpopulation:

1. Maternal orphans are children under the age of 18 whose mothers have died.
2. Paternal orphans are children under the age of 18 whose fathers have died.
3. Double orphans are children under the age of 18 whose mothers and fathers have died.¹⁰

The number of orphans can increase for three possible reasons: population growth (more children are born every year than the year before); improvements in child survival (which further increase the number of children at risk of being orphaned); and increases in adult mortality.¹¹ HIV/AIDS is an exceptional cause of orphanhood: if one parent is infected, it is highly likely both will be infected, so children often lose both parents

to illness within a short span of time.¹² Because AIDS is a sexually transmuted disease, AIDS orphans are more likely to have lost both parents and often aunts and uncles as well. This limits the ability of family to absorb orphaned children. Unlike other causes of adult mortality, AIDS tend to be concentrated in communities and thus so are AIDS orphans.¹³ As the world passes into the 21st century, it is very unfortunate that the number of orphans throughout the world is actually increasing. The most common reasons for children to become orphans come from poverty, war, disease, and starvation.¹⁴ Children and youth affected by AIDS typically face a wide range of stressful events and circumstances.¹⁵ For children infected or affected by HIV the likelihood of being abandoned is higher than for other children.¹⁶

ORPHAN CHILDREN: GLOBAL PERSPECTIVES

The phenomenon of street children is global, alarming and escalating.¹⁷ Estimating the number of vulnerable children is a much more difficult task.¹⁸ According to UNICEF report **143 million children in the world are orphan**.¹⁹ The majority of orphaned children under age 18 are found in Africa, Asia, Latin America, and the Caribbean.²⁰ Sub-Saharan Africa is home to some **53 million orphaned children**. That's more than the total number of all children under the age of 18 living in the United Kingdom, France, Germany, Norway and Sweden combined. Nearly a third of these children have lost their parents to AIDS. AIDS is particularly brutal to children because it often wipes out the entire family network.²¹ Orphans and vulnerable children (OVC) continue to maintain a spot at the forefront of the international agenda with millions of children worldwide being orphaned or made vulnerable by HIV/AIDS.²² There are 28.5 million estimated maternal orphans in Sub-Saharan Africa.²³ These children are vulnerable because of the direct impacts of parental illness, associated emotional and economic stress, and the burden of being a child caregiver for parents and/or siblings.²⁴ The report shows that many of the most severely affected countries in sub-Saharan Africa have no national policies to address the needs of orphaned children, including children orphaned and made vulnerable by HIV/AIDS. The ongoing failure to respond to the orphan crisis will have grave implications not just for the children themselves, but for their communities and nations.²⁵

Information about orphans in the region has increased significantly in recent years and research has become more rigorous.²⁶ The highest percentages of children orphaned are in countries with high HIV-prevalence levels.²⁷ The AIDS orphan crisis in Africa is what some are calling the holocaust of this generation.²⁸ Four out of five children orphaned

by HIV/AIDS live in sub-Saharan Africa, straining both the capacity of communities to cope and the budgets for social services.²⁹ Parent death has a moderate negative impact on child school participation.³⁰ As in many Sub-Saharan countries, the issue of orphan-care has raised to the top of the social protection agenda.³¹ In this region 90 per cent of children orphaned by AIDS are cared for by extended families, with little or no outside support.³² Orphanhood is expected to influence health outcomes and schooling although there are multiple potential channels through which this effect may work.³³ Without psycho-social support, children, especially girl orphans are particularly vulnerable to school dropout and early sexual debut.³⁴ HIV/AIDS is one of the greatest threats to childhood in the world today.³⁵ Orphans and street children are interconnected. Most street children are orphan. While no one seems to know how many children actually live on the streets worldwide, many reports cite a UNICEF estimate of 100 million.³⁶ Across Africa indicate that where the epidemic is more severe and/or the extended family is weakened, orphaned children are frequently cared for by grandparents.³⁷ The impact of HIV on the social and the mental health status of children have often been explored in studies and project activities.³⁸ Countries differ in how orphan rates have changed over time.³⁹ The number of children orphaned and made vulnerable by the impact of HIV and AIDS in Zimbabwe remains high. The approximate number of HIV and AIDS orphans in Zimbabwe in 2007 was 1 043 715, whilst estimates for 2008 and 2009 were 10, 25,472 and 9, 89,009 respectively.⁴⁰ Botswana has the highest rate of orphaning (20%).⁴¹ The Joint United Nations Programme on HIV/AIDS (UNAIDS) also has been estimates that 1.1 million children living in Kenya have been orphaned by AIDS.⁴² Like adults, children are grieved by the loss of their parents.⁴³ Today, thousands of orphans in Rwanda lack any or adequate care giving from surviving family members or other caregivers. Only a small number of these orphans are able to maintain land rights independently.⁴⁴ According to USAID, UNICEF and UNAIDS orphaned children in Lesotho account for 17% of the total population and half of these is due to AIDS.⁴⁵ Though the population of the Eastern and Southern Africa region currently represents only about 6 per cent of the world's population, 32 per cent of all new HIV infections around the world in 2007 occurred there.⁴⁶

Treatment for people living in Africa with HIV/AIDS is extremely limited.⁴⁷ Children living in Liberia's orphanages are denied basic rights – ranging from the right to development and health, to the right to identity, family, education, leisure and participation in cultural activities.⁴⁸ According to the 2008 Situation Analysis on orphans and vulnerable children (OVC),

there are approximately 51,806 (6.5%) orphans in Botswana.⁴⁹ On the basis of 2005 data, there were an estimated 2.5 million orphans, a number expected to grow to 4 million by 2015.⁵⁰ Out of a population of approximately 31 million, Uganda's HIV/AIDS pandemic has resulted in over 2.2 million orphaned children who have lost one or both parents.⁵¹ Early sexual debut, high rates of STIs, and a large mobile population make many people in HIV/AIDS infected.⁵² The school plays a major role in facilitating preventive and awareness rising among the communities.⁵³ Africa is still in the early stages of its orphan crisis.⁵⁴ The HIV/AIDS crisis in sub-Saharan Africa has resulted in the death of a large number of prime-aged men and women.⁵⁵ Many people assume that child-headed households are the result of an increase in orphaning.⁵⁶ In most African communities, the concept of '*adoption*' does not exist in the Western sense.⁵⁷ The needs of AIDS orphans are as immediate as their next meal and as extended as access to education, guidance and care until the end of their adolescent years.⁵⁸ In Namibia, South Africa and Zimbabwe, 60 per cent of orphans and vulnerable children are in grandparent headed households.⁵⁹ In Ethiopia, more than 75% of child domestic workers are orphans, working an average of eleven hours a day, seven days a week.⁶⁰ In Zimbabwe nearly one in four adults between the ages of 19-45 years is living with HIV and AIDS.⁶¹ As the number of orphans and children affected by HIV/AIDS increase, there is a need to have a comprehensive and integrated approach reflecting their diverse needs in care and protection.⁶² In Europe and Central Asia, over one million children live in residential institutions. There are limited statistics on sub-Saharan Africa, although statistics in 2004 indicate that 7,500 children were in residential facilities in Liberia and 5,000 in Zambia.⁶³ Currently, Zambia has nearly 1.2 million orphan children.⁶⁴ Recent World Bank studies found that in 20 out of 28 countries in Africa and Latin America, more than one-fifth of orphaned children were living with their grandparents. In South Africa and Uganda it was 40%, and in Zimbabwe, over half. In Zambia, Uganda and Tanzania, grandparents made up the single largest category of carers of orphans.⁶⁵ In Uganda, insecurity and civil strife during the 1970s and 1980s led to an increase in the number of orphans; this situation has been aggravated by the AIDS epidemic.⁶⁶ As children get older they are more likely to be orphaned because the risk of a parent dying increases over time.⁶⁷ Research in seven countries (Burkina Faso, Cameroon, Ghana, Kenya, Mozambique, Nigeria and the United Republic of Tanzania) with recent data reveals the enormous burden that orphaning is exerting on the extended family in general and grandparents – often grandmothers – in particular.⁶⁸ The number of children orphaned by AIDS in South Africa is set to grow to 1.7 million by 2010.⁶⁹

There are currently 68.9 million orphans in Asia, giving this region the largest absolute number of orphans in the world. Roughly 6% of all children in Asia are orphans, with 7.7 million orphaned in 2010 alone. In Cambodia, Laos and Korea the prevalence is even higher where 10% of all children are orphans. There are 20.3 million maternal orphans in Asia. The Ministry of Labour, War Invalids and Social Affairs (MOLISA) provides monthly social assistance to children living in difficult circumstances. It is estimated that 300,000 children in Viet Nam fall into this target group, of whom nearly 90,000 are orphans and 7,000 are children affected by HIV & AIDS.⁷⁰ A large amount of orphaned children has a strong influence on the well-being of Japanese society. The situation involving orphaned children has several both negative and positive influences on Japanese society.⁷¹ The report reveals that in China 86% of parentless orphans are living in the countryside, 450,000 children, or 79%, are living with relatives. Province-wise, Henan has the largest orphan population – about 50,000, followed by Hunan, Jiangxi, and Anhui. The four provinces combined account for about one third of all of China's orphans.⁷² The HIV epidemic, poverty and food insecurity are presently threatening the survival of many children in Cambodia, especially orphans.⁷³ Roughly 5% of all children in Latin America are orphans (10.2 million in total), with 1.2 million orphaned in 2010 alone. There are 2.5 million maternal orphans in Latin America.⁷⁴ There is a large population of children that grow up without one or both of their parents. About 1.5 million children in the Central and Eastern Europe and the Commonwealth of Independent States live in public care institutions. In Europe and Central Asia, over 1 million children live in residential institutions.⁷⁵ Wars and great epidemics, such as AIDS, have created many orphans. World War Two, with its massive numbers of deaths and population movements created large numbers of orphans—with estimates for Europe ranging from 1,000,000 to 13,000,000. Judt (2006) estimates there were 9,000 orphaned children in Czechoslovakia, 60,000 in the Netherlands 300,000 in Poland and 200,000 in Yugoslavia, plus many more in the Soviet Union, Germany, Italy and elsewhere.⁷⁶ During the year 2008, in Europe total of 27 institutions have signed a Memorandum of Understanding on due diligence guidelines for the search of right holders regarding orphan works.⁷⁷ In many countries, the children are taken in by grandparents or aunts and uncles. But if those adults are very poor, sometimes they cannot take care of the children, and many children are forced to live on the street.⁷⁸

ORPHAN CHILDREN IN INDIA

India has the second largest HIV/AIDS infection, and according to the United Nations Report.⁷⁹ India is the world's largest democracy with

a population of over a billion-400 million of which are children. About 20 million children, about 4% of their population in India and higher than people living in Delhi, are orphan. Of them, parents of only 0.3% children have died and rest have been abandoned. The figure is result of a study done by SOS Children's Village by analyzing data from National Family Health Survey-3 for the year 2005-06 and the population estimation by the Census of India to find the dark spots for children below the age of 18 in India. It were the poorer states such as Uttar Pradesh, Bihar and West Bengal, which had higher number of orphan children as compared to richer northern and southern states of India. As a result, the central zone has highest number of orphan children followed by east zone. The two zones also cover most of the naxal affected regions in India. Poverty has been a significant contributor in high orphan children in these states. Social unrest and terror —militancy and naxalism — are two another major factors behind the high number of orphans in certain states.⁸⁰ India also has the phenomena of *de facto* orphans.⁸¹ Children from poor families are most vulnerable. Most of the orphan children stopping school are those coming from poor families.⁸² Orphans may suffer additional vulnerability compared with other children, for example in nutrition and access to education, although evidence on these patterns is mixed.⁸³ Orphans may grow up without basis material resources and may lack of love and support.⁸⁴ Studies of childhood parental loss suggest that orphans tend to experience social depression, personality disorders, and personality disorders.⁸⁵ Children are also orphaned for earthquake and tsunami.⁸⁶ In the aftermath of a natural disaster, children continue to face dangers to their survival.⁸⁷ Distress from orphanhood may be exacerbated due to financial difficulties associated with parental illness and death.⁸⁸ Orphaned children may be lacking in social support owing to illness or death of family members, or may have distorted cognitions of themselves and others, which of itself may lead to reduced perceptions of social support.⁸⁹ The proportion of children who are orphans generally increases with age, and older orphans outnumber younger orphans.⁹⁰ Parental illness and death is traumatic, stressful and sad for children.⁹¹ In addition to grief and psychological impact, orphans living with relatives or in foster homes are less likely to receive basic healthcare, adequate nutrition and primary education.⁹² Most AIDS orphans are clustered in extended families or communities.⁹³ Discrimination at schools, in health services, and in other institutions compromises their rights and frequently limits their access to opportunities and benefits.⁹⁴

In India, AIDS orphans are more often likely to experience poverty, illiteracy, child labour, child prostitution, and police brutality. Conservative estimates suggest that around 300, 000 children in India are engaged in commercial sex. Many of them are also living as street children. These are children for whom the street has become their home, a situation where there is no protection, supervision, or guidance from responsible adults. Human Right swatch estimates that approximately 18 million children live or work on the streets of India. The majorities of these children are involved in crime, prostitution, gang related violence and drug trafficking. UNICEF estimates that there could be about 4 million affected children in India, located mostly in the high HIV-burden states of south and northeast India (affected children include those living with HIV or those who are orphaned by AIDS and children whose parents are living with HIV).⁹⁵ In South Asia, the HIV epidemic is quite heterogeneous in its dynamics and scope.⁹⁶ The impacts of AIDS on children are both complex and multifaceted.⁹⁷ In many cases orphan girls have been raped or sexually assaulted by various men.⁹⁸ Children orphaned by HIV/AIDS are likely to miss out on education and subsequently engage in behaviors like prostitution and drug abuse.⁹⁹ Social isolation due to immobility when the person's condition starts deteriorating manifests itself.¹⁰⁰ AIDS orphans have increased risk of malnutrition when compared to those children living with their parents, and they can be stigmatized and discriminated.¹⁰¹ Since the rise of studies of the impacts of HIV/AIDS, substantial attention has been drawn to the difficulties orphans face fostering a public perception of orphans as a severely disadvantaged group.¹⁰² Orphaned children need psychosocial help, especially in cultures where adults do not talk to children about death and where children are discouraged from self-expression.¹⁰³ According to the National AIDS Control Organization (NACO) India has 5.2 million HIV-positive people and an HIV-prevalence of 0.9 percent of adults.¹⁰⁴ Integrated Child Protection Scheme is being implemented through Child Protection Units at state and district levels, and through existing Child Welfare Committees.¹⁰⁵ Food and nutrition are important components of OVC support.¹⁰⁶

The social stigma the children suffer starts from the day it becomes known the parents are HIV positive and continues even after their death. They face discrimination both at the hands of adults and other children in both their villages and schools.¹⁰⁷ The number of orphaned street children in India remains a staggering problem, with conservative estimates at 12 million—one million are expected to die within a year. Many of these children are from the lower caste groups considered “*untouchables*”.

The movie “*Slumdog Millionaire*” brought this Indian orphan tragedy to a new level of global awareness.¹⁰⁸ The escalating AIDS crisis is leaving an unprecedented number of children orphaned with little or no adult protection and care. The proportion of orphaned children is expected to double in the next five years and remain exceptionally high until 2020 or 2030. The odds against AIDS-orphaned children are staggering.¹⁰⁹

RESPONSE OF THE NON-GOVERNMENT ORGANIZATIONS (NGOs)

The number of orphans is emerging as a massive challenge and the time to act is now.¹¹⁰ In assessing the impact of HIV/AIDS on the lives of children, both the short and long-term economic and social costs on local and national economies and the society at large are important.¹¹¹ Helping ill parents to become healthier and live longer is one of the most important areas of action to benefit their children. This can be accomplished through appropriate treatment and by supporting their care at home.¹¹² Many organizations focus on the protection and care of orphans and vulnerable *children* (OVC).¹¹³ National Government is not the only stakeholder for OVC. Regional and local government and the NGO/private sector also provide services.¹¹⁴ There are several NGO’s/groups already engaged with children’s rights, street children and/or orphan support,¹¹⁵ some of them are as below:

Asian Aid is a Christian, non-profit organization that is committed to making a difference in the lives of children and people in poverty. Asian Aid provides education and vocational training to children and young adults through sponsorship programs in India, Nepal and Bangladesh. Asian Aid is a registered charity and a signatory to the Australian Council For International Development (ACFID) Code of Conduct. Asian Aid makes orphan children a priority despite the high cost of caring for them in a boarding facility and school.¹¹⁶

The Miracle Foundation provides help and hope to the orphaned children of India. The Miracle Foundation was founded in the year 2000 on Mother’s Day by Caroline Boudreaux. The Miracle Foundation is a vibrant and trusted non-profit organization that empowers orphans to reach their full potential—one child at a time.¹¹⁷

The International Orphan Fund is a nonprofit organization with the mission to promote advocacy, provide services and financial support for schools and orphanages in foreign countries while incurring zero or minimal fiscal overhead. The IOF is currently running a fundraiser for

benefit of orphans in India. It is a round-the-world bicycle ride organized with the intention of gaining pledges based on mileage.¹¹⁸

The **Orphan Foundation Fund (O.F.F)** was founded in 2002 and is a registered non profit, non government organization (NGO), headquartered in Arusha Tanzanian. Orphans Foundation Fund had the graduation of the students in the street children project funded by CORDAID. Each of the young graduates received the tools they needed to now become self reliant. Through diligent hard work they will forge a path for their future.¹¹⁹

The International Children's Fund is a distinctively effective children's charity focused on work across the African continent. ICF has become an ever expanding network of caring relationships, formed between African missionary workers and the people worldwide who sustain their efforts. Contributions to International Children's Fund are tax deductible as allowed by law.¹²⁰

The One World Orphans Fund is a non Profit Charitable Fund set up to meet the nutritional, educational and health care material needs of both Economic and Familial Orphans in Third World Countries throughout the Asia Pacific Region. The Fund is not aligned with any Religious Group or Organization and does not discriminate on the basis of Race, Creed or Disability. The Fund is constituted as an Incorporated Association under Queensland, Australian Law and complies with all Statutory and Audit legislative requirements. Monies donated to the Fund are spent in the local communities purchasing products facilitated by Local "in country" Managers thereby stimulating the local communities economy.¹²¹

Community Oriented Rehabilitation Association (CORA) is a charitable voluntary social service organization started in 1995 and registered under the Tamil Nadu Societies Registration Act and by Govt. of India under FCR Act and by Income Tax Act. The goal of CORA is prevention of ill health primarily by health care measures and secondarily by socio- economic measures. CORA provides care and support for the children orphaned due to the death of their parents through HIV/AIDS, abandoned by their relatives and neglected by the community. CORA also supports People Living with HIV/AIDS (PLWHA) for availing treatment for opportunistic infections and livelihood interventions for bedridden HIV Positive women. Our areas of operation are Tiruvannamalai - a northern district and Tirunelveli – a southern district of Tamil Nadu state.¹²²

Ashinaga is a non-profit organization in Japan which supports orphaned but talented children to access education. Since it was founded

in 1969, more than 60,000 orphans have graduated from schools with ASHINAGA scholarship support. The organization provides internship places for students from the School of Psychology, especially those doing Counseling and Clinical Psychology.¹²³

Orphan Support Africa is a nonprofit 501(c) 3 organization that fosters effective and sustainable programs in Africa that improves the protection and well-being of orphans and vulnerable children, and nurtures these children to become self-reliant adults. Orphan Support Africa received a \$2,124,992 grant from the Bill & Melinda Gates Foundation to help local community groups that provide critical care to some of the world's most vulnerable children in Malawi and southern Tanzania.¹²⁴

EFFORT AND GOVERNMENT INITIATIVES

As the number of children orphaned or abandoned worldwide rises, worry about their rights and welfare also increase.¹²⁵ The promotion and protection of human rights is central to human development.¹²⁶ There are at least 250,000 child soldiers in the world, with tens of thousands under 15 years of age. They are small, inconspicuous, expendable, and easily indoctrinated and terrorized into performing extreme acts.¹²⁷ Protection involves preventing and responding to violence, exploitation and child abuse. Child protection is one of the major concerns of the international law on human rights protection.¹²⁸ The Global Fund to Fight AIDS, Tuberculosis and Malaria (GFATM) is a major source of funding in the response to HIV.¹²⁹ The U.S. President's Emergency Plan for AIDS Relief (Emergency Plan/PEPFAR) supports varied interventions to help families, communities and governments to care for children living with and affected by HIV/AIDS.¹³⁰ Laws, policies, and regulations may be effective for preventing HIV.¹³¹ The United Nations has play an important part¹³² Vocational training for older children and caregivers is critical but it needs to be the right one with the right quality for the right person and a clear roadmap towards an economic activity.¹³³ Since its inception in 1989, the U.S. Agency for International Development's Displaced Children and Orphans Fund (DCOF) has invested more than \$160 million to improve the well-being of vulnerable children, their families, and communities in more than 40 countries in the developing world.¹³⁴ As the diversity of the epidemic becomes more apparent, it becomes evident that a comprehensive legislative approach covering different public health aspects of HIV/AIDS is needed.¹³⁵ Coordination of the effort and expertise of many government departments and development agencies and civil society is needed to reach OVC, avoid duplication and ensure the optimal use of resources. A dedicated coordinating structure for orphans and other

children made vulnerable by HIV and AIDS on all levels (national, provincial, district and local) is central to the Policy Framework.¹³⁶

For helping the orphans following steps can be taken. Some of the steps are already taken by the various African and European countries:

1. **Support for Communities:** Extended families and communities care for more than 90% of all double orphans in sub-Saharan Africa. Funding and programming for OVC must reflect this fact and include support for caregivers so that children may be raised by their community versus being institutionalized in an orphanage where often there is a far lower care-taker to child ratio and where children simply do not fare as well.
2. **Caretaker Support:** Support for the caretakers is an essential step in ensuring that children receive proper care and attention. In many cases, orphans are taken in by grandparents who no longer work and, therefore, no longer earn a wage. Even when the caretakers do have money coming into the household, they were often in an impoverished situation before the addition of dependents to the household. The combination of chronic poverty and the HIV/AIDS epidemic have greatly stressed and drained community resources.
3. **Holistic Programming:** Holistic programming is also an important aspect to the support that is necessary to care for AIDS orphans. According to Unite for Children, Unite Against AIDS, the needs of children in the AIDS epidemic have been overlooked in prevention and treatment, policies and budgeting. Care for vulnerable children must extend beyond mere material need, as the AIDS crisis affects children psychologically and socially as well.
4. **Flexibility:** Programming must also be flexible, taking into account the realities of the people being served. According to UNICEF, decisions about resource allocation should be based on internal assessments of each country's unique circumstances and needs. Global figures suggest that 12% of all HIV/AIDS resources should go towards supporting OVC, and that more than 9/10ths of the 12% should go to sub-Saharan Africa. Furthermore, the needs of children vary depending on the age when they were orphaned. This fact should be taken into account when planning programming.
5. **Cash transfer:** It is another way to provide flexible support that is community based. In 2007, UNICEF evaluated cash transfer programs in Malawi, South Africa and Zambia. A community based committee selected households most in need of a monthly stipend of

approximately \$7.50 to \$10. As a result of the stipend, research showed that food consumption increased even during a drought period, illness in parents and children decreased and school enrollment increased slightly.¹³⁷

The Government of India is committed to preventing HIV infections and mitigating the medical impact of the virus on the lives of those already infected. It has already provided a detailed vision for achieving this objective in the National AIDS Control Programme 2007–2012 (NACP III). Adopting rights based approach; the first priority of this policy is to prevent HIV infection in order to ensure an AIDS-free generation. In addition, in order to facilitate prompt diagnosis, the policy focuses on ensuring access to medical treatment to prolong life.¹³⁸ Three years into National AIDS Control Programme Phase III (2006—11), which places special focus on medical treatment and after care, access to schooling, and adequate nutrition, government interventions for AIDS orphans are conspicuous by their absence in any area other than paediatric ART.¹³⁹ HIV/AIDS programs and interventions are vital for survival and welfare of orphan and vulnerable children, but they have reached only to a small fraction of the most vulnerable children.¹⁴⁰ The long awaited Right of Children to Free and Compulsory Education Act, 2009 (RTE Act) received the Presidential assent on 26 August 2009.¹⁴¹ The local governments are also key players in the same process both at Sub County and district.¹⁴² As per the guidelines issued by Directorate of Education (DoE) Delhi, private schools have to keep aside 25 per cent of their seats for students belonging to the Disadvantaged Group and the Economic Weaker Section (EWS) of the society.¹⁴³ Family Health International (FHI), through funding from the United States Agency for International Development (USAID), works with 37 projects in India reaching approximately 50,000 orphans and vulnerable children (OVC).¹⁴⁴

The Constitution of India recognizes the vulnerable position of children and their right to protection. The right to equality, protection of life and personal liberty and the right against exploitation enshrined in Articles 14, 15, 16, 17, 21, 23 and 24 further reiterate India's commitment to the protection, safety, security and well-being of all its people, including children. India's National Policy for Children 1974 provides a framework for policy and planning for children. In 1992 India acceded to the United Nations Convention on the Rights of the Child (UNCRC), committing itself to take measures to ensure the survival, protection, participation and development of its children.¹⁴⁵

In Sri Lanka the ethnic conflict this has devastated the country for over two decades and the Tsunami in December 2004; have left these children parentless, destitute, and deserted; living in refugee camps, often moving from place to place as IDPs. The Steering Committee on Peace and Reconciliation of the Ceylon Chamber of Commerce commenced the *Orphan Sponsorship Programme* to address this tragic problem and to build bridges of peace and reconciliation across the nation where orphans in the North are sponsored by business leaders from the South.¹⁴⁶ The Government of Indonesia has issued a policy on separated, unaccompanied and single-parent children, a first step towards a more formal arrangement for family or community-based care options for children who have lost both parents.¹⁴⁷ The number of orphans in the United States has implications for two social security programs-old age and survivors insurance and aid to depend & children. A number of orphaned children are receiving payments under social insurance and related programs and under aid to dependent children. About 1 million - mostly paternal orphans are receiving old-age and survivor benefits.¹⁴⁸ The United States has taken leadership in the fight against HIV/AIDS in some of the hardest-hit countries. The President's Emergency Plan for AIDS Relief (PEPFAR) has served as one of America's strongest goodwill ambassadors in recent years, as the acronym has become synonymous with "*life-saving help*" in many parts of the world.¹⁴⁹

International treaties have recognized free and compulsory elementary education as a human right for more than half a century now, and especially during the last decade the drive for universal (primary) education has gained momentum.¹⁵⁰ The UN Declaration of Commitment on HIV/AIDS was the first global policy document to specifically acknowledge the needs of children affected by AIDS.¹⁵¹ The legal protection of children was introduced into international humanitarian law after the Second World War. International humanitarian law provides general protection for children as persons taking no part in hostilities, and special protection as persons who are particularly vulnerable. Moreover, children taking part in hostilities are also protected. During international armed conflicts, children come into the category of those protected by the Fourth Geneva Convention relative to the protection of civilian persons in time of war. By virtue of this, they benefit in particular from all the provisions relative to the treatment of protected persons, which state the basic principle of humane treatment, including respect of life and physical and moral integrity, and forbidding, inter alia, coercion, corporal punishments, torture, collective penalties and reprisals.¹⁵² The U.N. Convention on the Rights of the Child, now ratified by virtually every

country in the world except the United States, provides a powerful new international recognition of the primacy of children's rights generally.¹⁵³ These international human rights treaties include: the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the International Convention on the Elimination of Racial Discrimination (ICERD) and the Convention on the Rights of the Child (CRC).¹⁵⁴ The United Nations Convention on the Rights of the Child affirms that it is in the overriding interest of children that they be brought up in their own families.¹⁵⁵ The focus on equity among all children and non-discrimination within the United Nations General Assembly Special Session (UNGASS) HIV and AIDS goals reflects the rights-based approach of the CRC.¹⁵⁶ The Convention on the Rights of the Child (CRC) recognizes that children have the best chance of developing their full potential in a family environment.¹⁵⁷ It is argued that 18 years is a more appropriate upper age limit, and is consistent with the UN Convention on the Rights of the Child (CRC). The CRC is underpinned by four major principles;

1. the right to survival, development and protection from abuse and neglect;
2. the right to have a voice and be listened to;
3. that the best interests of the child should be of primary consideration;
4. the right to freedom from discrimination.¹⁵⁸

Governments have a responsibility to provide suitable alternative care for every child in need. Article 20.3 of the CRC recognizes four types of alternative care: foster care, kafalah, adoption, and institutional placement. In practice, many variations on these types of alternative care exist. These alternatives often comprise formal alternative care, which describes alternative care that is recognized and regulated by the government. There are also other types of alternative care (or other groups of children outside parental care) not mentioned in the CRC. Most of these are informal alternatives, meaning that they are not formally recognized or regulated. An example of this is kinship care, the most widely used form of alternative care in South Asia. Children living on the street or in child-headed households are two examples of groups of children outside parental care who are often forgotten or unrecognized. Institutional placement is the most common formal response to children outside parental care.¹⁵⁹

Recognition of the child's right to protection is not limited to the Convention on the Rights of the Child. There are a number of other

instruments, both those of the United Nations and those of other international bodies, which also lay out these rights. These instruments include:

1. The African Charter on the Rights and Welfare of the Child of the Organization for African Unity (now African Union) of 1990,
2. The Geneva Conventions on International Humanitarian Law (1949) and their Additional Protocols (1977),
3. International Labour Convention No. 138 (1973), which states that, in general, persons under the age of 18 may not be employed in jobs that are dangerous to their health or development, and International Labour Convention No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.¹⁶⁰

UNICEF through its Orphans, Vulnerable Children and Child Protection programme works with national and international partners to create a policy, legal and institutional environment which is conducive to scaling up protection, care and support services for orphans and vulnerable children. The programme aims to strengthen national capacity at all levels to implement the National Plan of Action for Orphans and Vulnerable Children and to mobilize families and communities to care for and protect their vulnerable children. Early childhood development (ECD) remains a significant priority in the protection and care of young orphans and vulnerable children. UNICEF has worked with the National Juvenile Justice Forum to raise awareness among district official and service providers on diversion of child offenders.¹⁶¹ Foster Care is one of the cornerstones of the child protection system, and is legislated for in the Child Care Act of 1983.¹⁶²

The United Nations and many partner organizations have endorsed a framework of action to provide guidance to donor nations and the governments of affected countries to respond to the urgent needs of children affected by HIV and AIDS. The key strategies are to:

1. strengthen the capacity of families to protect and care for children by prolonging lives of parents and providing economic, psychosocial and other support;
2. mobilize and support community-based responses to provide both immediate and long-term support to vulnerable households;
3. ensure access of orphans and other vulnerable children to essential services, including education, health care and birth registration;

4. ensure that governments protect the most vulnerable children through improved policy and legislation and by channeling resources to communities; and
5. raise awareness at all levels through advocacy and social mobilization to create a supportive environment of all children affected by HIV and AIDS.¹⁶³

The United Nations Convention on the Rights of the Child and the South African Constitution further protects the child and ensures that:

1. In matters affecting the child, the child's views be heard and given due weight in accordance with the age and maturity of the child;
2. The child has the right to family or parental care or to appropriate alternative care when removed from the family environment; and
3. The child's best interests are considered paramount in every matter concerning the child.¹⁶⁴

CONCLUDING OBSERVATIONS

Orphan is a global problem. Because of AIDS, the number of orphans in sub-Saharan Africa is increasing dramatically, instead of declining. AIDS-related parental bereavement can contribute to heightened levels of internalizing and some externalizing distress, beyond that even for other orphans. Sub-Saharan Africa has the greatest proportion of children who are orphans.¹⁶⁵ There is need for targeted services, based on evidence of risk and protective factors in spheres such as home, school and community. It is essential that further research and interventions are focused towards reducing distress amongst this already-vulnerable group.¹⁶⁶ In the countries most affected by HIV/AIDS, there has been growing concern over the number of orphans, a problem that has increased largely as a result of the pandemic.¹⁶⁷ Throughout sub-Saharan Africa, poverty and AIDS have further destabilized households, changed demographic patterns, and orphaned enormous numbers of children. Consequently, families who are living amidst widespread poverty in AIDS-affected communities struggle to meet the basic needs of surviving children.¹⁶⁸ Children and young people who were orphans and helped by their extended family described situations in which they felt significantly better off than other children with no such support.¹⁶⁹ The most fundamental way to meet the needs of vulnerable children is to keep their parents alive and prevent them from becoming orphans.

While emergencies can and do increase vulnerability, there are views and experience that disasters can sometimes offer opportunities for longer

term change in terms of equality and quality of provision.¹⁷⁰ In many developing countries, increasing numbers of orphans and the spread of HIV/AIDS amongst caregivers are straining traditional practices of caring for vulnerable children within extended family structures.¹⁷¹ Young girls who are orphaned often turn to prostitution to survive, putting their lives in more danger.¹⁷² Orphans should have the best start in life to help them become useful members of society when they become adults.¹⁷³ Some of the vulnerabilities faced by the Orphans include stigmatization, discrimination, malnutrition, sexual violence, child labour, dropping out of school, lack of access to parent's properties, trafficking and even death.¹⁷⁴ Enhancing the quality of foster parent-orphan relationships has often been identified as key to the successful integration of orphans into mainstream socio-economic activity.¹⁷⁵ Violence and abuse of women and children, especially girls, is another major obstacle to which OVC are particularly susceptible.¹⁷⁶ The National Orphans and Other Vulnerable Children Policy (NOP) will contribute to the improvement of the quality of life of such children and their families.¹⁷⁷ United Nation also can play a vital role in this direction.

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PA RT II

SOCIAL SECURITY AND LABOUR

CHAPTER - 2

Social Security - Rights and Provisions for Workers in India

M S. PRIYANKA MANOJ JAWALE

INTRODUCTION AND CONCEPT OF SOCIAL SECURITY

There is always anxiety to all human beings for future discrepancies, fear for compromising minimum standard of living due to many factors. Among them unemployment, economic instability, social pressure and suppression, less dignity as a individual are common issues due to which weaker section of society mainly workers class has faced problems and these workers are always in need and assistance for their security. According to planning commissions report of working group on social security, the concept of social security is now generally understood as meaning protection provided by the society to its members through a series of public measures against the economic and social distress that otherwise is caused by the stoppage or substantial reduction of earnings resulting from sickness, maternity, employment injury, occupational diseases, unemployment, invalidity, old age and death.

In developing country like India there is hardly given a concern to the social security, adequate standard of living and the rights of the working class of people, though it is really complex to manage for populated country like India. Ministry of Labour, Government of India working hard to fulfill the needs of this working class, and coming with good innovative policies for their upliftment. Still there is always a cry and un-satisfaction by the NGOs working for rights of the workers and other concerned targeted groups, unions whose eye is on the government's functioning, its responsibility towards the weaker section of the society. Until very recent no much importance was given to the vulnerable class and its security specially workers in which both organized and unorganized labour class is involved. Even similar harsh comments about the poor economic and social status of Indian labour class given by International

Labour Organization (ILO) in its “*World Social Security Report*” relating to India’s administration has not made any significant change afterwards. In world at this globalization phase Social security programmes include proper health care facilities, pensions, social assistance and unemployment benefits, work incentives, medical assistance, disability, contract labours, etc.

Number of unorganized workers is also growing from last many decades due to factors contributing in it as part time or work from home kind of availability of jobs, many large scale industries / factories giving their small work to small scale industries, subcontracting is encouraged, government is not so serious about working of small scale industries and liberal in their social security norms and regulations, many labourer are not aware about their actual employer, now a days the straight relationship of employer and employee is weak, workers are hired by some one else who is doing subcontracting for other big company. In comparison such kind of unorganized workers who does not belong to any kind of legal entity / organization nor belongs to any labour union are facing more problems for social security, job certainty, proper pay scale, benefits like other organized sector workers get in old age, illness, death, disability.

Workers who ever may be organized or unorganized they need to be given social security in all major aspects but also promotional security¹ is also needed to be consider in this like food, education, health, sanitation, insurance schemes, housing, provision in contingencies like in unemployment, lack of job availability, sudden termination or closing of organization. There is need for special packages for below poverty line workers and education of their children’s. To study all these aspects it is important look in to this subject with a variety of dimensions with comparison to other developed states mechanism in this social security arena. It has been estimated that only about 20 per cent of the world’s working age population and their families have effective access to comprehensive social protection systems². Only, 17.2 per cent per cent of global GDP is allocated to social security and these expenditures are concentrated in higher-income countries. Fourthly per cent of the population of working age is legally covered by contributory old-age pension schemes with Asian counties having only a 20 per cent share. And less than 20 per cent of the elderly people receive pension benefits in India and elsewhere as compared to 75 per cent of people aged 65 or over receive some kind of pension.

DEFINITION OF SOCIAL SECURITY BY INTERNATIONAL
SOCIAL SECURITY ASSOCIATION (ISSA)

Any programme of social protection established by legislation, or any other mandatory arrangement, that provides individuals with a degree of income security when faced with the contingencies of old age, survivorship, incapacity, disability, unemployment or rearing children.

It may also offer access to curative or preventive medical care. Social security can include social insurance programmes, social assistance programmes, universal programmes, mutual benefit schemes, national provident funds, and other arrangements including market-oriented approaches that, in accordance with national law or practice, form part of a country's social security system. According to available estimates, around 50 per cent of the global population has access to some form of social security, while only 20 per cent enjoy adequate social security coverage³.

HISTORICAL EXPANSION OF SOCIAL SECURITY
MOVEMENT IN WORLD

Since long social security phenomenon is recognized, even since civilizations era there are traditional sources for economic security. Ancient Greeks economic security took the form of amphorae of olive oil. Olive oil was very nutritious and could be stored for relatively long periods. To provide for themselves in times of need the Greeks stockpiled olive oil and this was their form of economic security.

In medieval Europe, the feudal system was the basis of economic security, with the feudal lord responsible for the economic survival of the serfs working on the estate. The feudal lord had economic security as long as there was a steady supply of serfs to work the estate, and the serfs had economic security only so long as they were fit enough to provide their labor. During the middle ages the idea of charity as a formal economic arrangement also appeared for the first time. In the past social security measures played an important role in many western countries and they reduced the degree of pain during serious economic crises.

The English Poor Law of 1601 was the first systematic codification of English ideas about the responsibility of the state to provide for the welfare of its citizens. The colonial America is one of the first people to propose a scheme for retirement security that is recognizable as a forerunner of modern social insurance was Revolutionary War figure Thomas Paine. His last great pamphlet, published in the winter of 1795, was a controversial call for the establishment of a public system of economic security for the new nation.

The subsequent effect of cold war made America to think for the wellbeing of thousands of orphans, widows, disabled soldier along with many wounded population and unemployed workers. This triggered for the development of a generous pension plan which pave the way for present day's social security provisions by state. The First national pension programme for soldiers, was actually passed in early 1776, prior even to the signing of the Declaration of Independence. Throughout America's ante-bellum period pensions of limited types were paid to veterans of America's various wars. But it was with the creation of Civil War pensions that a full-fledged pension system developed in America for the first time. The Civil War Pension program began shortly after the start of the War, with the first legislation in 1862⁴. Despite the fact that America had a "*social security*" program in the form of Civil War pensions since 1862, this precedent did not extend itself to the general society. The expansion of these types of benefit programs to the general population, under Social Security, would have to await additional social and historical developments.

'The Townsend Movement' was initiated by Francis E. Townsend, bespectacled doctor from Long Beach, California. In 1933 he found himself unemployed at age 66 with no savings and no prospects. This experience galvanized him to become the self-proclaimed champion of the cause of the elderly. He devised a plan known as the Townsend Old Age Revolving Pension Plan, or Townsend Plan for short. The basic idea of the Townsend Plan was that the government would provide a pension of \$200 per month to every citizen age 60 and older. The pensions would be funded by a 2% national sales tax. There were three eligibility requirements: (1) the person had to be retired; (2) their past life is free from habitual criminality; (3) the money had to be spent within the U.S. by the pensioner within 30 days of receipt. Dr. Townsend published his plan in a local Long Beach newspaper in early 1933 and within about two years there were 7,000 Townsend Clubs around the country with more than 2.2 million members actively working to make the Townsend Plan the nation's old-age pension system. Mean while the Social Security Act in 1935 gone through many amendments. In November 1949, in the House of Representatives 179 members signed a discharge petition to force a floor vote on the Townsend Plan barely 39 members short of the number needed to force the House to consider the final version of the Townsend Plan as a replacement for the Social Security system.

President Franklin D. Roosevelt in 1930s received huge number of letters⁵ from old people who were hopeful to receive some kind of old age

help from the government to take care of them self. On June 8, 1934, President Franklin D. Roosevelt, *in a message to the Congress*, announced his intention to provide a program for Social Security. Subsequently, *the President created by Executive Order the Committee on Economic Security*, which was composed of *five top cabinet-level officials*. The committee was instructed to study the entire problem of economic insecurity and to make recommendations that would serve as the basis for legislative consideration by the Congress. The Social Security Act was signed into law by *President Roosevelt on August 14, 1935*. In addition to several provisions for general welfare, the new Act created a social insurance program designed to pay retired workers age 65 or older a continuing income after retirement. Upon signing Social Security Act president Roosevelt said: *“We can never insure one hundred percent of the population against one hundred percent of the hazards and vicissitudes of life, but we have tried to frame a law which will give some measure of protection to the average citizen and to his family against the loss of a job and against poverty-ridden old age”*.

In August 1941, Winston Churchill and President Franklin D. Roosevelt secretly met on a warship in North Atlantic. On the sixth anniversary of the Social Security Act, they announced a joint-declaration known as the Atlantic Charter. The *383-word Charter* was an expression of *“certain common principles in the national policies of their respective countries on which they base their hopes for a better future for the world.”* This brief charter would be the founding document of the United Nations and among its eight principles was a call for social insurance. Although social insurance began in Germany in the 19th century, in the years following World War II the United States was the leading model for nations around the world who were interested in designing Social Security systems. This movement toward the internationalization of Social Security can be symbolically fixed with the issuance of the Atlantic Charter in 1941.

President George W. Bush in his first speech to congress in February 2001 proclaimed his intention to appoint a Presidential Commission to recommend ways to address *Social Security reform*. The President stated the Commission would operate under three broad principles: (1) It must preserve the benefits of all current retirees and those nearing retirement; (2) It must return Social Security to sound financial footing; and (3) it must offer personal savings accounts to younger workers who want them. Also during his second term he insisted to his administration to give priority to Social Security reforms.

When arguing the case for the economic importance of social security provision, European social security history is particularly instructive. Many European countries introduced social security programmes early in their development; before they were rich societies. European history also shows that efficient economies and efficient social security systems can grow hand-in-hand, and that the latter is not a brake on the former. Clearly, all countries must develop their social security systems according to their own socio-economic needs and circumstances. Nonetheless, on the basis of European experience, the message for developing countries is a clear as effective and efficient social security systems is key to long term social and economic development.

