

Efficacy of Laws for Elderly Persons with Special Reference to the Pranam Act of Assam

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Abstract

Elderly persons require special care at the catastrophe of their life cycle like a minor child. They have a huge experience in their walk of life. This category of people in the society deserves positive discrimination through special legislation for their welfare. But in reality, barring few exceptions in case of few people, a large section of elderly persons has been denied certain rights including human rights in different occasions. Though embarrassing, the situation is almost same in every country. International covenants prescribe different obligations to the member nations. Certain rights have been provided to this section of people; obligations have been assigned to the concerned party. Laws are being made, schemes are available; but very less attention have been paid in implementing those laws or schemes.

The challenges to this socio legal issue have different dimensions. Changed social order in the society and dynamic and compulsive uncertain social imperatives are some of the reasons for the pathetic flight of the elderly persons. The emotions of the elderly persons are also another reason for being deprived of their rights.

The Assam Employees' Parent Responsibility and Norms for Accountability and Monitoring (PRANAM) Act of govt. of Assam in India is an example which provides mechanism for enforcement of the right of the elderly persons.

In this research article attempt has been made to deal with the issue relating to depriving elderly persons of their rights in spite of availability of plethora of legal provisions and international covenants. Further, focus will be given on the PRANAM Act and few steps undertaken by the govt. of Assam state in India for ameliorating the difficulties of elderly persons. Attempt has also been made to suggest remedies.

Keywords: Elderly persons, international covenants, rights, duty, society, and social order and dynamic situation.

INTRODUCTION

The causal effect of changed situation has led to the increase of number of elderly persons sheltering in the old age homes. The situation is alike in almost all the countries in the world. The elderly persons are deprived of certain rights as they have not been provided the support needed at the catastrophe of their life cycle. This amounts to discrimination on ground of age as per provisions of law.

Elderly persons are those who are aged ones usually who has crossed sixty years of their age. They are the persons who have contributed a lot in their life in different ways and is at the verge of the end of their life. Antonio Guterres said that older persons are invariable sources of knowledge and experience and have much to contribute towards peace, sustainable development and protecting our earthⁱ. It is the last stage of one's life cycle as per the division of life cycle according to Hindu religious philosophyⁱⁱ. It is a stage of

life when the person needs utmost care as they may not be able to lead their life by their own. After exhausting their energy in the name of upbringing of their offsprings or by contributing a lot to the society this section of people in the society needs to be looked after. The natural course of living being is to be independent with obligation to stand by the dependent, and again he has to be dependent. Hindu philosophy observes that the descendants have religious, moral and legal obligation to look after the aged parents.

The concept of Putra is to save the parents from going to Hell. It is believed that if the post dead rituals are not performed the soul of the deceased is bound to go to Hell. Therefore, having a son was a must under old Hindu philosophy. Those who did not have son had to have Dattaka Putra to meet those necessities. Thus, the concept of adoption emerged under Hindu law. This delineate the importance of having a son and also showcases how a person is dependent on other at the verge of the end of one's life. The son had to repay the debt of the parents and is bound to perform the post dead rituals apart from taking care of the aged parents. Thus, the concept of having male child by way of adoption emerged so that the persons get help during their old age and their liabilities be discharged.

The issues pertaining to elderly persons has turned to be a major concern worldwide. People hardly spend time to those dependents. There are instances of ill treatment towards the old parents who have been subjected to cruelty, and even killed to gain ownership of property or looking upon them as burden to care themⁱⁱⁱ. The issue has been discussed in different world forums which will be discussed subsequently. In India also despite different provisions contained in different laws including personal laws the problems of elderly persons have not been resolved amicably. Therefore, the Union govt. has made a policy called national policy for older persons and National Council for Older Persons was constituted in the year 1999. Considering the gravity of the problem and its necessity to resolve the problem the Ministry of Law and Social Justice, Govt. of India has passed a legislation called The Maintenance and Welfare of Parents and Senior Citizens Act, in the 2007. In tune with the provisions of the union legislation the Govt. of Assam state also brought out a welfare legislation called The Assam Employees' Parent Responsibility and Norms for Accountability and Monitoring Act, in the year 2017 which is known as the Assam Employees' PRANAM Act.

