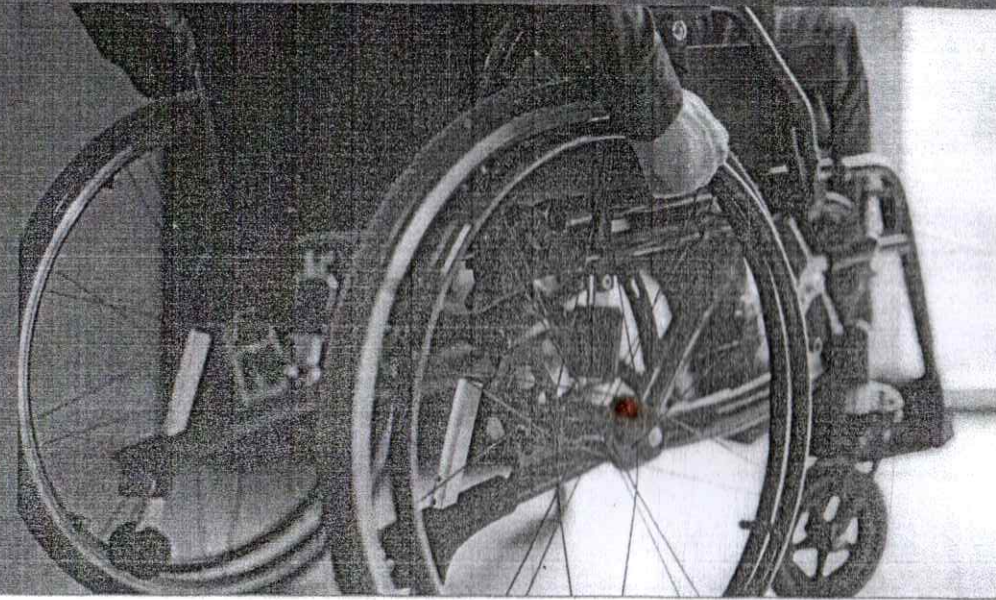


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But there are few categories of disability which are still not included in the legislation and it needs to be worked upon. This book has highlighted the rights which disabled persons have and also highlights the issues which they have been facing due to lack of facilities available in public domain for the persons with disabilities.

Rights of Differently abled Persons



The editors of this book work as Assistant Professors at the Faculty of Law, Kalinga University, Raipur, Chhattisgarh, India. They have pursued their masters degree in constitutional law, criminal laws and personal laws. They have published and presented papers in various national and international journals, seminars and conferences.

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Rights of Differently Abled Persons in India



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PREFACE

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ANALYSIS OF RIGHTS OF SENIOR CITIZEN IN INDIA

Dr. Ramesha K.¹

Abstract

Aging is natural and universal phenomenon. It is applicable to all the species in the world irrespective of its size, feature etc. However it is human being who naturally worried and feared about the aging as he would realize that his days are numbered. This fear is evident in spite of the fact that he is going to die on one day. But the life after 60 years is very special one and need a special attention as there will be lot of changes in the lifestyle. Generally aged people are called elderly people, senior citizen, older people or old age people etc. Aging involves changes and balances between growth and decline, loss and gain. Elderly people represent the most heterogeneous group within the population. There are great variations in how people are affected by aging process.

In most countries of the world, the older persons do not enjoy a decent status in society. This is all the more, so in developing countries like India, which are economically poor and have been subjected to the ravage of demographic transition, migration, modernization, dwindling joint family, market economy, poor public health and hygiene and low social and economic security. Consequently, there is an urgent need to empower the elderly through implementation of mass action programmes that are multi-prolonged. Empowering the elderly consist of enabling them in least three spheres or dimension of life, namely economics, social and health. In this connection the United Nation Organization adopted various Conventions, Conference and Declarations to its members and these countries have taken series steps to ensure protection of the aged people. At the National level the Government of India adopted various welfare programs, legislation and provides innumerable special programs for the protection of old age people.