Since ancient time India has joint family system that take care of the social security needs of all the family members, gives them access to ownership in land and other property of the house. This cultural tradition is taken into consideration by ministry of labour while providing any social security schemes, this give a sense to society like relatives or members of that family, that all are responsible for the life and standard of living of every member of that family. This step acknowledges one society as a one family. But due to urbanization, working culture in cities, migration for employment made significant changes in the family system and also disturbed strong social concern for one another, joint families converted into small units. This phase gave importance to the concern for social security and it started gaining importance.

SOCIAL SECURITY FOR WORKERS UNDER INDIAN CONSTITUTION

In India, out of an estimated work force of about 397 million, around 28 million workers are having the benefit of formal social security protection. Rest of the workers is in the unorganized sector. Several and successive attempts have been made in the past to address the multifarious problems faced by the workers in the unorganized sector through legislative as well as programme oriented measures⁷⁷ *TFYP WORKING GROUP Sr.No.48/2001, report of working group on social security for the tenth five year plan (2002-2007) government of India, Planning Commission- October 2001.*

. In India social security sector covers manly organized workers provision that also very small section. Provisions mainly deal with those workers who have direct relationship with their employers. The Directive Principle of State Policy (DPSP) part-IV of Indian Constitution provides main source and spirit behind the formulation of policies and various workers / labours provisions and legislations targeting social security. It

recommends responsibility to government or jointly between employer and government to provide social security to the working class.

Under Indian Constitution Part-III, fundamental rights chapter, Art. 19 (1) (f) declares that all citizens shall have right to practice any profession or carry on any occupation, trade or business. For securing components of this article again in part-IV, in DPSP wider scope for the social security measures under employment umbrella is given.

Provisions relating to Social security are listed in Directive Principles of State Policy and subjects in the Concurrent List, List III in the Seventh Schedule of the Constitution of India.

Item No. 23: social security and insurance, employment and unemployment.

Item No. 24: Welfare of Labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pension and maternity benefits.

Under Directive Principles of State Policy provisions for social security is discussed:

Article 41: Right to work, to 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 42: Provision for just and humane conditions of work and maternity relief,

The State shall make provision for securing just and humane conditions of work and for maternity relief.

Article 47: requires that the State should raise the level of nutrition and the standard of living of its people and improvement of public health as among its primary duties. The obligations cast on the State in the above Articles constitute Social Security.

PROVISIONS FOR SOCIAL SECURITY UNDER MINISTRY OF LABOUR, GOVERNMENT OF INDIA

Workforce in India: the NSSO survey of 1999-2000 has brought out the vast dichotomy between the sectors of organized and unorganized

work force. As per 1991 census, the total workforce was about 314 million and the organized sector accounted for only 27 million out of this workforce. The NSSO survey of 1999-2000 has estimated that the workforce may have increased to about 397 million out of which on 28 millions were in the organized sector. Thus, it can be concluded from these findings that there has been a growth of only about one million in the organized sector in comparison the growth of about 55 million in the unorganized sector.

Government of India mainly deals with the social security benefits under some acts which already have a structure for it. Those legislations particularly deals with the organized sector workers policies and provisions are mainly belong to the industries and establishments which are enclosed under: (1) The Shops and Commercial Establishments Acts of State Governments, (2) The Factories Act, 1948, (3) The Industrial Employment Standing Orders Act, 1946 etc

Protection of unorganized work force in India has a complex nature. The workers under this category are more vulnerable due to many external factors attached to their employment, they are hardly get any security and stability in work, this class is always in social –economic hardship. Main issues involved in this sector mainly consist of need of labour law coverage, high labour mobility, dispersed functioning of operations, seasonal and temporary nature of occupations, lack of organizational support, low bargaining power, etc. work nature also changes with area, region, rural or urban place. In the rural areas it comprises of landless agricultural labourers, small and marginal farmers, share croppers, persons engaged in animal husbandry, fishing, horticulture, bee-keeping, toddy tapping, forest workers, rural artisans, etc. where as in the urban areas, it comprises mainly of manual labourers in construction, carpentry, trade, transport, communication etc. and also includes street vendors, hawkers, head load workers, cobblers, tin smiths, garment makers, etc. The principal social security laws enacted in India for organized sector are the following:

- (a) The Employees' State Insurance Act, 1948
- (b) The Employees' Provident Funds & Miscellaneous Provisions Act, 1952 (Separate provident fund legislations exist for workers employed in Coal mines and tea plantations in the state of Assam and for seamen).
- (c) The Workmen's Compensation Act, 1923
- (d) The Maternity Benefit Act, 1961
- (e) The Payment of Gratuity Act, 1972

The 2nd National Commission on labour has also given some recommendation in central acts, and also amendments had taken place in that effect. There is large number of welfare funds available to the specified segments workers like beedi workers, construction or cine workers, etc. Various schemes are run by central and state government in which some times funding can be done by center or by state or by labour ministry. Some of its examples are as given below. *Centrally* Funded Social Assistance Programme *i.e.* National Social Assistance Programme (NSAP), which has three components viz., National Old Age Pension Scheme (NOAPS), National Family Benefit Scheme (NFBS) & National Maternity Benefit Scheme (NMBS).

The Employment Assurance Scheme (EAS) launched on October, 1993. Swaran Jayanti Gram Swarajgar Yojana (SGSY), Jawahar Gram Smridhi Yojana (JGSY), Schemes for Handloom weavers and artisans, by LIC-Social Security Group Insurance Scheme, Janshree Bima Yojana, Krishi Shramik Samajik Suraksha Yojana-2001, National Policy for Older Persons. The Central Government through the Ministry of Labour also operates at present Five Welfare Funds for Beedi workers, Limestone & Dolomite Mine workers, Iron ore, Chrome ore & Manganese ore Mine workers, Mica Mine workers & Cine workers. There is Building and Other Construction Workers Act, 1996 Most of the state governments are in the process of constituting Welfare Funds, framing the rules etc.

In addition with government few private local bodies, NGOs also work in proving social security to selected group of workers. Two of the outstanding examples are those of Self-Employed Women's Association (SEWA) and the Mathadi Workers Boards in Maharashtra.

INTERNATIONAL SCENARIO FOR WORKERS RIGHTS AND ISSUES RELATING TO THEIR SOCIAL SECURITY

Many international documents, conventions and declarations speak for the social security. Recognition of Social security is enshrined in many articles of UDHR (Universal Declaration of Human Rights) 1948. This document recognizes Social security as universal Human right of all the individuals without any kind of discrimination on the basis of cast, sex, religion, age, color, place of birth, etc.

Article 22 of Universal Declaration of Human Rights says, Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the

free development of his personality. Also article 23, 24 and 25 of the same document speaks for right to work, equal pay for equal work, and right to rest, participate in trade unions, adequate standard of living, etc.

India has accepted the commitment to the social welfare by ratifying “**International Covenant on Economic, Social and Cultural Rights**”, “(ICESCR), adopted by General Assembly resolution 2200A (XXI) of 16 December 1966, which came in to force on 3 January 1976. Though this instrument is not immediately binding on member states as like *International Covenant on civil and political Rights*. *State parties to this document are requiring taking steps, and promoting mutual cooperation for the promotion of economic social and cultural rights of all the individuals in all nations.*”

Article 4 of ICESCR states that Parties to the Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

PART III of ICESCR, in Article 6 specifically talks about the recognition of right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right. (2) The steps to be taken by a State Party achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7 recognizes the right of everyone to the enjoyment of just and favorable conditions of work which ensure, in particular minimum Remuneration, Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women with equal pay for equal work; A decent living for themselves and their families, Safe and healthy working conditions; Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations except seniority and competence; Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays all rights are stated under this article for the better life of working class.

Article 8 states The States Parties to ensure: The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others; Also spoke about to form or join international trade-union organizations; it also recognized The right to strike, provided that it is exercised in conformity with the laws of the particular country.

The important Article 9 particularly says that the States Parties to the present Covenant *recognize the right of everyone to social security, including social insurance.*

Article 10 recognize social security provisions for women and children in working conditions that, the widest possible protection and assistance should be accorded to the family, particularly for its establishment and while it is responsible for the care and education of dependent children. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

Article 11 recognizes the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation. Also shall take steps for freedom from hunger, states can work by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources; to ensure an equitable distribution of world food supplies in relation to need.

Article 12 recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Take steps for the improvement of all aspects of environmental and industrial hygiene;

the prevention, treatment and control of epidemic, endemic, occupational and other diseases. Article 13 and 14 speaks for right to education.

India has ratified some Conventions of the ILO including Workmen's Compensation, (Occupational Diseases) – (No. 18 and revised Convention No. 42 of 1934); Equality of Treatment (Accident Compensation) – No. 19 of 1925; and Equality of Treatment (Social Security) – No. 1 & 8 of 1962. ILO CONVENTION 102 has however not been ratified by India.

ILO has following conventions which particularly speak about social security⁹,

- C012** - Workmen's Compensation (Agriculture) Convention, 1921 (No. 12),
- C017** - Workmen's Compensation (Accidents) Convention, 1925 (No. 17),
- C018** - Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18),
- C019** - Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19),
- C024** - Sickness Insurance (Industry) Convention, 1927 (No. 24),
- C025** - Sickness Insurance (Agriculture) Convention, 1927 (No. 25),
- C035** - Old-Age Insurance (Industry, etc.) Convention, 1933 (No. 35),
- C036** - Old-Age Insurance (Agriculture) Convention, 1933 (No. 36),
- C037** - Invalidity Insurance (Industry, etc.) Convention, 1933 (No. 37),
- C038** - Invalidity Insurance (Agriculture) Convention, 1933 (No. 38),
- C039** - Survivors' Insurance (Industry, etc.) Convention, 1933 (No. 39),
- C040** - Survivors' Insurance (Agriculture) Convention, 1933 (No. 40),
- C042** - Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42),
- C044** - Unemployment Provision Convention, 1934 (No. 44), **C048** - Maintenance of Migrants' Pension Rights Convention, 1935 (No. 48),
- C102** - Social Security (Minimum Standards) Convention, 1952 (No. 102),
- C118** - Equality of Treatment (Social Security) Convention, 1962 (No. 118),
- C121** - Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121),
- C128** - Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128),
- C130** - Medical Care and Sickness Benefits Convention, 1969 (No. 130),
- C157** - Maintenance of Social Security Rights Convention, 1982 (No. 157),

C168 - Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168).

CONCLUDING OBSERVATIONS

However, for the success of social security provisions requires active support of employers and employees. Though this whole journey will never be without challenges but the willing administration of the many countries can found its ways and reforms in their practice and promises towards better government and equal adequate standard of living to all.

Social security can be considered as a major achievement of the nineteenth and twentieth century, which provided wider means for economic and social security to each and every individual specially in old age, in circumstances of illness, disability, death of the security provider in early or old age. There is a need to look forward with the universal social security based approach which is based on social solidarity principle with a common brotherhood. Decentralization of social security policies specifically in a way where direct participation of general public to help government or socially motivated organization is possible, where individuals also asked to perform certain social duties towards deprived class. Government should provide such environment and infrastructure in which social security will be considered as a common responsibility of all. Local participation needed to be encouraged. Community based and location specific social security measures will be encouraged through Self Help Groups, voluntary organizations, etc. State Governments like Kerala, Tamil Nadu, West Bengal have introduced social security schemes providing insurance and other benefits to the certain occupational groups in the unorganized sector. Other states could be motivated and encouraged to formulate and implement such schemes and programmes as per their requirements. If all states will have common security measures to workers then the flood of unorganized labours from one state to another state can be controlled.

Social security is a tool for social transformation and good governance in country so it must be used in an efficient way to promote and protect rights of all the vulnerable section, especially working class who is always working and struggling to make a better world. Traditionally in India same concept was deep rooted in family and community but now world has become a global village and in that such policies of Social security must be performed by each government more cautiously, taking it as a primary duty towards citizens, then only we all will be successful to make one world concept of United Nation practically possible.

In the end I would like to quote Franklin D. Roosevelt's words, which says:

“Security was attained in the earlier days through the interdependence of members of families upon each other and of the families within a small community upon each other. The complexities of great communities and of organized industry make less real these simple means of security. Therefore, we are compelled to employ the active interest of the Nation as a whole through government in order to encourage a greater security for each individual who composes it . . . This seeking for a greater measure of welfare and happiness does not indicate a change in values. It is rather a return to values lost in the course of our economic development and expansion . . .” Franklin D. Roosevelt: *Message of the President to Congress*, June 8, 1934¹⁰.

END NOTES

- 1 Social security in India: status, issues and ways forward, D. Rajasekhar, center for decentralization and development, ISEC, Bangalore.
- 2 India has not done enough in social security space: ILO report, PTI Nov 16, 2010, 09.57pm IST, http://articles.timesofindia.indiatimes.com/2010-11-16/india/28255812_1_health-scheme-pension-benefits
- 3 International Social Security Association, Limited Access, <http://www.issa.int/Topics/About-social-security>.
- 4 Historical Background and Development of Social Security, [www.socialsecurity.gov,http://www.ssa.gov/history/brief history3.html](http://www.socialsecurity.gov/history/brief%20history3.html)
- 5 www.ssa.gov/history/lettertoFDR.html. also see : The History of Major Changes to the Social Security System, By Teresa T. King and H. Wayne Cecil, <http://www.nysscpa.org/cpajournal/2006/506/infocus/p15.htm>
- 6 Sr.No.7.PRESIDENTIAL STATEMENT SIGNING THE SOCIAL SECURITY ACT. AUGUST 14,1935, <http://www.ssa.gov/history/fdrstmts.html#signing>
- 8 Office of UN High Commissioner for Human Rights <http://www2.ohchr.org/english/law/cescr.htm>
- 9 http://www.ilo.org/dyn/normlex/en/f?p=1000:12000:512622843967517:::P12000_INSTRUMENT_SORT:2
- 10 The Social Security Act-Passage and Development-<http://www.ssa.gov/history/briefhistory3.html>

CHAPTER – 3

Analyzing Provident Funds in India: The Splitting of Wages Issue

SWARNIM RAI SHRIVASTAVA

You must rank me and all my colleagues as strong partisans of compulsory social insurance for all classes for all purposes from cradle to the grave.¹

INTRODUCTION

Since time immemorial, man explored better ways of living through the resources continuously provided by nature. After attaining the basic necessities of livelihood, the need of governance for the management of resources and geographical boundaries was brought in existence. The concept of religion, government, state, country was formed by society. Now the first and foremost thing that this society seeks is security. Thus, social security has a powerful impact on all levels of society. Social security is the protection that a society provides to individuals and households to ensure access to health care and to guarantee income security, particularly in cases of old age, unemployment, sickness, invalidity, work injury, maternity or loss of a breadwinner.² The vulnerability of the poor to socio-economic shocks can be reduced by policies that protect their livelihoods, increase their human capital and assist them in times of crises.

Systems of socio-economic security were introduced in Europe in the late 19th century.³ These were slowly implemented in most countries during the early 20th century and consolidated after the Second World War. These programmes were established as a means of improving the well-being of the poor,⁴ reduce inequality within society and conciliate different social demands, thus avoiding the social and political conflicts, which necessarily arose as capitalist forms of production evolved in the industrialized countries.⁵ Two of the most influential examples were the United States' 1935 Social Security Act⁶ and the social security programme implemented in the UK, summarized in the 1942 Beveridge Report. These

programmes established the basis for modern forms of social security, defined by the International Labour Organization (ILO) as “*the protection which society provides for its members through a series of public measures against the economic and social distress that otherwise would be caused by the stoppage or substantial reduction of earnings resulting from sickness, maternity, employment injury, invalidity and death; the provision of medical care; and the provision of subsidies for families with children*” (ILO, 1984).

India, being a welfare State, has taken upon itself the responsibilities of extending various benefits of Social Security and Social Assistance to its citizens. The social security legislations in India derive their strength and spirit from the Directive Principles of the State Policy as contained in the Constitution of India. Although the Constitution of India is yet to recognize Social Security as a fundamental right it does require that the State should strive to promote the 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 national life. Specially, Article 41 of the Constitution requires that the State should within the limits of its economic capacity make effective provision for securing the right to work, to education and to public assistance in case of unemployment, old age, sickness and disablement. Article 42 requires that the State should make provision for securing just and humane conditions of work and for maternity relief. Article 47 requires that the State should raise the level of nutrition and the standard of living of its people and improvement of public health as among its primary duties. The obligations cast on the State in the above Articles constitute Social Security.

In India out of total workforce of 45.9 crore, 94% is in the unorganized sector and remaining 6% is in the organized sector. The workers in the organized sector are covered under social security legislations like Employees’ Provident Funds & Miscellaneous Provisions Act, 1952 and Employees’ State Insurance Act, 1948. However, the majority of workforce in the unorganized sector was devoid of any formal social security legislation. To address the social security needs of such workers, the Government enacted ‘*Unorganized Workers*’ Social Security Act, 2008. Provident Fund Schemes happen to be one of the major social security provided to the public. In India, the legislation that provides for the institution of compulsory Provident Fund, pension Fund and Deposit Linked Insurance Fund for the benefit of the employees in factories and

other establishments, is called Employees Provident Funds & Misc. provisions Act 1952 (EPF Act).

Employees' Provident Fund Organization is a statutory body of the Government of India under the Ministry of Labour and Employment. It administers a compulsory contributory Provident Fund Scheme, Pension Scheme and an Insurance Scheme. It is one of the largest social security organizations in the world in terms of the number of covered beneficiaries and the volume of financial transactions undertaken. The Employees' Provident Fund Act was passed in 1952 to provide for institution of provident fund for the employees of factories and other establishments. The Scheme came into force from 1st November 1952. The Scheme is presently applicable to 180 industries/class of establishments employing 20 or more persons. Coverage under the Scheme is restricted to employees drawing pay plus dearness allowance not exceeding Rs.6500/- per month. At present 3.40 lakh establishments having 2.6 crore employees are covered under the EPF Scheme.⁷The Scheme is basically meant for security of workers after their retirement. It provides for lump sum payment of provident fund, monthly pension and deposit linked insurance. The basic rate of provident fund contribution is 10% of basic wage/salary and the higher rate is 12%. The basic rate of 10% applicable to 5 main industries namely, beedi, brick, jute, coir and guargum for the rest it is 12%. Out of the employer share of contribution, a sum equal to 8.33% of wages is diverted to pension fund account while the balance of employer's share of contribution and employee's share of contribution is credited to the provident fund account.

The accumulation in the provident fund account of a member becomes payable for final settlement under following situations:

- (a) On retirement from service after attaining the age of 55 years.
- (b) On retirement as a result of total and permanent disablement rendering the worker incapable of working.
- (c) Immediately before migration from India for permanent settlement abroad for taking up employment abroad;
- (d) Termination of service upon mass or individual retrenchment;
- (e) Termination of service under a voluntary retirement scheme; and
- (f) Termination of job and remaining unemployed for over two months or leaving the job from a covered establishment and joining an establishment not covered by P.F.

The Provident Fund schemes are implemented through organizations set up for each with a view to provide efficient and prompt service nearer the doorsteps of members. All the organizations have generally adopted decentralization on a large scale. Employees' Provident Funds & Miscellaneous Provisions Act, 1952 and schemes framed there under are implemented through a network of 17 Regional offices at State Head Quarters and 84 Sub-Regional Offices. There are 155 inspectorates for enforcing the provisions and providing guidance to the employers and employees. Employees' Provident Fund Organization covers 2.99 lakhs establishments, and 2.14 crore members. It handles about more than 2.5 lakh claims every month, which casts a heavy responsibility on the organization.⁸

DILEMMA IN CALCULATING CONTRIBUTORY PROVIDENT FUNDS- THE SPLITTING OF WAGES ISSUE

The employee benefit package normally contains apart from basic wage, dearness allowance, house rent allowance, conveyance allowance, allowances by various names, bonus, incentives and host of other fringe benefits. The employers have generally been contributing provident fund on basic wages, Dearness allowance and retaining allowance wherever paid but there has been an old debate as to what all in wages would attract the contribution of provident Fund. Recently The Employees Provident Fund Organization (EPFO) has issued an inter-department circular on May 23, 2011 wherein it is mentioned that splitting of minimum wages for the purposes of PF contributions is not permissible and also that basic wages in any case cannot be less than minimum wages. There have been various pronouncements surrounding the issue from Hon'ble Supreme court and other High Courts from time to time. Recently, there have been judgments from Punjab and Haryana High Court, MP High Court and other High Courts wherein the related issues have been directly dealt with. In view of the Circular issued by EPFO, the pronouncements of various Courts of Law, a controversy that has arisen need to be understood from legal and practical perspective.

To understand the issue related to requirement of contribution of provident fund on the components of salary other than basic wages under The EPF Act⁹, it is important to refer to the concept of "*basic wages*" as contained in the EPF Act. There is no doubt that "*basic wages*" as defined therein mean all emoluments which are earned by an employee while on duty or on leave with wages in accordance with the terms of the contract of employment and which are paid or payable in cash. Had there

been no exception to this definition then in that event there would not have been any difficulty in holding that whatever other payments are there as made to an employee would have been included in “*basic wages*”.

The difficulty surfaces because the definition of basic wages also provides that certain components would not be included in the term basic wages and these are contained in three clauses. The presents made by the employer and the cash value of any food concession, etc. are excluded although there is no logical patterns in these exclusions. Then comes clause (ii), it excludes dearness allowance, house rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment. Having excluded dearness allowance from the definition of “*basic wages*” Section 6 then provides for inclusion of dearness allowance for the purposes of contribution. But that is clearly the result of the specific provision in Section 6.

Therefore, it is curiously important to understand the basis for exclusion in clause (ii) as also the inclusion of dearness allowance and retaining allowance in Section 6. It seems that the basis of inclusion in Section 6 and exclusion in clause (ii) is that whatever is payable in all concerns and is earned by all permanent employees is included for the purpose of contribution under Section 6 but whatever is not payable by all concerns may not be earned by all employees of a concern is excluded for the purpose of contribution.

Dearness allowance is payable in all concerns either as an addition to basic wages or as a part of consolidated wages. Similarly retaining allowance is payable to all permanent employees in all seasonal factories like sugar factories, etc. On an intense focus it would be revealed that house rent allowance, overtime allowance, commission and other allowances are not necessarily to be found in all concerns nor are they necessarily earned by all employees of the same concern though where they exist they are earned in accordance with the terms of contract of employment. It, therefore, appears that the basis for the exclusion in clause (ii) of the exception in Section 2(b) is that all that is not earned in all concerns or by all employees of a concern is excluded from the basic wages. To this, the exclusion of Dearness Allowance in clause (ii) is an exception. But that exception has been corrected by including Dearness Allowance in Section 6 for the purpose of contribution. On similar logic production bonus is exempted from the definition of “*basic wages*”. This has been held by the Supreme Court in case *Bridge and Roof Company*

*(India) Limited vs. Union of India*¹⁰, as referred hereinabove, and *Jay Engineering Works Limited vs. Union of India*¹¹. It has been held that whatever is payable in all concerns and earned by all permanent employees is included for their purpose of contribution under Section 6, but whatever is not payable by all concerns or may not be earned by all employees of a concern is excluded for the purpose of contribution irrespective of anything.

The principal as laid down by the Hon'ble Supreme Court could be summed as follows:

- (a) Where the wage is universally, necessarily and ordinarily paid to all across the board such emoluments are basic wages.
- (b) Where the payment is available to be specially paid to those who avail of the opportunity is not basic wages. By way of example it was held that overtime allowance, though it is generally in force in all concerns is not earned by all employees of a concern. It is earned in accordance with the terms of the Contract of employment but because it may not be earned by all the employees of a concern, it would be excluded from basic wages.
- (c) Conversely, any payment by way of a special incentive or work would not be basic wages.

This is the acid test which has been laid down by the Apex Court. Acting on the rationale of the above cited case of Supreme Court, the Madras High Court in the case of *Regional commissioner, EPF, Tamil Nadu and Pondicherry vs. Management of Southern Alloy Foundries (P) Ltd*¹² held that definition of term "basic wages" excluded a number of allowances grouped in sub-clause (ii) of sub-section (b) enunciated by the Supreme Court in the case of *Bridge and Roof Company (India) Ltd. vs. Union of India*¹³. The payment of good work allowance or good work reward could not be flatly done to all the employees of the concern or all the employees could earn it nor could it be regulated by the terms and conditions of the contract of employment. However, various other High Courts while dealing with different components have held that the components of payments could not be expanded or added to the extent to take the same away from applicability of the EPF Act. In a recent judgment passed by division bench of MP High Court in the case of WP No. 1857 of 2011 *Montage Enterprises Ltd. Vs RPFC*¹⁴, while relying and interpreting the earlier pronouncements of the Supreme Court in *Bridge and Roof*, *Manipal academy*, *Jay engineering* and *TI Cycles* cases, while dealing with the issue of components like conveyance allowance and

special allowances has held that the allowances which are universally, necessarily and ordinarily paid to all across the board such emoluments are basic wages and where the payment is available to be specially paid to those who avail of the opportunity is not the basic wages and therefore the transport allowance *i.e.* conveyance allowance and special allowance which is paid to all the employees, the same would included in basic wages.

As regards whether, the basic wages as paid to the employees necessarily have to be in any case not less than minimum wages, recently the *Hon'ble Punjab and Haryana High Court* in the case of Group 4 Securities Guarding Limited Vs RPFC¹⁵ while relying on the judgments in Bridge and Roof case and also interpreting the Airfreight case, has held that in view of the MW Act¹⁶ and EPF Act being two separate legislations enacted to achieve different objectives, the definition of basic wages in EPF Act and MW Act cannot be borrowed from each other and there being no such provisions there is no requirement for an employer to fix the basic wages which is not less than minimum wages. **It has also been held in the judgment that there is no law which actually prohibits the split of minimum wages and that** the exclusion clause is fairly large and the exclusions made while determining the basic wage cannot be said to be unjustified unless they are totally at variance and in complete deviation of the concept of the allowances sought to be under the exclusion clause.

Interestingly, the circular that has been issued by the EPFO is an internal communication issued by CPFC to Additional CPFCs and RPFCs to decide the issues related to provident fund contribution in Section 7A proceedings while following the principle that **basic wage in no case can be lesser than the minimum wage and that minimum wages are not amenable to split up. While conducting a proceeding under Section 7A, the CPFC, Additional CPFC and the RPFC, being authorities created by the EPF Act would have the same powers and authority and the CPFC may not be within its jurisdiction to dictate the other authorities exercising quasi judicial functions under Section 7A, as to the basis for deciding the issues related to contribution of provident fund. They being pari passu authorities are required to conduct and decide the issues independently with their own reasoning and understanding without any influence whatsoever.**

Looking at the circular, EPFO has made it known that they would pursue on these issues and proceed against the establishments who would not make compliance in accordance with their circular and thus

appears be a potential litigation for the employers in that case. However, as regards the legal position on the issue that basic wage cannot be less than the minimum wages or whether minimum wages is amenable to split, there being a direct judgment of Punjab and Haryana High Court in G4S case¹⁷ which has not been challenged and otherwise stayed or set aside by any higher court would prevail over the internal circular of the EPFO. As regards the issue on the components that would be basic wages to attract contribution of provident or would fall within the exclusion clause, it has got crystallized from various pronouncements as discussed above that what has been specifically excluded in Section 2(b) of the EPF Act would not be basic wages and what has not been specifically and unambiguously excluded or the component would be of any debate on this account, the same would be guided by the principles as laid down by Honourable Supreme Court in Bridge and Roof judgment and followed by other judgements as discussed above.

The Said Circular is a significant step by the PF department to ensure that PF contributions are made on at least the amount of Minimum Wages. Given that most organizations may have significant workforce and thereby large exposure to PF contributions, this circular and the corresponding executive actions based on the same, can be a major cause of concern in case their PF contributions are currently on an amount lower than that calculated on Minimum wages. The authorities may try to act retrospectively on all contributions made after the first circular of 2008. However, the organizations can take shelter under the various judicial pronouncements on the subject and other arguments available to them. Till the time, EPF Act is actually amended or till there is a Supreme Court ruling in the matter, controversy on the subject matter shall prevail.

CONCLUDING OBSERVATIONS

The Provident Fund Schemes are basically savings schemes with participation from employers and employees envisaging lump sum payment with interest on retirement/attaining certain age or death. These do not seem to provide Social Security in true sense in their original conceptual form. The analytical study of different Provident Fund Schemes reveals a notable feature that the Provident Funds continue to occupy a place of eminence in national context, in view of the following:

- (a) Promotes the idea of self-help
- (b) Inculcates habit of regular savings.
- (c) Provides a feeling of ownership

- (d) Simplicity and ease in administration
- (e) Financial participation from government not essential
- (f) Acts as a secured, definite financial reserve for the country
- (g) Provides Social Security to members and family

The nature and role of Provident Funds is, however, undergoing a change. Transformation from one that is primarily focused on providing financial savings for meeting future needs, to the one that is concentrating on the improvement of the well-being and quality of life of its members. These schemes are becoming increasingly relevant in developing countries today as a result of transformation/diversification into Social Security Schemes like - Pension Schemes, Provision for Insurance cover against accidents, disabilities and similar other benefits.

END NOTES

- 1 Winston Churchill, Radio Address, March 1943.
- 2 International Labour Organization - World Labour Report-2000.
- 3 The first modern social insurance programme was established in Germany in 1880 by Chancellor vonBismarck and quickly adopted by other European countries.
- 4 The Beveridge Report famously proclaimed the slogan “ freedom from fear and want”.
- 5 Chancellor von Bismark already in 1880 saw the Sozialstaat as a solution against socialism and as a means to win the new proletariat’s loyalties and keep class struggle under control (Esping-Anderson, 1990; Sala-i-Martin, 1996). See also Gintis and Bowles (1982)
- 6 The 1935 Social Security Act gave rise to the term ‘social security’ as it is commonly understood today(Schmidt, 1995).
- 7 Report on Social Security for 11th Five Year Plan
- 8 Late Shri S.R Kaushik, Evaluation of Existing schemes on Provident Funds in India, Ministry of Labour on 12th July, 2012
- 9 Employee’s Provident Fund & Miscellaneous Provisions Act, 1952
- 10 1962 (2) LJ 490
- 11 1963 (2) LLJ 72
- 12 1982 (1) LLJ P.28
- 13 1962 (5) FLR 423
- 14 2011 LLR 316
- 15 2004 (102) FLR 374
- 16 Motor Vehicles Act, 1988
- 17 *Ibid.*

PA RT III
SOCIAL SECURITY AND DISABLED

CHAPTER - 4

Socio-Legal Support to Disabled Indians: An Overview

SHAIWAL SATYARTHI

“A true friend knows your weaknesses but shows you your strengths; feels your fears but fortifies your faith; sees your anxieties but frees your spirit; recognizes your disabilities but emphasizes your possibilities.”

- *William Arthur Ward*

INTRODUCTION

Any constructive societal talk on disability is about people and their social relationships, and as such it is about the life of people with disabilities and their interaction with the community and the environment. In the past, disability has been seen primarily as a medical condition- a problem located within the individual. Since then, this medical or individual model has been challenged by disability activists who reconceptualised disability as primarily a social phenomenon. This social model of disability draws a clear distinction between ‘*impairments*’ and ‘*disability*’. It argues that it is society that disables people with impairments, through its failure to recognize and accommodate difference, and through the attitudinal, environmental and institutional barriers that it erects against people with impairments. Disability thus arises from a complex interaction between health conditions and the context in which they exist.

There is no universally agreed definition of disability. Disability is an evolving concept, and definitions are problematic. However, as defined in the United Nations Convention on the rights of persons with disabilities¹: “*Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others.*” That is why; disability must be defined as it is experienced by all disabled people, regardless of age and gender, including those with sensory, physical and intellectual impairment and mental health difficulties.²

In India, disability is still overwhelmingly viewed as a social welfare issue. As a result, disabled people are seen as passive victims requiring charitable assistance, and disability is considered a special issue, isolated from mainstream development. This is a reflection of the broader understanding of rights in the country. In India, rights are claimed less in terms of equality of access than of the notion that certain groups are under-privileged and require '*special*' assistance. At the same time, it is also realized that how disabled people are taking control over their lives, changing their environments and demanding their right to full participation in society and to equality in freedom and dignity, despite massive violations of their rights and lack of visibility on mainstream development agendas³. Disabled People and Development is one of the major outputs of the technical assistance. It describes the evolution of the global response to disability as well as the concepts and tools for addressing disability issues.

POVERTY: A MAJOR CAUSE OF DISABILITY

It has been established by many researches that the poverty is the biggest cause of disability in India. Poverty as a cause of disability: well over 50 per cent of disabilities are preventable and directly linked to poverty⁴. This is particularly true for disabilities arising from malnutrition, maternal under-nourishment and infectious diseases. The millions of Indian people who live below the poverty line are the most vulnerable to disability⁵. This is because they are more likely to:

- 1 Live in crowded and unsanitary conditions, making them more at risk of catching infectious diseases
- 1 Suffer from malnutrition
- 1 Limited access to medical care
- 1 Poorly educated and lack basic knowledge
- 1 Not immunise their children
- 1 Lack proper care during pregnancy and birth, and have multiple pregnancies.
- 1 Poor people are often forced to live and work in unsafe environments.

As a part of poverty alleviation programmes both Ministries of Rural Development and Urban Affairs and Employment are running umbrella schemes for promoting wage employment among urban and rural poor respectively. These include: Sampoorna Grammeen Rozgar Yojana (Rural wage employment scheme) administered by Ministry of Rural Development, Swarnjayanti Gram Swarozgar Yojana (Rural Self-employment Scheme)

run by Ministry of Rural Development, The Swarna Jayanti Shahari Rojgar Yojana (SJSRY) (Urban Employment Scheme) etc.⁶

DISABLED PEOPLE AND THEIR RIGHTS

The United Nations, in its early years, did not explicitly recognize the human rights of persons with disabilities. For example, the Universal Declaration on Human Rights states that “*everyone*” is entitled to the rights and freedoms set forth in the declaration, but does not recognize persons with disabilities as one of a series of classes in need of protection from human rights violations⁷. The Disability Rights Initiative is recognized as the only one of its kind in providing a comprehensive range of socio-legal support services to India’s disabled community. India’s disability rights movement is yet to mature. It is divided along lines of impairment and infused with personal rivalries. These are not unusual problems- they affect the disability movement the world over. However, unfortunately, many of the issues that have been raised by disability activists are largely peripheral to the lives of the average disabled person. Most disabled people in India are unaware of their rights and entitlements. They need empowering, they need information, and they need their concerns to be appropriately represented⁸.

The concept of human rights for disabled persons began to become more accepted internationally⁹. Recognition was given to the fact that disabled persons were entitled to the same political and civil rights as others, including measures necessary to enable them to become self-sufficient¹⁰.

The declaration on the Rights of Disabled Persons reiterated the rights of disabled persons to education, medical services, and placement service. It further recognized their right to economic and social security, to employment, to live with their families, to participate in social and creative events, to be protected against all exploitation, abuse or degrading behaviour, and to avail them of legal aid.

The challenge of integrating and including persons with disabilities in the economic mainstream has not been met. Despite international standards and the implementation of exemplary training and employment legislation, policies and practices in some countries, persons with disabilities, and especially women, youth and those in rural areas, remain disproportionately undereducated, untrained, unemployed, underemployed and poor. The legislative framework for the protection of the rights of disabled people is covered by four acts:

The Mental Health Act, 1987

This Act aims to introduce changes based on modern understandings of mental health and to consolidate treatment and care practices in line with modern practices and values. Outmoded language was replaced; admission and discharge procedures simplified and psychiatric hospitals have to be licensed. The Act removed mental retardation from under the definition of mental illness.

The Rehabilitation Council of India Act, 1992

This Act relates to the training of professionals in 16 disciplines within the rehabilitation sector. It seeks to ensure that disabled people are treated by qualified personnel, and acts as an accreditation and quality control facility. The Act requires everyone practising rehabilitation to register with the RCI's central rehabilitation register, but this is only possible with a government-recognized diploma. Following NGO lobbying, the Act has been diluted so that locally trained NGO personnel can be accredited after attending short bridging courses at a range of government-approved training centres.

The Persons with Disabilities Act, 1995

This Act has been landmark legislation for the disabled in India. This is the central government piece of legislation. The main provisions include:

- (a) Prevention and early detection¹¹
- (b) Free education for every child with a disability in an appropriate environment until the age of 18¹²
- (c) Schemes and programmes for non-formal education¹³
- (d) A three per cent reservation admission to all government education institutions¹⁴
- (e) A three per cent reservation in all government poverty alleviation schemes¹⁵
- (f) Barrier-free environments in transport and government buildings¹⁶
- (g) A three per cent reservation in government posts and identification of posts for disabled people¹⁷
- (h) Special measures to overcome discrimination, such as preference in allotment of land for housing, business, special schools, research and recreation centres, and factories¹⁸
- (i) Generic and specialized rehabilitation services¹⁹
- (j) Insurance scheme for disabled employees²⁰

- (k) Unemployment allowance for out-of-work disabled people²¹
- (l) Coordination and monitoring²²
- (m) Appointment of a commissioner in every state to follow up complaints²³.

The Persons with Disabilities Act, 1995 have been in force for many years and many developments have taken place with regard to employment of persons with disabilities, the pace of employment is still slow. The concerned apex bodies still do not have policies relating to employment of disabled people. The disability sector needs to be more pro-active in advocacy and sensitization of government and industry. Identification of jobs that persons with disabilities can do requires to be more creative and to break out of the present stereotypes of what disabled persons can do. NGOS have been backward in this field and need to take the lead role in preparing the workforce of persons with disabilities for employment, by promoting education, training and accessibility.

The National Trust Act, 1999

This Act aims to protect people with the seven impairments excluded under the 1995 Persons with Disability Act. It recognizes that there are disabled people who will require care throughout their lives, and enables parents, relatives and organizations to request the appointment of a guardian for severely disabled people. The Act also provides for the bequest of property by parents of disabled children for future protection of their children after death.

EDUCATION TO DISABLED CHILDREN

In shifting towards a social model of disability and education, the United Nations' first step was to recognize the inherent rights of persons with disabilities²⁴. The first document in the field of education to do so was the Convention on the Rights of the Child (CRC), passed in 1991. The CRC explicitly recognizes the right of all children to an education, a provision that applies with equal force to children with disabilities²⁵. Educating students with disabilities is a human rights issue and an economic one also²⁶.

In India, education is recognized as being absolutely critical to enable disabled children to realize their abilities, and the government acknowledges that the vast majority have no access to education at all. In India, the major problem is that of awareness or rather, the lack of it. There's also a kind of stigma associated with them, which is disgusting. There are laws that state that no school for '*normal children can refuse*

admission to disabled ones, however, it is rarely followed; most schools do refuse admission to such children. All these factors lead to just one result: these children do not receive the education they deserve, the education that their peers receive.”²⁷

India broadly advocates a twin-track approach to educating disabled children. It supports the inclusion or integration of the majority of disabled children into mainstream schools alongside special schooling for the more severely disabled. According to the National Sample Survey Organization’s report on ‘*Disabled Persons in India*’, 55 percent persons with disabilities were illiterate²⁸. This is very large and unacceptable percentage. Though, The Government of India is providing scholarships to students with disabilities for pursuing studies at post school level. Scholarship is also provided to the children with mental retardation and Cerebral Palsy pursuing education in school. There is a need for mainstreaming of the persons with disabilities in the general education system through Inclusive education²⁹.

SOCIAL SECURITY AND DISABLED PERSON

The purpose of any social security measure is to give individuals and families the confidence that their level of living and quality of life will not erode by social or economic eventuality; provide medical care and income security against the consequences of defined contingencies; facilitate the victims physical and vocational rehabilitation; prevent or reduce ill health and accidents in the occupations; protect against unemployment by maintenance and promotion of job creation and provide benefit for the maintenance of any children. The Indian Constitution³⁰ speaks of state’s responsibility to provide social security to the citizens of this country. In India, we find all the above strategies in practice. For the purpose of discussion, we may categorize the social security schemes available in India as Preventive Schemes, Promotional Schemes, and Protective Schemes. Disabled persons, their families and care givers incur substantial additional expenditure for facilitating activities of daily living, medical care, transportation, assistive devices, etc. There is a need to provide them social security by various means³¹. Central Government has been providing tax reliefs to persons with disabilities. The social security strategies include the following:

- (i) Social insurance with the participation of the beneficiary pooling risks and resources
- (ii) Social assistance financed from general revenues and granting benefits on the basis of means test

- (iii) Employers liability schemes where there is an identifiable employer and within the economic capacity of the employer
- (iv) National Provident Funds
- (v) Universal schemes for social security.

The present social security schemes are not comprehensive and also vary across the States.

The State Governments will be encouraged to develop a comprehensive social security policy for persons with disabilities. The benefits are extended only to working population in the organized sector through legislations like:

- (i) The Employees State Insurance Act, 1948
- (ii) The Workmen's Compensation Act, 1923
- (iii) The Employees Provident Fund and Miscellaneous Provisions Act, 1952
- (iv) The Payment of Gratuity Act, 1972
- (v) The Maternity Benefits Act, 1976

The three major Social Security Acts as listed above are the employer liability and employment related benefit schemes. They are operative only in the case of disability during the course of employment. There are no programmes for old age and survivor benefits in the case of the disabled who cannot be employed or the disabled person who are not employed even after crossing the employable age³².

EMPLOYMENT AND DISABLED PERSON

The severely disabled and intellectually challenged persons mainly depend on protected or sheltered employment. In the Constitution of India, labour is a subject where both the Central and State Governments are competent to enact legislation, subject to certain matters being reserved for the Central Government. India, over the last 30 years has put in place an impressive range of legal framework and administrative mechanisms to boost employment of persons with disabilities. However, for realization of the rights of persons with disabilities, there is a need to have a systematic effort so that the institutions and their functionaries who administer the employment are made fully conversant with the complexity of legal and administrative arrangements³³.

The Central Government has responsibility for developing training schemes at the national level, policy development, establishing training standards and procedures, and conducting trade tests and certification.

Implementation of training schemes largely rests with the State and Union Territory Governments. At the outset, the Government adopted the approach of sheltered employment for all types of disabilities. The National Council of Vocational Training, a tripartite body with representatives from employers, workers, and central and state governments, acts in an advisory capacity³⁴.

As disabled people constitute a significant 5 to 6 percent of the population of India, their needs for meaningful employment remain unfulfilled³⁵, in spite of the implementation of the People with Disabilities Act, 1995 which reserves 3% of all categories of jobs in the government sector for disabled persons, and provides incentives for public and private sector companies, that have at least 5% of their workforce comprising of disabled persons³⁶. Of the approximately 70 million people with disabilities in India, only about 0.1 million have succeeded in getting employment in the industries till now. The industries can however, play a more emphatic role because of their vast employment generating potential and the financial power. Accordingly, it is submitted that:

- (i) There should be a basic willingness on the part of employers to employ persons with disabilities. If this willingness is present, incentives may not be necessary.
- (ii) Companies will require professional expertise to screen persons with disabilities for employment.
- (iii) It is easier to promote employment of persons with disabilities in the initial stages of establishing a company, as the mind-set tends to be more open and empathetic.
- (iv) The prevailing rules of selection should apply to persons with disabilities in the same manner as everyone else.
- (v) Once employed, the rules of employment should be the same for all, with no concessions for persons with disabilities.
- (vi) Learning curves may be shallower for persons with disabilities initially, due to low self image and self confidence. Thereafter, their productivity is high, sometimes even better than their non-disabled peers.
- (vii) It is important to motivate middle level employers such as suppliers etc., to employ persons with disabilities.
- (viii) The benefits to the company from a community development focus include better image and happier, more loyal customers.