Objective of research

There are numerous international as well as national laws which provides rights and benefits to the elderly persons. However, despite availability of different provisions of law elderly persons are being deprived of their rights, facilities and benefits. Therefore, with a view to study the loopholes (if any) either in the laws or in enforcement of laws, or in any other matters connected to the issue the research has been carried out on the topic with the following objectives:

1. To study the laws on the matter of elderly person
2. To study the efficacy of laws on the subject matter
3. To identify and study other issues connected therewith and
4. To study the provisions contained in PRANAM Act in Assam state in India.

Research Question

With a view to carry out the investigation systematically the following research question has been formulated:

“Why despite laws and schemes available in different countries, the conditions of elderly persons are not

good? What is the efficacy of PRANAM Act of Assam in respect of resolving the problems of elderly persons?”

Methodology

While carrying out the research both doctrinal as well as empirical research methodology has been followed in collecting the data connected to the issue.

International laws in respect of elderly persons

Considering the seriousness of the issue the world community in different occasions discussed the matter and United Nations Organizations Resolution No. 35/52 is one of the outcomes. It recognized the importance of having common forum to deal with the needs and challenges faced by the aged persons. Accordingly, the World Assembly on Ageing was organized in the year 1982. Consequently, the Vienna International Plan of Action was formulated which happened to be the first international covenant on ageing and considered to be the forum to deal with the issues of the aged persons prior to the renaming from World Assembly of Elderly persons to World Assembly on Ageing vide UN General Assembly Resolution No. 35/129 of the year 1980. Vienna International Plan of Action was endorsed by the UN General Assembly in the year 1982 vide resolution No. 37/51. The aim and objective of the plan of action was to increase the capacities of Govt. and civil society to deal with issues related to ageing of persons to deal with the developmental potential and dependency needs of older persons.

Highlighting the issues connected to the older persons and manifesting the dire necessity of attending the same the UN General Assembly designated October 1 as the International Day of Elderly persons vide its resolution No. 45/106 on 14.12.1990 with the objective to increase global knowledge and awareness about human rights and to call on govt. and UN entities to review their current practices with a view to better integrate a life course approach to human rights in their works. The United Nations vide its resolution no. 46/91 formulated the United Nations principles for older persons on 16.12.1991. The UN appreciating the tremendous diversity in the situation of older persons which requires a variety of policy responses encourages governments to incorporate the following principles into their national programs wherever possible.

Independence:

- Older persons should have access to adequate food, water, shelter, clothing and health care through the provision of income, family and community support and self-help.
- Older persons should be able to live in environments that are safe and adaptable to personal preference and changing capacities.
- Older persons should be able to reside at home for as long as possible.

Care:

- Older persons should benefit from family and community care and protection in accordance with each society's system of cultural values.
- They should have access to health care.
- Should have access to social and legal services regarding to their care and protection.
- Should be able to enjoy human rights and fundamental freedoms when residing in any shelter, care or treatment facility.

Dignity:

- They should be able to live in dignity and security and free physical or mental abuse.

The Second World Assembly on Ageing adopted the Madrid International Plan of Action only in the year 2002. The UN General Assembly submitted a report wherein the importance of strengthening intergenerational partnership has been recognized and recommended for increasing effort for raising awareness about the Madrid International Plan of Action on Ageing of 2002. Thus, the importance of intergenerational family interdependence, solidarity and reciprocity for social development was reiterated.

UN High Commissioner for Human Rights in Geneva said in his lecture during the celebration of International Day of Older Person on 1 October 2024, that by 2050 the number of people aged 65 years and above will likely cross 1.6 billion. 16 percent of the global population. He also highlighted the contribution of elderly persons by saying that “we celebrate the contribution that older persons make to our societies in the day of International Day of Elderly persons on October 1. Thus, it has been observed that the issues related to the elderly persons has been endeavored to be resolved through different international covenants and other policies of the international organizations. However, the problems are found to be remaining the same if the data in different aspects like their save living in their home, care and other necessities they are supposed to enjoy are analyzed.