Keywords: Ageing, United Nation Organization, Government of India

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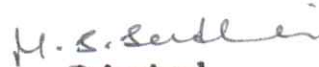
Introduction

A man's life is normally divided into six main stages namely infancy, childhood, adolescence, adulthood, middle age and old age. In each of these stages an individual has to find himself in different situations and face different problems. Aging is natural and universal phenomenon. It is applicable to all the species in the world irrespective of its size, feature etc and India is no exception. Ageing is an indispensable stage of life of a human being which a man cannot refute expects untimely death. The childhood and old age are natural dependent relative conditions of life where children depend on parents and vice-versa. But the life after 60 years is very special one and need a special attention as there will be lot of changes in the lifestyle. Generally aged people are called elderly people, senior citizen, older people or old age people etc.

In our traditional Indian society, the senior citizens have always enjoyed a sense of honour, pride, respect and responsibilities as well. They have regarded as root of knowledge, wisdom and experience. India has always been proud of its enduring family values since time immemorial. The ideal symbol of these values was the large joint family living under one roof. Today, due to development and impact of urbanization, modernization and globalization the traditional joint families system is breakdown. As a consequence the nuclear family is developed in society. Further, the so called values inherent in our society are fast eroding. As the children of parents are settling down in other cities, some parents are stay with their children in other city but many parents, who had conventionally enjoyed a place of pride in the family, found themselves living alone in their native place. Many citizens face problems and adopt a negative attitude in their day to day life. The problems face by the senior citizen in any society largely depends on the socio-economic conditions and environment. So Protection of old age people is very necessity in modern day, now a days the old age people are treated as a vulnerable section of society.

The concept of 'Social Justice' to the Preamble of the Constitution, the Supreme Court of India observes that 'social justice remains a touchstone of our nation-building' and 'social justice is about providing equal opportunities'. It also observes that the concept of social justice requires to be applied afresh in emerging situations, that may not have existed or been foreseen when our Constitution framers were at work, such as the present plight of the elderly. In India, access to


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justice is a fundamental right of every citizen, as guaranteed under Article 14² and 21³ of Constitution of India. Older persons have equal rights to justice; however, they face a lot of constraints in getting justice, due to their old age related restrictions. In view of declining health/mental/financial status of older persons, government of India has several provisions at different level to help them get easy access to Justice in old age.

Concept of Ageing

Ageing is a natural process that begins at birth, or to be more precise, at conception, a process that progresses throughout one's life and ends at death. The aged are often described as 'old, these terms indicate that they have lost their capability to be economically and socially productive. Several terms are being used in recent years to describe them in a more positive manner such as 'Senior Citizen', 'the Elderly', '

In the year 1875, in Britain, the Friendly Societies Act, enacted the definition of old age as, "any age after 50", yet pension schemes mostly used age 60 or 65 years for eligibility. The UN has not adopted any standard criterion, but generally uses 60+ & 65+ years to refer to the older population. The Indian Census classifies people in the age range 60 years and above as old.

The ageing is a studied in the terminology of "Gerontology" It is the study of the process of ageing. 'Gero' is a Greek term referring to elders. Gerontology is multidisciplinary that is includes the perspectives of numerous disciplines concerned with the physical, mental and social aspects of life of aged people.

Population of Senior Citizen i.e. 60+ Global and Indian scenario

One of the world's greatest challenges of the present century is the enormous increase in the absolute number and proportion of older persons in the world. In 2005 there were 672.8 million Senior Citizens (aged 60 years and above), which is expected to increase to an unbelievable 2.0 billion by 2050. By then the aged population will be more than the young population aged 0-14

²Article 14, Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

³ Article 21, Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law.

years of age. India is currently the second largest country in the world when it comes to the population of the elderly. India had 24.7 million senior citizens in 1961, which has more than doubled to 56.7 million in 1991 and to 76.6 million in 2001; it is expected to reach 113.5 million by 2016 and 134 million by 2021.