In the changing job market scenario, self-employment initiatives have become very important for economic rehabilitation of disabled persons³⁷.

DISABLED WOMEN'S ISSUES

In the context of disabled women's issues of disability and sexuality do not find a visible space in the disability discourse in India. The movement in India has focused on social change in terms of entitlements like inclusive physical environmental access, employment, and so on. The public image of disability is that of a healthy young man in a wheelchair or of an alert and intelligent blind man, both of whom are disadvantaged only due to a physically inaccessible environment. Complicated issues like disabled persons' interaction with gender and other social, cultural oppressions, and the embodied experiences of physical, sexual and emotional rejection, wants and desires are not raised at all. Within the disability movement there is a kind of vigilant silence about the wants and desires of the impaired body. Rendered deficient and regarded as unattractive, disabled women are denied socially inscribed sexual, reproductive and nurturing roles³⁸. This is a great disincentive for those disabled women who see sex and reproduction as integrated. And for women from cultures like India where marriage must precede sex and reproduction must follow sex. Denial of the reproductive role is denial of a sexual life. Considering that so many negative perceptions about the sexuality of disabled persons go unchallenged, there is a need to carry out empirical work to reclaim the sexual experiences of disabled people. This should be done for three reasons: to substantiate the fact that disabled people are indeed perceived as asexual and face multiple barriers to their sexuality, and to make the non-disabled world accept and value disabled persons' sexuality; to bring sexuality onto the disability movement's agenda; to validate the experiences of disabled persons³⁹.

CONCLUDING OBSERVATIONS

The approach to people with disabilities both nationally and internationally has for far too long, been built on a model of care and entitlement based on charity and the assumptions that disability is an individual pathology, a condition grounded in the psychological, biological or cognitive impairment of the individual. Having taken note of the historic grounds, which perpetuate on the equalities on the basis of physical and intellectual characteristics, the commitment is needed to create conditions in which persons with disabilities can enjoy their human rights and fundamental freedom on equal basis. This means combating disability based discrimination.

The current evidence based on the use and impact of social assistance for and by disabled people and their households remains limited and weak. With the increasing attention being paid by governments and donors to the role of social assistance in development it is critical to now invest in further research on the design, implementation and impact of transfer schemes that either target or aim to effectively include disabled people⁴⁰.

India has always been assisting the persons with disabilities in procuring durable and scientifically manufactured, modern, standard aids and appliances that can promote their physical, social and psychological rehabilitation, by reducing the effects of disabilities. Nevertheless, questions remain about the ability of transnational advocacy groups and domestic actors to persuade a state to change its behaviour.

India's disability organizations (including organizations both for, and of, disabled people) are underperforming, neither effectively representing the needs of disabled people nor holding the state to account. Hence, there are following suggestions and observations in order to improve the status of disabled people:

- (i) Guarantee equality and non-discrimination to all persons with disabilities;
- (ii) Recognize legal capacity of all persons with disabilities and make provision for support where required to exercise such legal capacity;
- (iii) Recognize the multiple and aggravated discrimination faced by women with disabilities and induct a gendered understanding in both the rights and the programmatic interventions;
- (iv) Recognize the special vulnerabilities of children with disabilities and ensure that they are treated on an equal basis with other children;
- (v) Mandate special programmatic interventions for home bound persons with disabilities; persons with disabilities in institutions as also persons with disabilities with high support needs;
- (vi) Establish a Disability Rights Authority which facilitates the formulation of disability policy and law with active participation of persons with disabilities; dismantles structural discrimination existing against persons with disabilities.

An entire range of disability issues such as the causes of disability, care, rehabilitation, empowerment, mainstreaming through education and employment are wait to be practically resolved. The role of social protection in reducing poverty and promoting development in low-income countries

is gaining increasing attention from international organizations, donors and governments. A growing body of evidence suggests that social protection not only helps to reduce poverty but has a wider transformative role in tackling power imbalances, enabling and promoting human capital investments and productivity, and contributing to economic growth.

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CHAPTER - 5

Lack of Social Security for Disabled Girls in India: A Human Rights Concern

SHARMILA GHUGE

Introduction

In the contemporary era India is positioned at a remarkable pedestal at the global juncture during the past two decades. In comparison to other developing nations, India has established itself in numerous fields resulting in the national economic growth and comprehensive advancement. It is a matter of gratification that today India is experiencing fundamental changes ensuing tremendous improvements in diverse sectors. However, this dramatic acceleration of development has not proved successful in bringing about the required changes in a few areas; one of them is the rights of disabled persons in India, especially disabled girls who are most susceptible amongst the disabled individuals. Regardless of the noteworthy progress, the disabled girls are not only marginalized but are victims of adversative forms of human activity paving way for countless challenges in future. Such discrimination, subjugation and victimization of disabled girls cross all known canons of human rights and results in widespread diagnosis of injustice.¹ According to the census of 2001, women constitute 42.457% of the total population of persons with disabilities in India.² Despite the humungous number, the existing international and national legislations fall short to concentrate and find the way out for the predicament of disabled girls in India which presently reflects as a mark towards dampening the spirit of rule of law in the country.

Disability is generally described as lack of normal functioning of physical, mental or psychological processes.³ Moreover, it is defined in different manner in different context.⁴ On humanitarian grounds disability should not be considered as impairment but a condition that results from the interaction between specific mental and physical characteristic.⁵ In fact, disability is a central concept of health.⁶ Nevertheless, the definitional problem of 'disability' persists as there are many other terms, such as,

impairment, physical handicap, physically or mentally challenged, differently abled, *etc.*⁷ Disability also is termed as incapacity to engage in any substantial gainful activity due to physical or mental impairment.⁸ Similarly, there are various approaches to disability, such as, the medical approach, social approach, and the humanitarian approach. On the foundation of human rights, the humanitarian approach emphasizes the need of elimination of the discrimination faced by the disabled girls in the society.

Furthermore, the definition of disability in light of social security differs from other definitions. '*Disability*' under social security is based on inability to work.⁹ Social security is a pervasive concept integral to accomplish the rationale of welfare States. It is a misconception that the notion of social security is a result of the modern developments. Social security cannot be characterized as the result of modernization, because it subsists since the existence of human beings. This is evident from the strong foundation of family as an institution in the society. The first and foremost institution of social security is the family of an individual. Family has been considered as the oldest institution providing social security. Any individual in family unable to take care on his own was always looked after by the family. However, presently we are subjects of the modernized era which aims towards socio-economic progress leading to welfare of each individual. In accordance to the transformed role of State as protector, provider, economic controller, entrepreneur, and arbitrator,¹⁰ the State is bound to provide the required benefits and protect rights of the citizens which results in providing social security to the people in need. It is not only the duty of the family but also an obligation on the State to provide social security. Moreover, it is a basic human right and a fundamental right of every individual to avail the benefit of social security to live with dignity and equality. To achieve social security, the State must depart from the traditional societal attitudes towards disability which was based only on pity, sympathy and charity.¹¹

Social security generally refers to various schemes, policies and programmes of the government intended to endorse the wellbeing and benefit of the people. In most of the countries social security refers to insurance, retirement and benefit programmes'.¹² The international Labour Organization (ILO) defines social security as "[t]he security that society furnishes through appropriate organization against certain risks to which its members are perennially exposed."¹³ There is no universal definition of social security as it differs from country to country. Unfortunately, of social security for disabled girls has never been exposed

by any movement or any group till date in India in required manner and intensity. Consequently, the agony of girls with disability continues to persist as an issue of consternation. In fact, the rights of disabled girls have largely remained 'hidden' and 'silent'.¹⁴ Furthermore, providing social security to disabled girls has emerged as the result of globalization and materialization as the vulnerable groups are exposed to a greater insecurity as compared to the past. Social security apart from being a human right is presently also a social and economical necessity to live with dignity.

The concept of social security is no longer unknown to India. Being the largest democracy in the world and stepping towards securing milestones in diverse sectors, India cannot remain detached from the necessity to provide social security to disabled girls. Presently, in India social security entails various schemes and policies under the umbrella of national and international legislations.

International And National legal Provisions for social security

Taking cognizance of the exploited, impoverished, dominated and discriminated status of disabled in the society, the United Nations passed various international instruments in order to emancipate and empower the disabled from the impediment of suppression and mortification. *The Universal Declaration of Human Rights* incorporates the provision of social security as a right of all individuals in the society.¹⁵ The international Labour Organization also affirms the right to social security of individuals,¹⁶ but this provision refers to employed persons. *The International Covenant on Economic, Social and Cultural Rights*, 1966, recognizes "the right of every person to social security, including social insurance."¹⁷ Similarly, *Declaration on Elimination of Discrimination Against Women*, (1967) incorporates provisions for "security in respect of unemployment, sickness, old age or other incapacity to work."¹⁸ Even the *Convention on Elimination of Discrimination Against Women*, (1979) provides a "right to social security, particularly in cases of retirement, unemployment, sickness, invalidity, old age and other incapacity to work."¹⁹ The *Convention on the Rights of the Child*, (1989) also elaborates the State parties' role in providing "various facilities to children with disabilities to achieve fullest possible social integration and individual development."²⁰ In addition to this, the year 1993 was observed as the SAARC year of disabled persons, which proves that disability has been the focus and attention of the United Nations and international organizations.²¹

However, the international instrument addressing specific concerns about disabled women and girls is the *Convention on the Rights of Persons with Disabilities*, [hereinafter CRPD]. The CRPD requires States to take appropriate measures to protect and guarantee all human rights and fundamental freedoms to women and girls with disabilities.²² It also requires the States to provide habilitation and rehabilitation programmes and facilities including health, employment, education and social services for disabled girls and women.²³ Moreover, the Convention guarantees adequate standard of living and social protection which further entails social security for disabled girls.²⁴ It is the first international provision which recognizes the fact that disabled women and girls are at greater risks in the society and hence need social security.²⁵

It is an established fact that whenever any issue has a social concern law is the most influential medium to guide the society in the precise direction as the utility of law depends on legal culture and social attitudes towards law in the society.²⁶ On the same wavelength, India being a welfare State ratified the CRPD for the persons with disabilities. In accordance to the ratification, India is under an obligation to ensure, protect, and promote the rights of persons with disabilities assuring them right to dignified life extending to provide social security. Furthermore, in tune with the various international instruments and human rights, the *suprema lex* of the land embodies elaborate and meticulous provisions to protect the rights of girls with disabilities. To begin with, the Preamble of the Constitution itself embodies and accentuates the prevalence of justice, liberty, equality and fraternity in India. Citizens with disability are an integral part of Indian human diversity.²⁷ Subsequently, provisions relating to social security derive their strength and spirit from the Directive Principles of State Policy.²⁸

Apart from the Constitution, there have been several legislations enacted from time to time to protect the rights of disabled by the Indian Parliament, such as, *The Mental Health Act of India, 1987*,²⁹ *The Rehabilitation Council of India Act, 1992*,³⁰ *The Persons with Disabilities, (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995*,³¹ *The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mentally Retardation and Multiple Disabilities Act, 1999*,³² *The Juvenile Justice Act, 2000*,³³ etc.

The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, [hereinafter referred as PWD]. The PWD Act is an excellent piece of legislation which governs all issues of disability. It embodies the State's responsibility not only to protect the

rights of disabled but also to educate, and empower them with equal participation. The Act also includes social security provisions, such as, social, housing facilities, various insurance schemes, medical and unemployment allowance, *etc.* The right to life and standard of living guaranteed under the PWD can be elaborated to include the right to social security.³⁴ However, the Act fails to address crucial problems, such as, discrimination, violence and humiliation faced by the disabled girls, who are the most vulnerable group amongst the disabled persons. It strives to promote education and empowerment for persons with disabilities but does not guarantee right to social, economic, cultural and political rights in practical scenario. Though the law's attitude is constructive, it should be practiced in the interpretative spirit for a better future.³⁵ It is averred that theories of justice however rich in their content and excellent in the mode of presentation through laws,³⁶ are worthless and hollow unless implemented practically in the society.

Nevertheless, no legislation has achieved desired goal in protecting the rights of disabled girls in India which continues to be a matter of unfathomable concern in view of the contemporary status of disabled girls.

contemporary Status of social security of disabled girls in india

The national and international legislations do make an attempt to protect rights of disabled girls albeit at snail pace. There are several policies for disabled persons in India, but the moot question which ponders is, whether the girls with disability avail benefit of the existing policies and programmes in India? And the answer to this question is not affirmative due to various reasons. Firstly, girls with disabilities as compared to boys are denied educational opportunities.³⁷ Though there are policies and programmes for enhancing educational opportunities for disabled girls, prevalence of biased attitude towards them in the society stands as an obstacle to break the cob web of existing cultural discrimination. Disability is perceived as a stigma in India which portrays disability as universally discrediting³⁸ and also restrains disabled girls from the social life. Moreover, numerous educational policies and programmes are implemented in the urban sector, whereas, a large number of disabled girls exists in the rural India who are deprived of their right to education due to lack of awareness, accessibility and non implementation of policies.

Apart from denial of countless rights, girls with disabilities are also victimized by sexual assault which is the most brutal, unpleasant and ruthless form of human rights violation. In fact, the feminists emphasize

that the oppression of disabled girls is socially structured through pessimistic approach and socially created impediments which restricts females suppressing their rights.³⁹

Though there are numerous programmes designed for the social security of disabled in India, most of these programmes are inaccessible to disabled girls due to the social and physical barriers.⁴⁰ Such discrimination not only marginalizes the disabled persons but also deprives them of their right to dignity, right to participate and right to equality. The right to equality for girls should be converted from *de jure* to *de facto* by collective consciousness in the society.⁴¹ The persons with disabilities are entitled to the complete range of human rights like any other individual. As the disabled girls are cornered from social life and community activities, it adds as a social stigma which further hampers their feeling and thoughts.

It cannot be refuted that there are several social security approaches in India, such as, social insurance assistance, national provident funds, food and nutritional security, education security and employment security, *etc.*⁴² Similarly, there are various legislations enacted for social security for workmen, women, medical insurance, dependent pensioners, *etc.*⁴³ However, all these policies and legislations for social security provide benefits only to employed people and employment related benefit schemes which do not cover majority of disabled who are unemployed and especially the disabled girls. Apart from the beneficial legislations for a particular class of disabled, the Government of India has made endeavor to empower disabled persons by framing various policies and programmes in the Five Year Plan, Ninth Five Year Plan and the Tenth Five Year Plan. The Ministry for Social Justice and Empowerment is directly responsible for providing, supporting and implementing all the policies designed by the Government. Nevertheless, the unconcerned and dispassionate attitude of the State towards the disabled clearly reflects by the lack of execution of all the skillfully drafted programmes.

It is evident from the present scenario that the existing legislations and development programmes of social security support only the people who are disabled as a result of an accident or due to some other reason.⁴⁴ There are no special programmes designed for disabled girls who may not be employed but undoubtedly require social security. The magnitude of this crisis is gigantic and infinite because girls with disability form the most exposed groups among the disabled persons.⁴⁵ Moreover, 80 per cent of disabled girls are denied even the equipments and prosthetics provided by the State.⁴⁶ The lack of social security for disabled girls

results in copious harmful and unconstructive consequences which directly pose a challenge to the existence of human rights, fundamental rights and the rule of law. It increases poverty, illiteracy, child labour; issues related to health, such AIDS, reproductive health, forced pregnancy, compulsory sterilization of disabled girls, *etc.*⁴⁷

In addition to the State's incapability to provide social security to disabled girls, the Indian traditional attitude developed due to some indoctrinate contemplations adds to the agony of such girls, for *e.g.*, it is believed that disabled girls are a curse and are result of bad fortune. Additionally, India is the only country with maximum child population which demonstrates the fact that the number of disabled girls is also high in India. And regrettably the violence against disabled girls is also on rise with increase in number of rape cases of disabled girls. Horrifying incidents of rape of disabled girls occur all across the country at different places. A few such cases despondently illustrate the plight of disabled girls in India. A five year old mentally disabled girls was raped in care home at Mumbai,⁴⁸ a three year old mentally challenged girl was raped by the peon in an orphanage house run by the State government in Allahabad,⁴⁹ a thirteen year old mentally and physically challenged girl was raped in Kashmir,⁵⁰ a nineteen year old girl suffering from speech impairment was raped by neighbours in Bhind, Madhya Pradesh,⁵¹ a mentally challenged girl who was deaf and mute was raped by two teenage boys in Ahmedabad,⁵² a nine year old disabled girl brutally raped by two men in Mumbai,⁵³ a seventeen year old physically challenged girl raped by an employee of medical college in the hospital in Sambalpur,⁵⁴ such forlorn incidents are disheartening and demoralizing for the spirit of humanity in any democratic country. Regrettably, despite the international instruments, Constitutional provisions and precedents laid down by the Supreme Court, violence against disabled girls is multiplying day by day in countless forms. It can be stated that violence against disabled girls is in form of a cycle that manifests itself in many forms throughout the life of woman. In view of the same, the apex Court has observed that rape of disabled girls is not only physical violence but also exploitation of her disabled condition.⁵⁵

Though India poses the PWD Act as a glorified achievement for disabled persons, this Act grossly fails to address the issues of girls with disabilities, regardless of the fact that India being a State party of the United Nations CRPD, which categorically highlights the need of special assistance, care, and protection of disabled girls.⁵⁶ deficient social security for disabled girls and human rights

It is alleged that society is the home for all human beings indiscriminately, law is its discipline, and justice its perpetual pursuit.⁵⁷ Girls with disability cannot be an exception and hence, in order to protect and guarantee the human rights of disabled girls it is extremely essential to have affirmative action, full participation, non-discrimination, barrier free infrastructure and positive attitudes. Denial of social security to disabled girls is gross violation of human rights which have been described as the greatest notion in the democratic era and the denial of human rights to persons with health disorders contributes as disrespect to the democratic process.⁵⁸ Human rights are inalienable rights attributed by the virtue of born as a human being. Moreover, human rights are not articulations of only the contemporary practice but have been exercised historically world over.⁵⁹ Nevertheless, it is evident from the present scenario that disabled girls are frequent victims of human right violations. In fact, there is no need to discriminate as such persons do not constitute a different race or an ethnicity.⁶⁰ The back drop of persistent inherent discrimination creates considerable limitations in the society for disabled persons.⁶¹ Rather than discriminating girls on grounds of disability there is a need to have a humanistic approach in order to bring about the conditions required for a rational human existence in the society.⁶² Factually, the distinctiveness should not be victimized as discrimination but should be considered as vulnerability and helplessness of disabled girls and hence distinctive rights claims should be provided for their welfare⁶³ in form of social security.

The denial of rights to girls with disability results in stereotypes of human rights violations that continue to prevail in the society.⁶⁴ The greatest disregard is that the discrimination is based on gender which has been challenged and condemned since ages but is yet to overcome the deprivation of human rights. Achieving equality on all fronts still remains an ideal rather than a complete reality in the society.⁶⁵ Despite of the awning human rights the present scenario of disabled girls is India demonstrates the fact that millions of girls are deprived of their rights. In order to protect and guarantee the human rights of disabled girls, it is highly important to provide social security in the realist sense at the earliest. Inclusion and implementation of social security would entail a life full of respect and dignity to the disabled girls. It will assert human independence, empowerment and fulfillment of all civil- political and socio-economic rights. As the emergence of globalization and modernization has upshot sweeping and extreme transformation in the society, especially the changes in the concept of family, social security

has undergone drastic changes. In changed scenario, family may not prove successful in providing security to disabled girls. Hence the State must step in to provide social security. Social security is required to provide assistance in education, employment, health care, reservations and concessions, adequate housing, elimination of poverty, rehabilitation, *etc.*

Presently, there are numerous schemes for disabled persons; however, there is need to incorporate schemes and programmes which will comprehensively address the problems of disabled girls with effective execution. All the existing social security programmes are designed to allocate benefits for employed disabled or disability due to employment, thus there is need to deflect from this restricted economic security and provide for all-encompassing progress, safety, welfare and wellbeing of disabled girls. The social security programmes must include and expand the academic and employment opportunities for girls with disabilities. Inclusion of social security for disabled girls will help them to cultivate optimistic attitudes and self-confidence which will bestow immense strength and ability to counter the social barriers and will also augment their efficiency in this technological era. Apart from the availability of abundant legislations and policies, there should be institutional, financial and procedural arrangements for obtaining the expected outcome for the benefit of disabled girls.⁶⁶

Therefore, there is immediate need to review the schemes and programmes for disabled girls with special emphasis on the human rights of each individual by incorporating the social model of disability instead of the restricted participative model for disabled people which shall definitely bring reforms in the future for eradicating the human rights violation and social injustice of disabled girls in India.

CONCLUDING OBSERVATIONS

Social security is an integral part of self-governing society which aspires welfare and development of the people. Though the legislations at national and international level incorporate social security for disabled persons, social security for disabled girls remains an unachieved goal in India. In order to protect the human rights of disabled girls by providing social security a few recommendations are put forth.

The first and foremost important aspect of social security for disabled girls should be to provide access to information and education. Education plays a vital role in whittling the life of an individual. Education has tremendous power which can enable disabled girls to participate in public

life and will also provide employment opportunities in future. Vocational training for disabled girls can also help in fetching means of livelihood. In order to spread the necessity and importance of education for disabled girls, awareness programmes which publicize gender equality and rights of disabled girls should be organized at regular intervals. The policies should be drafted in order to include disabled girls in the mainstream education system. The State through social security programmes must provide special allowance and incentives to the parents of disabled girls for covering the costs of education, transport, equipment, *etc.* Similarly, awareness programmes should be organized to protect disabled girls against violence, physical, mental and sexual abuse, exploitation, harassment, and gender discrimination. All such awareness programmes, workshops, and camps should be more frequently organized in urban as well as rural sectors of India to highlight the vulnerable condition of disabled girls. Awareness programmes may help to promote positive perceptions and also to sensitize society towards the plight of disabled girls. Social security must embrace measures to redress socio-economic exploitation of disabled girls. The State must also enhance the reservation percentage for disabled girls in education and employment quota across the nation. The mainstream social security programmes must embody pension schemes, medical benefits, unemployment assistance, food security, adequate allowances, rehabilitation, *etc.*

It is also pertinent to formulate Disability Rights Committees at Taluka, District, State and Central level. Such Committees can address the problems of disabled girls effectively and instantaneously for better promotion and protection of their rights. At the same time though India has highly equipped set of legislations, it is significant to have special amendments for stringent laws in case of violation of rights of disabled girls. This may facilitate as deterrent effect in the society. For successful extension of social security programmes it is extremely important to have specific data of the disabled girl population in the country. This will potentially enable the State to frame policies with better planning in accordance to the number of disabled girls depending on the age groups. In order to foster this more research and technical assistance is required to upgrade the government strategies of social security. The contemporary epoch is the age of technology; hence the technology through the medium of media can play a catalyst role of bridging up the gap of policies on paper and in practice. The media through its various channels such as, newspaper, radio, television, magazines, posters, motion pictures, *etc.*, can spread responsiveness about the social security programmes and protection of rights of disabled girls with superior influence.

There is need to safeguard the rights of disabled girls by incorporating special provisions in the present legislations for endowing required entitlements by social security. The gender discrimination should be deracinated from the society to explore the benefits of strategies and policies under the social security. The most important factor for rigorously exploring social security for disabled girls is the efficient, operative and immediate implementation of all the existing legislations and policies in order to provide long-term solution to this deeply entrenched tyranny which requires a political, economical, social, cultural and moral transformation of society. Denial of social security to girls with disability is indeed a gross violation of their human rights which needs a multidimensional, multifaceted, appositely amalgamated, well-organized and resourcefully dispensed legal and structural response for guarantee, protection, promotion and enhancement of rights of disabled girls in India. Collective and composed endeavours can definitely ameliorate disabled girls to combat the insurmountable battle successfully with social security as their shield protecting the human rights at large.

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- 30 This Act establishes Rehabilitation Council that standardizes and improves the quality of rehabilitation provided to persons with disability.
- 31 The PWD Act has been brought in force by the Parliament to give effect to the various international treaties relating to disability rights.
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CHAPTER – 6

Social Inclusion of Disabled People in
India

KALPESHKUMAR L GUPTA

INTRODUCTION

“On this day the ILO calls for a concerted effort to expand opportunities for decent and productive work for person with disabilities as one of the most effective channels of inclusive development”

- Juan Somavia, Director General of International Labour Organization¹

Whenever we see disabled people, we say ‘*poor guy*’, some of us try to help him/her out for the time being, but we can see these people are socially excluded for one and another reason. Dr. Lynn Todmann² suggests that “*Social exclusion refers to the process in which individuals and entire community are systematically denied rights, opportunities and resources that are normally available to other members of society and which is key to social integration. Problem of Social exclusion is tied to lack of opportunities as disabled people are more subject to exclusion than others.*” They are not considered to be a part of the mainstream most of the time of the society. Many time we assume that disabled people will live their life wandering aimlessly without contributing anything to the society, they depend on abled people to help them every time. This should not be acceptable behavior of civilized society. Disabled people are also a part of the society, they are not mere laggards created by the Almighty God.

We have to think deeply about the Social Inclusion of the disabled person. Social Inclusion is to the positive policy that combat social exclusion. Inclusion is characterized by a society’s widely shared social experience and active participation, by a broad equality of opportunities and life chances for individuals and by the achievement of a basic level of well-being for all citizens.³ Efforts should be made to help them become self-reliant and not just helping them for short period of time. People with disabilities face exclusion from education, employment and their

communities, resulting in a cycle of poverty. Discrimination, increased levels of violence and vulnerability in conflict and emergency situations remain the everyday experience of people with disabilities in the developing world. Inclusion is cost-effective and generally requires only small adjustments to existing projects. To achieve poverty reduction, gender equality and human rights promotion, development programs must include people with disabilities. We cannot afford to continue excluding over ten percent of the world's population.⁴

GLOBAL SCENARIO

Some facts about People with Disabilities highlighted in the International Convention on the Rights of Persons with Disabilities (*UN, New York, 14-25 August, 2006*).⁵

Overview

- Around 10 per cent of the world population, or 650 million people, live with a disability. They are the world's largest minority.
- This figure is increasing through population growth, medical advances and the ageing process, says the World Health Organization (WHO).
- In countries with life expectancies over 70 years, individuals spend an average about 8 years or 11.5 percent of their life span living with disabilities.
- Eighty per cent of persons with disabilities live in developing countries, according to UN Development Programme (UNDP).
- Disability rates are significantly higher among groups with lower educational attainment in the countries of Organization for Economic Co-operation and Development (OECD) says the OECD Secretariat. On average 19 percent of less educated people have disabilities, compared to 11 percent among the better educated.
- In most OECD countries, women report higher incidents of disability than men.
- The World Bank estimates that 20 percent of the world's poorest people are disabled and tend to be regarded in their own communities as the most disadvantaged.
- Women with disabilities are recognized to be multiply disadvantaged, experiencing exclusion account of their gender and disability.
- Women and girls with disabilities are particularly vulnerable to abuse. A small 2004 survey in Orissa, India found that virtually all of the women and girls with disabilities were beaten at home, 25 per

cent of women with intellectual disabilities had been raped and 6 percent of disabled women had been forcibly sterilized.

- According to UNICEF, 30 per cent of street youths are disabled.
- Mortality for children with disabilities may be high as high 80 percent in countries where less than five mortality as a whole has decreased below 20 percent, says the United Kingdom's Department of International Development adding that in some cases it seems as if children are "*weeded out*".
- Comparative studies on disability legislation show that only 45 countries have anti- discrimination and other disability specific laws.

Education: -

- Ninety percent of children with disabilities in developing countries do not attend schools, says UNESCO.
- The global literacy rate for adults with disabilities is a low as 3 percent and one percent for women with disabilities to a 1998 UNDP study.
- In the OECD countries, students with disabilities in higher education remain under-represented, although their numbers are on the increase, says the OECD.

Employment: -

- An estimated 386 million of the world's working age people are disabled, says the International Labour Organization (ILO). Unemployment among the disabled is as high as 80 percent in some countries. Often employers assume that persons with disabilities are unable to work.
- Even though persons with disabilities constitute a significant 5 to 6 percent of India's population, their employment needs remain unmet, says a study by India's National Centre for Promotion of Employment for Disabled People, inspite of the "*People with Disabilities Act*", which reserves for them 3 percent of government jobs. Of some 70 million people with disabilities in India, only about 1 lakh have been succeeded in obtaining employment in industry.
- A 2004 United States survey found that only 35 percent of working age people with disabilities are in fact working compared to 78 percent of those without disabilities. Two-thirds of the unemployed, disabled respondents said they would like to work but could not find jobs.

- A 2003 study by Rutgers University found that people with physical and mental disabilities continue to be vastly underrepresented in the US workplace. One-third of the employers surveyed said that the people with disabilities can not effectively perform the required job tasks. The second most common reason given for not hiring the disabled was the fear of costly special facilities.
- A US survey of employers conducted in 2003 found that the cost of accommodation was only \$500 or less; 73 percent of employers reported that their employees did not require special facilities at all.
- Companies reported that employees with disabilities have better retention rates reducing the high cost of turn-over, says a 2002 US study. Other American surveys reveal that after one year of employment, the retention rate of persons with disabilities is 85 percent.
- Thousand of people with disabilities have been successful as small business owners, according to US Department of Labour. The 1990 national census revealed that people with disabilities have an higher rate of self-employment and small business experience (12.2 percent) than people without disabilities (7.8 percent)

Violence: -

- For every child killed in warfare, three are injured and permanently disabled.
- In some countries, upto a quarter of disabilities result from injuries and violence, says WHO.
- Persons with Disabilities are more likely to be victims of violence or rape, according to a 2004 British Study and less likely to obtain police intervention, legal action and preventive care.
- Research indicates that violence against children with disabilities occurs at annual rates at least 1.7 times greater than for their non-disabled peers.

Message by Juan Somavia, Director-General of the ILO on the occasion of International Day of Persons with Disabilities” 3rd December 2011⁶:-

New global estimates show that the number of disabled persons is higher than previously assumed, making up some one billion or 15 per cent of the world’s population, the largest minority in the world. In the lives of persons with disabilities, stigma, discrimination and neglect all too often mean that they experience poorer health, lower educational achievements, lower employment and labour force participation rates and

higher rates of poverty than the rest of the population. This evidence, combined with ILO findings indicating the loss to GDP of up to 7 per cent due to the exclusion of persons with disabilities from the labour market, should motivate broad-based action to enable people with disabilities to be actively engaged in development processes which yield benefits for all. Such action would allow progress to be made towards meeting international commitments reflected in the Millennium Development Goals, the UN Convention on the Rights of Persons with Disabilities (CRPD) and ILO conventions, in particular, the Convention concerning Vocational Rehabilitation and Employment (Disabled Persons) (No. 159) and the Convention on Discrimination in Employment and Occupation (No. 111).

Enterprises, including small and medium-sized enterprises which are the main source of job creation are play a key role in expanding employment opportunities for women and men with disabilities. The ILO has set up a Global Business and Disability Network comprising multinational companies, employers' organizations, business networks on disability, representatives of disabled persons' organizations and others. This network supports enterprise efforts to take disability into account in the workplace and in strategic business plans. Organization is indispensable to progress on disability issues & trade unions are uniquely positioned in this regard. They can draw attention to disability-related issues in national consultation and negotiation processes and recruit, organize and integrate disabled persons into the movement. At workplace level they can promote positive action for inclusion including awareness-raising among managers and staff, as well as on required adjustments or adaptations.

Governments must give direction, enshrining the rights and entitlements of disabled citizens to full participation in the labour market and society as a whole, through appropriate legislation, policy and implementation measures. This commitment should translate into resource allocation, particularly in areas such as health, education, training, and employment placement. Universal social protection floors which protect empower and help to sustain demand will also give effect to the right of persons with disabilities to enjoy such protection on an equal basis with others. Promoting opportunities for decent work for people with disabilities is intrinsic to achieving a new era of social justice.

AGENCIES OF GOVERNMENT OF INDIA FOR THE DISABLED PEOPLE

Ministry of Social Justice & Empowerment, Government of India⁷

Brief History of Ministry

In the year 1985-86, the erstwhile Ministry of Welfare was bifurcated into the Department of Women and Child Development and the Department of Welfare. Simultaneously, the Scheduled Castes Development Division, Tribal Development Division and the Minorities and Backward Classes Welfare Division were moved from the Ministry of Home Affairs and also the Wakf Division from the Ministry of Law to form the then Ministry of Welfare.

Subsequently, the name of the Ministry was changed to the Ministry of Social Justice & Empowerment in May, 1998. Further, in October, 1999, the Tribal Development Division had moved out to form a separate Ministry of Tribal Affairs. In January, 2007, the Minorities Division along with Wakf Unit have been moved out of the Ministry and formed as a separate Ministry and the Child Development Division has gone to the Ministry of Women & Child Development.

Though the subject of “*Disability*” figures in the State List in the Seventh Schedule of the Constitution, The Government of India has always been proactive in the disability sector. It is not only running seven National Institutes (NIs) dealing with various types on disabilities and seven Composite Regional Centers (CRCs), which provide rehabilitation services to PwDs and run courses for rehabilitation professional but also funds a large number of NGOs for similar services and also a National Handicapped Finance & Development Corporation (NHFDC) which provides loans at concessional rates of interest to PwDs for self-employment. Besides, the Union Government is a party to (i) *Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and the Pacific Region* - adopted at Beijing in December, 1992, and (ii) *The UN Convention on the Rights of Persons with Disabilities (UNCRPD)*, which came into effect in May, 2008.

The subject has received attention in various States Governments in varying degrees. At the Central level also disability being one of the several responsibilities of the M/o SJ&E, and being looked after by just one bureau, has resulted in inadequate attention, as most of its time and energy is spent only on implementing Ministry’s own schemes, meeting their expenditure and physical targets, and organizing annual time-bound activities like the National Awards for empowerment of PwDs. In the above background, it was stated in the 11th Five Year Plan that “*The ‘Disability Division’ of the Ministry of Social Justice & Empowerment will be strengthened by converting it into a separate Department, so that*

it can liaise effectively with all the other concerned Ministries/ Departments and fulfill its responsibilities towards the disabled". Looking to the specialized nature of the subject on "Disability", the wide ranging work to be done in the light of the UNCRPT, and the inadequacy of existing implementation structure, the time has now come to upgrade the existing Disability Bureau in the M/o SJ&E. The decision to create a separate Department of Disability Affairs within the M/o SJ&E was taken up by the Government, in principle on 3rd January, 2012. This was also announced by the President before both houses of Parliament on 12th March, 2012.

Now the two departments have been created under the Ministry of Social Justice & Empowerment vide notification dated 12.5.2012, namely:-

- (i) Department of Social Justice and Empowerment (Samajik Nyaya aur Adhikarita Vibhag)
- (ii) Department of Disability Affairs (Nishaktata Karya Vibhag)

We will discuss about the Department of Disability Affairs as under.

Department of Disability Affairs (Nishaktata Karya Vibhag)

The following subjects which fall within List I - Union List of the Seventh Schedule to the Constitution:

1. Indo-US, Indo-UK, Indo-German, Indo-Swiss and Indo-Swedish Agreements for Duty-free import of donated relief goods/supplies and matters connected with the distribution of such supplies. The following subjects which fall within List III - Concurrent List of the Seventh Schedule to the Constitution (as regards legislation only):
2. Social Security and Social Insurance save to the extent allotted to any other Department.
3. For the Union Territories, the following subjects which fall in List II - State List or List III - Concurrent List of the Seventh Schedule to the Constitution, in so far as they exist in regard to such territories: Relief of the Disabled and the unemployable; Social Security and Social Insurance, save to the extent allotted to any other Department.
4. To act as the nodal Department for matters pertaining to Disability and Persons with Disabilities.
5. Special schemes aimed at rehabilitation and social, educational and economic empowerment of Persons with Disabilities, e.g. supply of aids and appliances, scholarships, residential schools, skill training, concessional loans and subsidy for self-employment, etc.

6. Education and Training of Rehabilitation Professionals.
7. International Conventions and Agreements on matters dealt with in the Department; The United Nation Convention on the Rights of Persons with Disabilities.
8. Awareness generation, research, evaluation and training in regard to subjects allocated to the Department.
9. Charitable and Religious Endowments, and promotion and development of Voluntary Effort pertaining to subjects allocated to the Department.
10. The Rehabilitation Council of India Act, 1992 (34 of 1992).
11. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996).
12. The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999).
13. The Rehabilitation Council of India.
14. The Chief Commissioner for Persons with Disabilities.
15. The National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities.
16. The National Handicapped Finance and Development Corporation.
17. Artificial Limbs Manufacturing Corporation, Kanpur.
18. Deendayal Upadhyaya Institute of Physically Handicapped, New Delhi.
19. National Institute for the Orthopaedically Handicapped, Kolkata.
20. National Institute of Visually Handicapped, Dehradun.
21. National Institute of Mentally Handicapped, Secunderabad.
22. Ali Yavar Jung National Institute for the Hearing Handicapped, Mumbai.
23. National Institute of Rehabilitation Training and Research, Cuttack.
24. National Institute for the Empowerment of Persons with Multiple Disabilities, Chennai.
25. The Indian Sign Language Research and Training Centre, New Delhi.

#Person with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995

Person with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995 was notified on 7th February, 1996. This act basically enlists facilities that persons with different types of disabilities would be entitled to and the responsibilities and obligations which are placed on the Government of India, State Governments, local bodies and establishments in this behalf. It broadly includes measures for prevention and early detection of disabilities, education, employment, social security, research and manpower development, barrier free access and preference and facilities that are available to such person and the action which needs to be taken to avoid any discrimination against person with disabilities.

It has been provided in the Act that there shall be a Chief Commissioner at the Govt. of India level and a Commissioner in each State of the Union/UT who would be broadly responsible to :-

- Monitor the utilization of funds disbursed by the Central Government and compliances of various provision of act.
- Safeguard the rights and facilities made available to person with disabilities. Coordinate work of the State Commissioner.

The Chief Commissioner is authorized on his/her own motion or on the application of any aggrieved person or otherwise look into the complaints relating to:

- Deprivation of rights of persons with disabilities.
- Non-implementation of laws, rules, bye laws, instructions issued by the appropriate authority for the welfare and protection of the rights of the disabled.

Now we will look at the some special bodies created by the government of India.

(1) Rehabilitation Council of India (RCI) ⁸ :-

The Rehabilitation Council of India (RCI) was set up as a registered society in 1986. On September, 1992 the RCI Act was enacted by Parliament and it became a Statutory Body on 22 June, 1993. The mandate given to RCI is to regulate and monitor services given to person with disability, to standardize syllabi and to maintain a Central Rehabilitation Register of all qualified professional and personal working in the field of Rehabilitation and Special Education. The Act also prescribes punitive action against unqualified persons delivering services to persons with disability. Following are the objectives of Rehabilitation Council of India.

- (a) To regulate the training policies and programmes in the field of rehabilitation of PwD.
 - (b) To bring about standardization of training courses for person dealing with PwD.
 - (c) To prescribe minimum standards of education and training of various categories of professional/personnel dealing with PwD.
 - (d) To regulate these standards in all training institutions uniformly throughout the country.
 - (e) To recognize institutions/organization/universities running master degree/bachelor degree/P G Diploma/Diploma/Certificate courses in the field of rehabilitation of PwD.
 - (f) To recognize degree/diplomas/certificate awarded by foreign universities/institutions on reciprocal basis.
 - (g) To promote research in Rehabilitation and Special Education.
 - (h) To maintain Central Rehabilitation Register for registration of professional/personnel.
 - (i) To collect information on a regular basis on education and training in the field of rehabilitation of people with disabilities from institutions in India and abroad.
 - (j) To encourage continuing education in the field of rehabilitation and special education by way of collaboration with organizations working in the field of disability.
 - (k) To recognize vocational rehabilitation centres as manpower development centres.
 - (l) To recognize the national institutes and apex institutes on disability as manpower development centres.
 - (m) To register personnel working in national institutes and apex institutions on disability under the Ministry of Social Justice and Empowerment.
- Ø National Handicapped Finance & Development Corporation (NHFDC) ⁹

The National Handicapped Finance and Development Corporation (NHFDC) have been set up by the Ministry of Social Justice & Empowerment, Government of India on 24th January 1997. The company is registered under Section 25 of the Companies Act, 1956 as a Company not for profit. It is wholly owned by Government of India and has an authorized share capital of Rs. 400 crores. The company is managed by

Board of Directors nominated by Government of India. NHFDC functions as an Apex institution for channelizing the funds to persons with disabilities through the State Channelizing Agencies (SCAs) nominated by the State Government(s). Following are different scheme given by NHFDC

- Micro Financing Scheme
 - 1 Purpose of the loan is to provide financial assistance to weaker section of the disabled for starting or augmenting income generation activities such as small business trade, tiny, cottage industry or service activity, artisan activities, agricultural & allied activities, transport sector activities.
- State Channelizing Agencies (SCAs) & Nationalized Banks.
 - 1 Wide range of income generating activities to disabled persons. *i.e.* for setting up small business service/trading sector.
 - 1 Loan for education/training to disabled persons.
 - 1 Financial Assistance for skill & entrepreneurial development.
 - 1 Micro Credit Scheme
- Parent's Association of mentally retarded person.
 - 1 Purpose of the scheme is to provide loan to parents associations of mentally retarded persons to set up an income generating activity for the benefit of the mentally retarded persons. The nature of income generating activity will be such that it involves the mentally retarded persons directly and income will be distributed among the mentally retarded persons. The income generating activity will be managed by the parents association which is expected to render its service voluntarily.
- (3) The National Trust for the Welfare of Persons with Autism, Cerebral Palsy, mental Retardation & Multiple Disabilities, New Delhi¹⁰

The National Trust is an autonomous organization of the Ministry of Social Justice & Empowerment, Government of India set up under “*National Trust for the Welfare of Person with Autism, Cerebral Palsy, Mental Retardation & Multiple Disabilities Act 1999*” *The National Trust was set up to find an answer to the worries of parents – “What will happen to my child when I am no more?”*

The basic objectives of the National Trust are:-

- To enable and empower persons with disability to live as independently and as fully as possible within and as close to the community to which they belong.

- To strengthen facilities to provide support to person with disability to live within their own families.
- To extend support to registered organization to provide need based services during period of crisis in the family of persons with disability.
- To deal with problems of persons with disability who do not have family support.
- To promote measure for the care and protection of persons with disability in the event of death of their parents or guardian.
- To evolve procedure for the appointment of guardians and trustee for person with disability requiring such protection.
- To facilitate the realization of equal opportunities, protection of rights and full participation of person with disability and
- To do any other act this is identical to the aforesaid objects.