Laws in India:

The Constitution of India provides liberty to the states to make laws for elderly persons. Article 41 of the Constitution of India provides that the state will make laws ensuring security to the elderly persons. Article 21 of the Constitutions of India also inculcate the rights of the elderly persons under the garb of right to life in as much as the term right to life includes right to life with dignity^{iv}. Again, if the question right to life with dignity comes, then it implies that every individual will have to survive with dignity. This will have to be enforced by the state authority by bringing laws to that effect. Therefore, providing food and security to the elderly person is one of the bounded duties on the part of the state. In the wide scope of this article under right to life, the constitution has given plethora of rights which has bound the son or the heirs to look after the dependents.

The preamble of Indian Constitution enshrines the philosophy of the constitution of the country. In the preamble it has been provided that the constitution has been adopted, enacted and the same has been given to the citizen to give social, economic and political justice. In that sense every citizen (including elderly) person entitles justice. Constitution embodies the guaranteed right to the elderly persons in as much as the same has inherently been provided under article 21^v as reflected in the preamble as well. However, it has been observed that the elderly persons are not getting social justice in true sense. The government has brought different schemes and laws relating to issues of elderly persons. Different state governments have numbers of old age homes. But the pertinent question whether the wishes and expectations of the elderly persons are cherished or not. In Assam’s Guwahati out of 100 respondents from old age home for answering the questions mentioned below, more than 50% respondents answered in negative.

The question put to them were:

1. Are you satisfied in staying in old age home?
2. What is your wish by staying in this home?
3. What is your opinion in respect of your experience in situation you are facing?

In response to the first question 62% respondents were of the opinion that they are there just for compulsive situation. From the opinion of the respondents, it is clear that they are staying there as they have no other option but to stay. They are either abandoned or harassed by the sons or daughter to which they are reluctant to openly divulge as the cause of his/her being there. In the opinion of 53% of the respondents, they are happy. However, their happiness or satisfaction is to the extent that they get their daily meals

regularly and they are not harassed and there is no threat to their life. Their unhappiness or dissatisfaction is that they have lost their beings (son, daughter or their relationships). They feel that they are alive without life. As they have lost the things, they loved most, they feel life worthless and accordingly feel surviving only for the sake of saving the life in as much as they cannot terminate their life according to their wish. With regard to the question no. 2, among 100 respondents, 23% even hope that their sons and daughter will come back some day and will take him/her along. They wish that their sons and daughters should come and take them along.

In respect to the question no. 3 as many as 47% of the respondents are of the opinion that their relations (son or daughter as the case may be) are behaving this way because of the order of the day. They feel that their sons or daughter are creating such situation by focusing their personal greed. Having lots of property in one's life is the common wishes of the day in the present situation. Therefore, they feel that their sons and daughters are also swayed by the essence of the day and as such in this materialistic world their sons and daughters prefer wealth than human values or relations. So, they feel that in spite of their wishes of enjoying the love and care of their sons and daughter, the situation will not let it happen. Therefore, they are determined that they have to spend the rest of their life in this home. Since they have brought up to that extent, they feel they have done their job. There is no more expectation.

From the above open-ended questions, it has been observed that the general expectation of the aged parents in the society has not been fulfilled, in other words it implies that the constitution, though provided right to life with dignity under the right to life, the same has not been materialized.