Senior Citizen population in India

In India the population of aged is significantly growing, the 60 years and above aged group which in 1971 was around 6% crossed 7% in 2001 and 21% by 2081. Today independence India has adopted a policy of development through welfare measures. The expansion of science and technology. Health facilities infrastructure etc., has greatly affected the span of common people.

The following table gives the data relating steadily increase of Senior Citizen Population.

Growth of population senior citizen 60+ (million)

Year	Total No and Percentage of senior citizen population		Male		Female	
	No	Percentage	No	Percentage	No	Percentage
1951	19.61	5.43	9.67	5.25	9.94	5.66
1961	24.71	5.63	12.36	5.46	12.35	5.80
1971	32.70	5.97	16.87	5.94	15.83	5.99
1981	43.98	6.42	22.49	6.35	21.49	6.50
1991	55.30	6.55	28.23	6.45	27.07	6.66
2001	77.93	7.70	38.22	7.55	37.71	7.86
2011	104.00	8.06	57.50	8.20	47.50	8.12

Source: census of India 2011

The above table data shows that the senior citizen population has increased from 77 million in 2001 to 104 million in 2011. By 2050 the senior citizen population is likely to increase

by three times to reach around 300 million, accounting for 20 percent of the total population of the country. The relatively young India of today will turn into a rapidly graying society in the coming decades.

Problems of the aged people:

Although the problems of aged the aged people are many and various basically these can be divided four are as

1. Economic
2. Familial
3. Health and social adjustment
4. Housings

1. Economic problems

Old age people often encounter the problems if low income due to loss of job. For those who are engage in organized sector, offer retirement bring for them a sudden decline of income. Therefore they have to adjust their life style with reduce income and forced to curtain kind of expenditure with they used to spend when they were in job. The situation become more distressful when a retire person has to carry on the familial responsibility like educating children. Getting those married and setting them in life⁴.

As the matter of fact it is difficult to identify and analysis the economic problems of the old age due to the varied nature of their economic problems of the aged to may be examined by dividing them (aged) in two groups which is

1. Secured
2. Un secured

Secured: those who have retired from active service and are in receipt of the pension and other benefit, professional land lard, upper class merchants and traders. Although the retired people no suffer any economic problems, pertaining to food and shelter, they will have other economic problems relating to marriage, education and employment of their children settled in life with the pension. Family obligation continues to dog the retired even into retirement.

⁴Article by Sourajit Ray, Problems of the aged in contemporary society-an overview, man and life vol-36, nos-3-4, July-dec, 2010, editor Pradip K. Bhowmick,. Published by The Institution Of Social Research and Applied Anthropology

Unsecured: this people consists of those workings in semi-organized and unorganized sectors workers.

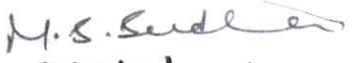
The second category of the old includes laborers, farmers, workers, domestic servants, vendors and hawkers who actually face the brunt of the economic problems in during their old age. With the advancement of age the ability to work and earn is lost, which turn. Increase one's dependency on children and relatives. In rural area the problem of aged acquire a special dimension among the poorer families. Old people are not provided adequate food, shelter, clothing and medicine. They are often deprived of family support and left to fend for themselves. A sense of insecurity and helplessness persists throughout the remaining days. Those who depend on agriculture for their livelihood do not have worthwhile schemes for economic security during their old age when morbidity and physical disabilities take a full grip on them. It can be observed that the aged from poorer families go begging in towns and cities.

2. Familial:

In traditional joint family system the old and aged member were and are respected and honored, parent's excised power and authority, while the grand parents gave blessings for a long life, wealth and prosperity. Both the aged and the young believed in and shared the traditional system of values and ideals. However, the tradition system of values and norms undergone significant changes with the introduction of modernization, urbanization, industrialization and formal education. The Indian society is transforming itself from the traditional rigid and conservative to the rational dynamic and scientific. The youth tend to believe in philosophy of individualism, material prosperity and want to possess or have their own independent identity. The gap between the psychosocial expectations of the young as well as the old. The young have begun to view the old as useless appendages. The transformation of traditional family structure from rigid to modern has brought about a constantly increasing exclusion of the old from the traditional social and familial roles of prestige and placed them in marginal position