(4) National Institute for Empowerment of Persons with Multiple Disabilities, Chennai¹¹

National Institute for Empowerment of Persons with Multiple Disabilities (NIEPMD) was established in the year 2005 in Chennai under the Ministry of Social Justice & Empowerment, Govt. of India to serve as national resource centre for empowerment of persons with Multiple Disabilities such as those with two or more disabilities in a person. The Disabilities enumerated as per PwD Act, 1995 are low vision, blindness, locomotor disability, hearing impairment, mental retardation, mental illness, leprosy cured persons and as per The National Trust Act, 1999 are Cerebral Palsy and Autism.

Following are the main objectives of the NIEPMD.

- To undertake development of human resources for management training rehabilitation, education, employment and social development of persons with multiple disabilities.
- To promote and conduct research in all areas relating multiple disabilities.
- To develop transdisciplinary models and strategies for social rehabilitation and to meet the needs of diverse groups of people with multiple disabilities.
- To undertake service and out reach programmes for the persons with multiple disabilities.

- 5) National Institute of Rehabilitation Training and Research, Orissa¹²

National Institute of Rehabilitation Training & Research (NIRTAR) is an autonomous body under the Ministry of Social Justice and Empowerment, Government of India in Cuttack, Orissa.

NIRTAR is having following aims and objectives.

- **Human Research & Development.** To undertake, sponsor or co-ordinate the training of personnel such as Doctors, Engineers, Prosthetists, Orthotists, Prosthetic & Orthotic technician, Physiotherapists, Occupational Therapists, Multipurpose rehabilitation therapist and such other personnel for the rehabilitation of the physically handicapped.
- **Research.** To conduct, sponsor, co-ordinate or subsidize research on biomechanical engineering leading to the effective evaluation of the mobility aids for the orthopaedically disabled persons or suitable surgical or medical procedure or development of new aids.
- **Aids & Appliances.** To promote, distribute, subsidize the manufacture of prototype designed aids and to promote and aspects of the education and rehabilitation therapy of physically handicapped.
- **Service delivery programmes.** To develop models of service delivery programmes for rehabilitation.
- **Vocational Training.** To undertake vocational training, placement and habilitation of the physically handicapped.
- **Information.** To promote and disseminate information on rehabilitation in India and abroad.
- Promote the use of products of Artificial Limbs Manufacturing Corporation of India.
- Undertake another action in the area of rehabilitation of the physically handicapped.

- 6) National Institute for the Orthopaedically Handicapped, Kolkatta¹³

National Institute of Orthopaedically Handicapped (NIOH) is an apex organization in the area of locomotor disability (orthopaedically handicapped) established in 1978 at Kolkatta. It is an autonomous body under the Ministry of Social Justice and Empowerment, Govt. of India.

Its objectives is to develop Human Resource for providing services to the Orthopedically Handicapped population, namely training of

physiotherapist, occupational therapist, orthotic and prosthetic, employment and placement officer and vocational counselor etc. To conduct and sponsor research and all respects related to the rehabilitation of the orthopaedically handicapped. To provide service in the area of rehabilitation, restorative surgery, aids and appliances and vocation training to the person with disability. To standardize aids and appliances and to promote their manufacturing and distribution.

(7) Artificial Limbs Manufacturing Corporation of India, Kanpur¹⁴

Artificial Limbs Manufacturing Corporation of India (ALIMCO) is a non-profit making organization working under the aegis of Ministry of Social Justice and Empowerment, Govt. of India. It was incorporated in 1972 to take up manufacture and supply of artificial limb components and rehabilitation aids for the benefit of the physically handicapped and started production in 1976.

Following are the main objectives of the corporation.

- To maintain the status of largest manufacturer and supplier of rehabilitation aids in India.
- To maintain the status of largest ADIP implementing agency through camp activity, headquarter activity, limb fitting centres activity.
- To ensure all aids & appliances supplied under ADIP scheme must bear ISI mark and must be durable, modern, sophisticated and scientifically manufactured.
- To enhance export of quality rehabilitation aids to help disabled persons abroad to self-dependence.
- To carry out constant research & development work to improve design of existing aids and develop new assistive aids at affordable prices.

(8) Pandit Deendayal Upadhyaya Institute of Physically Handicapped, Delhi¹⁵

Pandit Deendayal Updhyaya Institute of physically handicapped is an autonomous organization under the administrative and financial control of Ministry of Social Justice and Empowerment, Govt. of India. The institute for the physically handicapped came into being when the erstwhile Jawahar Lal Institute of Physical Medicine and Rehabilitation and other allied institute run by the council for the Aid of crippled and handicapped were taken over by the Government of India in 1975 and converted into an autonomous body in the year 1976. It was renamed after Pt. Deendayal Upadhyaya in the year 2002.

The Institute aims to serve the physically disabled of all age's group. In this pursuit of alleviating the suffering of disabled people, the institute runs following programmes:

- Bachelor of Physical Therapy, Bachelor of Occupational Therapy and Bachelor of Prosthetics & Orthotics.
- Out patient clinical services in Physical Therapy, Occupational Therapy and Speech Therapy.
- Workshop for the fabrication of Orthotics and Prosthetics appliances including calipers, splints, artificial limbs, surgical boots and customized wooden furniture for the persons with different types of locomotor impairments.
- Out-reach camps for the economically weaker disabled persons living in the far flung and remote area, with the help of concerned district administration and locally active non-governmental organization.
- Extension of institutional comprehensive rehabilitation services to persons with disabilities by establishing & operationalizing the Southern Region Centre, Secunderabad, AP, Composite regional Centres at Lucknow and Srinagar, District Disability Rehabilitation Centres (DDRSc) in the state of Rajasthan and facilitating the establishment of Regional Spinal Injury Centre at Bareilly, UP.
- Integrated School for Orthopaedically disabled children upto 5th standard approved by Municipal Corporation of Delhi.
- Provide Social, Psychological and Vocational Counseling Services to the persons with disabilities.
- Printing Press to cater to the printing needs of the Institute and Ministry for dissemination of information and generation of awareness.

(9) National Institute of Visually Handicapped, Dehradun¹⁶

National Institute of Visually Handicapped (NIVH) is an autonomous body under the Ministry of Social Justice and Empowerment, Government of India. Institute is training centre for blind. It is also engaged in production of Braille literature, Aids and Appliances for visually handicapped. The institute has its regional centre in Chennai to provide rehabilitation services in the southern state of the country. It renders vocational training art par with NIVH. It also provides rehabilitation services to the rural based visually handicapped persons through its Community Based Rehabilitation activities.

(10) National Institute of Mentally Handicapped, Secunderabad¹⁷

National Institute of Mentally Handicapped (NIPH) established in the year 1984 at Secunderabad, Andhra Pradesh. It is an autonomous body under the administrative control of Ministry of Social Justice and Empowerment, Govt. of India. NIMH has three regional centres located at New Delhi, Kolkatta & Mumbai. NIMH Model Special Education Center located at New Delhi. The institute endeavors to excel in building capacities to empower persons with mental retardation. Since the quality of life of every person with mental retardation is equal to other citizens in the country, in that they live independently to the maximum extent possible and through constant professional endeavors, National Institute for the Mentally Handicapped empowers the persons with mental retardation to access the state of the art rehabilitation intervention viz., educational, therapeutic, vocational, employment, leisure and social activities, sports, cultural programmes and full participation. The objectives for which NIMH works are listed as under:-

- Human Resource Development
- Research & Development
- Development of models care and rehabilitation.
- Documentation & Dissemination.
- Consultancy Services to voluntary organizations.
- Community Based Rehabilitation.
- Extension & Outreach Programmes.

(11) Ali Yavar Jung National Institute for the Hearing Handicapped, Mumbai¹⁸

Ali Yavar Jung National Institute for the Hearing Handicapped (AYJNIHH) was established on 9th August 1983. It is an autonomous organization under the Ministry of Social Justice and Empowerment, Government of India, New Delhi. The Institute is located at Bandra (West), Mumbai. Regional Centres of the Institute have been established at Kolkata (1984), New Delhi (1986), Secunderabad (1986) and Bhubaneswar (1986- in association with Government of Orissa). These are centres aimed at meeting the local and regional needs in terms of manpower development and services.

The District Disability Rehabilitation Centre (DDRCs) under Gramin Punarvasan Yojana (GPY) a programme of the Ministry of Social Justice and Empowerment, Government of India was started in the year 2000. The objective of the programme is to provide total rehabilitation to persons

with sensory (hearing and vision), physical and mental disabilities. Under this programme, 24 DDRCs were allotted to AYJNIHH. All the 24 DDRCs, on completion of successful establishment and running for three years, are handed over to State Governments/District Administration/NGO. Composite Regional Center (CRC), Bhopal is a service model initiated by the Ministry of Social Justice & Empowerment, Govt. of India, established on 14th August, 2000. The Center is functioning under the administrative control of AYJNIHH since February, 2006. And one more CRC at Ahmedabad, Gujarat was established on 16th Aug, 2011 and this CRC also functioning under the administrative control of AYJNIHH.

Following are the objectives of the Institute

- 1 **Manpower Development:** To deal with the various aspects of rehabilitation of the Hearing Handicapped, various undergraduate and post graduate courses are being offered. The Institute is rated excellent by the RCI.
- 1 **Research:** Research in the areas of identification, intervention, educational approaches, remedial teaching methods, jobs for the hearing handicapped and technology development have been carried out.
- 1 **Educational Programmes:** By studying the existing school for the deaf, curriculum followed, methods of teaching etc. and supplementing or strengthening them by way of improving existing educational facilities and developing new strategies wherever required, newer measures such as open school for the illiterate/drop out is being conducted as model activity.
- 1 **Service Facilities:** Strategies for early identification and rehabilitative procedures. Films and audio visuals on vocational training and job placement, etc. are being developed.
- 1 **Community Programme:** Identification and intervention, home bound training; correspondence training and also tele-rehabilitation services are being rendered and evolved with emerging needs.
- 1 **Material Development:** Required for (a) education, like teaching aids, audio-visuals etc. (b) public awareness and community education, literacy programme for adult deaf, Parent Counseling and Programme for strengthening voluntary organizations.
- 1 **Information and Documentation:** Documenting and disseminating the latest information and developments in the science of hearing, speech and related technology is being done.

(12) The Indian Sign Language Research and Training Centre, New Delhi¹⁹

Govt. of India has established an autonomous sign language institute called Indian Sign Language Research & Training Centre (ISLRTC) which will help around 13 lakh deaf and hearing impaired people. For the first five year, the centre will function as an autonomous centre of Indira Gandhi National Open University. IGNOU will provide five acres of land for the Centre. Besides teaching and training people in sign language, the ISLRTC will ensure study, academic development and propagation of sign languages. With an investment of Rs. 44 crore over the next five years, the Centre will teach and train people using sign languages.

ROLE OF SOCIETY IN DEVELOPMENT OF DISABLED PEOPLE

In this part we will see some case studies and know how society can be helpful in enhancing life of disabled people and make them self-reliant as well.

(1) Blind People's Association, Ahmedabad, and Gujarat²⁰

Blind People's Association (BPA) is a professional organization which believes in providing equal opportunities to all categories of people with disabilities. Consistent with the philosophy, it works for providing education, employment opportunities, equal rights and quality life for them. BPA understands that gainful employment plays an essential part in the life of a person because it gives him status and binds him to the society. Acceptance of disabled persons at work can be viewed as society's acceptance of these Persons without discrimination. However, many people with disabilities are still unable to obtain gainful occupation and are dependent on others.

Since 1984, BPA has continuously strived to provide Employment Opportunities to people with disability. During the last five years, it has been successful in providing employment to as many as 1500 people with disability who are presently employed in public as well as private sectors and are capable of handling important assignments in banks, railways, hospitals, restaurants, etc. They are also excellent in their work as telephone operators, computer programmers, mobile repairers, liftman, etc. So far as many as 900 individuals are earning a regular livelihood from self-employment programmers. Organizations have their own telephone booths, food stalls, beauty parlors, mobile repairing shops, etc.

BPA is having following schools and academic programmes

1. Shri K N Desai Adult Training School for the Blind (Supported by Department of Social Justice & Empowerment, Govt. of India)
2. Minnie CAMA Secondary and Higher Secondary School for the Blind (Supported by Department of Education)
3. Rajesh Mehta Technical School for the Blind (Supported by Department of Employment Manpower and Training). One year certificate course in general mechanics, motor rewinding, canning, carpentry and weaving.
4. Nandini Ramesh Mehta Gandhi School of Physiotherapy. (Supported by Department of Social Justice & Empowerment, Govt. of India)
5. Lions Metropolitan Shkariben Mangaldas Music School for the Blind.

BPA is running following Job Oriented courses: -

1. Computer at CAMA computer training center for the blind and disabled.
2. DTP
3. Short Hand at Dahiben stenography course for the blind.
4. Telephone Operating at Shirin Cyrus telephone operation & receptionist course.
5. Hair & Care at Arti Mrugesh doctor hair & skin care centre.
6. Tailoring
7. Offset Printing

Recently BPA launched new course on Massage for visually impaired. This course is aimed at training visually impaired as professional al masseur in order to make them financially independent. According to Dr B K Panchal, generally masseur do not have any formal training, but his scientifically designed course will provide participants an edge over others as they will be able to cater to people in a professional way. They programme will create job opportunities for participants in spa and beauty parlours. Any class X pass out can enroll for the course. The programme has been recognized under the state government's Kaushalya Vardhak project, a skill development scheme.

Rehabilitation & Intervention Centres at BPA:-

1. Chandrikaben N Kinariwala mental hygiene clinic.
2. Ratanlal Lallubhai centre for the multi handicapped.

3. Chandrikaben N Kinariwala unit for deaf-blind.
4. Pre-vocational training centre for severely disabled.
5. Jagdish Patel & BhadraSatia early intervention centre for children with multiple disabilities.
6. BPA-MSM Naaz Samarth Scheme respite care centre for children with Autism, Cerebral palsy, mental retardation and multiple disabilities.

(2) Apang Manav Mandal, Ahmedabad, Gujarat²¹

Apang Manav Mandal is a Non-Government Organization founded in the year 1959. It is registered under the Bombay public trusts Act, 1950 and the societies Registration Act, 1960. Apang Manav Mandal is one such organization that is devoted to the cause of handicapped, looks after all their needs and requirements, tries to give their life purposeful and gradually makes them self-sufficient and live in the society with respect and pride. The aims are overall development of the child by imparting good values and to attention on education, health care and rehabilitation. Apang Manav Mandal is continuously working since last 50 years for the physically challenged people particularly for the students, poor and down trodden and service to the society at large.

NGO is having following facilities

1. Primary School, Secondary School, Computer Centre, Scholarship for higher education, Day care centre, Speech therapy centre, English conversational class.
2. Separate hostel for boys & girls with all facilities. Disabled boys studying in std 1 to 12 as well as doing higher studies, colleges, technical courses and vocational training are admitted in the respective hostel.
3. Shri Ramniklal Jivanlal Kinariwala Computer Education Centre. Students studying in std. 5 to 10 are taught computer. Disabled trainees are given 75% concession in course fees. Special training programme was organized to impart training in computer to disabled girls students staying in the hostel.
4. Smt. Kalindi Kaji Fashion and Apparel Design Training Centre. Skill training is imparted to boys and girls. This disabled boys and girls are trained in cutting dress designing and other articles.
5. Sheth Shri Parshottamdas Mulchand Printing Training centre.

RECENT SCENARIO :-

Now we will look at the practices adopted by some companies regarding disability at the workplace.

WIPRO

Wipro Limited is a global service provider of information technology, consumer care, lighting, precision engineering and health care that is headquartered in Bangalore, India. Wipro's largest business segment is its Informational Technology services which meets the needs of its global customers through business process and research outsourcing, information technology services, consulting and product development services. The company has a presence in over 35 countries and a global workforce of 1,00,000 employees comprising over 50 nationalities.

Wipro's Equal Opportunity, Employment Policy and Policy Prohibiting Discrimination and Harassment states that it hires employees "*without regard to their race, color, religion, national origin, citizenship, age, sex, marital status, ancestry, physical or mental disability, medical condition, socio economic background or sexual orientation*". The policy also states that equal opportunities will be offered in "*all aspects of employment, including recruitment, training, career progression, and termination or retirement.*" The Spirit of Wipro defines the corporate culture Wipro stands for and includes three cores statements, one of which guides its disability and diversity work: Act with sensitivity, which includes respecting the individual and being thoughtful and responsible. It is Wipro's vision to develop an atmosphere that is respectful of every individual, including those with disabilities.

In line with the Spirit of Wipro, the company launched a major initiative in 2009 to analyze the company's work in six key diversity areas: people policies, recruitment, training, infrastructure and facilities, information systems and awareness creation. As a part of the action, Wipro developed a Diversity Framework to support its employees coming from diverse backgrounds. The framework included governance measures, such as a diversity council formed at the corporate level that would track and review Wipro's progress in the six areas on a quarterly basis. It also established the Persons with Disability Program. The programme was designed in collaboration with one of India's leading disability consultancy firms, which carried out an audit of Wipro's activities in the six areas as they specifically related to disability. The audit helped Wipro develop a sustainable framework and strategy to promote equal opportunity for

people with disabilities and identified areas that required attention to create a more inclusive environment.

As a result significant adjustments were made to its “*people policies*”. For example, with regard to transportation, because of a lack of access to suitable and accessible modes of transportation for 81 disabled persons, the company now offers transportation services for its employees with disabilities. With regard to facilities, the company’s buildings in all locations have been renovated to provide greater accessibility. Wipro’s infrastructure standards have been modified to include international norms developed by the United Nations’ *Accessibility for the Disabled: A Design Manual for a Barrier Free Environment* and the latest draft of the building code prepared by the Indian based National Center for Promotion of Employment for Disabled People (NCPEDP) and Access Ability, India. Across India, Wipro has completed accessibility audits for all its offices and 14 of them have been remodeled to better accommodate disabled persons. According to its current practices, vacancy announcements include not only Wipro’s commitment to equal opportunity but also a statement that requests candidates to specify needs for disability related accommodations.

Wipro organizes recruitment events with institutions that serve people with disabilities in India, such as Braille without Borders, the National Institute of Speech and Hearing (NISH) and the Ambedkar Institute of Technology for Handicapped (AITH) to hire qualified people with disabilities. For example, in 2010, Wipro held a job fair at the AITH where 40 students participated and four were hired. Once a candidate is selected, Wipro provides reasonable accommodation to create a barrier free working environment. For example, the company provides assistive technologies, such as a screen reading software for visually impaired individuals. Each department absorbs the cost of accommodation if it is directly related to the person’s work. Recently, Wipro launched the Vendor Diversity Program to proactively reach vendors with disabilities and disability non governmental organizations. The Program’s objective is to induct vendors with disabilities into the company’s procurement system and to encourage existing vendors to hire people with disabilities. All vendors are also encouraged to attend job fairs for disabled persons.

Wipro’s Sustainability Report covers a broad range of CSR topics, such as good governance and management practice, employee and workplace sustainability, ecological sustainability and customer stewardship. As part of its CSR activities, Wipro is involved in various

diversity initiatives for people with disabilities. For example, it organizes forums and shares good practices as they relate to people with disabilities with industry bodies, such as National Association of Software and Services Companies (NASCCOM), the trade body and chamber of commerce of information technology and business process outsourcing industries in India, and the Confederation of Indian Industry, an organization that works to create an environment for industries in India to grow and develop. Wipro won the 2009 NCPEDP Shell Helen Keller Award for its efforts in promoting equal opportunities for people with disabilities.

Sony

Sony Corporation and its subsidiaries develop, manufacture and sell audio and video equipment, liquid crystal display (LCD) televisions, personal computers, monitors, semiconductors, mobile phones, CDs, DVDs and Blu ray discs. Headquartered in Tokyo, Japan, the company also designs and manufactures video games and is involved in motion picture, television, and home entertainment production, acquisition and distribution. In addition, Sony produces recorded music and music videos through contracts with various artists around the world. The company employs about 168,000 people worldwide, and in 2009 had revenue of USD 77 billion.

Sony believes that nurturing employees with diverse backgrounds is the key to driving innovation among its people. The company's commitment to diversity has allowed it to bring together employees from various backgrounds, including people with disabilities. Sony's Code of Conduct, adopted in May 2003, promotes equal opportunity in employment and lays down a policy of "*recruiting, hiring, training, promoting and otherwise treating applicants and employees without regard to non business related characteristics, including race, religion, skin color, nationality, age, gender and physical limitation*".

In Japan, the law requires that individuals with disabilities constitute at least 1.8 percent of the workforce of companies of a certain size. In fiscal year 2009, Sony employed 342 employees with disabilities, representing 2.29 per cent of its Japanese workforce, thus surpassing the legally mandated quota of 1.8 per cent in Japan. Sony Taiyo Corporation, a special subsidiary that manufactures microphones in Japan, has created an employment environment where anyone can work, whether disabled or non disabled. Established in 1978, Sony Taiyo offers customized work stations, which are adjusted to accommodate the needs of its disabled employees, sign language interpreters during meetings, flexible working

hours and other adjustments. With regard to housing offered to employees, Sony's corporate dormitories include accessibility features to meet specific needs of its disabled workers. Sony has two other special subsidiaries that provide work opportunities for disabled persons: the Sony Hikari Corporation and the Sony Kibo Corporation.

In Sony companies that hire a large number of disabled employees, staff members are given disability awareness training by the Japanese Ministry of Health, Labour and Welfare. The Ministry provides study tours for Sony employees and managers so they can visit and learn from other companies that have hired and successfully integrated disabled people into their workforces. Sony also has a disability support system through its personnel and administration divisions. Support includes providing advice to companies engaged in activities such as making facilities accessible or providing direct accommodations for employees such as sign language classes and workplace accommodations. At its corporate headquarters in Tokyo, Sony has a department that deals with the employment promotion of disabled persons. The department oversees activities throughout the entire company to promote diversity and inclusion in Sony companies through the hiring and retention of disabled employees. It provides networking activities and holds regular meetings among Sony companies to share best practices on hiring, training and awareness raising.

Sony incorporates distinctive features in its products' design to make them accessible to people with disabilities. For example, one of Sony's LCD televisions sold in the European market features an audio description function that provides narrative soundtrack for visually impaired users and digital video teletext for people with hearing impairments. The Sony Reader digital book, currently available in Canada, Europe and the United States, enables readers with low vision to adjust the size of the text on the screen according to their needs. Sony also provides CD versions of catalogues and audio manuals to people with visual impairments and other customers who are unable to use regular catalogues and manuals. For some product models, user manuals are available in audio and text versions are available on Sony's product information web site. Sony Electronics' products can be used by other companies to support people with disabilities. For example, DeafTalk Interpreting, a service of DeafTalk LLC, bridges the gap between Deaf and hearing individuals by using Sony videoconferencing. DeafTalk allows its clients, such as US based hospital emergency room staff to effectively communicate with hearing impaired individuals by providing access to on demand American Sign

Language (ASL) video interpreting services. The system allows emergency room personnel to have round the clock access to a Deaf Talk interpreter who can relay the patient's symptoms to hospital staff.

The Sony CSR Report discloses its CSR activities around six key themes: management, product responsibility, employees, social contribution, environment and CSR innovation. Sony encourages its employees to participate in volunteer activities and contribute to society. In Japan, for example, Sony matches employee contributions to Eye Mate, Inc, an organization that provides guide dogs to visually impaired people. In the United States, Sony Corporation of America (SCA) provides support for Lighthouse International, a non profit organization dedicated to meeting the evolving needs of people who are challenged with vision loss and blindness. SCA also supports the Recording for the Blind and Dyslexic, which works with leading publishers and technology innovators to bring accessible materials to individuals with visual and learning disabilities. Since 1996, Sony Electronics has also participated in Multiple Sclerosis Bike Tours for various chapters of the National Multiple Sclerosis Society. Since 2004, many Sony group companies in Japan, including Sony Taiyo Corporation, have received the Superior Facility for Disabled Persons Employment Award by the Japanese Ministry of Health, Labour and Welfare

Microsoft

Microsoft is a computer technology corporation headquartered in Redmond, Washington, United States. It is best known for its Microsoft Windows operating system and the Microsoft Office suite of productivity software. Microsoft has expanded into markets such as video game consoles, customer relationship management applications, server and storage software and digital music players. The company has gained a foothold in online advertising, mobile devices, and enterprise software, and makes its presence known on the Web with the MSN Internet portal and Bing search engine. Microsoft employs about 90,000 people in more than 135 countries. It is one of the major software companies developing, manufacturing, licensing, and supporting a wide range of software products. In the fiscal year 2009, the corporation had revenues of USD 58.4 billion.

Microsoft is committed to providing equal employment opportunity to all qualified employees and applicants. It has an Equal Employment Opportunity Policy which prohibits unlawful discrimination on the basis of "*race, color, sex, sexual orientation, gender identity or expression,*

religion, national origin, marital status, age, disability, or veteran status in any personnel practice, including recruitment, hiring, training, promotion, and discipline”. Its equal opportunity and anti discrimination policies cover all employees globally.

The corporation seeks to back up this commitment with a variety of programmes to accommodate people with disabilities in the workplace. At the front end, the company trains recruiters on how to interview people with disabilities and instructs them to focus on the qualifications of the applicant, not disability. When applying to Microsoft, an applicant can self identify as a person with a disability, thereby alerting the Disability Inclusion Program Manager that an accommodation may be needed. The Disability Inclusion Program Manager helps candidates and employees secure workplace accommodations to best meet the needs of the individual. When an employee is hired, a needs assessment is completed involving the employee, human resources personnel, and the manager to determine the accommodation needs. The accommodations for employees who have disabilities may include American Sign Language interpreting, captioning services, screen readers, refreshable Braille displays, orientation and mobility training for those moving to new buildings or campuses, hearing assistance devices, ergonomic office furniture, power interior and exterior doors, and many more.

At the Microsoft Inclusive Innovation Showroom, in Redmond, employees have an opportunity to test out assistive technologies and ergonomic hardware designs firsthand. This enables the company to determine appropriate methods, techniques, and products that can help maintain or improve job performance and meet the needs of employees with disabilities.

In the United States, Microsoft relies on a centralized budget to pay accommodation costs. By using this approach, these costs are not charged against the account of an individual team, and provide a level of consistency across accommodations made. Disability etiquette training is offered for employees. This training is beneficial to team members of employees with disabilities to ensure they understand the appropriate disability etiquette when working with the individual and learn tips for maximizing communication and understanding between all team members. For example, an employee at headquarters who happens to be Deaf conducts deafness awareness training for any team that hires a new employee or intern who is Deaf or hard of hearing. Lighthouse for the Blind of Seattle is contracted to provide training to the team that include employees or interns with visual disabilities.

The Cross Disability (XD) Employee Resource Group (ERG) represents employees with disabilities such as deafness, blindness, visual impairments, Attention Deficit Hyperactivity Disorder, mobility disabilities, and dyslexia. The XD ERG enters into partnerships with nationwide associations, non profit organizations, and special interest groups to increase disability awareness, drive joint objectives, and help organizations in need. The XD ERG's core goal is to enable employees to reach their full potential through inclusion, representation, and access to accommodations and in doing so, Microsoft hopes to be the employer of choice for people with disabilities globally. In addition, Microsoft has employee networks for the blind and low vision community, Deaf and hard of hearing workers and those with Attention Deficit Hyperactivity Disorder, dyslexia and mobility impairments. The company also supports social groups for parents who have children with various disabilities.

Bill Gates, the Chair and founder of Microsoft, has laid out a company vision to create innovative technology that is accessible to everyone and that adapts to each person's needs. He has written that "*accessible technology eliminates barriers for people with disabilities and it enables individuals to take full advantage of their capabilities*". Microsoft takes a strategic approach to this issue by integrating accessibility into product planning, research and development, product development, and testing. Its goal is to make the computer easier to see, hear, and use by building in accessibility features.

Nokia

Nokia is one of the largest manufacturers of mobile phones and supplier of mobile networks in the world. Headquartered in Keilaniemi, Espoo, Finland (near Helsinki), Nokia connects more than 1.2 billion people to one another with a Nokia device. Ovi, Nokia's brand for Internet services, offers services such as applications, games, music, maps, media and messaging. Nokia's NAVTEQ is a leader in comprehensive digital mapping and navigation services, and Nokia Siemens Networks provide equipment, services and solutions for communications networks globally. In 2009, Nokia had over 123,000 employees in 120 countries and reported EUR 40.9 billion (USD 58,738.3 million) in annual revenue.

Equal opportunity is the underlying principle of Nokia's employment practices. The company's Code of Conduct states that "*no employee or potential employee will receive less favorable treatment due to any reason whatsoever*" as long as the job requirements are fulfilled. Furthermore, the Nokia Standards for Factory Labor Conditions forbids

discrimination based on “any personal attribute (such as age, gender, nationality, opinions, memberships, religion, disabilities or race)”. At Nokia, diversity is considered a key element of its business success. To measure its progress toward diversity, Nokia conducts annual surveys among its staff. In 2008, 72 per cent of the employees who participated in the survey answered that Nokia treated its employees as individuals regardless of age, race, gender or physical capabilities.

Hiring people with disabilities is a fairly recent initiative among Nokia’s diversity actions. The company is steadily integrating disabled persons into the work force at headquarters as well as its local factories. For example, Nokia’s largest global factory in Komarom, Hungary is taking the lead in recruiting people with health problems or moderate disabilities by collaborating with non governmental organizations (NGO) that help identify and place them. The company offers flexible work hours and accommodates people with health problems or moderate disabilities with shorter work days than others, if needed.

At Nokia, accessibility is about making its devices and services usable and accessible to the greatest number of people, including customers with disabilities. When designing mobile devices, Nokia collaborates with representatives from disability organizations, regulators and academia to make accessibility part of the mainstream product design. The company offers more than 60 features or applications aimed at providing greater accessibility for people with limitations in hearing, speech, vision, mobility and cognition. Nokia’s CSR goal is to ensure that CSR is embedded in the business so that each unit addresses CSR during its operations. The company’s annual Sustainability Report covers a wide range of areas including ethics and compliance, health and safety, materials management, supply chain management, logistics, the environmental impact of products and services, employee relations and community outreach.

Nokia’s community development activities include an employee volunteering programme called Helping Hands. Through this programme, Nokia employees make meaningful contributions by spending one or two days per year in a voluntary work of their interest. In 2008, the programme launched a fundraising initiative that would support people with physical disabilities in Singapore. Nokia works with NGOs and governments to support disability related initiatives and other social causes. For example, in the United Kingdom, Nokia supports Mencap, UK’s leading charity working with children and adults with intellectual disabilities, through sponsorship, donations, staff fundraising and in kind gifts. Currently,

Nokia is sponsoring Art Spider (<http://www.artspider.org>), a web site for people with learning disabilities who are working in the arts. In 1999, the Association of Access Engineering Specialists (AAES), an US based professional organization concerned with improving access to telecommunications and computing products and services for people with disabilities, presented Nokia with the Access Innovation Award for its LPS 1 Loopset developed for customers with hearing impairments.

IBM

International Business Machines Corporation (IBM) is a multinational computer technology and consulting corporation headquartered in Armonk, New York, United States. Operating through five segments: Global Technology Services, Global Business Services, Systems and Technology Group, Software, and Global Financing, IBM is the world's largest computer company and systems integrator. After selling its PC company division to Lenovo in 2005, IBM concentrated its business operations on providing infrastructure, hosting and consulting services. The company employs over 399,400 employees worldwide and serves clients in 170 countries. In 2009, IBM had annual revenues of USD 95.8 billion.

IBM includes a non discrimination statement that references disability in a number of its company policies, such as its Workforce Diversity Policy, Global Employment Standards Policy, Diverse Business Relationships Policy, and Supplier Conduct Principles. For example, IBM's Global Employment Standards states that "*IBM will not discriminate in hiring, promotion, compensation of employees and employment practices on grounds of race, color, religion, age, nationality, social or ethnic origin, sexual orientation, gender, gender identity or expression, marital status, pregnancy, political affiliation, disability or veteran status*". Furthermore, in its workforce diversity policy, IBM emphasizes that the company will make workplace accommodations in order to ensure effective job performance by qualified people with disabilities. To implement the policy, IBM established a central reasonable accommodation fund to cover costs of adaptive equipment that are not part of the standard workstation or to provide for other accommodations such as transportation and interpreting services. By doing so, IBM managers are able to hire employees based on merit and skill without the disincentive of having cost of accommodation charged to their department budgets. IBM's efforts to promote workforce diversity and equal opportunity date back to 1899, when the company hired its first black male employee and three women, well before non discrimination legislation existed. In 1914, IBM

hired its first disabled employee and soon after began to recruit disabled veterans of World War I. Ever since; IBM has introduced many different programmes to create an inclusive workforce. For example, in 1943, IBM established a training centre in New York City for 600 disabled people; and in 1972, IBM initiated Computer Programmer Training for the Physically Disabled in collaboration with the US government and non governmental organizations to train and place people with serious physical disabilities as entry level computer programmers.

In the United States, IBM's Project Able seeks to increase representation of employees with disabilities. Proactive recruitment of disabled jobseekers is carried out through IBM's relationship with various training and job placement organizations. Once hired, IBM has an established network of champions for disabled employees. Through Project Able, IBM also provides internship opportunities for undergraduate and graduate students with disabilities who are pursuing careers in science, computer science, technology, engineering, or mathematics through its partnership with the American Association for the Advancement of Science (AAAS) and Entry Point!. Interns are matched with experienced mentors at IBM and offered assistive technology to facilitate their work. Worldwide IBM offices have proactively sought to increase the number of employees with disabilities through various programmes. For example, IBM Australia has developed close partnerships with the National Disability Recruitment Agency, Disability WORKS Australia, and the Australian Employers' Network on Disability to identify and employ qualified people with disabilities. At IBM Canada, its

People Enablement Network Group focused on Persons with Disabilities provides mentoring and coaching, and supports professional skills development for disabled employees. To ensure that IBM successfully recruits and retains employees with disabilities, disability awareness training is provided to IBM recruitment specialists, managers and employees. IBM's Supply Chain Diversity Program aims to ensure access to the company's procurement process for groups who have been traditionally left out of the economic mainstream if they have a product or service that adds value to the supply chain. As a result, IBM has worked with businesses owned by diverse groups, including people with disabilities.

Over the years, IBM has been equally active in the disability aspects of developing products and delivering services by identifying technology solutions for people with disabilities. In 1975, IBM developed the Model

1403 Braille printer; in 1980, the company introduced a talking typewriter for people who were blind; and in 1981, it invented a talking display terminal. The Executive Diversity Task Force for People with Disabilities was launched in 1995 to drive innovation in developing assistive technologies while helping customers and business partners use accessible technology and products. The company believes that the idea of manufacturing accessible products has created an unparalleled business opportunity and a way to differentiate IBM from competitors. In 1999, the IBM Board of Directors codified a standard for product accessibility by adopting the Corporation Instruction 162, which contained a mandate to assess accessibility characteristics of all new products. As a result, IBM pays attention to accessibility considerations during the initial product development stage and then conducts accessibility assessments at key checkpoints. Corporation Instruction 162 applies to not only all IBM products but also those manufactured by its subsidiaries.

Accessibility is a key criterion IBM uses to select vendors or suppliers, and is identified as a requirement when procuring components from third parties. In addition to manufacturing accessible products, IBM provides consulting services for companies that seek to make their corporate products and services accessible. IBM Accessibility Services enable its clients to realize the benefits of taking accessibility considerations into account. It also drives IBM's accessibility in the product development process and develops technologies that help remove barriers and extend capabilities of disabled users. In 2000, IBM established the IBM Human Ability and Accessibility Center as a part of its research effort. The Center's mission is to make information technology and information in other formats easily accessible to people who have visual, cognitive, and motor disabilities by applying research technologies and introducing software solutions. The Center operates in seven worldwide offices: Australia, Brazil, China, Europe, India, Japan and the United States.

IBM's annual Corporate Responsibility Report covers the company's priorities and notable activities with regard to corporate citizenship under the following six key headings: employees, communities, environment, supply chain responsibility, governance and public policy. The most recent 2008 report highlights the company's effort to enhance working conditions of its employees with disabilities through Accessible Workplace Connection, a web application that streamlines the process of accommodation requests for items like computer audio screen readers and live captioning for teleconferences. IBM's CSR programme includes the promotion of policies to address societal challenges by working closely

with governments, regulators, and standard setters at global and local levels.

During the last decade, IBM's contribution to supporting people with disabilities has been recognized in the areas of hiring, policies and product development. For good hiring practices, IBM was honoured with the New Freedom Initiative Award in the US (2003), the Austin Mayor's People with Disabilities Award (2006), the Australian Prime Minister's award for Employer of the Year (1998 and 2002), the US President's Committee on Employment of People with Disabilities Large Employer of the Year Award (1998) and many more. For policy creation, IBM was presented with the Americans with Disabilities Act (ADA) Eagle Award (2007), which recognized the company's leadership role in the creation of technology access policies, such as the W3C and the WAI. IBM India was also given the National Centre for Promotion of Employment for Disabled People (NCPEDP) Shell Helen Keller Award (2006) for policies and practices that support equal rights and employment for persons with disabilities. Finally, for product development, IBM was honored the Access Award (2004) from the American Foundation for the Blind for promoting accessibility throughout the company in its products and services and the New York Mayoral Advocacy Award (2006).

(1) Employers make the case for hiring people with disabilities²²

In 11 June 2012 the ILO's Bureau for Employers' Activities held a special session to bring awareness to the ILO Global Business and Disability Network and the business case for hiring people with disabilities as part of the International Labour Conference. Disabled people constitute the world's largest minority group, representing 15 per cent of the population, or an estimated one billion people. At least 785 million of them are of working age.

The session brought together experts representing businesses and employer groups who helped make the "*business case*" for hiring and retaining disabled people. The "*business case*" argues that hiring a qualified person with a disability brings greater benefits beyond just filling an open job. People with disabilities can contribute to a company's overall competitiveness through benefits such as increased productivity, greater market share and lower job turnover rates.

Many employers are sharing their good practices on implementing inclusion strategies through the ILO Global and Business Disability Network, or the Network. Javier Constante, Commercial Vice President of Performance Plastics Europe, Middle East and Africa, Dow Chemical,

stated that one of the reasons behind Dow Chemical's joining the Network was because "*we wanted to find successes and show our successes in building a business case for hiring people with disabilities*".

The Network includes some 43 multinational companies and 17 employers' organizations globally, as well as disabled persons groups such as the International Disability Alliance. It aims to help its members share knowledge and identify good practices; develop products and services that facilitate hiring and retention of disabled people; strengthen technical expertise on disability issues; and, link members to ILO activities and partners at the national level and through their local offices and supply chains. Stefan Tromel of the International Disability Alliance noted the timeliness of the Network in light of the more than 112 countries that have now ratified the UN Convention on the Rights of Persons with Disabilities – a comprehensive human rights convention for people with disabilities – and the important role companies play in sharing the business case with each other.

(2) Rights of children with disabilities²³

The Right to Education Act (amendment) Bill passed recently in the Rajya Sabha to widen the beneficiary net for children with disabilities is a declining step since it defeats the very purpose of the Act, which is to promote social inclusion in elementary schools. The amendment is in contradiction of the United Nations Convention on the Rights of Persons with Disabilities and the recent Supreme Court judgment (April 2012) on RTE, since it seems to suggest that home-based education may be the best option for children with '*severe disability*.' The very notion of what constitutes '*severe disability*' is a contested term and the assumption that '*certain children*' may be best educated at home rather than schools, defeats the very premise of inclusive education that espouses the belief that every child, including those with differing abilities have an entitlement to study with their peers and not be excluded from mainstream education. Even if we were to presume that certain parents '*choose*' home-based education for say their child who has severe medical complications with impairment, how would the state governments find the human resources to make home-based education a reality?

Currently, there are a total of 415 institutions which are recognized by Rehabilitation Council of India (RCI) to run rehabilitation councils, and the total number of registered rehabilitation professionals in the country is approximately 35,000, with special educators included in this figure. A recent study has highlighted that in 2007, the total number of special

teachers' requirement for all categories of children with disabilities stood at 1, 79,116 (IAMR, 2009) - a current shortfall of approximately 1.4 lakh special teachers. According to MHRD, the number of out-of-school children with disabilities remains a high 35% (SRI-IMRB, 2009) and currently coverage of children with disabilities stands at 26.4 lakh in mainstream schools and 2.4 lakh through home-based education. Census 2011 results are due and expected to show an increase in the national population of children with disabilities. Right of Children to Free and Compulsory Education (Amendment) Bill, passed recently in the Rajya Sabha, covers children with disabilities. As a result, it will now allow children with '*severe disabilities*' the option to receive home based education. It will also cover children with autism, mental retardation, cerebral palsy and multiple disabilities

③ Employment of Persons with Disabilities in Public Sectors in India -

Emerging Issues and Trends – An Evaluation Study with Special Reference to Persons With Disabilities Act, 1995 (Year 2008) (Prepared by Society for Disability and Rehabilitation Studies, New Delhi)²⁴

In the year 2008 Society for Disability and Rehabilitation Studies, New Delhi conducted a survey on Employment of Persons with Disabilities in Public Sectors in India and found some interesting outcome from it. Some of the findings of the survey are shown as under Level of Awareness:-

- a. All the people in the officers' set of respondents from different ministries / departments and organizations where were aware of the employment rights of the persons with disabilities. These respondents however were not sure of the details regarding the quota fixed by the government for the employment opportunity and eligibility of persons suffering from various kinds of disabilities. More than 83% of the other staff members knew about the government policy of provision of employment opportunities in governments and public sector undertakings.
- b. 16.4 of the total staff had absolutely no clue of this Person with Disabilities Act and reservation quota for the person s with disabilities. The target group of disabled respondents was inquired if they were aware of the existence of employment rights of the disabled or any act or legislations passed for the persons with disabilities. The level of awareness about this initiative was not found to be high. Only 58.7% of the target groups with disabilities are aware of employment rights of the persons with disabilities.

- (4) A Blueprint to enhance life and claim the rights of the people with disability in South Australia (2012-2020) published on October, 2011²⁵

In this report some recommendation were made and such reforms aim to bring people with disability and their families and careers to the forefront in determining live their lives, pursue aspiration and contribute to society. Social Inclusion Board believes that South Australian must recognize people with disability as equal citizen. Stigma and discrimination have no place in communities. Every south Australian must look beyond a person's disability to see them as a person, vibrant and diverse as any others. Major reforms at both the community and system levels are fundamental to achieving a shift in the way our systems and community view disability.

The Board recognizes that there is still strong need for Government to play a role in funding and delivering specialist services for those whose disability may require high level continuous or ongoing support. Change within community will require strong Government leadership and resourcing. Bold actions through partnership with diverse stakeholders including business, local government and the not-for profit sector is also required.

“Many people with disability said they face a constant struggle to obtain what the rest of the community would consider to be an ordinary life. They do not want special treatment – they just want the barriers removed so they can get on with living.”