The Maintenance and Welfare of Parents and Senior Citizens Act

In pursuance to the provisions of the Constitution of India the govt. of India has brought out 'The Maintenance and Welfare of Parents and Senior Citizens Act, 2007' which prescribes legal obligations upon the sons, daughter and other heirs for providing maintenance. The Act also contains provision allowing the aged parents to apply to the Tribunal for a direction towards the sons, daughter or other legal heirs to provide maintenance. The Act also allows the state govt. to make laws for creation of Tribunal to enable the aged parents to claim maintenance. The act also contained penal provisions for not paying the maintenance after direction which includes three months jail or payment of Rs. 5000/- as fine. Further the act of abandonment of parents has been looked upon as an offence for which the offender will have to face punishment which may be a fine of Rs. 5000/- or imprisonment up to three months or both.

The above discussed Act has legally obligated the son, daughter or heirs to provide maintenance. But the emotional aspect has not been dealt with under the Act. The Act lacks provisions requiring to work out schemes which could have been dealt with the matters connected to emotion. In the verge of the end of life the person expects caring and to get rid of solitude. Therefore, certain mechanisms should have been mandated by obligating the states for achieving the objectives which is missing in the Act.

While dealing with the issues pertaining to elderly persons the aspect of emotion or sentiment requires to be taken into account. The report of above discussed survey reveals that 59 % of the respondents are not in favor of going against their kids. They are not in favor of filing case against their kids for not providing maintenance. It is also a fact that filing a case or suit whatever may be, is not an advisable remedy in every situation in as much as the same may aggravate the situation. For illustration, if the aged parents file a case and the court accordingly directs to provide maintenance to the parents but the respondent for any reason fails to provide then the person may be imprisoned for which the respondent may lose the govt. job or his or her livelihood. This may lead to worsen the relationship between the parents and the kids apart

from bringing hardship in the family.

Parents usually never expect evils upon their kids. The kids may misbehave the parents, even then the parents hardly go against the kids. So, there is least possibility of filing case by parents against their kids for obtaining maintenance. The parents may suffer a lot, or they might have been tortured, even then the parents may wish the good of their kids and for this reason only the parents may not file any case.

Another aspect to be considered is that after filing the case the relations between the kids and the parents will turn sour. In such situation even after winning the case and after having the maintenance the parents will be in a trauma with regard to their care in as much as even after getting the maintenance money the parents are supposed to be under the care of the kids. They may be refused to take care on the plea that as the maintenance allowance has been paid off the kids are not under obligation to take care, or, in other words, their care may be outsourced by paying out the maintenance money which will affect the parents a lot emotionally. Under the present Act those aspects have not been dealt with.

Under personal laws also provisions for providing maintenance are found in India. Under Muhammedan laws the sons and daughter are obligated to maintain the aged parents. In *Kasim vs. Sadiq*^{vi} the Privy Council held that the sons and daughter have to provide maintenance if the sons and daughters have means to provide maintenance. However, the laws relating to maintenance under Muhammedan laws are subject to following conditions^{vii}.

1. The maintainer should be in an easy circumstance and
2. The claimant should be poor.

The Hindu laws also prescribe obligation for maintaining the aged parents. Under the Hindu adoption and Maintenance Act, 1956, the aged parents can claim maintenance from the kids^{viii}. The law prescribes that wife, minor children and unmarried daughter, disabled persons and the aged parents can claim maintenance.

The Code of Criminal Procedure, 1973, which has been repealed also contained provision for maintenance to the aged parents along with other deserving persons^{ix}. The new law called Bharatiya Nagarik Suraksha Sanhita also contains provision for maintenance for the aged parents^x. The provision contained in section 125 of the Code of Criminal Procedure has been provided in the Bharatiya Nagarik Suraksha Sanhita under section 144.

In India, in several occasion the govt. has been taking measures through different policies and by formulating different schemes. National Policy on Elderly persons was adopted in the year 1999 to address the need of the elderly persons. It aimed to ensure financial security to the elder persons. It was also endeavored to provide healthcare and nutrition. The policy was also to provide shelter to the needy persons. Protection of life and property of the elder persons was also another issue covered under the policy as this section of people are vulnerable to criminals.