3. Health and social adjustment:


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Health plays an important role in the life of human beings especially in old. In developing or poor country like India, health status plays the important role in determining ones social adjustment. After 65 year bring new problem in a person's life. This type of people experiences more problems of adjustment of changing late life style. The decline in physical strength limits the older persons activates. A continues illness can make the individual feel demoralizing helpless. Ageing mean deteriorating health. It has been observed that high blood pressure, heart dieses, diabetic and joint and bone pain etc. are some of the conman dieses of aged people in India like a eye, hearing and other common dieses suffer from lifelong. The process of decline during the last part of life becomes problem not only for the concerned, but also for close relatives and the society as a whole. A sense of insecurity and helplessness prevails. Moreover, the loss their status in family, caste group and community becomes a source of utters frustration and mal-adjustment.

4. Housing:

Housing basic needs of man in society. House is where people in their basic domestic and personal needs of life. Physical and mental health, working efficiency, emotional security and social status are likely to be influenced by housing conditions. Housing acquires a special important with regard to old age. If a man is n not able to have a roof over his head to call his own towards the end of his life at least, he will come to think he has been failure to life. In India housing is an acute problem for the old. A separate and suitable housing provision for the aged is generally not though of India. Their priority for special housing needs stands last. They are supposed to sleep and rest at any place vacant in the verandah or forecourt regardless of cold and rain. In rural area where the old sleep at place like temples, maths and other religious establishments. In industrialization, urbanization and population growth have created acute shortage of housing which will have an adverse effect on old. They are gradually pushed out of the house. Thus housing is directly linked to the well being and welfare of the aged⁵.

International and national provisions relating to old age persons

⁵ Article by Chidanand. N, The Aged and their Rehabilitation: Need for empowerment-Edited by, O D Heggade , Journal of development and social change-vol-vii,no-3 April-June 2011.

Protection of old age people not only national law make law for older people but in international level international law had more provisions provided the protection of the life and liberty, social security to the old age people


In International provisional relating to old age people

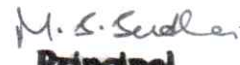
The question of ageing was first debated at the United Nations in 1948 at the initiative of Argentina. The issue was again raised by Malta in 1969. In 1971 the General Assembly asked the Secretary-General to prepare a comprehensive report on the elderly and to suggest guideline for the National and International action. In 1978, Assembly decided to hold a World Conference on the Ageing. Accordingly, the World Assembly on Ageing was held in Vienna from July 26 to August 6, 1982 wherein an International Plan of Action on Ageing was adopted. The overall goal of the Plan was to strengthen the ability of individual countries to deal effectively with the ageing in their population, keeping in mind the special concerns and needs of the Elderly. The Plan attempted to promote understanding of the social, economic and cultural implications of ageing and of related humanitarian and developed issues. The International Plan of Action on Ageing was adopted by the General Assembly in 1982 and the Assembly in subsequent years called on governments to continue to implement its principles and recommendations. The Assembly urged the Secretary-General to continue his efforts to ensure that follow-up action to the Plan is carried out effectively.

- i. In 1992, the U. N. General Assembly adopted the proclamation to observe the year 1999 as the International Year of the Older Persons.
- ii. The U. N. General Assembly has declared —1st October as the International Day for the Elderly, later rechristened as the International Day of the Older Persons.
- iii. The U. N. General Assembly on December 16, 1991 adopted 18 principles which are organized into 5 clusters, namely-independence, participation, care, self-fulfillment, and dignity of the older persons.

Principles Providing Action for Old Age Person:

- i. Older Persons should have the opportunity to work and determine when to leave the work force.