CONCLUDING OBSERVATIONS

As we saw that Ministry of Social Justice and Empowerment, Government of India is doing remarkable job for upliftment of the disabled persons in India by establishing different types of autonomous organizations engaged in achieving various types of objectives regarding disability. It is not only government's duty to help the disabled but also of the society to participate in this journey of upliftment. Some of the organizations have been excellent examples by showing their path breaking work as we show in the chapter on role of society in development of disabled individual.

We have to think about the inclusive growth of the disabled person not just by providing them basic facility like food, shelter etc. but we also have to work upon the overall growth of those people. We have to make them self-reliant and independent. I always remember one quote given by

Confucius, a Chinese Philosopher “*Give a man a fish; you feed him for a day. Teach him how to fish; you feed him for a lifetime*”. In our case it means that we have to create job opportunities for these people so that they can be self-made. Government is performing its duty at its own pace but as a citizen of India one should come forward to take care of this segment of the society which is often neglected by us.

End Notes

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PA RT IV
SOCIAL SECURITY AND WOMEN

CHAPTER - 7

Widows' Right to Live with Dignity, with Special Reference to Status of Widows in Vrindavan

BINDUJINDAL

INTRODUCTION

In a society where a woman's identity is governed by her male relative— whether father, husband, or son—and eventual patrilocality, it would appear that after the death of the husband, she “*ceases*” as a person and passes into a state of “*social death*.” Since a woman is regarded primarily as a vessel of reproduction, her “*social death*” also signals her “*sexual death*.” As a widow she is pushed to the margins of the functioning social unit of the family and is alienated from reproduction and sexuality.¹ She begins to be regarded as a disrupter of the social order and the society is not at ease about other categories because a woman is not regarded as an independent being. As a widow, she is reduced to a void, a zero. The question arises about where to place her? Unlike the elaborate marriage rituals that mark a woman's entry into legitimate sexual activity, the rituals marking the renunciation of the widow's sexuality are simple but deeply humiliating and traumatic, the most visible being the breaking of bangles and tonsure, or the shaving of the head. These enforced signs of widowhood signify symbolic restraint or castration along with the effacement of colour from her garments and taste from her food. (A widow must wear a white borderless sari—or black in certain communities— and eat a bland vegetarian diet and on some days be denied food altogether.) These are the ways by which the community reiterates its power to control a widow's sexuality (such practices were especially prevalent and severe among the Brahmins). Two other signs of marriage that are removed are the *sindur* or the vermilion mark in the parting of the hair and the *bindi* or the red dot on the forehead (a widow may wear a bindi of ash if she wishes, as a reminder of the ash from her husband's pyre or the heap of ash her life has become). In addition to removing the symbols of marriage, a widow is expected to renounce all adornments,

cosmetics and is forbidden from looking in a mirror. The fear of female sexuality and the need to control it have figured in all patriarchal societies and this desire has assumed various forms in different societies at different times. The customs and rituals represent an attempt to find a social and ideological resolution of the tensions inherent in the conceptualization of widowhood where a widow continues to exist but is sexually a non-being. The worst of all is the lifelong shame a widow must bear of being considered inauspicious and hence banned from attending celebrations. A widow is feared and imagined as a bad omen. Of the eight incarnations of the Devi in Hindu mythology, the most feared is "*Dhumavati*" in the form of a widow accompanied by the raven as her vehicle.

There is an economic angle to the way widows are treated must not be overlooked. Often social norms restrict a widow's rights to residence, property, and employment, and impose a gendered division of labour as well as seclusion. Without any source of income, she is reduced to helpless dependency and penury. There is hardly a family in India that does not have a widow—a grandmother, mother or an aunt—as an omnipresent figure. When supported and cared for, she is the matriarch who rules the household with love and wisdom. But increasingly, with the dismantling of the joint family system, she is left to fend for herself and as Martha Alter Chen puts it, "*symbolizes the imminent collapse of the social order.*"² According to the Government of India's 1991 Census, there are more than 33 million widows in India of whom some thirty thousand are below fifteen years of age. According to Chen, the reasons for the high proportion of widows are because "*marriage in India is near universal; husbands are five years older on average than wives; male mortality rates are still very high; women begin to outlive men after their reproductive years; and, most importantly, widow remarriage is infrequent.*"³ Until recently, two linked social practices—*gauri daan* or child marriage to avoid social ostracism if a daughter remains unmarried after attaining puberty and *kulin pratha* that allows polygamy among the Brahmins—were the major causes for widowhood since very young girls were wed too much older men and men with multiple wives. To avoid the problems of both economic and familial nurturing of the widows, the convenient way devised by communities was, and still is, to send them away to pilgrimage centres like Mathura-Vrindavan and Kashi/Varanasi ostensibly to let them pass the remainder of their life in devotion and worship. These pilgrimage centres, as well as others, teem with widows sent away by their families invariably without financial support to live in pitiful conditions. Their status is one of being "*lifted from the pyre but*

left in the cremation ground.”⁴ In two of India’s most sacred towns, Benaras and Vrindavan, thousands of widows who have been driven out of their homes or some who have escaped sati, eke out a living by begging on the streets or prostituting themselves.⁵

Though the plight of the Hindu widows has captured the attention of the people in India and abroad, and the Indian National Commission for Women presented its Report on widows living in Mathura, Vrindavan and Varanasi in 1996, their lot remains unchanged. Three images in particular—the child widow, the ascetic widow, and the widow who burns on her husband’s pyre—have never failed to evoke pity and consternation. The current work of social reformers and women’s rights activists focuses on the financial well-being and the customary rights of widows to property as both daughters and daughters-in-law.⁶ The urgent need is to highlight the widows’ rights in principle and the reality of their denial. However, these matters are yet to be satisfactorily resolved, given the patrilineal laws and customs in India as well as the existing social norms in patrilineal communities.

HISTORICAL PERSPECTIVES

The nineteenth century is considered the most eventful period in the history of women’s struggle for the rights of equality and freedom. Effective campaigns were launched in India by social reformers like Rammohan Roy, Iswar Chandra Vidyasagar, Dayanand Saraswati, Pandita Ramabai, Narmada Shankar Dave, and Tarabai Shinde, against “sati,” “polygamy,” “child marriage” and in favour of “widow remarriage” to mention a few relevant and volatile issues. The reformist rhetoric and the ultimate success of these movements translated into various legislative enactments and amendments making “sati” and child marriage—those who perform and also those who incite—punishable offences and legalizing widow re-marriage.⁷ The latter, however, was not a totally new concept because certain communities of Punjab and Rajasthan permit a widow to marry the younger brother of her deceased husband⁸. This is in keeping with certain allowances made in the *Dharma shastras*. The noteworthy feature of these socio-religious debates was the way the major code of Hindu laws promulgated as *Manu Samhita* was contested by the social reformers with alternative texts of Hindu ethics and conduct. For instance, Sage Parashar⁹ was invoked to suggest three ways of life for widows: to lead celibate lives, to die with their husbands, or to re-marry.

Indian myths offer examples of all three: Kunti (*Mahabharata*) lived a celibate life; Madri (*Mahabharata*) died with her husband; and on

Ram's advice, Mandodari (*Ramayana*) re-married Vibhisan. Despite all this, re-marriage of widows was not a socially accepted practice; for instance, Vidyasagar's efforts to conduct remarriage of widows met with stiff resistance and antagonism and even attracted physical attack; the remarriage of Anandi Bai Joshi to D.K. Karve in 1893 created a furor¹⁰. Such was the unease and tension regarding the issue that many literary leaders of the century like Bankim Chandra Chattopadhyay, Sharat Chandra Chatterjee, Rabindranath Tagore, Govardhanram Madhavram Tripathi, and Baba Padmanji Mulay dealt with the image of the widow in their fiction but did not permit her the happy resolution of a marriage.¹¹ Though such fictional characters are treated with initial sympathy by their creators, they are slowly developed as transgressive and disruptive agents who threaten the moral and social order of the family and the community. Young and beautiful widows free of male control circulate as objects of desire and illicit passion. Therefore they must be and eventually are removed by some narrative connivance. According to Meenakshi Mukherjee, since marriages were arranged and the brides were sometimes very young, the only possibility of romance of an adult male could be with a courtesan, prostitute or a widow¹². A few memorable representations of widows by the pioneer novelists address widowhood and its difficulties by pivoting the plot on it but do not break social conventions nor introduce liberal thinking that would challenge prevailing social attitudes towards widows.¹³ In fact, their treatment confirms society's subliminal fear of young widows as sexually disruptive agents. The development of analytical awareness of social-cultural evils takes time.

The movement for the emancipation of women began gradually to take bigger and more successful strides in the twentieth century and reflected the positive change and aggressive stance vis-à-vis regressive customs in various kinds of writing.¹⁴ Stories were written with widows as protagonists who were admired and respected for their conduct and ethics. With films becoming widely popular by mid-century, another medium became available as an expressive mode to explore and represent social issues. While the usual social and family dramas had widows as ubiquitous characters, a few memorable films inspired by equally remarkable novels confronted the subject more directly and courageously.

WIDOWS IN VRINDAVAN AND HUMAN RIGHT TO LIVE WITH DIGNITY

1. Concept of 'Human Dignity' -

Modern constitutionalism and concept of human rights jurisprudence both heavily rely on the concept of human dignity but the precise meaning

of this concept is elusive. At present, there is not any universally recognized and accepted definition of this term. This nature of the term is because of the value of human dignity comes in part from its evolving and plastic nature as well as difficulties lie in its amorphous content. The term 'dignity' has secured a social, religious, political and legal history.

When the available treatises are perused to find the jurisprudence of this concept, it is found that the very idea originated in Judo-Christian tradition, which believed that man was made in the image of God¹⁵. This grants a special and unique status to human being. Thus, man's connection with divine imbued him with an inherent form of dignity¹⁶. Political theorists of natural law traditions mainly emphasized on the importance of human dignity and autonomy. With passage of time, this idea was further developed and given particular shape by Immanuel Kant who declares that human rights are based on human dignity. Kant's theory of autonomy of the individual served as a foundation for conceptualizing the respect due to every human being. He explained autonomy is the ground of the dignity of human nature and of every rational nature¹⁷. This view of dignity largely centered around an individual whereas modern concept of human dignity as a *human right* and *constitutional value* has a strong communitarian basis and requires the state to create and protect appropriate conditions for the realization of dignity.

The term 'dignity' has been derived from a Latin terms '*dignitas*' which means worth, merit. Thus the term is referred as quality of being worthy of esteem or honour of high repute, proper pride and self respect¹⁸. In this background, it can be said that human dignity refers to a status of righteousness, integrity, or virtue in a human beings. Dignity means a state of being worthy of honour and respect and it is intrinsically associated with human being. It signifies that human being possesses intrinsic worthiness and deserves unconditional respect regardless of age, sex, health, status, social or ethnic group, political ideas or criminal history¹⁹. If it is violated it would amount to discrimination. It can be said that it is owed by every individual by mere fact that he or she is the member of human family or *Homo sapiens* groups.

2. Supreme Court and the Right to Live with Dignity-

Right to live with dignity is part and parcel of Article 21 of the Constitution of India. Article 21 which had lain dormant for nearly three decade was brought to life by the now famous Supreme Court decision in *Manekla Gandhi*.²⁰ Since then Art. 21 have been on its way to emerge as the Indian version of American concept of due process. It has become

the source of many substantive rights and procedural safeguards to the people.²¹ Under its human rights jurisprudence Supreme Court of India covered almost all the aspects of human life which make it worth living. By the term 'life' as here used something more is meant than mere animal existence.²²

In *Francis Coralie Mullin v Administrator, Union Territory of Delhi*²³, it was held that 'the right to life enshrined in Article 21 cannot be restricted to mere animal existence. It means something much more than just physical survival. The right to life includes the right to live with human dignity and all that goes along with it, are, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings. Again, Justice Bhagwati, in *Bandhua Mukti Morcha v. Union of India*²⁴, reiterated that-

'We have already pointed out in Asiad construction workers case (AIR 1982 SC 1473) that the state is under a constitutional obligation to see that there is no violation of the fundamental right of any person, particularly when he belongs to the weaker sections of the community and is unable to wage a legal battle against a strong and powerful opponent who is exploiting him. the central government is therefore bound to ensure observance of various social welfare and labour laws enacted by parliament for the purpose of securing to the workmen a life of basic human dignity in compliance with the Directive Principles of State Policy'.

3. Woman and Human Dignity-

The concept of dignity is closely connected with gender equality and gender justice. Therefore, the Supreme Court of India has held that the women should be treated with full dignity and any act, conducts, gesture and manner of doing a work should not be 'derogatory to the dignity of women'²⁵. Moreover, the Indian Constitution has declared that it shall be the duty of every citizens of India - 'to renounce the practices derogatory to the dignity of women'. It is in consonance with the spirit of the 'preamble' of the Constitution to ensure the 'fraternity assuring the dignity of the individual'. Right to equality has also specifically prohibited the State from making any type of discrimination on the basis of sex²⁶. The Courts have in numerous cases declared that violence against woman is a non-venial act and highly insulting to the dignity of woman, in particular and to society, in general.

4. Widows and Right to Live with Dignity-

The foundation for women's inequality today is patriarchal cultures; these, in turn, are founded on patriarchal religion. Women are simply not valued as fully equal human beings deserving of the same dignity, rights, and treatment as men. Women are, instead, valued for providing sex to men and then for their ability to spend their entire time keeping house, preserving the family, and raising children. When women are no longer needed to fulfill these tasks, then they simply aren't needed at all. If they provide no sexual or child-rearing services, there is nothing they have to offer. In patriarchal systems and patriarchal religions, women are eminently dispensable. Nowhere has this problem been more clearly demonstrated than in India, where widows were traditionally expected to kill themselves on the funeral pyres of their deceased husbands — without a man to be joined with, the life of a woman was worthless. Today suttee is illegal, but women still aren't valued without a husband.

Unwanted baggages, widows were once encouraged to fling themselves onto their husband's funeral pyres. The majority who did not were forbidden to remarry, and often corralled into beggar colonies at pilgrimage places like Vrindavan. Though the law now gives India's 45m-or-so widows better protection, they are still discouraged from remarrying. Indeed, in Vrindavan nine-tenths of widows surveyed say they are against the practice. That includes many widowed in their youth: two-fifths were married before they were 12 years old. Most widows are driven to Vrindavan by poverty and cruel relatives.²⁷

The ten thousand odd Widows of Vrindavan, marginalized and ostracized by society, live in institutionalized hell, being exploited by politician-pimp nexus, just because of the heinous practices of a society where widow-remarriage is a taboo, and where a widow is supposed to be a "bad omen" for any unmarried or a married, woman.²⁸

National Legal Services Authorities confirmed the fears of the pension and other doles given by the state governments do not reach the widows in time. "*Disbursement of pension (Rs 300), food money (Rs 500) and pocket money (Rs 50) is not reaching the destitute women living in the homes regularly. This money reaches through the Syndicate Bank, Anaj Mandi Branch, Vrindavan, only once in six months,*"²⁹ On the health condition of the widows, it said: "*They suffer from a large number of geriatric problems like rheumatism, blood pressure etc. Being women they are prone to fracture of limbs due to deficiency in calcium. At least in every home one can find women unable to move out of the shelter on*

account of broken limbs or physical disability. "It is suggested that a direction may be issued from the Supreme Court to the state government to ensure that a dispensary is opened in one of the rooms in each of the government run shelter homes with adequate stock of free medicines".³⁰

Sorry state of affairs is revealed through a report on the status of widows in Vrindawan. The report³¹ is based on personal interaction with the widows and the data provided by the government and non-government agencies. The official figures provided by the District Probation Office and Social Welfare Department at Mathura puts the number of abandoned women in the entire district at 3151 — a large number of whom were shunned by their conservative and orthodox families in certain parts of West Bengal and persuaded or even forced by the family members to live a 'sacred widowed life' in Vrindavan after the death of her husband. In most cases widows are denied remarriage even after the death of their husband in childhood or young age. While some are forced to leave the marital home and native place by the family members just to avoid maintenance in old age and bearing the burden of a non-productive family member, many others leave their homes due to physical and mental torture. The report details the plight of these women, some of whom get a monthly pension of Rs. 300 and a measly quantity of food grain and sugar which is woefully inadequate for survival. As a result, they are forced to beg and sing in temples from where they can earn two or three rupees a day.

The living quarters are unhygienic with little or no facilities for toilets and drinking water. Medical facilities are only on paper. But due to lack of education, the women are often deprived of the paltry sum they are entitled to under the National Social Assistance Programme, Antodaya Scheme and Food Money Scheme as the funds are often pilfered. Recommending setting up of sufficient shelter homes with proper facilities, the DLSA report said the Centre and the State governments are expected to fulfill the basic needs guaranteed by the Constitution and protect the human rights of the widows. It has also suggested proper audit of the funds received by the NGOs and private charitable institutions.

5. Right to Decent Burial-

Not only the living persons do have rights but a dead person also does have some rights. The first and foremost right of a dead person is the right of a decent burial or cremation. The second right of dead person is right to reputation. Indian Penal Code makes the act of defaming a dead person and his relatives punishable up to two years with simple

imprisonment or fine or both³². His third right is the right of disposal of his property after his demise. Here we will take the first right *i.e.* “*Right of decent burial*” for the discussion. As we all know a person can make a wish regarding his burial or cremation viz how he is to be buried or cremated or may mention a particular place where he wishes to be buried or cremated after his death. Pundit Jawaharlal Nehru wished that his ashes should be scattered all over the Himalayas so they mingle down below in the plains. His wishes were carried out. A woman who marries the person of other faith is buried or cremated according to the religion of her birth unless she converts or wills otherwise.³³

The right of decent burial has been recognized at Common Law since long and usually granted to surviving spouse or next kin unless deceased expressed his will otherwise. The dead body is the property of state. The idea is that whatever comes out of the earth or develops on it should go in to the earth. Dead body once buried cannot be exhumed without state intervention and usually it is done on the orders of a Magistrate in extreme cases. If nobody claims the dead body it is the duty of the state to cremate or bury it in a dignified way. To fiddle with the body or dismember its parts of or have sex with dead boy is an offence and termed necrophilia. In some countries the crime is termed as “*Abuse of corpse*” but in India it is covered under unnatural sex³⁴.

For harvesting organs from the dead body “*Transplantation of Human Organs (THO) Act 1994*” has been enacted. Any commercial dealing in human organs is punishable. For donations of cadavers or any parts thereof such as cornea, heart, liver, kidney bones or bone marrow the consent of the relatives is necessary. Now a day’s many persons wish to donate their organs after their death. In such cases their relatives has to inform the nearest organ bank without loss of crucial time necessary for harvesting organs. Time of harvesting varies from organ to organ donated. If without the consent of the near relatives any organ from corpse is removed or any part of body is dismembered, the hospital entrusted with the custody of the corpse will be responsible. It is criminal offence to remove corpse or parts thereof from Morgue or graves without the authority of law.³⁵

6. Dignity Denied Even in Death for Vrindavan Widows³⁶

The life of Vrindawan is not tough only but their death is also no concern for the deaf and dumb society and administration. According to news report, the bodies of widows taken away by sweepers, cut into pieces and disposed of in jute bags. The bodies of widows who die in

government-run shelter homes in Vrindavan are taken away by sweepers at night, cut into pieces, put into jute bags and disposed of as the institutions do not have any provision for a decent funeral. This, too, is done only after the inmates give money to the sweeper.³⁷ One institution, started by the Union Ministry of Women and Child Development in 2006 and run by a non-governmental organisation Akhil Bharatiya Maa Sharda Samaj Kalyan Samiti, does not undertake the responsibility of arranging funerals. Similar conditions prevail in another residential institution established by the U.P. Mahila Samaj Kalyan Nigam — the only of its kind run by the State government under its Meera Sahbhagini scheme.

7. Supreme Courts Initiatives for the protection of Rights of Widows in Vrindawan-

Abandoned by relatives and living in abject poverty in humiliating conditions, Vrindavan widows will have some dignity restored. The Supreme Court ended the age-old indifference and neglect of these hapless widows by asking the UP government and Mathura authorities to provide proper food, medical facility and clean toilets at four government-run shelter homes at Vrindavan, which house more than 1,700 women.

Before passing the order, a bench of Justices D K Jain and Madan B Lokur made known their anguish at the failure of the authorities and the NCW. The bench said *“It is worse that in spite of your (NCW) visit (to Vrindavan), you have not done anything.”* But what pained the SC most was a report by District Legal Services Authority of Vrindavan which narrated how inmates who died were packed into gunny bags and dumped away. The bench ordered that a team of doctors will visit the shelter homes twice a week and the chief medical officer will provide a doctor in case of any emergency and will ensure last rites were conducted of any deceased inmates. The court also constituted a panel to ensure that *“proper food is supplied”* and the head of the health department *“shall ensure toilets are kept in good condition.”*

8. Initiatives by NGOs-

NGO like Maitri³⁸ has expanded its areas of reach through a variety of programmes which include overcome domestic violence awareness, victim support and victim to survivor program (with a special focus on the uniformed services and their families) Maitri also promotes respect, dignity, and support for abandoned elderly widows in Vrindavan (Mathura, India). The motto of this NGO is-

(a) a healthy home is a happy home

- (b) No woman (least of all a mother) should ever have to live in destitution and humiliation
- (c) Women have the right to live with respect and dignity even in the sunset years of their lives.³⁹

9. Notes Different from Common Belief-

Hindu widows dressed in white and living in clusters adjoining temples are a common sight in Vrindavan and surrounding areas. However, contrary to traditional beliefs, these women do not want to tonsure their heads and some are even open to remarriage, reveals a recent survey done by Guild of Service, with support from the UNIFEM⁴⁰. As per the findings of the report, *“Dimensions of Deprivation: Study on the poverty levels of widows of Vrindavan”*, these women are happier here than in their village homes and most have no intention of going back. According to the survey it has been found that *“They seem to be veering away from traditional beliefs on how widows should live in terms of what they should wear and eat.”*

The study done in the Braj area of Vrindavan, Radhakund, Goverdhan, Gokul and Barsana finds that the widows seem to be open to the idea of remarriage, though they don't say it openly. Some of them are computer literate; one, in fact, had used the Internet to 'Google' her way to an ashram in Vrindavan. The report is based on detailed questionnaires to over 500 widows, aged between 24 and 75 and living in several locations at these five places. The study also revealed the changing face of widowhood in Braj — their sense of self-esteem, age, literacy levels, ability to access services, and how people treat them.

The survey shows that though widows are extremely poor monetarily, they eat well and there are no chances of them starving. However, shelter, sanitation, health and access to the widow's pension are key problems. Approximately a third of them live in the open — on streets, ghats, railway stations and bus stops — and they have to fend for themselves. More than half (54 per cent) live in rented spaces, and 16 per cent in ashrams.⁴¹

10. Recommendations of National Legal Services Authority to improve the Condition of Widows in Vrindawan-

Taking cognisance of a report published in *The Hindu*, on the plight of the widows living in Vrindavan in Mathura district of Uttar Pradesh, Justice Altamash Kabir, Executive Chairperson of the National Legal Services Authority,

- (a) Had asked the U.P. State Legal Services Authority to survey the conditions of the women.

- (b) The terms of reference also included ascertaining whether there were peculiar family circumstances which led to abandonment of the women by their families or children which was actionable under Section 24 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.
- (c) The report, has recommended that the District Magistrates be directed to protect the property and property rights of these women. It wanted them to take necessary steps to restore the property to the destitute women in accordance with law which would facilitate their return home and enable them to lead a dignified life.
- (d) It has also suggested that legal aid clinics be set up to generate awareness among these women about various Acts and their rights and provide assistance wherever needed.
- (e) The District Legal Services Authority in its report quoted⁴², to reveal the “sorry state of affairs and disheartening fact that sweepers take away the dead bodies in the night, cut them into pieces and dispose them of in jute bags.”

CONCLUDING OBSERVATIONS

Every human being, the creative expression of God, deserves the right to live and enjoy life in a complete and dignified way. The widows should not be made to live life minus the colour of basic needs, emotional support and caring hands in times of need. Not only during their life but their body after death deserves the human and respectable disposal if not by the relatives then by the Government. A corpse is not a person anymore, legally speaking, and does not have *rights* as such, but nonetheless there are legal obligations regarding the corpse which are imposed on still-living persons that derive from its former humanity and personhood. “*Prevention of Abuse of Corpse Act*” may also be a need of the day in present scenario. The provision of “*Maintenance of Parents and Senior Citizens Act 2007*” must be publicized and be implemented properly. The widows need not sympathy but what they need is empowerment and no mode is better than their educational and vocational training. They may serve as a contributing citizen of India. Very old may remain the responsibility of State. There should be proper auditing about the help provided by Government and NGOs whether reached to them actually or not. India is known to maintain its tradition and culture cannot afford to remain indifferent from the experienced generation.

END NOTES

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- 7 The Hindu Widow's Remarriage Act, 1856.
- 8 Karewa and Chadarandazi Marriages, for detail see Paras Diwan, *Customary Law (Of Punjab & Haryana)* Publication Bureau Panjab University, Chandigarh, Third ed. 1990.
- 9 Parashar Samhita Ch IV.
- 10 For documents and personal narratives on widow remarriage, see Uma Chakravarti and Preeti Gill, eds., *Shadow Lives: Writings on Widowhood* (New Delhi: Kali for Women, 2001), 54-250.
- 11 Novels like *Vishabriksha* (1873), *Krishnakanter Will* (1878), *Palli Samaj* (1916), *Charitraheen* (1931), *Chokher Bali* (1903), *Yamuna Paryatan* (1857), *Saraswatichandra* (1887) to mention a few memorable representations of widows by the pioneer novelists mentioned above.
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- 13 While the several film versions of classic novels like *Vishabriksha*, *Krishnakanter Will*, *Charitraheen*, *Palli Samaj*, *Chokher Bali*, *Saraswatichandra* present the cautious attitude of the earlier generations, films in post-independence India like *Vamshavriksha* (1972, Girish Karnad and B.V. Karanth), *Ghatashraddha* (1977, Girish Kasaravalli), *Ek Chadar Maili Si* (1986, Sukhwant Dada), *Rudali* (1993, Kalpana Lajmi), and *Adajya* (1997, Santwana Bardoloi) explore the various aspects of widowhood and their social implications with realistic, nuanced and sensitive maturity.
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- 31 prepared by Sapna Tripathi, ACJM and Vijay Bahadur Yadav, chairman (DLSA) and District Judge, Mathura along with some other members.
- 32 Explanation to Section 499, Indian Penal code.
- 33 <http://pramodkumar1958.blogspot.in/2012/04/decent-burial-human-right.html>as visited on 16.09.12 at 8.29 a.m.
- 34 Section 377 of IPC.
- 35 *Ibid.*
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- 37 This shocking fact has come to light in a survey by the District Legal Services Authority (DLSA) on the “Plight of Forsaken/Forlorn Women — Old and Widows Living in Vrindavan and Radius.”
- 38 Maitriis a developmental humanitarian NGO based out of New Delhi, India which was founded in 2005 by Gen (Retd.) Bhopinder Singh and Winnie Singh. The organization was born out of a felt need to fill in the gaps in awareness about essential health impacting information such as STI’s, HIV/AIDS and TB for the uniformed services.
- 39 <http://www.maitriindia.org/>
- 40 Secretary for Women and Child Development D K Sikri released the report recently. <http://www.indianexpress.com/news/life-of-vrindavan-widows-better-but-only-just-study/725302/> Updated: Tue, 28 Aug 2012 3:14 IST.
- 41 <http://indianexpress.com/Updated: Tue, 28 Aug 2012 3:14 IST>
- 42 Mithilesh Solanki, a widow living in Swadhar Mahila Ashray Kendra, Chaitanya Vihar (Vrindavan)

CHAPTER – 8

Empowering Women in India

RANJANA FERRAO

INTRODUCTION

'Equality of status and of opportunity' is the rubric chiselled in the luminous preamble of our vibrating and pulsating Constitution radiates one of the avowed objectives in our Sovereign, Socialist and Secular Democratic Republic. In every free country which has adopted a system of governance through democratic principles, the people have their fundamental inalienable rights and enjoy the recognition of inherent dignity and of equality.

From the advent of our Constitution we have marched on, the tormenting enigma that often nags the people of India is whether the principle of *'equality of status and of opportunity'* to be equally provided to all the citizens of our country from cradle to grave is satisfactorily consummated and whether the clarion of 'equality of opportunity in matters of public employment' enshrined in Article 16(4) of the Constitution of India has been called into action¹? With a broken heart one has to answer these questions in the negative.

The founding fathers of our Constitution have designedly couched Articles 14, 15 and 16 in comprehensive phraseology so that the frail and emaciated section of the people living in poverty, rearing in obscurity, possessing no wealth or influence, having no education, much less higher education and suffering from social repression and oppression should not be denied of equality before the law and equal protection of the laws and equal opportunity in the matters of public employment or subjected to any prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

To achieve the above objectives, the Government have enacted innumerable social welfare legislations and geared up social reformative measures for uplifting the social and economic development of the disadvantaged section of people. True, a rapid societal transformation

and profusion of other progressive changes are taking place, yet a major section of the people living below the poverty line and suffering from social ostracism still stand far behind and lack in every respect to keep pace with the advanced section of the people. The undignified social status and sub human living conditions leave an indelible impression that their forlorn hopes for equality in every sphere of life are only a myth rather than a reality.

India has 397 million workers, 123.9 million are women, 106 million are in rural areas, 18 million are in urban areas, only 7% of India's labour force is in the organized sector; 93% is in unorganized, informal sector, 96% of women workers are in unorganized sector. Female work participation rate (WPR) has increased from 19.7% in 1981 to 25.7% in 2001. In rural areas female WPR has increased from 23.1 to 31%. In urban areas it has increased from 8.3 to 11.6%. But women reported as non workers in the census found to spending 4 hours a day. Picking, sowing, and grazing cattle, threshing, or working as domestic servants for 8-10 hours a day.

Women's lack of economic empowerment, on the other hand, not only impedes growth and poverty reduction, but also has a host of other negative impacts including less favourable education and health outcomes for children and a more rapid spread of HIV/AIDS. Thus, it is extremely important to ensure that women are economically empowered. There are various factors that contribute to the economic empowerment of women. These factors operate at various levels.

At Macro Policy level there is need for women's representation in better remuneration for jobs, representation of women's interests in macro-economic policies, at both national and state level. In Meso Community level there is need to create ownership of assets and land, access to credit, involvement and/or representation in local trade, associations; access to markets. At Micro Household level there is need for a Women's control over income her relative, contribution to family support and access to and control of family resources.

The extent of empowerment of women in the national hierarchy is determined largely by the three factors – her economic, social and political identity and their weight age. It is only when all the three factors are simultaneously addressed and made compatible with each other can the woman be truly empowered. Therefore for holistic empowerment of the woman to happen - social, economic and political aspects impacting a woman's life must converge effectively.

PLANNING PROCESS

The planning process has evolved over the years from purely “welfare” oriented approach where women were regarded as objects of charity to the development programmes and currently to their “empowerment”. It was only from the Sixth Five Year Plan onwards that women secured a special niche and space in the national plans and planning process primarily with thrusts on health, education and employment of women.

A paradigm shift occurred in the Eighth Plan where ‘empowerment’ of women was recognized and accepted as a distinct strategy. A further impetus for sectoral contribution to women’s programmes was received with the introduction of the concept of Women’s Component Plan in the Ninth Plan where by identified Ministries were required to indicate the flow of funds to the women’s programs and schemes. However the Ninth Plan refrained from making any commitment for achieving any specific goal or target. This was overcome to some extent in the Tenth Plan where for the first time; monitor able targets were set for a few key indicators of human development. The targets include, among other things, reduction in gender gaps in literacy and wage rates and reduction in MMR.

The Tenth Five Year Plan (2002-07) called for the three pronged strategy of social empowerment, economic empowerment and providing gender justice to create an enabling environment of positive economic and social policies for women and eliminating all forms of discrimination against them and thus advance gender equality goals.

The Planning Commission vides its order no. PC/SW/1-23(2)/2005 dated 17th April 2006 constituted a Working Group on “*Empowerment of Women*” for the 11th Five Year Plan with the basic objective to carry out a review, analysis and evaluation of the existing provisions/ programmes for women and make recommendations for the Eleventh Five Year Plan. Though for the first time, a separate section on ‘*Gender Equity*’ was included in the Draft Approach Paper to the 11th Five Year Plan. In the Eleventh Plan, it is proposed to expand the scope and content of these schemes so as to reach more women and empower them economically and socially.

CONSTITUTIONAL PROVISIONS

End of colonial rule in India paved the way for a full fledged Constitution. The importance of women as an important human resource was recognized by the Constitution of India which not only accorded

equality to women but also empowered the State to adopt measures of positive discrimination in their favour.

The Preamble to the Indian Constitution intends to secure to all its citizens “*equality of status and of opportunity*”. To acquire equality of status and opportunity, prohibiting of all distinctions and discriminations by the state, between citizen and citizen, on the ground of religion, race, caste, ‘*sex*’ or place of birth becomes necessary.²

The Preamble also assures the dignity of each and every individual. This dignity is assured by securing to each individual equal fundamental rights and at the same time, by laying down a number of Directives³ for the State to direct its policies towards, *inter alia*, securing to all citizens, men and women equally, the right to an adequate means of livelihood,⁴ just and humane conditions of work⁵ and a decent standard of life.⁶

A perusal of the Fundamental Rights gives an insight how the constitution was framed keeping in mind the needs of women. Article 14 grants equality to Men and women, along with equal rights and opportunities in the political, economic and social spheres. While Article 15 (1) Prohibits discrimination against any citizen on the grounds of religion, race, caste, sex etc. Article 15(3) is a Special provision enabling the State to make affirmative discriminations in favour of women. The State enact special laws for the benefit of women and children. Article 16 provides equality of opportunities in matter of public appointments for all citizens.

The Constitution in its Directive Principles ensures in Article 39 (a) that the State shall direct its policy towards securing all citizens men and women, equally, the right to means of livelihood. The most progressive being Article 39 (d) is to provide Equal pay for equal work for both men and women. The landmark Equal Remuneration Act was passed to ensure this article was followed in letter and spirit. Article 42 states the State to make provision for ensuring just and humane conditions of work and maternity relief. The Maternity Benefit act was passed. It is the duty of every citizen of this country to renounce the practices derogatory to the dignity of women Article 51 (A) (e)

N ATIOAL POLICIES FOR WOMEN

The National Policy for Empowerment of Women 2001 has as its goal bringing about advancement, development and empowerment of women in all spheres of life through creation of a more responsive judicial and legal system sensitive to women and mainstreaming a gender perspective

in the development process. The strengthening and formation of relevant institutional mechanisms and implementation of international obligations/commitments and co-operation at the international, regional and sub-regional level was another commitment. The present Government in their National Common Minimum Programme has laid down six basic principles of governance one of which is to empower women politically, educationally, economically and legally.

SCHEMES OF THE MINISTRY OF WOMEN AND CHILD DEVELOPMENT

The schemes of the Ministry of Women and Child Development can broadly be categorized into those that contribute to the economic empowerment of women, those that provide rescue and shelter to women in need of care and protection and those that provide gender justice and safeguard the rights of women. The schemes for economic empowerment also include the Support for Training and Employment Program (STEP) which aims to raise the incomes of rural women by updating their skills in the traditional sectors⁷, such as dairy development, animal husbandry sericulture, handloom and social forestry. The Ministry has also set up support systems like Working Women Hostels and crèches to help women in their struggle towards economic empowerment. Swadhar and short Stay homes have been set up to provide shelter and care services for women in distress.

Swarnjayanti Gram Swarozgar Yojana (SGSY)

This scheme is a major on going programme for the self employment of rural poor with an objective to bring the assisted poor families above the Poverty Line by providing them income generating assets through a mix of bank credit and government subsidy. The programme aims at establishing a large number of micro enterprises in rural areas based on the ability of the poor and potential of each area.

Sampoorna Grameen Rozgar Yojana (SGRY)

SGRY is a wage employment scheme, which is self targeting, with wages paid partly in cash and partly in food grains, with minimum quantity of 5 kilograms per manday.

National Food for Work Programme (NFFWP)

This is a 100% Centrally Sponsored Scheme to provide additional resources apart from the resources available under the SGRY to 150 most backward districts of the country so that generation of supplementary wage employment and provision of food security through creation of

need based economic, social and community assets in these districts is further intensified. This is a 100% Centrally Sponsored Scheme.

Indira Awas Yojana (IAY)

The objective is to provide financial assistance for shelter to the BPL rural households belonging to SC, ST and freed bonded labourer categories. The houses are allotted in the name of female member or jointly in the names of husband and wife. IAY does not provide separate earmarking of provision and physical target for women. The program stipulates that the dwelling units should be invariably allotted either in the name of a female belonging to the beneficiary household or in the joint names of husband and wife, Evaluation report mentions that the titles of houses still continue to be predominantly in the names of the male family members.

Swarn Jayanti Shahari Rozgar Yojana (SJSRY)

This scheme was launched with a view to provide gainful employment to the urban unemployed or under employed through encouraging the setting up of self employment ventures or provision of wage employment. The programme is applicable to all urban towns with special emphasis on urban poor clusters. The percentage of women beneficiaries shall not be less than 30%. Women beneficiaries belonging to women headed households shall be ranked higher in priority than other beneficiaries.

Mahatma Gandhi National Rural Employment Guarantee Act / Scheme

Under the aegis of MHNREG Act 2005, the Scheme was launched in February, 2006 to ensure livelihood security in rural areas by providing at least 100 days of guaranteed wage employment in a financial year to every house hold whose adult member volunteers to do unskilled manual work. Unlike the other poverty alleviation programs, NREG Scheme now known as Mahatma Gandhi National Rural employment has been described as a potential tool of empowerment for rural labourers since it, being a guaranteed employment, can protect them from economic insecurity, strengthen their bargaining power, and help them to organize and fight for their rights.

The Act states that “*priority*” should be given to women in the allocation of work, “*in such a way that at least one-third of the beneficiaries shall be women*”. Guaranteed paid employment close to home is a major step towards improving the status of women, with facilities for child care and promise of equal wages without gender discrimination, invoking the provisions of the Equal Remuneration Act.

Women and older persons are also required to be given preference to work on sites close to their homes. If there are 5 or more children under 6 years at a particular worksite, the Act requires provisions to be made such that one of the women workers can be deputed to look after the children, who will then be entitled to receive the stipulated minimum wage. The scheme has huge potential to reduce the massive crisis of employment in rural India and improve both access to work as well as rural infrastructure and quality of life.

SCHEMES FOR ECONOMIC EMPOWERMENT

Swa-Shakti

The Project jointly funded by IFAD, World Bank and the Government of India was launched in October, 1999 and culminated on 30th June, 2005. The objective of the Program was to bring out socio-economic development and empowerment of women through promotion of women SHGs, micro credit and income generating activities. The project was conceived as a Pilot Project implemented in 335 blocks of 57 districts in 9 states. The Project established 17,647 SHGs covering about 2,44,000 women. This was a Centrally Sponsored Project.

Swawlamban Programme

Swawlamban Programme, previously known as NORAD/Women's Economic Programme, was launched in 1982-83 with assistance from the Norwegian Agency for Development Corporation (NORAD). NORAD assistance was availed till 1996-97 after which the programme is being run with Government of India funds. The objective of the programme is to provide training and skills to women to facilitate them to obtain employment or self employment on sustained basis. The target groups under the scheme are the poor and needy women, women from weaker sections of the society such as Scheduled Castes and Scheduled Tribes etc. In order to ensure more effective implementation and for better monitoring/evaluation of the scheme, it has been transferred to the State governments from 1st April 2006 with the approval of Planning Commission.

Support to Training and Employment Program (STEP)

This program seeks to provide skills and new knowledge to poor and assetless women in the traditional sectors. Under this project, women beneficiaries are organized into viable and cohesive groups or cooperatives. A comprehensive package of services such as health care, elementary education, crèche facility, market linkages, etc. Access of credit is also provided. Skill development is provided in ten traditional skills amongst women. This is a Central Scheme launched in 1987. The Ministry is at

present getting the program evaluated. Based on the results of the evaluation, the scheme is proposed to be revamped. Further, the possibilities of providing training and skills to women both in traditional and non traditional sectors and integrating with Rashtriya Mahila Kosh for credit linkages are being considered. A sum of Rs.240 crore is proposed for the scheme in the XI Plan⁸.

SUPPORT SERVICES

Construction of Working Women Hostels

Under the scheme, financial assistance is provided to NGOs, Co-operative Bodies and other agencies for construction / renting of buildings for Working Women Hostels with day care centre for children to provide them safe and affordable accommodation.

This is a central scheme. The utilization of funds under the Scheme has been unsatisfactory during the Tenth Plan period because NGOs are not able to avail funds due to strict norms of funding and lack of suitable proposals from the organizations. The norms and financial pattern of assistance discourage the NGOs for construction of these hostels⁹. At present, the norms are (i) availability of land in prime location so that they get sufficient number of working women, (ii) 50% of the cost of land (the land has to be acquired before the proposal for the government grant is submitted) and 25% of the cost of construction has to be borne by the NGO, (iii) construction of the hostel is required to be completed within two years, etc. Another issue needing review is the fixed percentage of trainees and students as a proportion to working women that is uniformly applicable across the country.

Creches

The Ministry runs a scheme of crèches that caters to the children of poor working women or ailing mothers. This provides a great help to women who are working as their children are being provided a safe environment when they are at work. This scheme is being covered in the Report of the Working Group on Child Development of this Ministry.

Relief, Protection and Rehabilitation to Women in Difficult Circumstances Swadhar. This Scheme was launched in 2001-2002 for providing relief and rehabilitation to women in difficult circumstances. The main objectives of the scheme are as follows, to provide primary need of shelter, food, clothing and care to the marginalized women/ girls living in difficult circumstances who are without any social and economic support. To provide emotional support and counseling to women. To rehabilitate

destitute women socially and economically are through education, awareness, skill up gradation and personality development. To arrange for specific clinical, legal and other support for women/girls in need of those interventions by linking and networking with other organizations in both Government and non-Government sectors on case to case basis. To provide helpline or other facilities. Beneficiaries covered under the scheme are widows deserted by their families, women prisoners released from jail, women survivors of natural disaster, trafficked women, women victims of terrorist/extremist violence, mentally challenged, and women with HIV/AIDS etc.

The recently introduced Protection of Women from Domestic Violence Act, 2005, provides that women seeking shelter should be accommodated in the shelter homes. These call for increase in the number of shelter homes in the country. In the XI Plan, it is proposed to set up one home in each district. It is also proposed to revise the schematic norms.

Compensation to Rape Victims

The Hon'ble Supreme Court in Delhi Domestic Working Women's Forum vs. Union of India and others¹⁰ had directed the National Commission for Women to evolve a "*scheme so as to wipe out the tears of unfortunate victims of rape.*" The Supreme Court observed that having regard to the Directive principles contained in the Article 38(1) of the Constitution, it was necessary to set up criminal Injuries Compensation Board, as rape victims besides the mental anguish, frequently incur substantial financial loss and in some cases are too traumatized to continue in employment. The Court further directed that compensation for victims shall be awarded by the Court on conviction of the offender and by the Criminal Injuries compensation board whether or not a conviction has taken place. The Board shall take into account pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurs as a result of rape.