PRANAM Act of Assam

The Assam Employees' Parent Responsibility and Norms for Accountability and Monitoring (PRANAM) Act of Assam was passed in the year 2017. The preamble of the Act highlights the objectives of the Act. The objective as reflected in the preamble is to provide for accountability of the state govt. employees to take care of the aged parents and other dependents including dibyang siblings. It aims to ensure that dependent family members of the state govt. employees have support of decent living through the maintenance to be provided by the employees. Another vital objective of the Act is to bring out a norm for an enforceable morality.

It further aims to sustain the family system and promote the sense of responsibility of taking care of dependents of the family. It assigns a duty on the part of the employee towards the dependent and right to the dependent to claim maintenance and seek assistance from the concerned authority whenever needed. As per provisions of the Act the employees are responsible to take care of their dependent parents and divyang siblings^{xi}. To ensure responsibility of taking care of the dependents the Act has provided that the authority of employee will have the power to apportion the salary of the employee to compel to provide maintenance^{xii}. The employee has to abide by the decision of the authority flouting of which may lead to disciplinary action as per relevant provisions of the service rule. While drawing proceeding under the Act the employee has to cooperate with authority by appearing before the Designated Authority whenever required and will have to provide the necessary information. One more positive aspect of the Act is that the petitioner under this Act can file application before the Drawing and Disbursing Authority which is apparently less cumbersome than the court proceedings. If the applicant dependent can prima facie establish that the applicant does not have adequate source of income to maintain their livelihood in a dignified manner and they are in need of financial support from the employee^{xiii} then the authority will redress the grievances by apportioning the salary of the employee and directing to pay the apportioned amount on monthly basis^{xiv}. The Act has provided an expeditious proceeding for redressal of the grievance of the dependent parents by fixing a time limit of ninety days for disposal of the application for maintenance under the Act^{xv}. The Act also provided provision for filing an appeal against the order of the designated authority with a time frame of one month within which the appeal is required to be filed and the same is to be decided by the appellate authority within sixty days^{xvi}. Section 22 of the Act provides for second Appeal before a Commission known as Assam State PRANAM Commission to be constituted by the state government. If the parents do not receive a decision from Appellate Authority within the time as specified period of sixty days as provided under section 15, or any employee or parents or divyang sibling aggrieved by the decision of the Appellate Authority, as the case may be, may within sixty days from the expiry of such period or from the receipt of such a decision from the Appellate Authority prefer an appeal before the Commission^{xvii}. Very efficacious provision of the Act is covered under sections 23 and 24 which deal with penalty for dereliction of duty by the Designated Authority or the Appellate Authority^{xviii}. This provision ensures the expected expeditious proceeding for the aged parents who are in dire need of help and support for their subsistence in return of their toil in rearing up and reaching the employee to the present position.

The PRANAM Act is a social welfare legislation and dependent beneficial law founded on the basis of cultural ethos of India. It provides benefits to the dependents including the divyang siblings. The provisions contained in the Act are apparently good and effective as discussed above. However, certain issues have been left unaddressed.

It is quite obvious that if the relation between the kids and the parents or divyang sibling is not good then only the parent will approach for getting apportioned salary which manifest that the parents are staying under the care of other person outside the custody of the kids. The application for apportioned salary will obviously enrage the kids and finish the iota of affection left towards the parents. Under such circumstances the kids will try to avoid them out of anger and vengeance. Then the parents will have to stay out of the care of the kids. In such situation the parents will face more vulnerable situations leading to decrease of emotional bonding as well.

Apart from that, such situation will make the parents more insecure. If the persons with or under whom the parents are staying is a third party not having blood relation, then there is every possibility of

sabotaging the situation and exploitation of the aged persons by that care taker. This issue has not been addressed in the legislation.

In such situation, instead of getting rights, care and protection, they will be thrown into the realm of insecurity. So, in that perspective the legislation is addressing or dealing only one in many aspects. The employee or kids are compelled to provide portion of their salary. But nothing has been provided in the Act with regard to motivation of the employee to take care of the aged parents.