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- ii. Older Persons should remain integrated in society and participate actively in the formulation of policies affecting their well-being.
- iii. Older Persons should have access to health care to help them maintain the optimum level of physical, mental and emotional well-being.
- iv. Older Persons should be able to pursue opportunities for full development of their potential and have access to educational, cultural, spiritual and recreational resources of society.
- v. Older Persons should be able to live in dignity and security and should be free from exploitation and mental and physical abuse.⁶

Universal Declaration of Human Rights 1948

Universal Declaration of Human Rights is an international document that states basic rights and fundamental freedoms to which all human beings are entitled. Article 3⁷, 22⁸, 25⁹ and 27¹⁰, of Universal Declaration of Human Rights asserts that everyone has the right to life, liberty and security of person. These provisions include the old age peoples. Furthermore, everyone is entitled to social security and the realization of any economic, social and cultural rights are important and development of individual's dignity and personality. Everyone should have the opportunity to involve and take part in the cultural activities in their community and share in the benefits of the arts and sciences. Finally, everyone have right to a standard of living adequate for one's health and well-being including quality of food, clothing, housing and medical care as well as any needed social services provided by the governments of nation-states. Most important

⁶Article by Dr. Shashi Nath Mandal- Protection of Rights of Old age Person in India: A Challenging Facet of Human Rights, Global journal of Human social science vol 11,issue 5 version 1.0 August 2011 Global Journals Inc. (USA)

⁷ Article 3. Everyone has the right to life, liberty and security of person.

⁸ Article 22. 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.

⁹ Article 25. (1).Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, and housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. (2).Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

¹⁰ Article 27. (1).Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

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in respect of old age persons is that, in the event of unemployment, sickness, disability, widowhood and old age, one has the right to security due to circumstances beyond one's control.

International Covenant on Economic, Social and Cultural Rights 1966: This covenant is a multilateral treaty adopted by the United Nations General Assembly on 16th December 1966 and in force from 3rd January 1976.

Article 9¹¹, 11¹² and 12¹³ of the International Covenant on Economic, Social Cultural Rights 1966, and this treaty reiterates the right of everyone to social security, to all people and they are entitled to an adequate standard of living, adequate and nutrition food, clothing and housing. The Universal Declaration of Human Rights, the International Covenant proved the guarantees to everyone the right to continuous improvement of living conditions. It insist that the governments should be continuously work toward the improving the living conditions and provide and maintain the good health conditions of all people, and state should provide the basic needs for some aged persons, women children.

International Covenant on Civil and Political Rights, 1966: The International Covenant on Civil and Political Rights, 1966, prohibits the international gender discrimination in case of employment and imposes obligation on the state that, States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular: the right to work; the right to the same employment opportunities; the right to promotion, job security and all benefits and conditions of service; the right to social security, particularly in cases of retirement, sickness, invalidity and old age. States Parties shall eliminate discrimination against women in

¹¹. Article 9. The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

¹². Article 11. (1) The States Parties to the present Covenant recognize 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 based on free consent. (2) The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed.

¹³. Article 12. (1) The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. (2) The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right.

the field of health care in order to ensure, on a basis of equality of men and women, access to health care services. States Parties shall eliminate discrimination against women in rural areas in order to ensure in particular the right to benefit directly from social security programs; to enjoy adequate living conditions.”¹⁴

U N Declaration on the Rights of Disabled Persons 1975: Article 5¹⁵, 9¹⁶, 10¹⁷ and 12¹⁸ of this declaration defines the status of disabled persons. As some elderly persons, and suffering from various types of disabilities persons, the rules established in this declaration are also applicable to them. Disabled people are entitled to all types of measures designed to assist them in becoming as self-assured as possible. Proved the institutional assist to the disabled persons, that individual is entitled to living conditions that come as close as possible to those of other people of the same age. Disabled persons are protected from any kinds of exploitation and abuse from others.

International Year of Older Persons, 1999: During the year special emphasis was given on:

- a) Situation of older persons,
- b) Individual life long development,
- c) Relationship between generations,
- d) Inter-relationship between ‘Population Ageing’ and ‘Development’¹⁹,

ILO Recommendation No. 162 Concerning Older Workers: Part II, paragraph 5²⁰, This recommendation states that older workers must enjoy equality of opportunity and treatment with other workers without age discrimination, including access to housing, social security provisions and health, organizations, particularly when this access is related to occupational activity or employment.