Access to Legal Services

Guarantees of women's rights to equality shall be realized only if women are encouraged to assert their rights in a court of law. In order to achieve this objective, there is need to ensure a woman's access to legal aid services. Article 39A of the Constitution of India provides that State shall secure that the operation of the legal system promotes justice on a basis of equal opportunity, and shall in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason

of economic or other disability. Articles 14 and 22(1) also make it obligatory for the State to ensure equality before law and a legal system which promotes justice on a basis of equal opportunity to all. Legal aid strives to ensure that constitutional pledge is fulfilled in its letter and spirit and equal justice is made available to the poor, downtrodden and weaker sections of the society.

The Legal Services Authority Act was enacted in the year 1987. Section 12 of the Legal Services Authorities Act, 1987 includes women as a category eligible for free legal aid in its list of eligible persons. A nationwide network has been envisaged under the Act for providing legal aid and assistance. National Legal Services Authority is the apex body constituted to lay down policies and principles for making legal services available under the provisions of the Act and to frame most effective and economical schemes for legal services. It also disburses funds and grants to State Legal Services Authorities and NGOs for implementing legal aid schemes and programmes. It also envisages legal service authorities to be constituted at every state, district and taluk levels. These authorities are supposed to give effect to the policies, directions and implement legal aid schemes in their respective areas.

Legal aid to a woman however still remains a distant dream in our country. Further even if a woman decides to approach the court she is beset with many hurdles like the quality of legal aid, attitude of the implementing bodies and the lengthy period of judicial process etc.

T C N¹¹

India's concern with the issue of population began with adoption of National family planning Program (NFPP) in 1952. In 2000 the National Population policy was formulated in spirit with the International conference on Population and Development. Some states adopted laws on restricting participation in panchayats and Municipalities under the TCN Norm. These laws were enforced in Rajasthan, Haryana, Orissa, Andhra Pradesh. The states also barred entry of those who had three or more children in Public service, contesting Panchayat elections and deriving benefits of welfare programs. Thus making the policy itself arbitrary and a policy which was meant to bring in economic stability in India affected the vulnerable sections of the society.

The 73rd and 74th amendment of the constitution were very significant they enable people from SC/ ST's to participate in Panchayat elections. The amendment also reduced the age limit to contest elections. Now anyone from as young as 21- 25 can contest elections. On one hand the

Constitutional amendments began on a positive note while at the same time the two children Norm Policy hit hard on those having 3 or more children as it disqualified those from contesting elections¹².

TCN was being implemented due to the “*Population explosion*” with was increasing by the minute. But today what India faces is not population explosion but decline in Sex Ratio. In the 1950 a woman had an average ratio of six children. In 2001 the average children a woman had was three. The Family unit has already become smaller.

By introducing the Two Child norm the policy had a reverse Trend. Government had campaigns and advertisements like “*Hum do humare do*” and “*Do ya Teen Bache lagte hai ache*”. The advertisements showed a happy family with the parents having a boy and girl. With the pressure of TCN the parents started wanting a son instead of a girl child. In a country which considers the son as a blessing and a daughter a curse there started rampant killing of the girl child and the number of missing girls started increasing. The Pre Natal and Diagnostic technique Act, and Medical Termination of Pregnancy Act caused rampant killing of the girl child till government had to make these two Acts stringent and introduce severe amendments in the Acts in the year 2003. The Government of Tamil Naidu to control this situation has introduced a unique scheme of cradles as part of their social welfare schemes. Those people who abandon the girl child are now looked after in these shelter homes.

CONCLUDING OBSERVATIONS

Women must always be honoured and respected by the father, brother, husband and brothers-in-law who desire their own welfare. The concept of inequality is unknown in the kingdom of God who creates all beings equal, but the “*created*” of the creator has created the artificial inequality in the name of casteism with selfish motive and vested interest. It is verily believed - rightly too - that the one and only peerless way and indeed a most important and promising way to achieve the equal status and equal opportunity is only by means of constitutional justice so that all the citizens of this country irrespective of their religion, race, caste, sex, place of birth or any of them may achieve the goal of an egalitarian society.

END NOTES

- 1 Dr. J.N. Pandey, Constitutional Law of India, 44th edition, Central Law Agency, 2010.
- 2 See Articles 14 and 15.
- 3 See Part IV of the constitution.

- 4 Article 39(a)
- 5 Article 42
- 6 Article 47
- 7 Shruti Pandey, coercion Versus Empowerment, Human Rights Law Network, India, 2006
- 8 <http://wcd.nic.in/>
- 9 Amiya Kumar Bagchi, The economic policy of the Government of India, Cambridge South Asian Studies, 1972.
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- 11 Two Child Norm
- 12 Dr. D.D. Basu, Constitutional Law Of India,2nd Edition, Lexis Nexis Buttersworth

CHAPTER – 9

A Real Portrait of the Concept of Women Empowerment: Myth or Reality

GAGANDEEP KAUR

*‘People are like stained-glass windows,
They sparkle and shine when the sun is out,
But when the darkness sets in, their true beauty is revealed
Only if there is a light from within.’
Elizabeth Kubler Ross*

INTRODUCTION

A woman is the full circle. Within her is the power to create, nurture and transform the entire cosmos around her. However this light in women is suppressed, ignored, neglected, rejected and burnt alive. The concept of ‘*Women Empowerment*’ is a step towards the protection of this ‘*light of women*’ from the winds of domination. The phenomenon of 21st Century which is the centre of attention at international level is ‘*Women Empowerment*’. Women empowerment is a multifaceted concept. For women, empowerment means the importance of increasing their power and taking control over decisions and issues of their concern. The concept of women empowerment has a mixture of power and relationship in society. It is intertwined with culture, caste, gender equality, race, historical record and ethnicity.¹**(Footnotes)**

If we trace the meaning of women in old english the words *wer* and *wyf* (*wæpman* and *wifman*) were used to refer to “a man” and “a woman” respectively. In Middle English man displaced *wer* as term for “male human”, whilst *wifman* (which eventually evolved into woman) was retained for “female human”.² There is no doubt that we are in the midst of a great revolution in the history of women. The evidence is everywhere; the voice of women is increasingly heard in Parliament, courts and in the streets. While women in the West had to fight for over a century to get some of their basic rights, like the right to vote, the Constitution of India

gave women equal rights with men from the beginning. Unfortunately, women in this country are mostly unaware of their rights because of illiteracy and the oppressive tradition. With the introduction of the National Policy for Empowerment of Women, the Government of India had declared year 2001 as *Women's Empowerment Year*. It was said, "*Our vision in the new century of a nation is where women are equal partners with men*". Many new projects were launched like Swashakti and Stree Shakti for women's empowerment; Swayam Sidha to benefit women through micro-credit programs, Balika Samrudhi Yojana for the girl child and many more. Clearly, a common thread uniting each of the major international conferences of the 1990's is Women's Empowerment. Furthermore, the international community is now accountable to the world's women for fulfilling the significant commitments it has made to help make empowerment a reality of women's lives. Various efforts are made by NGO's, media, welfare organizations in this direction. Improvement in the status of women was a solemn pledge made by the founding fathers of the Constitution. Over the years a large number of social welfare legislations have been passed in favour of women. However an attempt has been made to highlight a bitter reality of this concept in this research paper.

MEANING OF WOMEN EMPOWERMENT

'*Women empowerment*' is a process whereby women become able to organize themselves to increase their own self-reliance, to assert their independent right to make choices and to control resources which will assist in challenging and eliminating their own subordination.³ As a general definition, empowerment is a multi-dimensional social process that helps people gain control over their own lives. It is a process that fosters power (that is, the capacity to implement) in people, for use in their own lives, their communities, and in their society, by acting on issues that they define as important. Empowerment is multi-dimensional, social, and a process. It is multi-dimensional because it occurs within sociological, psychological, economic, and other dimensions. Empowerment also occurs at various levels, such as individual, group, and community. Empowerment, by definition, is a social process, since it occurs in relationship to others. Empowerment is a process that is similar to a path or journey, one that develops as we work through it.⁴ Today the term Women's empowerment means conferring more rights to women in such a way that they are able to reach at similar pedestal with men. If our language is transcript of reality, then man is a portion of woman and is included in the word woman (wo+man). Moreover one can judge the degree of civilization of a country

by the social and political position of its women.⁵ Women's empowerment has five components:

- (i) women's sense of self-worth;
- (ii) their right to have and to determine choices;
- (iii) their right to have access to opportunities and resources;
- (iv) their right to have the power to control their own lives, both within and outside the home;
- (v) and their ability to influence the direction of social change to create a more just social and economic order, nationally and internationally.⁶

SEEDS OF THE CONCEPT: WOMEN EMPOWERMENT

In real sense, the seeds of this current phenomenon lie in the past. The position of women in India has not been very sound in proceeding few hundred years.⁷Manu the father of Hindu Dharma Sutra says about woman⁸:

*“Pita raksati kaumare
Bharta raksati yauvane,
Raksanti sthavire putra na
stri svatantrayamarhati”*⁹

The subordination and dependence of women particularly in socio-economic life continued till independence. The word empowerment, although it gained widespread usage in the context of the US Civil Rights and Women's Movements is an extension of earlier concepts of equality, justice and freedom which were expressed in many anti-imperialist and political struggles. These are also enshrined in international agreements and also underlie the precepts of many religious traditions, including Islam. ¹⁰In India several attempts have been made for giving a rich status to women. It is evidenced from the provisions for elevating the status of women in our laws.

STATUS OF WOMEN IN LEGAL CONTEXT

During British rule certain attempts were made to improve the status of women. Certain laws were enacted .These includes Sati Prohibition Act 1830, the Hindu Widows Remarriage Act 1856(repealed in 1983),Special Marriage Act 1872,the Child Marriage Restraint Act 1929,the Hindu Women's Right to Property Act 1937 (repealed in 1956 and replaced by the Hindu Succession Act) and the Dissolution of Muslim Marriage Act1993¹¹.The Constitution of India prohibits any kind of discrimination

on the ground of sex¹² and requires positive act of equalization between the sexes by giving preferential treatment in favour of women.¹³ The preferential treatment in favour of women is not based on the basis of sex discrimination but on social facts attached to woman as a class. The framers of Indian Constitution were alive to such trend and provided special status to women so as to make them come into the national life with the male counterparts.¹⁴ Efforts were made at international level through Charters like Universal Declaration of Human Rights 1948, International Covenant on Civil and Political Rights 1966, Convention on Economic, Social and Cultural Rights 1966, Convention on Elimination of all forms of discrimination against women 1979, which followed the U.N. Declaration on Elimination of Discrimination against women 1967 and re-emphasizes that discrimination against women violates the principles of equality of rights and respect for human dignity and is an obstacle to the participation of women on equal terms with men in political, social, economic and cultural life of their countries, hampers the growth of prosperity of society and family. These Charters had their great effect in India.¹⁵ The Preamble of our Indian Constitution has portrait a clear reflection of equality.

A REAL PORTRAIT WOMAN: MYTH OF THE TERM WOMEN EMPOWERMENT

In India, women have been greatly praised in the literature and religion. They have been called '*Devi*' or '*shakti*' or a portion of a man, however, by the contrivance of this civilization this slice or part has assumed a very little proportion of the whole by reducing woman to an appendage of his life, a parasite, a domestic animal, a pleasure resort. This is true story of man-made civilization wherein the birth of tragedy of woman lies. The life of average Indian women is still governed by customs, habits, prejudices and unwritten codes of conduct. The Indian society is averse to treating women as a human being. *Yeh mat bhuloo kit um ek aurat ho* (forget not that you are a women) is a worst form of castigation frequently hurled at women by all and sundry.¹⁶ All theoretical indicators of equal rights and high social status such as policy, declarations, constitutional guarantees and prohibitive and protective measures exist only on papers.¹⁷ Enormous legislations, legal provisions and statutes have been enacted for women. Nineteenth century witnessed reform movement for women, with various issues like sati practice, violence, child marriage, and employment being addressed, but the results are just the phantom of what it should have been. Still we find that the status of

women in our society has not achieved the desired standards. With the modernization in the society new problems has appeared on surface, *e.g.* broken marriages and families, problem of maintenance, dowry, dowry death, cruelty, increase in cases of rape, eve-teasing and humiliation of women in various ways.

The roles a woman plays in various aspects of life are many. At home, on job, in society women are works as mothers, wives, sisters, daughters, learners, workers, citizens, leaders. But are they being treated fairly and equally? Are they empowered enough by the society? Let's have a look...

- (a) Indira Gandhi, the first lady prime minister, for four terms, including three consecutive terms from 1966 to 1977.
- (b) Pratibha Devisingh Patil, the first lady president of India.
- (c) Indira Nooyi, Chairman and CEO of Pepsi Co, is the fourth most powerful women in the world.
- (d) Shriti Vadera, special advisor to Britain Prime Minister, Gordon Brown.

If we are in a doubt that a lot has been done for woman empowerment, think again. It is observed that if we see behind the veil of women empowerment, then it is realized that this concept is an interesting game of politicians for their popularity because their contribution for giving actual shape to all these dreams is doubtful.

1. Eve teasing and sexual harassment is bitter reality but it is true that women are being insulted almost everyday, everywhere and every time. It is almost a torture for a woman to walk alone on the road. Eve-teasing is almost recognized as a male sport. The victim of offence is mostly modest and shy girls or young women of respectable families. The poor victims dare not protest in order to avoid creating a scene o attracting a crowd on the spot. There are three sections of Indian Penal Code¹⁸ to deal with the crimes but there is no specific law which deals with the crime in entirely.¹⁹
2. Incidents of indecent Representation of women are shameful. The law relating to obscenity is codified in Indian Penal Code²⁰ but in spite of this provision, there is a tendency to represent women indecently in publications, particularly advertisements .The rapid spread of nude and semi-nude floor shows in liquor bars and five

star hotels has been a blunt insult to womanhood. Pornographic magazines have become a big business. All these nudity and obscenity has resulted in increase sexual crimes against women.²¹

3. The greatest irony of history is the rapidly advancing medical technology outpacing the law. The grey areas causing major social upheavals are the vital questions relating to amniocentesis, abortion and foeticide. The perplexing scenario represented by artificial insemination, reproductive industrialization and surrogate motherhood are reducing the woman's body to a raw material.²²
4. The idea of sending women outside their homes to earn income originally did not find favour in our country. Now it is being accepted as The Constitution of India guarantees equality and opportunity as well as justice to all the citizens of India.²³ Despite all the Constitutional provisions women are still being harassed, exploited and discriminated in one way or the other in almost all walks of life. It is bitter to listen but it is truly observed that due to scarcity of employment she has to do many sacrifices for staying in the job.
5. Prostitution has existed in India since time immemorial. Prostitution is the crudest manifestation of societies where women have driven to sell their bodies as a means of survival. In spite of SITA²⁴ this vulgar practice is going on without any hindrances.
6. Cases of female-infanticides are still on rise (both reported and unreported)
7. Certain section of the society does not send girls to schools once she attains puberty. Dowry related harassment and deaths are still in news now and then. Harassment at work place, sexual or otherwise, though mainly unreported, is significant.
8. Sati is still being practiced in many villages across the country in name of customs and law cannot interfere where customs appears on the screen.
9. The legislative strength of women is still less than 10%. Many issues regarding increase in number of seats when elections are near. After that the whole issues for the welfare of women flew away from the minds of politicians.
10. The gender disparity is at all time high.²⁵ And the following phrase of Manusmriti, "*Na Stree Swathantryam Arhati*" (woman is undeserving for independence), reflects our whole attitude towards

women in our country. Woman suffers discrimination and injustice in all stages of her life.

11. Some are not sent to schools ever. According to Mahatma Gandhi, “If you educate a man you educate an individual, but if you educate a woman you educate an entire family.” Our predominant patriarchal system doesn’t provide enough chances for women to have higher education even if they wish. Girls should be motivated to take up higher education. Universal education for all below 14 years should be strictly implemented. There is an urgent necessity of framing gender sensitive curricula at all stages of primary education to address sex-stereotyping menace.
12. Dowry still remains the major reason for all the discrimination and injustice shown to women. Dowry has always been an important part of Hindu marriages. Not only among Hindus, are its evil tentacles now spreading to other religions also. Although dowry was legally prohibited²⁶, it continues to be highly institutionalized.
13. It is ridiculous to see that even among highly educated sections, the articles of dowry are proudly exhibited in the marriage as a status symbol. The practice of dowry abuse is rising in India. The most severe is “bride burning”, the burning of women whose dowries were not considered sufficient by their husband or in-laws. Most of these incidents are reported as accidental burns in the kitchen or are disguised as suicide. It is evident that there exist deep-rooted prejudices against women in India.²⁷
14. Cultural practices such as these tend to subordinate women in our society. Dowry is one of those social evils that no educated woman will own up with pride; still many are adhering to it, why? Women should be more economically empowered and should be educated properly regarding the various legal provisions such as Section 498-A of the *Criminal Procedure Code*, 1973, Protection from domestic violence etc. only then only this evil menace could possibly be eradicated from Indian social system.

The list is long. But such attitude and gender bias is eating away a talent pool. The respect has been replaced with discrimination.

CONCLUDING OBSERVATIONS

It is observed that the legal equality which women enjoy under the Constitution and the special privileges are all in papers. Though in their

public utterances, men praise the concept of equality and show concern that women have not been able to avail of their constitutional and legal rights, yet at heart they are the most conservative. The judiciary is not sympathetic to the women's cause. She has undergone sex determination test to know the gender of the child. She is teased on streets, harassed everywhere, molested in public places but she is mum because of the fear of retaliation from the offender.²⁸ Most crimes against women go unreported. The condition of women in India cannot be improved by any single method or merely by pronouncing the word 'women empowerment'. There is need to change the traditional mental set-up which is deep rooted in the minds of women. Since from their childhood a baby child is reared with the thoughts or mental set-up that she has to adjust in male dominant society at all costs. She is taught to act as a golden thread in maintaining all the relationships.

The Indian society seems to have a fixed role for its women members. The traditional forms of ashirvad (blessings) have been given²⁹:

Sada suhagan raho (the marital bliss is always there)

Phulo phalo (have a growing family *i.e.* be blessed with children)

Ashtapura bhava (blessed with eight sons)

It is observed that these blessings will never let a woman to empower herself because the male dominant society placed the women into the watertight compartment of motherhood. She was looked upon as a mere male-child producing machine. This really resulted into denial of her individual and separate identity and existence. I still keep asking myself the same question, and so do many of us: Are women getting their due share in the society? Swami Vivekananda had said

*"That country and that nation which doesn't respect women will never become great now and nor will ever in future and in pursuit of making India a great nation, let us work towards giving women their much deserved status."*³⁰

END NOTES

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SOCIAL SECURITY AND ELDERLY
PEOPLE

Social Security: A Lifeline to Elderly
W o m e n

SAROJ CHHABRA

INTRODUCTION

Social security, in its broadest sense, implies an overall security for a person within the family, work place, and society in general. It includes measures designed to ensure that all citizens receive certain basic standards of personal security which consist of: their basic needs (such as adequate nutrition, shelter, education, health care, clean water and food supplies); protection from contingencies (such as illness, disability, accidents, death, unemployment, medical care, child birth, child care, widowhood, and old age), protection against natural disasters; and an environment free from violence (including sexual harassment and domestic violence). These basic measures would enable them to maintain an adequate standard of living consistent with prevalent social norms and the ability to support their dependents adequately. By extension of these basic measures, social security includes protection of livelihood, guarantee of work, and adequate and fair wages, because without these, other contingency benefits have no meaning. Right to social security represents an important legal guarantee aimed at ensuring the right of everyone to live a life with dignity. Implementation of this right is an essential precondition for realization of other human rights like right to an adequate standard of living, right to health, and other rights enshrined in various human rights instruments. Thus, recognition of social security as a human right represents an essential transformation from needs-based charity to rights-based social justice¹. This article focuses on statistics of elderly people, problems suffered by them specifically elderly women and critically analyzing social security mechanism prevailing in India.

AGEING AND SOCIAL SECURITY

Ageing of populations and extension of life are significant by-products of the demographic transition. Ageing of population is primarily the result of two factors—reductions in fertility and mortality. The reduction

in mortality rates implies a longer life span for the individual and the reduction of fertility implies a decline in the proportion of the young in the total population. Thus an '*ageing population*' means a population characterized by higher average life expectancy and increasing proportion of the elderly in the total population. Aging population is the most challenging demographic phenomenon worldwide in the 21st century.

The reduction in fertility level, reinforced by steady increase in the life expectancy has produced fundamental changes in the age structure of the population, which in turn leads to the aging population. The forces of globalization, modernization and technological change, mobility and the explosion in the lateral transmission of knowledge are making changes in the life styles and cultural values to adjust the changing circumstances. Individuals and families tend to be caught between tradition and modernity which sometimes leads to ambivalence in attitudes towards the use of knowledge and experience of the past in solving problems of the present. When this happens, it tends to make the old people less valued. The migration of the younger people increases the vulnerability of the old who stay behind. Incorporation of a gender perspective in all policy actions on aging as well as elimination of discrimination on the basis of age and gender is a great challenge in today's world. "*Ageing*" encompasses all the biological changes that occur over a lifetime. "*Getting old*", on the other hand, is a social concept and slightly related to the biological processes of ageing. The social context of ageing, according to the Dharmashastra, is when wrinkles and grey hair appear in a person and a grandson has also appeared in the house. Then it is considered time for the householder to retire. Thus, the Brahminic concept of old age emphasizes conclusion of and, therefore, disengagement from family life cycle responsibilities².

According to the United Nations, World Population Projection predicts that the world population will increase from 6.5 billion to 9.1 billion in 2050. In India, the persons above 60 years were only 1.9 crores in 1947 whereas their number went up to 10 crores (10% of the total population) by 2001 and is expected to go up to 15 crores by 2020.³ The analysis of historical patterns of mortality and fertility decline in India indicates that the process of population aging intensified only in the 1990's. The older population of India, which was 56.7 million in 1991, is 72 million in 2001 and is expected to grow to 137 million by 2021. Today India is home to one out of every ten senior citizens of the world. Both the absolute and relative size of the population of the elderly in India will gain in strength in future. Among the total elderly population, those who

live in rural areas constitute 78 percent. Sex ratio in elderly population, which was 928 as compared to 927 in total population in the year 1996, is projected to become 1031 by the year 2016 as compared to 935 in the total population. The data on old age dependency ratio is slowly increasing in both rural and urban areas. Both for men and women, this figure is quite higher in rural areas when compared with that of urban areas. More than half of the elderly populations were married and among those who were widowed, 64 percent were women as compared to 19 percent of men. Among the old-old (70 years and above), 80 percent were widows compared to 27 percent widowers. Men compared to women are found to be economically more active. In 1991, 60 percent of the males were main workers whereas only 11 percent of the females were main workers. Out of the main workers in the 60+ age group, 78 percent of the males and 84 percent of the females were in the agricultural sector. Since women's economic position depends largely on marital status, women who are widowed and living alone are found to be the worst among the poor and vulnerable. The UN's concerns on aging were first recognized in the first World Assembly on Aging, in Vienna in 1982, where an International Plan of Action on Aging was adopted. In 1983, the United Nations directed countries to offer social security and social programmes to older women. The UN General Assembly in 1990 designated October 5, as the International Day of Older Persons. In 1991, the United Nations General Assembly adopted a set of principles for aging women at its 46th session. The Convention on the Elimination of All Forms of Discrimination Against Women is a landmark tool for setting out global normative standards of gender equality. CEDAW is a living instrument to protect the human rights of older women as it is mandated to eliminate all forms of discrimination against women throughout their lifespan. The theme of United Nations Second World Assembly on Aging (2002) was "*Building Society for All Ages*". At the 45th CEDAW session in January, 2010, older women's issues like-witchcraft allegations, mob trials, and killing of older widows in order to grab their property were raised.⁴

PROBLEMS WITH AGEING AND GENDER INEQUALITIES

Both men and women face discrimination due to old age, but women experience ageing differently. Gender relations structure the entire life cycle, from birth to old age, influencing access to resources and opportunities and shaping life choices at every stage. Good health, economic security and adequate housing are essential requirements of ageing with dignity, but older women in both developed and developing countries face difficulties in accessing these on a basis of equality with

men. The impact of gender inequalities in respect of education and employment opportunities and access to health services widens at every stage of individual life. As a result, older women are more likely than older men to suffer due to poverty and deprivation of basic needs. Former UN Secretary General Kofi Annan stated in March 1999, during the International Year of Older Persons, "*Women comprise the majority of older persons in all but a few countries. They are more likely than men to be poor in old age, and more likely to face discrimination.*"⁵

The gendered nature of ageing reveals that women tend to live longer than men and more older women live alone than men. The then Secretary General Kofi Annan stated at the 2nd World Assembly on Ageing, in Madrid in 2002, that "*The world is undergoing an unprecedented demographic transformation. Between now and 2050, the number of older persons will rise from about 600 million to almost two billion. In less than 50 years from now, for the first time in history, the world will contain more people over 60 years old than under 15*". In fact demographic ageing is happening faster than then predicted.

Current UN figures estimate that in a mere 36 years there will be more people over 60 than children under 15 globally. They estimate the number of older people in 2050 at over 2 billion, or 22% of the global population, an unprecedented doubling of the present 11% of the population that is over 60. The majority of older persons are women, their percentage being 55. As per statistics from UNDESA 80% of men over 60 are married compared to only 48% of older women. There are 82 men for every 100 women at the age of 60; there are only 55 for every 100 women at the age of 80⁶. Older women continue to outnumber older men. This unprecedented demographic ageing in population structures has profound human rights implications and increases the urgency of addressing the discrimination experienced by older women through the CEDAW Convention. At present there is no other legally binding international human rights instrument to specially address these issues. In reality older women are invisible in the application of human rights law.

Old age is a critical phase in life as much as childhood or adolescence and hence requires special consideration. Old age is considered as second childhood, because both the aged and the child have to depend on others for many of their personal requirements. The major problems of old age could be devaluation in status and income, deteriorating health, retirement, dependency, fear of death and shock of growing old. Old age should be tranquil as childhood should be playful. However, nobody prefers to have

old age for a longer time, as aged people are looked upon as useless, non-productive, rigid and burdensome. This leads to various problems like cultural rejection, self-rejection, anxiety and panic, psycho-physiological exhaustion, isolation and unrealistic pre-occupation⁷.

MAJOR CONCERNS OF OLDER WOMEN

Destitution/ Alienation / Isolation

Marginalization/isolation or alienation in old age is among the most common issues that are affecting older women constantly. Older women, who are still living with their sons/daughters and grand-children are also suffering from emotional alienation. Due to fast changing socio-economic scenario of the country, fast paced modern life style and rapid urbanization across the country younger generations hardly interact with their elderly family members. Popularity of nuclear family system has virtually crushed strong traditional bond between grand-children and grandmothers.

Social insecurity

Older women, who live in cities, are prone to social alienation/marginalization in comparison to older women of villages. Joint family system (to a certain extent) is still alive in rural areas. Older women, who live in semi urban situations/industrial townships also, find it difficult to cope with old age, particularly after their children have grown up and husbands retire. Due to lack of social protection, older women are forced to lead a life full of distress. Ignored by their own kith and kin, they don't expect any kind of social security from others.

Financial insecurity

With increased life span of older women in old age, their financial needs are emerging as a major concern. However, today, many older women have property/money but they cannot possibly use the money or take financial decisions on their own. Social traditions don't allow them to use their ancestral property / money for their own welfare. They may be rich or poor; they always have to act according to others' directives. Since they are habitual of sacrificing their own interests for the good of other family members throughout their life, in old age they don't want to ask for their share.

Medical problems

Due to negligence, lack of awareness, financial support and religious mindset of women, older women often have to face acute health problems. Since most of the older women are living within the four walls and barely come out in open public places, most of their health problems remain

unnoticed. Their family ignores these – saying that in old age diseases are common. Older women living alone could not share their pain, since there is no one to lend her patient hearing. Above all, many times, due to lack of health awareness older women themselves ignore symptoms of diseases. Most of them believe more in divine powers instead of medical science. In India, still there are a few religious sections, that don't allow its followers to take particular medicine.

Emotional insecurity

In old age most of the older women face family problems like uncomfortable relations with son and daughter-in-law, limited interaction with children, grand-children. Their daughters-in-law don't like their interference in family matters, children are busy with their jobs, and their husbands invariably have mood swings after retirement and mostly restrict their free movements. Most old women are self conscious. In old age, women turn towards religious rituals and activities, pilgrimage, etc. after losing their life-partner or any other family members. Many are from orthodox/religious background and have been following religious lifestyle since childhood. Since women have been emotionally attached to their near and dear ones throughout their life, in old age when they are not with them, they miss it a lot. Emotional support is much needed in old age.

Human Rights and Older Women

Older women have to face age related discrimination, mistreatment, harassment and elder abuse in their life due to lack of awareness about their rights and support system available for them in old age. Indian women have always been introvert by nature, that's why they are vulnerable and soft target of wrong doers. Human rights of the elderly women are violated from time to time. Majority of cases of Human Rights violation are due to poverty of older women.⁸

According to the medical practitioners, old age depression is a very rampant problem today, and the sorrier thing is that the number of cases each year is only increasing. It is a myth that old age depression happens only in countries with poor old age plans; today it is also happening in the most advanced countries of the world with the best long term plans. The situation has become so grave that in most cases depression and elderly women have almost become synonymous. Most elderly women in the world suffer from some kind of depression or the other. With depression among elderly women, it is necessary to give them as much time as possible to make them feel wanted. A careful analysis of old age depression shows that this condition occurs generally when elderly women feel that

there is no one to look after them. If the depression continues, then it could take a toll on the heart or it could complicate into major mental problems. Depressed women might need someone to converse with. That is why care homes that care to them take the efforts to make depressed elderly women feel involved in all the activities that they undertake. In case of elderly men, the problems may be lower, but in case of women, it is a double burden that older women have to bear. In addition to having to face the travails of being a senior citizen, there is an inbuilt disadvantage of being a woman in India. According to the latest statistics, around 18 million of the 70 million senior citizens in the country are widows. The widows have different psychological problems such as feeling of insecurity, loneliness, lack of adequate care from the family members, non-recognition in society, etc. The lack of adequate financial resources, the power to make decisions and a lifetime of living under the control of other members of the family have rendered many of them incapable of running their lives after 60 years. While the aged remain a largely neglected group, special care services for aged women are yet to occupy the attention of policymakers and voluntary organizations.⁹

SOCIAL SECURITY MECHANISMS AND ELDERLY WOMEN : A CRITICAL ANALYSIS

Societies have come to recognize women as a part of the deprived and vulnerable and have made them part of the forefront of all social security mechanisms. Although social security covers a gamut of needs, there is a gendering of the provision of welfare of the family where women are dependent on men who are the breadwinners.¹⁰ It does not recognize or understand the nuances and distinction of women's unpaid work within the household and paid work outside, if any. In India, it is often tend to ignore or forget that a bulk of the productive work of women gets subsumed under the family labour and domestic tasks, which are unpaid.

The dependency of widowhood is most vulnerable as it is the women who mostly outlive their spouses. Further the fragility of their existence is accentuated when compared to the dependency of older couples living with their spouses. Men who were widowed almost always obtained a companion compared to the destitution that faced widows. One of the studies showed that a greater proportion of female (widowed) dependents lived with their children. Widows were disadvantaged within families compared to their male counterparts. Thus socio-demographic explanations that lie behind the vulnerability of widows has to do with difference in patterns of remarriage of men and women who are widowed,

differences in life expectation and differences in the age of marrying partners.¹¹

Poverty of households headed by women or widows is often dependent on household size and expenditure. Further, if widowed women had land, they were not heads of households, but most widows who were landless were the heads of their households. While in aggregate, evidence does not always point to the absolute poverty of female-headed households compared to male-headed households, where households of a given size are seen, the ones headed by women or widows are poorer than those headed by men. Apart from the several socio-economic insecurities that widows alone face, threat to life and injury to person is in particular always present when there are claims to property and land. Reports about abuse of elderly women by the family are frequently cited, especially in urban areas. Apart from the livelihood inputs to old age social security, which includes food and shelter, the other major component is health or medical and disability care. In a society that has achieved some though not excellent levels of public health standards, with increasing life expectancy, the special health needs of the older populations have not merited attention. A comprehensive review of the health status of older people and the various measures adopted by the state and non-governmental agencies has indicated the enormity of the issue and the need for special attention to this group.¹²

Shelter homes, short-stay homes, measures for the rehabilitation of destitute women and prostitutes and the initiatives to set up Mahila Mandals were some of the welfare measures adopted by Government of India in 1995. From the Fifth Five-Year Plan, the state reluctantly began to recognize women's contribution to economic development and sought to bring in equity considerations in various social security measures. However, these remain half-hearted and piece-meal efforts. For instance, in terms of property rights, political participation and other rights women still remain behind men. The state did not make an effort to dislodge traditionally entrenched patriarchal norms that pervaded every institution in society. In the 1990s, some improvement has occurred with Panchayati Raj introduced with the 73rd and 74th Amendments providing reservations for women in the local bodies in the village and urban areas. Among the schemes for poor women, in addition to the programmes that were existent in the 1980s such as the Integrated Rural Development Programme (IRDP), which has now 40 percent beneficiaries to be women, the Training for Rural Youth for Self-Employment (TRYSEM), the Integrated Child Development Services (ICDS), were introductions such as the Development

of Women and Children in Rural Areas (DWACRA) through which groups of women are formed to obtain subsidy and credit for income generation activities and adult literacy programmes under the National Literacy Mission. A significant number of the elderly participate in these programmes. There also continued to be schemes such as the Socio-Economic Programme (SEP) which provides training and employment to needy women such as widows, deserted wives, the economically backward and the handicapped in traditional, agro-based and non-traditional trades by the Government of India, 1995.

Among some of the central government provisions for the non-organized sector is the recent 20 percent tax rebate to senior citizens above the age of 65 of those paying taxes. The state continued to help women who had no familial support, while not disengaging from reinforcing the breadwinner and dependent relationship that exists within families.

Latest in the line of policy documents, the first ever national policy on older persons of India, refers to the legal rights of parents who have no means to seek the support of their children having sufficient means. It was formulated by the Ministry of Social Justice and Empowerment and submitted for cabinet approval in January 1999. Some analysts have tried to see how far it is sensitive to the mandate for gender parity and the removal of gender discrimination. There is recognition of higher expectancy of life for women and the recognition of more number of women in the age group above 60, while the incidence of widowhood is also much higher compared to the situation for men above 60 years of age. Women who outlive men are greater in number as they tend to be married to men who are older, besides women also do not remarry and live longer. In 1991, there were four times as many widowed females as compared to widowed males.

Among the categories of provisions, the largest segment of old age security, has a very limited outreach, is centered on organized sector employees, as pensions. Among pension schemes which are contributory in nature are the Employees State Insurance Scheme (ESIS), Provident Fund, Pension and deposit linked insurance scheme and so on, in which both workers/employees and employers contribute. Among non-contributory schemes are Workmen's Compensation Act (1923), Maternity Benefit Act (1962), National Social Assistance Programme (1995) and the Payment of Gratuity Act (1972). In the organized sector which is just 4 percent of the workers officially recognized in the country, women account for about 15 percent. Therefore the proportions from the above schemes going to the elderly retired women can be gauged.

As part of the larger net that is termed anti-poverty measures, almost all states in the country have Old Age Pension, for which all persons above 65 years who may also be old, poor and infirm are eligible. The Widow Pension Schemes have also been functional since the 1960s. All these eligible persons receive pensions. It is important to note that these old age pensions are not subject to the employment status of the old persons and hence, covers all the older people above that age provided they are able to satisfy the conditions and criteria. Elderly destitute widows alone are considered under the Old Age Pension, but in Kerala, even young widows are considered eligible under this scheme. Apart from this some states, such as Andhra Pradesh, Gujarat, Kerala and Tamil Nadu have special pension schemes for agricultural labour.¹³

For the welfare of the aged the Ministry of Social Justice, formerly social welfare, has set up an inter-ministerial committee on welfare of the aged to suggest programmes for care and protection of the elderly. It is interesting to note that national efforts to provide for vulnerable groups often end up consolidating the state efforts begun many decades ago. In this line is the National Social Assistance Scheme introduced on August 15, 1995. Among its components are the National Old Age Pension Scheme (NOAPS), National Family Benefit Scheme (NFBS) and the National Maternity Benefit Scheme (NMBS). The old age pension scheme (NOAPS) is a 100 percent centrally sponsored scheme giving assistance to the states for the poor elderly, with the norms, guidelines and conditions laid down by the central government and managed by the union ministry of rural development. The administration is through the state governments even though the assistance is centrally provided.¹⁴

In 1999, the Government of India announced Annapurna, a national social assistance scheme for elderly destitute. Under this scheme the destitute old person would be provided 10 Kg of rice or wheat per month free through Public Distribution System (PDS). It is implemented by the Ministry of Rural Development with the assistance of the Ministry of Food and Civil Supplies. It includes those destitute who are eligible under the NOAPS, but have no one to look after them. In the initial year of implementation, Rs. 100 crore was allotted which was estimated to benefit 6.6 lakh elderly destitute persons. As of October 2000, only 15 states and two union territories have been covered by the programme to which the allocated amount has been released. Both the above schemes as well as the state pension schemes together cover only 25 percent of India's elderly population more over the financial help provided under these schemes are quite less, far from satisfactory amount required in the present scenario of inflation where the prices are touching sky.¹⁵

There are various NGOs those efforts to provide social security to elderly, for instance, the comprehensive group insurance scheme, widowhood insurance and so on. The Self-Employed Women's Association (SEWA) based in Ahmadabad, Gujarat is one of the largest unions of the women workers in the unorganized sector.¹⁶ Fourteen percent of SEWA membership is widowed. For the widows, the most important aspects of SEWA membership have been the ease of entry, the access to creation of assets, labour sharing and group support. The various cooperatives for the economic activities function in the village or 'mohalla' where the women live and they do not have to go far. Similarly, the SEWA Bank reaches its member-clients through the extension workers, through village level savings groups, or through group leaders. Apart from suggesting improvements in social security schemes, governments have to move beyond pensions and employment for widows to providing immovable assets and properties rights. For those who do have property, the Sector 498 A and other related ones do provide protection against domestic violence in case there is harassment of older women and men trying to usurp their property.¹⁷ Under the national policy, the government wishes to promote and assist voluntary organizations for providing non-institutional services, construction and maintenance of old age homes, organizing day care services, multi-service citizen centers, reach out services, supply of disability related aids and appliances, short-term stay services and friendly home visits by social workers. Other services which are forthcoming are rehabilitation of destitute widows, mobile geriatric services, adoption of the elderly, marginal subsidies on purchase of plane or train tickets and tax rebates. A step forward in this direction The National Policy on Older Persons was announced by the Government of India in the year 1999. It was a step in the right direction in pursuance of the UN General Assembly Resolution 47/5 to observe 1999 as International Year of Older Persons and in keeping with the assurances to older persons contained in the Constitution. The well-being of senior citizens is mandated in the Constitution of India under Article 41, "*The state shall, within the limits of its economic capacity and development, make effective provision for securing the right to public assistance in cases of old age*". The Right to Equality is guaranteed by the Constitution as a fundamental right. Social security is the concurrent responsibility of the central and state governments. The Ministry of Social Justice and Empowerment piloted landmark legislation the Maintenance and Welfare of Parents and Senior Citizens Act 2007 which is being promulgated by the States and Union Territories in stages.¹⁸

By and large, there is not much emphasis to highlight the gender implications of such a policy despite evidence that women in this category suffer greater vulnerability. In the sections on health care, nutrition, shelter and education there is no specific reference to women's situation. What is interesting is there are pointed references to the changing nature of the family and the roles of younger women who are potential caregivers, and therefore, older persons tend to be seen as burdensome. The document exudes a tone of alarm while making these observations. However, at the implementation level there should be the Panchayat Raj Institutions who should take the initiative in implementation. There should be discussion forums set up at the Panchayat, Block and District level with adequate representation of older women, to review the concerns of older persons and activities that need to be undertaken. An issue on which the state needs to be interrogated is its intention to adopt private help in the implementation of its pronouncements. While there is no mention of financial support, for instance in providing geriatric health care, the government anticipates division of this responsibility between itself and the voluntary and private sector, incentives for whom will be in the form of tax relief's and land at subsidized rates to provide care for the poor elderly and charge reasonable user fees from those who can afford.¹⁹ Among the categories of provisions, the largest segment of old age security, has a very limited outreach, is centered on organized sector employees, as pensions.

CONCLUDING OBSERVATIONS

Human nature is funny. People take great trouble to preserve relics from the past as some kind of evidence of history. Millions of dollars are spent in restoring heritage buildings, archaeological expeditions and museums. We are paranoid about our glorious past and so we need proof that it had existed at some point. While man-made heritage is preserved, people seem to give two hoots about caring for living heritage in itself. We must protect an old building because it is a symbol of a rich, living history but it is perfectly acceptable to throw out an old relative because he or she has lost any form of material utility. India is a perfect example of such an attitude. In case of elderly women, the problems are manifold. That is, due to inequality of women in the society, the elderly women are neglected by youth. Further, if the elderly women are widows, then they find it difficult to face challenges in their lives. Due to loneliness, there are also many of the mental health problems such as feeling of insecurity, loneliness, depression, etc. The live example is the suicide committed by 62 year old woman by setting herself ablaze because of depression.²⁰This

is not the only case, the history is long. Further, due to ageing, there are also physical health problems such as bronchitis, asthma, arthritis, etc. Of course, many of the social security schemes are proved to be beneficial for elderly women, still there is need of health schemes to look after the health of elderly women. Hence, the Government and the NGOs have to intervene the problems of elderly women for their better. Till few decades ago, when average age of women in India was less than 60, condition of older women was never even mentioned. But now with fast growing elderly population, increased life expectancy and higher percentage of elderly women in Indian elderly population, issues concerning elderly women cannot be ignored any longer. If ignored today, this may turn in to a major social development challenge. Focus should be shifted on older women. Since they have specific needs they need special attention.

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Welfare of Old Aged Persons and Law:
An Overview in Indian Context

VIKRAM KUMAR

INTRODUCTION

In India the reduction in fertility level combined with the steady increase in the life expectancy has resulted into fundamental changes in the age structure of the population and this in turn leads to the increasing population of old aged persons. India had the second largest number of old aged persons *i.e.* - persons above the age of 60 years in the world as of 2001. The analysis of historical patterns of mortality and fertility decline in India indicates that the process of population aging intensified only in the 1990's and the absolute and relative size of the population of the old aged in India is gaining strength steadily.