However, govt. has initiated to encourage the employee regarding taking care of parents by providing or granting special leave under Pitri-Matri Vandana Scheme under which state govt. employee can avail special leave in the name spending time with the aged parents. Apart from that, since the Act is confine to the state govt. employees and rights of their parents only, a large section of aged parents whose kids are not state govt. employees is left out of the benefit of the laws and from addressing the acute problems in the society of the day. As a result, a good number of aged persons are spending in the old age homes.

Conclusion

The problems of elderly persons are divergent and complex too. The domain of those legislations is also limited. Those legislations deal with only those erring persons who are under the direct control of the govt. and who evades their responsibility to take care of the dependents. The possible remedy to annihilate such menace is to bring awareness in the society and revamp the society with social values. In today's technology driven world order the social values are waning. People focus more in their career and as such become very professional too. They consider themselves as self-reliant and as such least bothered for others including parents. Therefore, the mindset of the people requires to be changed. The age-old wisdom of the Indian culture and social systems requires to be revived. This can be brought out through social revolution. The traditional social values must be sustained even in the technology driven social order. Concept of gerontology should be introduced in the curriculum and there should be professionals in the subject.

Laws relating to welfare of the aged persons should be popularized through wide and effective publications. The legislations like The Maintenance and Welfare of Parents and Senior Citizens Act and PRANAM Act in Assam are not adequately publicized amongst the public as was publicized in case of Right to information Act or Consumer Protection Act. The beneficiaries of the legislation are mostly unaware of the existence of the laws. The figure of the number of registered cases pertaining to maintenance is minimal. Unreported cases are not counted whereas many unreported or unnoticed incidents are taking place in the nook and corner of the country. Therefore, the stake holders and social workers should take note of the facts and strive to resolve the menace by bringing awareness and taking protective measures by dealing with through legal as well as sociological perspective as discussed above.

1. Secretary General of the United Nations Organization said in his speech.
2. Hindu philosophy categorizes the life cycle in four Ashramas namely Brahmacharya Ashrama, Grihastha Ashrama, Vanaprastha Ashrama and Sannyasa Ashramas
3. Asomiya Pratidin- an Assamese Daily News Paper, published from Guwahati, dated 12.08.2024 wherein son reportedly killed father. In another incident being intoxicated son assaulted father as reported in Niyomiya Barta- an Assamese Daily Newspaper published from Guwahati, dated 10.05.2024. many such incidents of torture meted toward parents are reported and these two incidents are mere example among many such instances.
4. Francis Coralie Mullin v. Administrator, Union Territory of Delhi, AIR 1981 SC 746.

5. Maneka Gandhi vs. Union of India, AIR, 1978 SC 597.
6. 1938 PC 169.
7. Paras Diwan, Muslim Law in Modern India, Allahabad Law Agency, Faridabad, Haryana, 13th Edn., 2018 p.168.
8. Section 29 of the Hindu Adoption and Maintenance Act, 1956.
9. Section 125.
10. Section 144.
11. Section 4.
12. Section 5.
13. Ibid.
14. Section 8.
15. Section 7.
16. Section 12 provides that an appeal may be preferred within thirty days from the date of receipt of such order which is supposed to be decided by the appellate authority within sixty days from the date of receipt of such application of appeal as provided under section 15.
17. Section 22.
18. Section 23 empowers the Commission to impose a penalty of one hundred rupees per day not exceeding Rs. Twenty-five thousand in total upon such Designated Authority or Appellate Authority where the commission is of the opinion that the Designated Authority or the Appellate Authority as the case may be, has without reasonable cause, refused to receive an application or has not disposed of the application within the time specified under section 7 and section 15. On the other hand, section 24 provides for withdrawal of the petition or Appeal as the case may be. This has provided the option whether to pursue the application or stop the harsh steps taken by the parents or siblings against his own kid or siblings as the case may be. This has enabled the means of redressing grievance flexible and negotiable which is important for the ends of justice in respect of issues of such nature which are all about family matters.