¹⁴ Mr. Prafull B. Chavate, The Protection and Promotion of the Interest of Aged People under International Human Rights Law, www.lawyersclubindia.com visited on 3/8/2013, 05:00 pm

¹⁵ Article 5. Equality and non-discrimination.

¹⁶ Article 9. Accessibility.

¹⁷ Article 10. Right to life.

¹⁸ Article 12. Equal recognition before the law

¹⁹ www.un.org/ageing, visited on 22/06/2013

²⁰ Recommendation 5. Older workers should, without discrimination by reason of their age, enjoy equality of opportunity and treatment with other workers.

National Provisions

The Government of India owing to various conventions and the treaties has launched various laws schemes and policies for the protection of older persons.

Constitutional provisions:

In Indian Constitution also given more provisions to protection of old age people. In the Constitution of India, entry 24 in list III of schedule VII Article 246 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. Entry 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 of old age people²¹. Further, Article 41 of Constitution of India Directive Principle of State Policy, has directed that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right of public assistance in cases of old age. There are other provisions, too, which direct the State to improve the quality of life of its citizens²². Right to equality has been guaranteed by the Constitution as a Fundamental Right²³. These provisions apply equally to older persons. Social security has been made the concurrent responsibility of the Central and State Governments.

Legislative Protection:

- 1) Protection under Personal Laws: The moral duty to maintain parents is recognized by all people. However, so far as law is Concerned, the position and extent of such liability varies from community to community.
- 2) Protection under Hindu Laws :Part IX – Personal Law (Hindu), (Chapter III – Hindu Adoption and Maintenance Act, 1956)


A Hindu is bound during his or her life-time, to maintain his or her legitimate/illegitimate children and his or her aged or infirm parents. The obligation of a person to maintain his or her

²¹ 7th schedule of Indian constitution

²² Article 41 of Indian constitution

²³ Article 14 of Indian constitution


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aged infirm parent²⁴. Thus amongst the Hindus, the obligation of sons to maintain their aged parents, who were not able to maintain themselves out of their own earning and property. The statutory provision for maintenance of parents under Hindu personal law is Section 20(1) of Hindu Adoption and Maintenance Act, 1956 Section 20(3) of Hindu Adoption and Maintenance Act, 1956. This Act is the first personal law statute in India, which imposes an obligation on the children to maintain their parents. As is evident from the wording of the section, the obligation to maintain parents is not confined to sons only, and daughters also have an equal duty towards parents.

1. Protection under Muslim Law: Children have a duty to maintain their aged parents even under the Muslim law. According to Mulla:

- a) Children in easy circumstances are bound to maintain their poor parents, although the latter may be able to earn something for themselves
- b) A son though in strained circumstances is bound to maintain his mother, if the mother is poor, though she may not be infirm.
- c) A son, who though poor, is earning something, is bound to support his father who earns nothing.

2. Protection under Criminal Laws:

Criminal Procedure Code, 1973: Chapter IX: 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 direct²⁵.

Section 125(3): If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issued a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or

²⁴ Section 20(1) of Hindu Adoption and Maintenance Act, 1956

²⁵ Section 125(1)(d) of criminal procedure code 1973

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any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made²⁶.

The Maintenance and Welfare of Parents and Senior Citizens Act, 2007: The Act is called as the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, was enacted in December 2007. It is to ensure need based maintenance for parents and senior citizens and their welfare. The act provides for:-

- a) Maintenance of parents/senior citizens by children/ relatives made obligatory and justifiable through Tribunals.
- b) Revocations of transfer of property by senior citizens in case of negligence by relatives.
- c) Penal provisions for abandonment of senior citizens
- d) Adequate medical facilities and security for senior citizens.