Presently, overall nearly 7.5% of India's population is aged 60 years and above. In rural India, 7.5% of the population is above 60, and the corresponding figure is 7% in urban areas. Kerala (11.8%), Himachal Pradesh (10.1%) and Tamilnadu (10%) have the highest percentage of elderly in the country, followed by Maharashtra (9.2%), Punjab (8.9%) and Odisha (8.7%). Jharkhand (5.7%), Assam (5.5%) and Delhi (5.7%) record the lowest percentage. UN estimates say the global population of 60 years and older will more than double from 542 million in 1995 to about 1.2 billion in 2025.¹

The old age phase of human beings is most vulnerable one in which one has to face different kinds of problems. In old age physical strength deteriorates, mental stability diminishes and money power becomes bleak coupled with negligence from the children and relatives. The problems associated with the old age phase ranges from absence of ensured and sufficient income to support themselves and their dependents, ill health, absence of social security, loss of social role and recognition and to the non-availability of opportunities for creative use of free time. The needs and problems of the old aged persons vary significantly according to their

age, socio-economic status, health, living status and other such background characteristics.

In India, the urbanization, education and exposure to life styles has brought changes in values and life styles. The high costs of bringing up and educating children and pressures for gratification of their desires have affected much the transfer of share of income for the care of old aged members in families. The shortage of dwelling space in urban areas and high rents, the adoption of small family norms and the career ambitions compels the migrants to prefer to leave their old aged parents in their native place. Though the family ties in India are very strong and an overwhelming majority lives with their sons or is supported by them. But the operation of several forces has made vulnerable the position of a large number of old aged persons. Now the old aged parents cannot take for granted that their children will be able to look after them when they need care in old age, especially in view of the longer life span implying an extended period of dependency and higher costs to meet health and other needs.

Keeping in view the problems faced by old aged persons in India, the time has come to seriously think about the welfare of old aged persons in India. There is a need of properly implementing our obligation towards various international norms, the mandates of Constitution of India & various legal schemes running in India.

WELFARE OF OLD AGED PERSONS & INDIA'S OBLIGATIONS TOWARDS INTERNATIONAL NORMS

Being a party to various international human rights treaties and declarations, India's obligation towards preservation and protection of human rights of old aged persons is created, which helps in the promotion of the welfare of old aged persons. The human rights of old aged persons includes their right to an adequate standard of living, adequate food, shelter and clothing; right to adequate social security, assistance, and protection; right to freedom from discrimination based on age in all aspects of life including employment and access to housing, health care, and social services; right to the highest possible standard of health; right to be treated with dignity; right to protection from neglect and all types of physical or mental abuse; right to full and active participation in all aspects of political, economic, social and cultural life of society; etc.

We have also made commitments under various international documents to ensure the realization of human rights of old aged persons. The *UN General Assembly* through its proclamation urges the support of

national initiatives on ageing so that the appropriate national policies and programmes for the elderly are considered as part of overall development strategies. The governmental and non-governmental organizations should collaborate in the development of primary health care, health promotion and self-help programmes for the elderly. The older persons should be viewed as contributors to their societies and not as a burden.² The commitment as to welfare of old aged persons is also set out in the *International Conference on Population and Development* held at *Cairo*. This was convened with the objectives to develop systems of health care as well as systems of economic and social security in old age and to develop a social support system with a view to enhancing the ability of families to take care of elderly people within the family. The commitment was made that in consultation with elderly people, the Governments should ensure that the necessary conditions are developed to enable elderly people to lead self-determined, healthy and productive lives and to make full use of the skills and abilities they have acquired in their lives for the benefit of society. Further the Governments should in collaboration with non-governmental organizations and the private sectors strengthen formal and informal support systems and safety nets for elderly people and eliminate all forms of violence and discrimination against elderly people.³ In the *World Summit on Social Development* held at *Copenhagen*, the commitment is made by the participant countries to take action to improve the possibility of older persons achieving a better life and to develop and implement policies to ensure that all people have adequate economic and social protection during the old age.⁴ In the *Habitat II Conference* held in *Istanbul* the agenda declared that the older persons are entitled to lead fulfilling and productive lives and should have opportunities for full participation in their communities and society and in all decision-making regarding their well-being, especially their shelter needs. Their many contributions to the political, social and economic processes of human settlements should be recognized and valued. Special attention should be given to meeting their evolving housing and mobility needs in order to enable them to continue to lead rewarding lives in their communities.⁵

SCHEMES FOR THE WELFARE OF OLD AGED PERSONS IN INDIA

In India, the old aged persons constitute a precious reservoir of human resource gifted with knowledge of various sorts, varied experiences and deep insights. They significantly contribute to the social, cultural and economic development of our country. Therefore, the welfare of old aged

persons in India is of prime importance for which we have detailed constitutional and legal schemes aiming towards sorting out the problems associated with their old age, likewise - economic problems including the problems as to loss of employment, income deficiency and economic insecurity; physical and physiological problems including health and medical problems, nutritional deficiency and the problem of adequate housing; and psycho-social problem including problems related with their psychological and social maladjustment and the problem of elder abuse.

Constitution of India

Constitution of India itself in Entry 24 in List III of Schedule VII deals with the welfare of labour, including conditions of work, provident funds, liability for workmen's compensation, invalidity and old age pension and maternity benefits. Further, Item No. 9 of the State List and Item No. 20, 23 and 24 of Concurrent List relates to old age pension, social security and social insurance, and economic and social planning. Article 41 of Directive Principles of 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 unemployment, old age, sickness and disablement and in other cases of undeserved want*".

Article 41 in Part IV of the Indian Constitution provides for the directive as to public assistance in old age. While upholding the right to pension at the evening of one's life after retirement in the case of *D.V. Kapoor vs. Union of India*⁶, the Supreme Court observed that the public employee holding a civil post or office under the State has a legitimate right to earn his pension, be it on superannuation or voluntary retirement. It is not a bounty of the State. Gratuity too is a statutory right earned by him. Article 41 of the Constitution accords the right to assistance at old age or sickness or disablement. Further on in the case of *D.S. Nakara vs. Union of India*⁷, the Supreme Court has observed that the pension is not only compensation for loyal service rendered in the past, but also has broader significance in that it is a social welfare measure rendering socio economic justice by providing economic security in the fall of life when physical and mental prowess is ebbing corresponding to ageing process and when one is required to fall back on savings. It was also observed by the court that in the fall of life, the State shall ensure to the citizens a reasonably decent standard of life, medical aid, freedom from fear and enjoyable leisure, relieving the boredom and humility of dependence in

old age. This is what Article 41 aims, when it enjoins the State to secure public assistance in old age sickness and disablement.

Code of Criminal Procedure

In the Code of Criminal Procedure, 1973; Section 125(1) makes it incumbent for a person having sufficient means to maintain his father or mother, who is unable to maintain himself or herself. It is applicable to all irrespective of their religious faith and religious persuasions and includes adoptive parents also. This section has been interpreted by the Supreme Court in its ruling so as to make daughters and sons, married or unmarried, equally responsible to maintain their parents. Though, it is not clear by the bare reading of section 125 whether '*father or mother*' will also mean '*adoptive father or mother*' or '*step father or step mother*'. As per General Clauses Act, 1897 the word '*father*' shall include an '*adoptive father*'.⁸ The term '*mother*' is not similarly defined though it includes '*adoptive mother*' also as held by the apex court. It was held by the Punjab & Haryana High Court that the liability to pay the maintenance to father or mother is that of the son and not of the daughter.⁹ Later on the view was adopted by Kerala High Court that daughter is also liable to pay maintenance to her parents who have no ostensible means of livelihood.¹⁰ The above view so adopted by the Kerala High Court was affirmed by the Supreme Court in the case of *Vijaya Manohar Arbat vs. Kashirao Rajaram Sawai*,¹¹ in which the court has observed that apart from any law, the Indian society casts a duty on the children to maintain the parents and this social obligation equally applies to daughter. Further on section 125(1) does not contemplate that the obligation to maintain an aged, infirm parent who is unable to maintain himself or herself can be enforced only if it is preceded by the fulfillment of the parental obligation to maintain and bring up the children during the childhood of the children.¹²

Hindu Law

In the Hindu Adoption and Maintenance Act, 1956; Section 20(1) provides that every Hindu son or daughter is under obligation to maintain aged and infirm parent, who is unable to maintain himself or herself. The amount of maintenance under this Act must be determined by the court taking into consideration the position and status of the parties. A Hindu is under a legal obligation to maintain his aged parents, whether he possesses any property or not. The obligation to maintain is personal, legal and absolute in character and arises from the very existence of relationship between parties.¹³ Not merely a male Hindu, as was the law previously applicable, but a female Hindu as well is now under legal

obligation to maintain aged or infirm parents.¹⁴ The maintenance to parents includes provisions for food, clothing, residence, medical attendance and treatment. Further on the obligation to maintain parents extends in so far as any one of them is unable to maintain himself or herself out of his own earning or other property. There can be no absolute test for determining whether the parent is 'aged or infirm'. It depends upon the facts and circumstances of the case and in this context importance may also be attached to the factor 'unable to maintain himself or herself'.¹⁵

Muslim Law

The Chapter XVII of Holy Quran lays down that -

“The Lord hath commanded that ye show kindness into your parents, whether the one of them or both of them, attain too old age with thee. Wherefore say not unto them Fie on you! neither reproach them, but speak respect unto them, and submit to behave humbly towards them, out of tender affection, and say “O Lord! Have mercy on them both, as they nursed me little..... and give unto him that is of kin to you his due.”

Under the Muslim Law also the children have a duty to maintain their aged parents. According to Mulla - children in every circumstances are bound to maintain their poor parents, although the latter may be able to earn something for themselves; a son though in strained circumstances is bound to maintain his mother; and a son though is poor, bound to support his father who earns nothing. The Arabic equivalent of 'maintenance' is *Nafqah* which literally means “*what a person spends over his family.*” In its legal sense, maintenance signifies and includes food, clothing and lodging.¹⁶ The children are liable to pay maintenance to their parents. Every child, whether male or female, adult or minor, who has sufficient property, is responsible to supply maintenance to the parents under Sunni law, whether the parents are capable of earning or not makes no difference. But under Shia law, the children are relieved of their duty, if the parents are capable of earning. If there are no children or the children are indigent, it is the liability of the grand children to provide maintenance to their grandparents. The step mother can also claim maintenance, if the father is weak and infirm and has no means to maintain her.

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

In spite of the above mentioned constitutional and legal schemes, the old aged persons are hitherto neglected. Though, the recently enacted

legislation namely 'The Maintenance and Welfare of Parents and Senior Citizens Act, 2007' has sought to some extent to redress the grievance of old aged. This Act is passed to provide for more effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognized under the Constitution of India. Under this Act, "children" includes son, daughter, grandson and grand-daughter but does not include a minor;¹⁷ the "maintenance" to infirm and old aged parents includes provision for food, clothing, residence and medical attendance and treatment;¹⁸ the "parent" who can claim maintenance means father or mother whether biological, adoptive or step father or step mother, as the case may be, whether or not the father or the mother is a senior citizen;¹⁹ the "senior Citizen" means any person being a citizen of India, who has attained the age of sixty years or above;²⁰ and the term "welfare" means provision for food, health care, recreation centres and other amenities necessary for the senior citizens.

Under the Act a senior citizen including parent who is unable to maintain himself from his own earning or out of the property owned by him, shall be entitled to make an application to 'maintenance tribunal' to get an order against the children for their maintenance.²¹ Such application for maintenance may be made by a senior citizen or a parent, as the case may be; or if he is incapable, by any other person or organisation authorised by him; or the Tribunal may take cognizance *suo motu*. The "organisation" for the purpose of making an application to tribunal means any voluntary association registered under the Societies Registration Act, 1860 or any other law for the time being in force.²² If the tribunal is satisfied that the children or relatives, as the case may be, neglect or refuses to maintain a senior citizen being unable to maintain himself, it orders such children or relatives to make a monthly allowance at such monthly rate for the maintenance of such senior citizen, as it may deem fit and to pay the same to such senior citizen as the tribunal may, from time to time, direct. The maximum maintenance allowance which may be ordered by the tribunal shall be such as may be prescribed by the State Government which shall not exceed ten thousand rupees per month.²³ A maintenance order made under this Act shall have the same force and effect as an order passed under Chapter IX of the Code of Criminal Procedure, 1973 and shall be executed in the manner prescribed for the execution of such order by that Code.²⁴ Further on notwithstanding anything contained in Chapter IX of the Code of Criminal Procedure, 1973 where a senior citizen or a parent is entitled for maintenance under the said Chapter and also entitled for maintenance under this Act may, without prejudice to the provisions of

Chapter IX of the said Code, claim such maintenance under either of those Acts but not under both.²⁵

The Act also provides for the establishment and maintenance of old age homes at accessible places. There should be at least one old age homes in each district to accommodate a minimum of one hundred fifty senior citizens who are indigent. For the purposes of this Act, “*indigent*” means any senior citizen who is not having sufficient means, as determined by the State Government, from time to time, to maintain himself.²⁶

The provisions for medical care of senior citizens are also laid down in the Act. The State shall ensure the preferential treatment is to be given to the senior citizens in the hospitals such as providing them with separate queues; treatment facility for chronic, terminal and degenerative diseases; offering medicines and also promotion of research in the geriatric medicine.²⁷

The State Government is under obligation to take all measures to ensure that the provisions of this Act are given wide publicity through public media including the television, radio and the print, at regular intervals. The police officers and the members of the judicial service must be sensitized and to be made aware of the issues relating to this Act through the periodic training programmes.²⁸

Most importantly the Act also provides for the transfer of property by a senior citizen to be void in certain circumstances. If any senior citizen transfers his property by way of gift or otherwise subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and if such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the tribunal.²⁹

The Act also makes punishable the exposure and abandonment of senior citizen. The person having the care or protection of senior citizen if leaves such senior citizen in any place with the intention of wholly abandoning him shall be punishable with imprisonment of either description for a term which may extend to three months or with fine which may extend to five thousand rupees or with both.³⁰ In this way this Act has strengthened the position of old aged parents and senior citizens in our society in various ways.

CONCLUDING OBSERVATIONS

In spite of the availability of various legal norms to promote the welfare of old aged persons, they are facing the abuse of one kind or another by their family members. The incidences of elderly couple being forced to sell their houses are very high. The old aged persons are suffering in silence as they fear humiliation or they are scared of their children or relatives. In urban areas in India, the grand dumping has become very common as children are not tolerating their parents' health problems. The constitutional and legal schemes available in India are still needed to be made implementable. The problems of the old aged must be addressed to urgently and with utmost care. This can be done by amending the Constitution by including special provisions for protection of aged person and to bring their issues 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 duty of the State to think properly for the welfare and extra protection of the old aged persons in India. Now there is a need to pay greater attention to the increasing awareness on the issues arising out of old age phase and its socio-economic effects and to promote the development of policies and programmes for dealing with old aged persons of our society.

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- 3 Paras 6.17, 6.19 and 6.20 of Cairo Programme of Action
- 4 Para 26 and commitment 2 of Copenhagen Declaration
- 5 Paras 17 and 40 of Habitat Agenda
- 6 AIR 1990 SC 1923
- 7 AIR 1983 SC 130
- 8 See section 3(20)
- 9 Raj Kumari vs. Yashoda Devi, 1978 Cr LJ 600
- 10 M. Areefa Beevi vs. K.M. Sahib, 1983 CrLJ 412
- 11 (1987) 2 SCC 278
- 12 Pandurang vs. Baburao, 1980 CrLJ 256
- 13 State of Haryana vs. Santra, AIR 2000 SC 1888
- 14 *Thulasikumar vs. Raghavan*, AIR 1985 Ker 20
- 15 *Munni Devi vs. Choti*, AIR 1983 All 444
- 16 See Ameer Ali, Mohammedan Law, Vol. II, page 358

- 17 The Maintenance and Welfare of Parents and Senior Citizens Act, 2007;
Section 2(a)
- 18 *Ibid.*, Section 2(b)
- 19 *Ibid.*, Section 2(d)
- 20 *Ibid.*, Section 2(h)
- 21 *Ibid.*, Section 4
- 22 *Ibid.*, Section 5
- 23 *Ibid.*, Section 9
- 24 *Ibid.*, Section 11
- 25 *Ibid.*, Section 12
- 26 *Ibid.*, Section 19
- 27 *Ibid.*, Section 20
- 28 *Ibid.*, Section 21
- 29 *Ibid.*, Section 23
- 30 *Ibid.*, Section 24

CHAPTER-12

Social Security for the Elderly Problems and Challenges of Facing Abuse - With Critical Analysis of the Law

DR. KANWAL DP SINGH

INTRODUCTION

The concept of '*senior citizens*' is of a recent vintage in the country. It as understood in the modern Constitutional sense, has originated after the establishment of '*nation-states*'. India is an ancient nation, with a history of many millennia. The rights and responsibilities of people in the past were not codified in any Constitution. Rather, they were embedded in our culture and our spiritual outlook towards life. The wise elders of yester-centuries had created a cultural environment in India in which every person was expected to rise from one stage to the higher stage in the four-stage evolution of life, as if he was ascending a ladder, and try to attain self-realization as much as possible.¹ There are two important points which should be taken in consideration.

Institution of Family must be preserved and strengthened

Indian society has never been against modernity. But modernity cannot mean destruction of all that is valuable and life-nourishing in the past. Among all the institutions that mankind has built for its survival and progress, the best is the institution of family. A happy family is one in which the young and old live together, sharing the bonds of love and mutual care.² The need for family life is even greater for senior citizens. Senior citizens develop illnesses because they are not living in a proper family environment where they have a happy family environment. They do not need medicines since happiness and contentment itself is the most effective medicine for senior citizens.³

Enhance participation of Senior Citizens in public affairs

This precious tradition should be preserved even in modern times. It exists even today to some extent in villages. But in big cities, our society is not benefiting from the knowledge and wisdom of senior citizens. We

should find new ways, and evolve new formal and informal structures, whereby the involvement of senior citizens in public affairs can be enhanced.⁴ The aged in INDIA face a predicament that is peculiar to an increasingly industrialized and materialistic society and to a city that does not have enough space for its citizens. There are few open spaces earmarked for the elderly and their space within their homes is continually dwindling. Even as age and poor health catch up with them, they are faced with diminishing finances, social isolation, loneliness, excessive free time and loss of family and friends. Estimates based on the national demographic patterns suggest that the number of elderly in the city is around 0.72 million persons. (Urban elderly account for 5.4% of the total population).⁵ The Projected Population aged 60+ by sex as on 1st March 2001-2026, as per the Report of the Technical Group on Population Projections constituted by the National Commission on Population, May 2006 published by the Office of the Registrar General, India is as under (In million) :

Table 1 Gender Distribution in various years.

Year	Males	Females	Persons
2001	34.94	35.75	70.69
2006	40.75	42.83	83.58
2011	48.14	50.33	98.47
2016	58.11	59.99	118.10
2021	70.60	72.65	143.24
2026	84.62	88.56	173.18

In fact, the 60+ citizens are the fastest growing age group in the country. Among the elderly itself, the growth rate of 80+ is the highest. Ms Sheilu Srinivasan of the Dignity Foundation says that, by 2050, India will have the largest elderly population in the world. Yet, care for the aged is amongst the youngest of “causes” in India. Children’s rights and women’s rights, though relatively new, have been around for decades; but “rights of the aged” is a nascent concept. It is subsumed under the Ministry of Social Welfare and is ranked only after women and children.⁶

GENERAL PROBLEMS OF THE ELDERLY

Health Rigours

The Union Ministry of Social Welfare has maintained that exclusive health services for the elderly may be difficult, but some priority for them should be assigned in health care centres like hospitals. This has not

happened, and the elderly, especially the poor, continue to be plagued with worries about health care financing. A study of the health status of 60+ citizens done in 1998 by S Siva Raju, Professor of Urban Studies, Tata Institute of Social Sciences, found that the poor elderly perceived those health problems which are visible -headache, body pain, etc.; whereas the perceptions of the health status among the upper strata were based largely on clinical diagnosis. A disease divide is also present among the classes. The poor had a higher incidence of anaemia, cataract, hypertension and kidney problems. More poor women (28.6%) had knee-joint pain and poor vision (55.6%) than men. Cutting across class lines, a high proportion of the elderly (62.8%) had poor vision in both eyes.⁷

Financial Crunch

In fact, financial concerns are common to senior citizens across all classes. Estimates show only 10% of the aged are retirees from the Government or the private, organized sector who get pension and medical benefits. The overwhelming majority of the elderly are dependent on their savings and their children for their day-to-day living needs. Given the falling interest rates, savings are an inadequate source of financial security. Interest rates on savings have declined from 16% per annum a few years ago to 6.5% per annum, though many banks do offer an additional half per cent interest to senior citizens.⁸

Even though socially aware countries make provisions for their aged according to the need of the hour, the amount is never enough as inflation creeps in, scoops out all their savings and renders the Government pension insufficient. This is a problem facing all countries sensitive to the aged as well. The Scandinavian countries, which are more upscale in their treatment of the elderly, also find it difficult to cope with spiralling inflation.⁹

Safety Concerns

Safety of senior citizens is a key concern as the number of aged couples living alone is quite high in the city, thanks to migration of children to greener pastures and the popularity of nuclear families. To address this, a drive was initiated by the police to encourage senior citizens, especially those living alone, to approach the local police stations with their particulars, so that they can be better protected. This drive has had a poor response because senior citizens fear exposing themselves to the possibility of being attacked, as information would then spread fast that they live alone. The volunteers visit their homes and encourage them to install security latches, alarm systems, etc., for prices ranging from Rs. 500/- to Rs. 20,000/- at discounted prices. They also try to meet the senior

inspector of the local police station once a month to promote a rapport between the society's elderly and the law and order custodians.¹⁰

No Room to Themselves

In space-starved INDIA, many senior citizens end up being resented by their families for the space they take up in small homes. Many of them sleep in cramped spaces, like the balcony or the kitchen, and are hardly given adequate space in their homes. Incidents of the elderly slipping on the floor of the house have increased in the past few years, since more and more middle class families have begun to opt for smooth, glistening tiles for flooring.¹¹

GENERAL RIGHTS AND FACILITIES AVAILABLE TO THE ELDERLY

The population of the older persons in India is continuously increasing. The Registrar General of India forecasts the share of older persons (age 60 years and above) in the total population to rise from 6.9% in 2001 to 12.4% in 2026.¹² At present, the age criteria for availing senior-citizen benefits differ across government agencies. But the government is yet to freeze an age-group for "*senior citizens*" who would be reached such benefits.¹³ The railways consider those above the age of 60 years as senior citizens and provide them discounted tickets. But, for availing income tax rebates and other tax related benefits, those above 65 years are considered senior citizens. Incidentally, the railways in 2003 had reduced the age limit for senior citizens from 65 years to 60 years. Airlines also have age criteria that range from 60 to 65 years for senior citizens to avail of tickets at concessional rates.¹⁴

Meanwhile, the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 has defined a senior citizen, who can access various schemes in the ambit of the Act, as one who is above 60 years. But the system lacks uniformity, as evident from the fact that the national. Here is a brief compilation of Benefits and special Rights available for Senior citizens for reference: -

Transportation:

1 Ministry of Road Transport and Highways:

1. Reservation of two seats for senior citizens in front row of the buses of the State Road Transport Undertakings.
2. Some State Governments are giving fare concession to senior citizens in the State Road Transport Undertaking buses and are introducing Bus Models, which are convenient to the elderly.¹⁵

¹ Under Delhi Transport Corporation:

1. Special Hire Service: - Apart from the normal services, the Corporation also provides buses to the Citizen of Delhi on Special Hire for marriage parties, picnics, etc.
2. Free/Concessional Passes: - DTC also offers Free Passes to disabled persons, war-widows & their dependents, eminent sport personalities, Freedom Fighters etc. and Concessional Passes to various categories of commuters viz. Students, Senior Citizens, Residents of Resettlement Colonies, Journalists, etc.
3. For Senior citizens above the age of 60 years, Bus passes for all routes at Rs. 50 per month. Income has to be below Rs. 75000 per year.¹⁶

• Ministry of Railways:

1. Indian Railways provide 30% concession in all classes and trains including Rajdhani / Shatabadi trains for both males and females aged 60 years and above.
2. Indian Railways also have the facility of separate counters for Senior Citizens for purchase/booking/cancellation of tickets.
3. Wheel Chairs for use of older persons are available at all junctions, District Headquarters and other important stations for the convenience of needy persons including the older persons.
4. Ramps for wheel chairs movement are available at the entry to important stations.
5. Specially designed coaches with provisions of space for wheel chairs, hand rail and specially designed toilet for handicapped persons have been introduced.¹⁷

• Ministry of Civil Aviation:

1. Indian Airlines is providing 50 per cent Senior Citizen Discount on Normal Economy Class fare for all domestic flights to Indian senior citizens who have completed the age of 65 years in the case of male senior citizens and 63 years in the case of female senior citizens subject to certain conditions.
2. Air India is offering discount of 55% to senior citizens of 60 plus on flights to USA, UK and Europe on economy class. Further, Air India has now decided to reduce the age of 60 plus for discount on their domestic routes as well with immediate effect. For Identity card, 2 passport sized photographs have to be submitted along with the form.

3. Sahara Airlines is offering 50% discount on basic fare for travel on its domestic flights only to senior citizens who have attained the age of 62 years. Discount is applicable in economy class only.
4. Kingfisher Airlines offers discount in Business class only for citizens of 65 years or above on sectoral basis. Age proof required.
5. Jetlite offers a discount of 50% on economy class for citizens of 65 years or above. One passport sized photograph required on the form along with age proof.
6. Jet Airways offers discount to senior citizens of 65 years or above. For availing discount in domestic flights, senior citizens have to fill up a discount form along with a passport sized photograph and Age proof certificate. Jet Airways also provides Senior Citizen I-Card which is available in all ticket counters and requires 2 passport sized photographs and age proof certificate. For the I-Card a very nominal amount is charged.¹⁸

Telecommunications:

1. Faults/complaints of senior citizens are given priority by registering them under senior citizens category with VIP flag, which is a priority category.
2. Senior citizens are allowed to register telephone connection under N-OYT Special Category, which is a priority category.
3. MTNL in NCR offers a discount of 25% on Rs. 250 per month Plan. Age limit is 65 years or above.¹⁹

Ministry of Consumer Affairs, Food and Public Distribution:

1. Under the Antyodaya Scheme, the Below Poverty Line (BPL) families which also include older persons are provided food grains at the rate of 35 kgs. per family per month. The food grains are issued @ Rs.3/- per kg. for rice and Rs.2/- per kg. for wheat. The persons aged 60 years above from the BPL category were given priority for identification.
2. Under the Annapoorna Scheme being implemented by the States/ UT Administration, 10 kgs. of food grains per beneficiary per month are provided free of cost to those senior citizens who remain uncovered under the old age pension scheme.
3. Instructions to State Governments for giving priority to the Ration Card holders who are over 60 years of age in Fair Price Shops for issue of rations.²⁰

Ministry of Health & Family Welfare:

There is provision for separate queues for senior citizens at hospitals and health care centres when they visit for any health related concerns or clinical examinations.

1. Separate queues for elderly persons in hospitals for registration and clinical examination.
2. Special Clinics, The Delhi Government runs special clinics for Senior Citizens in most of its hospitals in Delhi every Sunday between 10 am to 12 noon, for elderly persons available at many hospitals in New Delhi. The services include health check-ups, operations, treatment of physically invalid, gynecology, ENT and ophthalmology along with pathological and radiotherapy facilities.²¹

Income Tax (Ministry of Finance) :

1. For senior citizens the exemption limit is Rs. 2, 25,000 upto which senior citizen pays no income-tax at all. The benefit of higher exemption limit for a senior citizen is available only when a person has completed 65 years of age.
2. The senior citizen should also take full advantage of section 80C of the Income Tax Act, 1961 whereby deduction upto Rs. 1.00 lakh is available for investment by way of insurance premium, repayment of the housing loan or investment in Senior Citizens Savings Scheme as also the Bank Fixed Deposit.
3. Similarly as also the Bank Fixed Deposit, the citizen can also take advantage of the Mediclaim Policy. In case senior citizen or any member of his family suffers from serious medical problem or suffers from some disability he can claim certain other deductions under the tax law.²²

LEGAL PROTECTION AVAILABLE TO ELDERLY

The Legal Rights available to the Senior citizens can be enumerated as follows

Constitutional Law:

Art. 41: Right to work, to education and to public assistance in certain cases.²³

Art. 46: Promotion of educational and economic interests of and other weaker sections.²⁴

However, these provision are included in the Chapter IV *i.e.*, Directive

Principles of the Indian Constitution.²⁵ 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.²⁶

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.²⁷

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.²⁸

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.²⁹

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. The Cr.P.C it was thought was not the proper place for such a provision. 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.³⁰

The summary can be seen from the table below

Table- 2: Laws Regarding Maintenance and Care of Senior Citizens and Parents³¹

Law	Requirement	Maintenance Allowance
Constitution of India, Directive Principles, Article 41	The State shall, within the limits of its economic capacity and development, make effective provision for...old age, sickness and disablement, and in other cases of undeserved want."	Not justiciable
Code of Criminal Procedure (Chapter IX, Section 125(1)(2))	Requires persons who have sufficient means to take care of his or her parents if they are unable to take care of themselves.	Rs 500/month maximum
Hindu Adoption and Maintenance Act, 1956	Requires Hindu sons and daughters to maintain their elderly parents when parents are unable to maintain themselves	To be determined by court

THE MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS ACT 2007

There is need of a simple, inexpensive and speedy procedure to claim maintenance by the suffering parents. To cast an obligation on the persons who inherit the property of their aged relatives to maintain them and to make provisions for setting up old-age homes for providing maintenance to the indigent older persons and to provide better medical facilities to the senior citizens and to make provisions for protection of their life and property the Maintenance and Welfare of Parents and Senior Citizens Act was introduced in the Parliament The purpose of the Act to secure financial stability for parents who are unable to maintain themselves. In this Act too, the onus has been placed on children and relatives of senior citizens. Additionally, while the Act allows state governments to establish old age homes, it does not make it mandatory. Also, this Act does not address the needs of senior citizens who do not have either children or property. .³²

About the legislation

This Act has only 32 sections. It ensures that maintenance of old persons by their family will be a matter of right for the parents. It should be the duty of the children to maintain their parents. The Act is applicable to all persons irrespective of their religion. Earlier, provision for maintenance provided under section 20 of the Hindu Adaptations and Maintenance

Act, 1956 in which the aged parents can file the proceedings for their maintenance which is religion restricted act. The definition of maintenance covers all basic necessities and requirements of life. The age of parent is not described. Hence a parent can claim maintenance without any bar of age. And “*senior citizen*” means any person who is citizen of India and who has attained the age of 60 and above. This also includes childless senior citizen. He can claim maintenance from relative who is legal heir of that senior citizen and who is in possession of or would inherit his property after his death. And hence a senior citizen who is childless can file an application for maintenance under this act. This Act has an overriding effect on provisions of any other act. This is a special Act and hence it will prevail over other acts.

The proposed legislation also aims to create an enabling mechanism for the older persons to claim need-based maintenance from their children. The State of Himachal Pradesh had already enacted such a legislation called the “*Himachal Pradesh Maintenance of Parents and Dependents Act, 2001*.” The proposed legislation draws heavily on this. The Act, provides for the setting-up of old age homes, at accessible places, by the State Governments in a phased manner beginning with at least one in each district (or more than one,) to accommodate in such homes a minimum of 150 indigent beneficiaries.³³

An increasing number of older persons, who are economically self-sufficient, are living alone voluntarily or involuntarily. These people are increasingly becoming soft targets of anti social elements and as such there is a need to ensure that they are provided with a suitable mechanism for protection of their lives and property. Under section 21 the Act envisages to provide for the institutionalization of a suitable mechanism by the State Governments for protection of life and property of older persons. The major cause of anxiety in old age is deteriorating health condition coupled with dwindling financial position. There is a need for good affordable health services. Therefore, provisions to provide better medical facilities to older persons have been incorporated in the proposed legislation.

Aim of the Act:

The Government enacted the senior citizen act in 2007 as an answer to the insecurities faced by older persons of the country. An initiative of the Ministry of Social Justice and Empowerment, this Act accords prime responsibility for the maintenance of parents on their children, grand children or even relatives who may possibly inherit the property of a

Senior Citizen. The main aim of this section is to make the lives of Senior Citizens safer, securer and financially sound; following are few points which can explain it better:

1. To implement and monitor yearly work programs in pursuance of the objectives of this Act;
2. To draw up a list of available and required services which can be provided to senior citizens;
3. To maintain and regularly update on quarterly basis the list of senior citizens and to issue nationally uniform individual identification cards, free of charge, which shall be valid anywhere in the country;
4. To service as a general information and liaison center to serve the needs of the senior citizens;
5. To monitor compliance of the provisions of this Act particularly the grant of special discounts and privileges to senior citizens;
6. To report of the establishment found violating any provision of this Act;
7. To assist the senior citizens in filling complaints or charges against any establishment, institution, or agency refusing to comply with the privileges under this Act before the Department of Justice or the provincial, city or municipal trial courts; and
8. To set-up special courts to deal with matters like ELDER ABUSE, and

Comparison between Section 125 of the Criminal Procedure Code and the Senior Citizen Act, 2007³⁵

There is a considerable difference between the two Acts.

Some of these differences are:

1. Under S125 of CrPC there is no provision for maintenance of senior citizen who is without child. But under Senior citizen act a childless senior citizen can claim maintenance.
2. In The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (Senior Citizen Act) the power is given to the tribunal to decide the case but in CrPC only the Magistrate orders the claim for maintenance. In CrPC
3. Proceedings are time consuming under CrPC. But in the other act time limit of 90 days is stated.
4. Under CrPC advocate can participate in proceedings but participation of advocate is barred in Senior citizen Act. Also in CrPC there is

Table- 3, Comparison with the Himachal Pradesh Act¹

Provision	Himachal Pradesh Maintenance of Parents and Dependents Act, 2001	The Maintenance and Welfare of Parents and Senior Citizens Act, 2007
Eligible applicants	Applicants must be below poverty line, parents and grandparents wife, minor son, unmarried daughter, and widow if all not able to maintain themselves; not applicable to Muslims.	Applicable to senior citizens and parents of children above 18 years of age; applicable to all Indian citizens irrespective of religion.
Maximum amount for maintenance	Rs 5,000 per month.	To be specified by states, maximum limit of Rs 10,000 per month.
Amount of maintenance	To cover basic amenities.	To maintain 'normal life'.
Enforcement of maintenance order	If the person liable for payment is a government employee, maintenance may be deducted from his salary.	No such provision.
Application on behalf of senior citizen or parent	If applicant is unable to make an application, any member of his family, any person in whose care he resides, any other authorized person by him or maintenance officer may file application.	If applicant is unable to make an application, any person or organization authorized by him, or the maintenance tribunal may file application.
Provisions for maintenance order	Must be 'just and equitable', and the respondent should be able to first provide maintenance for himself, his wife and children. Tribunal must consider manner in which the applicant spent his savings, and if applicant is justified living separately.	The maintenance tribunal may make a maintenance order on satisfaction of neglect or refusal or maintenance. No such provision.
Appeals	The applicant, maintenance officer on behalf of the applicant, respondent, or approved person or organization or any other affected party may appeal to the district judge from the decision of the tribunal upon any question of law or of mixed law and fact.	State government may set up an appellate tribunal in each district. Any parent may file an appeal to the appellate tribunal within 60 days from the date of order. Respondents and childless senior citizens are not granted the same right.

restrictive definition of parents while in the other act broad definition is given.

The Act has been implemented by only 11 states so far. States that have come on board to implement the Act are Nagaland, Karnataka, Jharkhand, Andhra Pradesh, Rajasthan, Assam, Kerala, Tripura, Madhya Pradesh, Delhi and Orissa. It extends to the whole of India except the State of Jammu and Kashmir and it applies also to citizens of India outside India.³⁶

It was noted that as per the provisions of '*The Maintenance and Welfare of Parents and Senior Citizens Act, 2007*', the Act, when enforced shall be applicable to the whole of India as well as to the citizens of India living abroad except in the State of Jammu and Kashmir. There is no justification in excluding the State of Jammu and Kashmir from the ambit of the proposed legislation as it deals with social and family issues.

ELDERLY ABUSE

Broadly defined, elder abuse covers any behavior or pattern of behavior by a person or persons which results in harm to an older person. Little consensus exists on the range of harms which this broad definition should include. Definitional categories are often diverse, including combinations of physical abuse, psychological abuse, medical abuse, economic abuse, violations of rights, sexual abuse, neglect and self-neglect. These categories are often further modified by distinctions between intentional and unintentional acts, or passive or active abuse (acts and omissions); those which focus on the trust and obligation of care or on the relationship between the abused and the perpetrator; or which focus on the harm caused, regardless of the intention of the abuser.³⁷

The stark reality of the ageing scenario in India is that there are 77 million older persons in India today, and the number is growing to grow to 177 million in another 25 years. With life expectancy having increased from 40 years in 1951 to 64 years today, a person today has 20 years more to live than he would have 50 years back.³⁸

Elder abuse, the mistreatment of older people, is now achieving due attention. However, prevalence studies concerning this type of abuse have so far been restricted to developed nations, resulting in a dearth of evidence about the prevalence of abuse, neglect, and financial exploitation of elders in developing nations. In response to this problem, the World Health Organization (WHO) has worked to develop a global strategy for

the prevention of elder abuse, beginning by conducting a study in eight countries (Argentina, Austria, Brazil, Canada, India, Kenya, Lebanon, and Sweden).

TYPES OF ELDER ABUSE

Elder abuse encompasses several forms of maltreatment of an older person by someone who has a special relationship with the elder. The stories of abuse are sad, complicated, sometimes mean-spirited, and other times pitiful. There are total five different types of Elder Abuse and they are the following: -

1. Physical abuse –
2. Psychological or emotional abuse –
3. Financial or material abuse –
4. Sexual abuse –
5. Neglect –

DEPRESSION: A RESULT OF ABUSE

Depression is a state of mind where the mood swings of a person affect his thoughts, behaviour and his outlook towards life. It is a psychological disorder that affects the emotions of a person it ranges from feeling sad, low, miserable, unhappy to self loathing and suicidal thoughts. This study is done with an effort to try to integrate people with this psychological disorder into social processes so that they are not finally outcast or ostracised from the society.

Depression was not commonly heard in the Indian society where generations live together. Suddenly there were many reported cases in the print media about people suffering from psychological disorders that affected a person in particular and society at large. The changing life styles to meet the demands of globalization did not fit into the Indian culture. Individuals tried to juggle and make efforts to meet the demands of complex social institutions. In the process of these efforts, anxiety and stress affected them in body and spirit and even a little mismatch pushed them into disorder.

CONCLUDING OBSERVATIONS

Older people need to be able to live in the community in order to maintain a variety of communication partners and to be fully included as valuable members of the community. Access, including access to transport, should be on the agenda of many community groups. Older people with a developmental disability also increasingly live in the community. Many

of them remain in the family home until their families are no longer able to care for them and then they must move to other options.

The civil society must take part in the debates on ageing and contribute to the broadening of the discussion about respect and dignity for the aged. Needs for food, shelter, education, and employment are social rights that have strong acceptance in this society. For these are our needs for respect, dignity and honor—they refer to our sense of acceptance and belonging –and in this sense these refer to our solidarity as well as our individualism. It is important that making the rights of the aged be as much part of the ordinary as possible. One of the challenges in the implementation of the Plan on Action on Ageing is the lack of funding and expertise of government staff. Particularly, the economic situation in developing countries is the cause of difficulty in addressing the issues on housing, income security and social welfare of the older people. Nevertheless, there are funding agencies all over the world that the countries can approach to facilitate the needs for the implementation of the Action Plans.

¹ Senior Citizens have no doubt given a lot to the Society in their prime time but have taken also a lot from Society. It is now time to give back as much as possible.

1. ***Civic Facilities for all:*** They can keep an open eye on various civic facilities like maintenance & cleanliness of roads, supply of water & electricity, transport services, and wherever required, take up suitably with Civic Authorities by correspondence & personal visits. They should get nominated on various committees like Railway Users Committees, Human Rights Commission, Panchayats, Municipal Committees and various such committees dealing with common cause and welfare of all citizens.
2. ***Community Projects:*** They should take part in all projects like teaching adults & street children, Family Planning, Polio Drops, HIV Awareness, Non-smoking, Drinking, Respect for women, Special Drives like Census, Elections etc.
3. ***Law & Order Situation:*** Volunteering for such jobs at the time of festivals & other special occasions. They can form or be members of Peace Committees of their areas, Social Clubs etc and be helpful in neighborhood areas during situations like floods, earthquakes etc.

4. **Maintenance of Facilities:** They should help or takeover maintenance of gardens, gymkhanas, sports clubs, help in getting removed encroachments on footpaths, roads, garages & welding works from residential areas.
5. **Help to needy Senior Citizens:** They should collect full data of all Senior Citizens residing in their area and coordinate with other agencies for help of different kinds to needy, with Police for safety, maid servants etc.
6. **Free Counseling:** In the field of their expertise, they should give free counseling to Senior Citizens as well as others.
7. **Visit to Hospitals, Old men's Houses:** They should regularly visit Hospitals, Old men' Houses etc and look after requirements of Senior Citizens like giving company, reading for them, giving fruits etc, as possible by self or through others.
8. **Social Service:** They should join Senior Citizens Associations of their area and do good to Senior Citizens as well as others collectively. Take part in Services of Dignity Foundation & other Social Organizations.
9. **Writing their Experiences:** All should write their experiences & opinions on various social situations & problems for benefit of the Society in the field of their expertise without pride or prejudice & without fear or favour.

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Social Security of Older Persons with Special References to Welfare of Parents

DR . CHINTAMANI ROUT

INTRODUCTION

Ageing is a universal biological fact and a natural process, which inventively occurs in human life cycle. In India it has been part of our culture that society and family take care of older persons and held them in high esteem and are given respects in all aspects. However in recent times technological advancement accompanied with rapid urbanization, migration of population, compulsion in working conditions and unemployment etc have led to the disintegration of traditional joint family system as a result of which a section of the emotional neglect and a lack of physical support family, primarily the elder are exposed to somewhat emotional neglect and a lack of physical support. According to 2001 census Statistical Dimension of Elderly Citizen in India ; 77 Million Elderly population (projected to 177 million by 2025) 90% with no special security, 30% of older persons live below the poverty line, 33% of older persons live just marginally over the poverty on line, 80% of older persons live in rural areas, 73% are illiterate and can only be engaged in physical labour, 55% of elderly women are widows.

Now for the good news, we are not just living longer; we're staying healthy longer. From 1982 to 1999, the percentage of senior citizens who had chronic disabilities dropped from 26 percent to less than 20. Active-life expectancy at age 65-the average number of additional years a person could expect to live free of chronic functional impairment-rose from fewer than 12 years to nearly 14. That is a five year gain from 8.8 years of active life. According to Dr. Kenneth Manton, a leading scholar of old-age disability, men now get arthritis, heart disease, or respiratory disease less in life than their forebears did. Their experience of being 65 to 74 has changed so radically that the Census Bureau now calls this group the "*young old*."

So, all these young old folks are working longer. In 1950, more than 45 percent of men 65 or older were still in the labour force. By 2003, that percentage had plunged below 20. Five years ago, a study showed that men and women were retiring five and six years earlier, respectively, than their predecessors did 45 years before, because they could get pension which helped them a lot for their social security. By 2001, the programme was supporting 91 percent of people aged 65 or older. It provided nearly 40 percent of their income- equal to what they got from earnings and assets, and more than twice what they got from pensions. A study quoted in the census report documents the effect on work. When social security payments went up, men 65 and older quit the labour force at an accelerating pace. When payments were reined in, the trend reversed. It is wonderful that social security brought so many old people out of poverty.

The study of the trend of population ageing in India shows that the older persons face a number of problems ranging from, economic problems, health problems, lack of social security, loss of productive social role and recognition, non-availability of opportunities etc. Thus there is an emerging need to pay greater attention to ageing issues and to promote holistic policies and programs dealing with an ageing society. Thus social security of the elderly is one of the prime responsibilities of the state.

INTERNATIONAL INSTRUMENTS

The elderly people at the old age without any means of finance are often considered as an economic burden to the family. Their role in the family remains restricted to the household's non-economic matters and their opinions are not taken in economic decisions. This has compelled the conscientious souls all over world to think in terms of providing social security to the elderly people in the society.

In 1948, the question of ageing was first debated inside the General Assemble at the United Nations Organization in New York. The issue was again raised in 1969 and in 1971 the General Assembly asked the Secretary General to prepare a comprehensive report on the elderly and suggest guidelines for national and International Action. In 1977 the UN Convention on Ageing provides, older people have the right to live in dignity and security and to be free of exploitation and physical or mental abuse. In 1982, from 26th July to August 6th the General Assembly held at Vienna, adopted an international plan of action on ageing, recognized that the majority of older persons are women and recommended that particular attention be paid to their situation. In 1990, the General Assembly declared the 1st October to be observed as the international day for older persons.

On 16th December, 1991 the General Assembly, by a resolution adopted a set of 18 principles for older persons like their independence, participation, care, self fulfillment and dignity of life. The Assembly on October, 1992 convened a special international conference and later adopted a proclamation on ageing and decided to observe the year 1999 as the year of older persons. The Second world assembly on Ageing, was held in Madrid in April 2002 and adopted the international plan of Action and Political declaration which gives the importance of incorporating ageing issues into all kinds of development plans. It called for changes in attitudes, policies and practices at all levels in all sectors so that enormous potential of ageing in the twenty-first century may be fulfilled. The aim of the Action is to ensure that persons everywhere are able to age with security and dignity and to continue to participate in their societies as citizens with full rights.

EXISTING FRAMEWORK OF SOCIAL SECURITY MEASURES
IN INDIA: CONSTITUTIONAL PROVISIONS

Preamble- To secure all its citizens justice, social, economic and political, liberty of thought, expression, belief, faith and worship; equality of status and of opportunity and to promote among them all, fraternity assuring the dignity of the individual and the unity and integrity of the nation.

The various articles in part III and IV of the Indian Constitution also have direct and indirect bearing on social security measures that protects the older people and caste duty on state to provide adequate security to them.

FUNDAMENTAL RIGHTS

- 1 Article 14, the state shall not deny to any person equality before law or the equal protection of the laws within the territory of India.
- 1 Article 15(3), allows state to make special provisions for women and children.
- 1 Article 16(2), discrimination against any citizen on grounds of sex in general matters or in respect of employment or office under the state is prohibited.
- 1 Article 21, no person shall be deprived of his life or personal liberty except according to procedure established by law.
- 1 Article 23 and 24, which contains right against exploitation of workers and prohibition of employment of children in factories

Directive Principles of State Policy:

- 1 Article 38(1), the state shall strive to promote the 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.
- 1 Article 39, the state shall, in particular, direct its policy towards securing; (a) that the citizens, men and women equally, have the right to an adequate means of livelihood (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.
- 1 Article 41, 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.
- 1 Article 47, the state shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as its primary duties.

Concurrent List III in the Seventh Schedule:

- 1 Item No. 23, social security and social insurance; employment and unemployment.
- 1 Item No. 24, welfare of labour including conditions of work, provident funds employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits.

The ultimate object of social security is to ensure that every one has the means of livelihood, food, shelter, health and care. Therefore it follows that, the right to social security is also inherent in the right to life and liberty under article 21 of our constitution. India is a socialist state and the main object of socialism is to eliminate inequality of income and status to provide a decent standard of living to the people.

OTHER LAWS RELATING TO SOCIAL SECURITY IN INDIA

Hindu Adoption and Maintenance Act 1956, section 20 (3), provides for the maintenance of aged parents; the Act deals with the obligation of a Hindu to maintain his or her aged or infirm parent in so far as the parent is unable to maintain himself out of his or her own earnings or other property. Maintenance includes: in all cases, provision for food, clothing, residence and medical attendance and treatment.

The Code of Criminal Procedure 1973, section 125 of Cr. P.C. order for maintenance of wives, children and parents, if any person having sufficient means neglects or refuses to maintain his father or mother, unable to maintain himself or herself, a magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance, for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct.

The Hindu Succession Act, 1956 provides that the parents are entitled to inherit the property of sons and daughters and every parent is entitled to the benefit of their deceased child. The various personal laws such as the Hindu Marriage Act, 1955, The Indian Divorce Act, 1859, The Parsi Marriage Act, 1954, etc., for maintenance of their parents providing alimony or allowance.

NATIONAL POLICY ON OLDER PERSONS, 1999

The Government of India announced the national policy on older person in 1999 to reaffirm its commitment to ensure the wellbeing of older persons. This policy has brought the concern for older persons on the top of the National agenda safeguarding the interest in terms of financial security, health, legal, social and psychological security etc., envisages a productive partnership with the older people in the process of development by creating opportunities for their gainful engagement and employment. The policy also appreciates special needs of older persons and therefore lays emphasis on empowerment of community as well as individuals to adequately meet the challenges of the process of ageing.

Government of India has also come up with National Social Assistance Programme for poor households and the national old age pension scheme covering older persons of 65 years or above and destitute having little or no regular means of subsistence. Annapurna scheme has also been introduced, covering all elderly people of below poverty line who are not covered by National Old Age Pension Scheme. Concession, tax rebate and other incentive are also provided for the benefit of older persons.

Apart from this, ministry of social justice and empowerment is maintaining an integrated programme for older persons. Under this scheme, the financial assistance is provided to Non-governmental Organizations, autonomous bodies, educational institutions, co-operative societies etc. up to 90% of the project cost for setting up and maintenance of day care centres, old age homes and non institutional service centres.

THE MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS ACT, 2007

Parents and Senior Citizens form a physically and mentally active segment of society with twin strengths as consumer and voters. Hence strong measures were needed to alleviate the pains of this vulnerable section, which comprises a sizeable chunk of the population. The number of senior citizens in the country has been steadily growing in percentage terms; their population is projected to rise to about 12.4 percent in 2026, doubling from 76.6 million in 2006 to 173.1 million in 2026.

With this in mind, the Government enacted the Senior Citizen Act, 2007 as an answer to the insecurities faced by older persons of the country. This Act accords prime responsibility for the maintenance of parents on their children, grand children or even relatives who may possibly inherit the property of a senior citizen. It also calls upon the state to provide facilities for poor and destitute older persons. Provisions of this Act:

- 1 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. This maintenance includes the provision of proper food, shelter, clothing and medical treatment.
- 1 Parents include biological, adoptive and step mothers and fathers, whether senior citizens or not.
- 1 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.
- 1 This 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.
- 1 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.
- 1 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.
- 1 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.

- 1 No legal practitioner is required or permitted for this process.
- 1 Erring persons are punishable with imprisonment up to three months or a fine of up to rupees five thousand or with both.
- 1 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.
- 1 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.

CONCLUDING OBSERVATIONS

The provision for maintenance of parents by children, wives by husbands, etc. under various statutes, however, is not to provide minimum income or old age security but to prevent destitution and vagrancy. It cannot, therefore, substitute for state action in providing risk cover to older persons. A critical analysis of these statutory provisions shows that they have been merely a drop in the ocean in view of the vast aged population of India. However, the legislative measures taken by the state in this regard could be appreciated. Amendments have to be made in the enactment as well as in the rules to rectify the defects. In a welfare state it is expected that instead of avoiding its responsibility and shifting the burden to its citizens, the state shall design a social security scheme including financial products like pension schemes, reverse mortgage scheme, health care including proper facilities and other forms of support for the elderly so that they may lead a happy and dignified life. An atmosphere of positivity, hope, encouragement and enthusiasm has to be created which would lead increasing access of older people to all the benefits created by developmental efforts. There is a need of sensitizations for love, care and obligation for parents by their young children. Let us hope that our socialist democratic constitution and the rights given to every citizen will allow us to move in the right direction to ensure this.

Elder Victimization: An Analysis from Human Rights Perspective

RADHIKA DEV VARMA*

INTRODUCTION

Old Age has never been a problem in India where a value and ethos based, joint family system has existed. Indian culture demands its youth to be respectful and supportive of elders. With such culture prevailing, elder abuse has never been considered as a problem in India. However, with the changes taking place in life style, the coping capacities of the younger and older family members are now being challenged. More often than not this change in behaviour of the younger family members is considered as abnormal by the older family members. Thus, the growing security concern of older persons is clearly visible.

With an increase in age expectancy and older people living longer, the households are getting smaller and congested, causing stress in joint families. Further, older persons feel insecure and isolated due to the generation gap and change in lifestyles of their children and grandchildren. Increase in lifespan also results in chronic functional disabilities creating a need for assistance required by the older person to manage chores as simple as the activities of daily living. With the traditional system of the lady of the house looking after the older family members at home is slowly getting changed as the women at home are also participating in outdoor activities and have their own career ambitions. There is growing realization among older persons that they are by and large being perceived by their children as a burden.

On the contrary, old age is said to be a period of gold and glory, provided the elderly are helped and not left alone to perish. The senior citizens constitute a precious reservoir of such human force which is gifted with knowledge of varied sorts, plethora of experiences and a wondrous foresight. The population of elderly persons has been increasing over the years. As per the UNESCO estimates, the number of aged (over

60) was about 600 million in 2000. In 2009, it had increased to 700 million. The figure is projected to cross two billion marks by 2050.¹ In India; the population of elder persons has increased from nearly 2 crores in 1951 to 7.2 crores in 2001. In other words about 7.4% of the total population is above 60 years.²

Increasing population of elders has been facing the increasing number of problems like economic problems such as loss of employment, income deficiency and economic insecurity. Physical and physiological problems include health and medical problems, nutritional deficiency, and the problem of adequate housing. Psycho-social problem which cover problems related with their psychological and social maladjustment as well as the problem of elder abuse / victimization. Although, older persons are generally at a lower risk than young people of being victimized, because they avoid situations in which they may easily become crime victims. They represent a particularly threatened group of victims, as they are easily injured on account of their aging process and their victimization tends to stay concealed. Older persons are often abused or intentionally neglected in their families or in nursing homes. They are beaten, chastised and threatened by their children/grand children, relatives, neighbours or nursing staff etc. Their money is taken away from them if they are not able to manage their own financial affairs or are mentally incapacitated.

Many pan-India surveys reveal that almost 30% of India's elderly are subject to some form of abuse or neglect by their families. Ironically, in spite of this, only one in six of the abused elderly reports the injustice. 47.3% of abuse against elders is committed by adult caregivers, partners or family members, while 48.7% of all abuse cases imply neglect of an elderly person, abandonment, physical, financial or emotional abuse. Nine out of 10 calls received by Mumbai's Dignity Foundation pertain to property-related abuse. HelpAge's Delhi, Bangalore and Chennai help lines report a similar trend.³ Abuse of older persons, which has increased over the past decades, occurs most frequently in the family, because it is in the family that they are still cared for the most. Violence in the social environment has a particularly hard impact on older persons. Further, social isolation increases with the process of aging. Their contacts with family members, friends or old age home staff thus gains importance. They also hesitate to report and do not divulge their abuse or victimization to others. This is mainly because they are often dependent on relatives who are abusing them and are afraid of being further victimized. They often feel ashamed for the conduct of the offenders and the consequential disrepute

associated with it, usually involving their partners, children / grand children, with whom they live in close personal relationships.

ELDER ABUSE/VICTIMIZATION: MEANING

The definition developed in the United Kingdom and adopted by World Health Organization for the Prevention of Elder Abuse states that: a single, or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust, which causes harm or distress to an older person. Abuse comes in various forms: *physical abuse, psychological or emotional abuse, financial abuse, sexual abuse and even neglect*.⁴ However, definitions of elder abuse differ depending on the field in which it is being referenced. Law enforcement agencies differ in their definitions and response. Social workers, psychologists and other medical practitioners all have their own definitions on which their response protocols are based.⁵

TYPES OF ABUSES/VICTIMIZATION

Elder abuse/victimization can be seen as including the infliction of physical pain or injury, physical coercion, infliction of mental anguish, illegal or improper exploitation of finances or other resources of the elderly and deprivation of services, which are necessary to maintain mental and physical health of the elderly. Thus the term '*abuse*' comprises various dimensions such as, physical abuse, physical neglect, sexual abuse, verbal assault, material abuse and neglect of the environment and violation of rights. When these dimensions are applied unfairly for some time, it amounts to victimization.

VULNERABILITIES

A review of the few studies focused on elder abuse indicates that the most likely victim of elder abuse is a woman of very advanced age, role less, functionally impaired, lonely and living at home with someone, primarily their adult child, spouse or other relatives. Studies in India have indicated that more women than men complain of maltreatment in terms of both physical and verbal abuse. The prevalent patterns of elder abuse mainly include psychological abuse in terms of verbal assaults, threats and fear of isolation, physical violence and financial exploitation. The health profile of the elderly victims indicates that a person suffering from physical or mental impairment and dependent on the caretakers for most of his or her daily needs is more likely to be the victim of elder abuse. Older individuals suffering from depression, poor health or physical impairments are more at risk of being abused than those of similar age and normal

health status. This indicates that a dependent elderly with physical or mental impairments may be perceived as a burden by the care-givers and resulting stressful situation may most likely lead to the abuse and neglect of the elderly person. Though a large section of victims of elder abuse are less educated and with no income of their own, old people with high educational background and sufficient income are also found to be subject to abuse.

CAUSES OF ABUSE

Common causes for abuse/victimisation are: (a) decrease in earning capacity of elderly, (b) generation gap and (c) bad children. It is feared that as society progresses; these issues may become common since older persons become vulnerable being unable to take care of themselves. Apart from these, health problems and economic dependence add to their woes. Situations of abuse/victimisation gets further aggravated because the younger generation tends to be impatient, self centered and disrespectful. Elder uneducated ladies are more vulnerable as they remain totally depended on family being financially unsound and old men for not maintaining communication with the young generation and for being rigid and opinionated. A host of psychological problems such as, maladjustment, nervousness, isolation and the inability to adjust to new arrangements in the family are other causes for victimization.

CONCERN FOR SENIOR CITIZEN

During a seminar held on 22 February 2009 at New Delhi, The Minister for Social Justice and Empowerment Meira Kumar expressed concern that senior citizens were not getting the traditional respect and care from their children and called for effective implementation of the law. She said there was a gradual increase in the women population among the elderly and they were set to outnumber the males in the old-age group by 2016. Supreme Court Judge and NALSA Executive Chairman Justice Arijit Pasayat said senior citizens unable to maintain themselves would have the right to apply to a maintenance tribunal seeking a monthly allowance from their children or heirs.⁶

UN CONVENTION ON OLDER PEOPLE'S RIGHTS

The U.N. General Assembly has declared "*1st October*" as the International Day for the Elderly. 15 June 2012 was the first officially recognized, "*United Nations World Elder Abuse Awareness Day*" (WEAAD). Millions of people around the world held events to raise awareness of a growing and global injustice on that day. Elder abuse/

victimization whether physical, psychological, financial, sexual or a form of neglect, is a violation of older people's human rights. Older men and women have the same rights as everyone else: everyone is born equal and this does not change as people grow older. Even so, older people's rights are mostly invisible under international law. Despite the existence of the Universal Declaration of Human Rights (UDHR), 1948, older people are not recognized explicitly under the international human rights laws that legally oblige governments to realize the rights of all people.⁷ It is a considered view that a UN Convention on the rights of older people is necessary to ensure that older men and women can realize their rights. By bringing about this change, it would empower governments the world over with a legal framework, guidance and support to help them protect older people's rights. Such a convention would: (a) help governments to adopt non-discriminatory laws and allocate their budget judiciously across age groups; (b) necessitate governments to collect data by age group wise to form policy decisions; (c) encourage governments to design age-sensitive programmes, and impart training to service providers, viz. health workers etc. on ageing issues; (d) assist governments to take a stand against discrimination; and (e) institutionalize a system to monitor government action and hold them accountable.⁸

However, the proposal to draft a new Convention was opposed by the European Union (EU) on behalf of its 27 Member States. The EU, and other States which were opposed to the drafting of a Convention, argued that no 'normative gap'⁹ exists in the current international human rights framework regarding older people, and that any lack of protection is due to the failure to implement existing human rights standards. Other States which took a similar position to the EU include the US, Canada, Norway, Switzerland, China, and New Zealand.

HUMAN RIGHTS: BASIC CONCEPT

Human rights are rights inherent to all human beings, irrespective of age, citizenship, nationality, race, ethnicity, language, gender, sexuality or abilities. We are all equally entitled to our human rights without paying any heed to cast, colour or creed. These rights are interrelated, interdependent and indivisible. When these rights are respected, people are able to live with dignity and equality, free from discrimination. Human rights are universal, widely accepted and central to our understanding of humanity. The concept of human rights has developed over time and has its origins in a wide range of philosophical, moral, religious and political traditions. There is no single historical narrative charting the evolution of

rights to the understanding we have of them today. This is what gives them their universal relevance. The term “*human rights*” refers to those rights that are considered universal to humanity, regardless of citizenship, residency status, ethnicity, gender, or other considerations. The best-known expression of human rights is in the Virginia Declaration of Rights in 1776 which proclaims that “*All men are by nature equally free and independent and have certain inherent rights, of which, when they enter a state of society, they cannot, by any compact, deprive or divest their posterity.*”

OLDER PEOPLE’S RIGHTS

The UDHR states in Article 1 that ‘*all human beings are born free and equal in dignity and rights*’.¹⁰ This equality does not change with age: older men and women have the same rights as people younger than themselves. The rights of older people are embedded yet not specific in international human rights conventions on economic, social, civil, cultural and political rights. Examples include the right to equal protection before the law, the right to own property, the right to education, the right to work and the right to participate in government. Some rights may have more relevance in older age than at other times in life, *e.g.* the right to social security in the form of a pension. Sometimes a right that may have been respected when someone is young may not be well protected in older age, *e.g.* the right to access appropriate health and social care services.

PROTECTION OF THE RIGHTS OF OLDER PEOPLE

The UDHR states that “*all human beings are born free and equal in dignity and rights*”. Protecting older people’s rights will help to enable them to lead dignified, secure lives, as equal members of society. Discrimination against any group in society is unacceptable. With ageing population, the prevalence of age discrimination escalates and so does the imperative to address the fundamental causes of discrimination. Treating older people with respect and on an equal basis with younger people creates the conditions that enable all people in society to participate in and contribute to their own development. It is important to remember that with the passage of time everyone will be old and the rights do not change as people grow older. What changes is the attitude of the younger lot who consider that older men and women are less valuable to society. At the same time, as people get older, they face increasing barriers to their participation, become more dependent on others and lose some or all of their personal autonomy. These threats to their dignity can make them more susceptible to neglect, abuse and violation of their rights.¹¹

IMPLEMENTATION OF HUMAN RIGHT LAWS

Universal human rights are often expressed and guaranteed by law, in the forms of treaties, customary international law, general principles and other sources of international law. International human rights law lays down obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups. The UN General Assembly adopted the UDHR on 10 December 1948. With its adoption the international human rights movement got strengthened. It was drafted as a common standard of achievement for all peoples and nations of the world to follow. This declaration for the first time in human history spelt out basic civil, political, economic, social and cultural rights that all human beings should enjoy. With the passage of time it has been widely accepted as the fundamental norms of human rights that everyone should respect and protect. The UDHR, together with the International Covenant on Civil and Political Rights (ICCPR), 1966 and its two Optional Protocols, and the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, form the International Bill of Human Rights.

Further, a series of international human rights treaties and other instruments adopted since 1945 have conferred legal form on inherent human rights and developed the body of international human rights. Other instruments have been adopted at the regional level reflecting the particular human rights concerns of the region and providing for specific mechanisms of protection. Most States have also adopted constitutions and other laws which formally protect basic human rights. While international treaties and customary law form the backbone of international human rights law, other instruments such as declarations, guidelines and principles adopted at the international level contribute to its understanding, implementation and development. Respect for human rights requires the establishment of the rule of law at the both international and national levels.¹²

International human rights law lays down obligations which States are bound to respect. By becoming parties to international treaties, States assume obligations and duties under international law to respect, to protect and to fulfill human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfil means that States must take positive action to facilitate the enjoyment

of basic human rights. Through ratification of international human rights treaties, Governments undertake to put into place domestic measures and legislation compatible with their treaty obligations and duties. Where domestic legal proceedings fail to address human rights abuses, mechanisms and procedures for individual complaints or communications are available at the regional and international levels to help ensure that international human rights standards are indeed respected, implemented, and enforced at the local level.

International human rights law provides a system that codifies human rights and makes them enforceable. It is primarily concerned with the relationship between the State and the individual. International human rights law is made up of a number of treaties, usually called conventions or covenants. When a UN Member State ratifies a treaty, the treaty becomes legally binding on that member state. This implies that the Member State has to revise and amend its own laws in line with the treaty, failing which it would amount to have violated the treaty.

Each treaty has a monitoring system, comprising of independent experts. Member States that have ratified a treaty report regularly to this committee on its progress in implementing the said provisions. The committee examines these reports and makes suggestions on how to further improve the implementation procedures. Most of the committees can also examine and investigate individual complaints of rights violations. There is also a body of 'soft' law guiding the treatment of older women and men, including the UN Principles for Older Persons (1991) and the Madrid International Plan of Action on Ageing (MIPAA 2002). Although human rights underpin the recommendations in these soft laws, they are not legally binding. States are under a moral rather than a legal obligation to follow their recommendations. UN Member States reporting on MIPAA in 2007 showed inconsistent government commitment to the implementation and review, and inconsistent inclusion of older women and men in this process.¹³

ADEQUACY TO EXISTING INTERNATIONAL AND REGIONAL LAWS

Older people's rights are protected in a general sense under existing international human rights law. The UDHR applies to people of all ages. Both the ICCPR, 1966 and the ICESCR, 1966 apply to every person regardless of their age. However, this general protection is not enough. Apart from one exception (on migrant workers and their families), international human rights conventions do not recognize specifically that

age discrimination should not be allowed. Regional human rights laws also do not protect older people's rights systematically or comprehensively.

There are a number of normative gaps where aspects of the lives of older people are not addressed adequately by existing human rights law, for example: international standards on rights within community-based and long-term care settings for both the caregiver and the person receiving care; legal planning for older age; and the abolition of mandatory retirement ages. Legal capacity and equality before the law for older men and women under guardianship also require urgent attention.

In addition, standards that protect older people's rights are scattered throughout various international and regional conventions. Bringing the relevant provisions together in one text, as was successfully done for the rights of women, children and disabled people would bring clarity to both the nature of older people's rights and the responsibilities necessary to protect them.

In practice, the rights of older men and women are not being adequately addressed or protected through the existing human rights system. The committees monitoring human rights commitments rarely ask questions about the rights of older people and UN Member States rarely include older people in their reports. Older people also remain invisible in the new Universal Periodic Review system.¹⁴ The continued existence of age discrimination and ageism in national laws, policies and practice is a sign that governments have failed to adequately incorporate older people's rights into their laws, budgets, programmes and training for service delivery staff.

CARE FOR ELDER'S POSITION IN INDIA

Help Age India undertook a national survey to determine prevalence of elder abuse / victimization in the country. The executive summary of the findings revealed the following:-

- (a) Primary abuser is son (56%) and next is Daughter-in-Law (DIL) (23%)
- (b) More than 50% victims experienced abuse for more than four years
- (c) Among solutions, more than 62% feel sensitization of children will help; only 33% felt economic independence will help.
- (d) Delhi NCR witnessed increased incidence of Elder abuse - 12% victims increased to 30% victims
- (e) Bhopal is the worst: 77.12% elders face abuse¹⁵

This nationwide survey reveals that about 38 per cent of the elderly don't receive proper care from their children. Some of them are thrown out of their houses and forced to live in old age homes run by charitable organizations. On the occasion of the first UN International Day to Prevent Elder Abuse and the seventh World Elder Abuse Awareness Day, statistics show that one in every three senior citizens in Hyderabad is subjected to abuse and humiliation, shockingly by none other than their own children. Situation is no different in other States/ Cities.

According to the survey, a higher number of elderly women than men are subjected to abuse. In most cases, the sons are the culprits, followed by the daughters-in-law. The survey also reveals that while all the elders were verbally abused, substantial percentages reported being disrespected and neglected. *“Psychological abuse has multiple impacts, which is more than physical and financial abuse.”* With the changing times, the problem of elder abuse is increasing due to *“the loss of cohesiveness in families probably due to children migrating for employment; and increasing appetite & greed for materialism in society.”*

Considering the plight of senior citizens and aged parents neglected by their sons and daughters, the Government of India has enacted the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The law seeks to make it a legal obligation for children and heirs to provide maintenance to senior citizens. It also permits State governments to establish old age homes in every district. Senior citizens unable to maintain themselves shall have the right to apply to a maintenance tribunal seeking a monthly allowance of Rs. 10,000 from their children or heirs. State governments are required to set up tribunals in every sub-division to decide the level of maintenance. The punishment for not paying the monthly allowance shall be Rs. 5,000 or up to three months imprisonment or both.

CONSTITUTIONAL PROVISIONS

In the Constitution of India, list III of schedule VII entry 24 deals with the Welfare of Labour, including conditions of work, provident funds, liability for workmen's compensation, invalidity and old age pension and maternity benefits. Further, Article 41 of Directive Principles of State Policy has particular relevance to Old Age Social Security. Item No. 9 of the State List and item 20, 23 and 24 of Concurrent List relates to old age pension, social security and social insurance, and economic and social planning. Article 41 of Indian Constitution that deals with the State's role in providing social security to the aged states that 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.

Under Personal Laws the moral duty to maintain parents is recognised by all people. 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 recognised even in earlier texts. The statutory provision for maintenance of parents under Hindu personal law is contained in Sec 20 of the Hindu Adoption and Maintenance Act, 1956. Under Muslim personal law even according to Mulla, children in easy circumstances are bound to maintain their poor parents, although the latter may be able to earn something for themselves. The provision, however, was introduced for the first time in Sec. 125 of the Code of Criminal Procedure (CrPC) in 1973. It is important to note that CrPC, 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.

The Government of India approved the National Policy for Older Persons¹⁶ on 13 January, 1999 in order to accelerate welfare measures and empowering the elderly in ways beneficial for them. These schemes and policies are meant to promote the health, well-being and independence of senior citizens around the country. The main objective of this policy is to make older people fully independent citizens. The Integrated Programme for Older Persons is a scheme that provides financial assistance up to 90 per cent of the project cost to Non-Governmental Organisations or NGOs as on 1 April, 2008. In the case of schools, colleges, educational institutions and recognized youth organisations such as Nehru Yuvak Kendra Sanghathan (NYKS) and the National Service Scheme (NSS) undertaking programmes and services for Older Persons, up to 100% cost of the project indicated in the scheme shall be provided by the Government.¹⁷ Another programme of the government is the Scheme of Assistance to Panchayati Raj Institutions voluntary organisations and self help groups for the construction of old age homes and multi service centres for older persons. This scheme provides a onetime construction grant.

Central Government Health Scheme provides pensioners of central government offices the facility to obtain medicines for chronic ailments up to three months at a stretch. The National Mental Health Programme focuses on the needs of senior citizens who are affected with Alzheimer's

and other dementias, Parkinson's disease, depression and psycho geriatric disorders. The Ministry of Justice and Empowerment has announced regarding the setting up of a National Council for Older Person, called age well Foundation. There are sensitisation school children to live and work with the elderly. Jeevan Dhara Yojana, Jeevan Akshay Yojana, Senior Citizen Unit Yojana, Medical Insurance Yojana are the schemes started by LIC for the senior citizens. The former Prime Minister, Shri A.B.Bajpai also launched 'Annapurana Yojana' for the benefit of aged persons. Under this Yojana unattended aged persons are being given 10 kg foods for every month.

Article 46- Promotion of educational and economic interest of..... and other weaker sections: The State shall promote with special care the educational and economic interests of weaker sections of the people..... and shall protect them from social injustice and all forms of exploitation. However, these provisions 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 justifiable right in favour of any individual. It is most unfortunate that State has not made even a single Act which is directly related to the elderly person.

Maintenance And Welfare of Parents and Senior Citizens Act, 2007 also exists to provide legal assistance and help to senior citizens of our Country. This is also an innovative law aiming to protect elders and prevent elder abuse and victimisation. Under this law, an obligation is created of the children or adult legal heirs to maintain their parents, or senior citizens above the age of 60 years who are unable to maintain themselves out of their own earnings, to enable them to lead a normal life. The law states: A senior citizen including parent who is unable to maintain himself from his own earning or property owned by him, shall be entitled to make an application under section 5 in case of – (a) parent or grandparent, against one or more of his children not being a minor; (b) a childless senior citizen, against such of his relative referred to in clause (g) of section 2¹⁸.

1. The obligation of the children or relative, as the case may be, to maintain a senior citizen extends to the needs of such citizen so that senior citizen may lead a normal life.

2. 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.
3. Any person being a relative of a senior citizen and having sufficient means shall maintain such senior citizen provided he is in possession of the property of such senior citizen or he would inherit the property of such senior citizen:

Provided that where more than one relatives are entitled to inherit the property of a senior citizen, the maintenance shall be payable by such relative in the proportion in which they would inherit his property. If children or legal heirs neglect or refuse to maintain the senior citizen, the Tribunal can pass an order asking the children or legal heirs to make a monthly allowance for their maintenance. Although the Act reflects genuine concern for the senior citizen, but it has the following demerits which must be addressed urgently:

1. The Tribunal is not manned by a person with a judicial qualification or acumen or experience. It is not known how they will adjudicate in matters that arise in accordance with the procedure followed by a civil court.
2. Complete exclusion of the professional lawyers from the purview of the Tribunal simply defies logic and reasoning.
3. The Act entrusts the entire responsibility of establishing Tribunals, enacting rules and so on to the concerned State.
4. The presiding officer of the Tribunal has no power of discretion in awarding the maintenance amount and the power is vested with the State government.
5. Imposing liability on a person who happens to be a relative of the senior citizen on the ground that he will inherit the property of the senior citizen is illogical and unreasonable. The senior citizen may sell his property to any third party before his death and there is no guarantee that the relative will definitely inherit the property of the senior citizen.
6. The exclusion of the jurisdiction of civil courts is not justified, because Tribunals are not manned by legally qualified or experienced persons.
7. It seems that most of the State governments are not serious about implementing the provisions of the Act and only a few States like Andhra Pradesh have moved ahead to notify the Act in the gazette.

To implement the Act more effectively and render justice speedily, the Central government should come forward to remove the above mentioned drawbacks.¹⁹

INDIAN CRIMINAL JUSTICE SYSTEM AND ITS IMPLICATIONS FOR OLDERS

In Indian criminal justice system, victims have no rights but the State undertakes full responsibility to prosecute and punish the offenders by treating the victims as mere witnesses. Thus the victims suffer injustice silently. Though no separate law for victims of crime has yet been enacted, the silver lining is that victim justice has been rendered through affirmative action and orders of the Apex Court. The Court has adopted the concept of restorative justice and awarded compensation or restitution or enhanced the amount of compensation to victims, beginning from the 1980s irrespective of age²⁰. Besides, many national level Commissions and Committees have strongly advocated victims' rights and reiterated the need for a victims' law. There are also significant developments in the form of new laws to promote the cause of victims and to mitigate the sufferings of potential victims of vulnerable sections of the population such as women, children and elders. The recent enactments passed by the Parliament have a significant bearing on preventing victimization and giving relief to victims:

The Protection of Women from Domestic Violence Act, 2005- *“The Protection of Women from Domestic Violence Act, 2005”* is a major achievement of the women's movement towards protection of domestic violence victims after a struggle of 16 years. This Act aims to provide for more effective protection of the rights of women guaranteed under the Constitution. The definition of domestic violence is wide enough to include physical, sexual, verbal and emotional abuse. The unique feature of the Act is that it prohibits denying the victim “continued access to resources or facilities which the aggrieved person (victim) is entitled to use or enjoy by virtue of the domestic relationship, including access to the shared household”.

Prevention of Caste-Based Victimization and Protection for Victims: The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989- This is an Act to prevent atrocities against the members of the Scheduled Castes and Scheduled Tribes irrespective of age. Under this Act, compensation to victims is mandatory, besides several other reliefs depending on the type of atrocity. The victims are entitled to receive

monetary compensation ranging from Rs. 25,000 to 200,000 depending on the gravity of the offence.

Considering all the aforesaid provisions of laws, older persons should have full opportunity to work and determine when to leave the work force. They should remain integrated in society and participate actively in the formulation of policies which affect their well-being. They also should have access to health care to help them maintain the optimum level of physical, mental and emotional well-being. Further, they 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. Lastly, they should be able to live in dignity and security and should be free from exploitation and mental and physical abuse. Following measures are suggested to eradicate this social evil:

- (a) **Making adjustments within family-** Counseling of older people to adjust to the needs and changed circumstances of the younger generation is the need of the changing society. At the same time, the younger generation must remain respectful and obedient to their elders. Too much interference in each other's domain brings in disharmony amongst family members. Thus, the children and the elders both need to make adjustments. Also, families should interact with one another and maintain harmony and peaceful relationships to control elder abuse or victimization.
- (b) **Reduce economic dependency-** This can be achieved by having steady cash flow to the elders, or they having own property. The elderly should stay alert about the property papers and keep the valuables in banks.
- (c) **Communication or Interaction-** This includes talking about the abuse faced with other family members or within the community, contacting Senior Citizen's Association for help and guidance when faced with abuse, maintain contacts with the law enforcing agencies viz. police and lawyers, and Police registering the complaint without any delay and harassment. The elders must also stay in touch with community members and friends.
- (d) **Spreading Awareness-** The civil society needs to be made more aware of the issue of elder abuse. To facilitate this, the Corporate Sector should support the cause as they are part of the society and it is their social obligation to participate in social issues. Further, it is felt that to control elder abuse, awareness among people needs to be created through advertisements, organizing public seminars,

exhibitions on the issues of the elderly so that people are sensitized towards the elderly and their concerns.

- (e) **Instituting Detection System-** Ideally all citizen of the country specially the social activists, neighbours, friends, colleagues, nursing staff etc. should take cognizance of the elder abuse when notice and report to the law enforcing agencies. However, this is a rare phenomenon. Doctors are best placed to notice such cases owing to the trust the elderly have in them, but many doctors do not diagnose elder abuse. Neither do the healthcare professionals feel comfortable when dealing with elderly people. Most emergency departments of hospitals rarely if ever address mental health or behavioural symptoms of elderly abuse such as depression, attempted suicide or drug and alcohol abuse. Reporting of such cases must be made compulsory and included in the charter of doctor's duties.
- (f) **Making the Law Effective-** Maintenance and Welfare of Parents and Senior Citizens Act, 2007 in the present form has certain demerits, which should be removed in order to make the law more effective and result oriented.
- (g) **Legal Recourse-** Normally, discussing matters calmly can solve a lot of problems within the families. Only if all this does not work, then one should go in for any legal step to address the problem of elder abuse. In such situation, the elder should register complaint legally. However, he should continue to remain part of the welfare association.

CONCLUDING OBSERVATIONS

Physical and psychological violence impacts the health of an elderly person. Despite the impact of violence on the elderly, physical and cognitive impairments combined with extensive family ties make it difficult for an elderly person to leave an abusive relationship or to take corrective measures. There is empirical evidence to suggest that in India, incidents of abuse and neglect of older people are increasing day by day, both within families and institutions, and that it prevails across classes, castes and religions in both rural and urban areas. The most disquieting trend is the vulnerability of ageing women to oppression in various forms. Given existing structures of gender discrimination, women run a greater risk than men of becoming victims of material exploitation, financial deprivation, property grabbing, abandonment, verbal humiliation, emotional and psychological torment.

In adversity or when seriously ill, mostly, it is the elderly women in the family who are denied proper health care. Tendency to dismiss the gendered aspects of elder abuse remains questionable. This is because such attacks are made invisible by the belief that they are matters within 'family' that need to be sorted out amongst them and not publicly. There is also a widespread belief that the neglect, deprivation and marginalization of older women are the normal consequences of ageing. In these circumstances, a good legal regime would help the 'victims of abuse and neglect' amongst the elderly in prevention of victimization and the protection of victims. However, it still remains to be seen if an Act like The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 prove a deterrent to abuse/victimization? The problem here is that senior citizens, especially women, do not actively seek justice on issues like these. There is a need to raise public awareness on the issue and set up fast-track systems that will enable older persons to access justice more easily.

But, there are many challenges faced by the elders which need to be tackled through some positive measures. Some of the challenges and the countermeasures include:

- (a) **Need for a Separate Law for 'Crime Victims' and 'Speedy Justice'**- Although no such law exists as of now, continuous and sustained efforts must be made to enact a national law for victims. Victims often suffer from embarrassment and shame and need sensitivity from the agencies and personnel who provide help. For elders, justice must be fast, easy to get and inexpensive. Concept of 'Lok Adalat for Senior Citizen' as instituted in Andhra Pradesh should be adopted by all the States of the Country.
- (b) **Empowerment of Women to Prevent Victimization of Women-** Serious efforts to change the traditional submissive and victimized role of women has been taken up by NGOs and the Government. One attempt is the consistent struggle and active efforts by women's organizations to get more political power for women in the form of representation in the Parliament, state legislatures and local bodies through a 33% reservation of seats for women in these bodies. Women have already succeeded in getting representation in local self-government but the struggle continues to get reservations for women in Parliament and state legislatures. Many concessions, special privileges and tax rebates are provided for senior citizens, and to encourage senior women citizens in economic self-reliance.

- (c) **Guidelines to Govern Private Old-age Homes-** There should be proper guidelines to govern private old-age homes to ensure “right benefits” for the elderly and prevent any exploitation.
- (d) **Education and public awareness campaigns:** conducting campaigns on elderly abuse are vital for informing people. Public education, awareness building as well as training workshops, continuing educational programmes, scientific meetings and conferences can help change the attitudes and behaviour of caregivers and practitioners in various disciplines – medicine, mental health, nursing, social work, criminal justice, researchers, educators, policy-makers and decision-makers. However, no official policy or programmes have been formulated for prevention of elderly abuse in India.
- (e) **Educating the Law Enforcement Agencies-** Education is one of the most important elements in preventing future abuse. The issue is complicated by the fact that many elders choose not to pursue legal redress because of the stress of being a witness, or out of shame, or simply because of ill health. As a consequence, elder abuse is largely under-reported. One way to bridge the gap between criminal justice and elder abuse is better training of frontline police officers. A closer focus by law enforcement agencies and media on the problems of the elders is crucial, particularly with the establishment of specialized investigative units that can lead to prosecution.
- (f) **Major Challenge is Implementation-** Transparency and honesty among the politicians who make policies and the commitment of government officials who are charged with the responsibility for implementation are the big challenge. Under Article 21 of the Constitution the elderly have a right to live with dignity. “The statute has several provisions which have good intention but these need to be implemented.” Similarly, there are several statutes or “benevolent legislations” lying dormant which should be reinvigorated and implemented.
- (g) **Prevention is better than Cure-** The age old dictum must be followed in full earnest *i.e.* to start preparing for old age even when one is relatively young. It is essential that each individual must understand the legal, social and financial factors that shape his life through his entire life span, and build the necessary support network. This will help him take the necessary practical steps to secure his future and protect his rights, even as he advances in age.

To conclude it may be said that the problem of the elderly people must be addressed urgently and with utmost care. There is an urgent need to amend the Constitution for making special provisions to protect the elder persons and bring it in the close proximity of fundamental right. With the degeneration of joint family system, dislocation of family bonds and loss of respect for the aged person, the family in modern times should not be taken for granted to be a secure place for them. Thus, it should be the Constitutional duty of the State to make a suitable law for the welfare and protection of the senior citizen, so that they can live a life of self respect, equality and dignity, free from all forms of exploitation, and be able to enjoy their human rights.

END NOTES

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- 9 The lack of provision in human rights law is known as a 'normative gap' 10 United Nations Universal Declaration of Human Rights 1948, United Nations.

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- 11 Global Alliance for the Rights of Older People, Available at <http://www.rightsalliance.org/index.php/en/component/content/article/82-what-are-older-peoples-rights>
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- 14 The Universal Periodic Review (UPR) was created through the UN General Assembly on 15 March 2006 by resolution 60/251, which established the Human Rights Council itself. The UPR is a unique process which involves a review of the human rights records of all 192 UN Member States once every four years. The UPR is a State-driven process, under the auspices of the Human Rights Council, which provides the opportunity for each State to declare what actions they have taken to improve the human rights situations in their countries and to fulfil their human rights obligations. As one of the main features of the Council, the UPR is designed to ensure equal treatment for every country when their human rights situations are assessed. United Nations, Office of the High Commissioner for Human Rights. Available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>.
- 15 Report on Release of HelpAge Survey on Elder Abuse 2012. Available at <http://vyasa-kaaranam-ketkadey.blogspot.in/2012/06/report-on-release-of-helpage-survey-on.html>
- 16 The National Policy for Older Persons (NPOP), 1999 aims to strengthen their right to enjoy their legitimate place in society and live with purpose, and in dignity and peace. The Policy recognises the implications of an aging population; it describes the vulnerabilities that older persons are exposed to, due to rapid transformation in the socio-cultural fabric of the society including: industrialisation, urbanisation, education and changes in values and lifestyles. It calls for a collaborative partnership between the State, individuals, families, communities and institutions of civil society to fulfil the aspirations laid down in the Policy. The principal areas of intervention and action strategies outlined in the Policy comprise financial security, healthcare and nutrition, shelter, education, welfare and protection of life and property of older persons. Other areas of action include, among others: issue of identity cards to older persons for various benefits; fare concessions in all modes of travel; preference in reservation of seats in local public transport; modifications in designs of public transport vehicles for easy entry and exit. In order to implement NPOP, a National Council for Older Persons (NCOP) was constituted in May 1999 under the chairpersonship of the Minister for Social Justice and Empowerment. The NCOP is the highest body which plays an advisory role to the Government in the formulation and implementation of policy and programmes for the elderly. The Policy

mandates social security as the concurrent responsibility of the Central and State Governments.

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- 19 Chandan Das, “A Critical View on Indian Laws for Senior Citizens”, LIG Reporter, 2010. Available at www.lawisgreek.com/tag/senior-citizens.
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