Objectives: the major objectives of this Act to:

1. Provide appropriate mechanism to be set-up to provide need-based maintenance to the parents and senior citizens.
2. Provide better medical facilities to them.
3. For institutionalization of a suitable, mechanism for protection of life and property of older persons.
4. Setting-up of old age homes in every district.

National Policy for Senior Citizens, 2011: National Policy on Older Persons seeks to assure older persons that their concerns are national concerns and they will be unprotected, ignored and marginalized. The National Policy aims to strengthen their legitimate place in society and help older people to live the last phase of their life with purpose dignity and peace.

Government Concessions and Facilities given to Senior Citizens: Concessions and Facilities given to Senior Citizens by Different Ministries/Departments of the Government of India have

²⁶ Section 125(3) of criminal procedure code 1973

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introduced various welfare schemes to old age people and concessions of old age people in the various department of India are as below:

Ministry of social justice and empowerment: Ministry of Social Justice & Empowerment is the nodal Ministry responsible for welfare of the Senior Citizens. This department has announced the national policy on older persons include all special welfare provisions of old age people and this policy applicable only who are aged 60 years and above people. This ministry implementing the numbers of scheme through the special scheme for the senior citizens like pension scheme, day care centre, Old Age Homes, Mobile Medicare Units, etc.

Ministry of Finance: A Senior Citizens Savings Scheme offering an interest rate is 9% per annum on the deposits made by the senior citizens in post offices has been introduced by the Government through Post Offices in India doing savings bank work.

Ministry of Health and Family welfare: The 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. This ministry also provide for (i) separate queues for older persons in government hospitals and (ii) geriatric clinic in several government hospitals.

Ministry of Road Transport and Highways: The Ministry of Road Transports and Highways also provides some concession to senior citizens that concession like are,

- a. Reservation of two seats for senior citizens in front row of the buses of the State Road Transport Undertakings.
- b. 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.

Ministry of Railways:

- a. Indian Railways provide 30% fare concession in all Mail / Express including Rajdhani / Shatabadi / Jan Shatabadi trains for senior citizens aged 60 years and above.
- b. Indian Railways also have the facility of separate counters for Senior Citizens for purchase / booking / cancellation of tickets.

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- c. 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.
- d. Ramps for wheel chairs movement are available at the entry to important stations.
- e. Specially designed coaches with provisions of space for wheel chairs, hand rail and specially designed toilet for handicapped persons have been introduced.


Ministry of Consumer Affairs, Food and Public Distribution:


- a. Under the Antyodaya Scheme, for 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.
- b. Under the Annapurna 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.
- c. 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.

Department of Pensions: The department has set up a Pension Portal to enable senior citizens to get information regarding the status of their applications, the amount of pension, document required, if any, etc. the Portal also provides for lodging of grievances As per the recommendations of the sixth pay commission.

Ministry of Civil Aviation: The National carrier, Air India, under ministry of Civil Aviation provides air fare concession up to 50% for male passenger aged 65 years and above and female passenger aged 63 year and above on the date of commencement of journey and on production of proof of age.

National Old age Pension (NOAP) scheme: under this scheme the central assistance was available towards pension to persons above 65 years belonging to a house hold below the


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poverty line, which is meant to be supplemented by at least an equal contribution by the states so that each beneficiary.

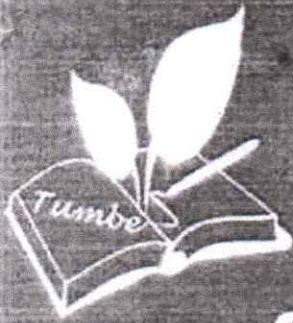
Conclusion

Perhaps no other country in the world as India offers various benefits to old age people. But the only problem is implementations and misuse of these benefits. The Governmental authority though conscious about all these benefits there is always problem with identification of beneficiaries for these programmes. The people in the society are also in the forefront to misuse these programme. This proves both the administrative machinery and the people must have the greater responsibility to see that these programmes are properly implemented and misuse of these programme can be prevented. This is the duty of each and every one.

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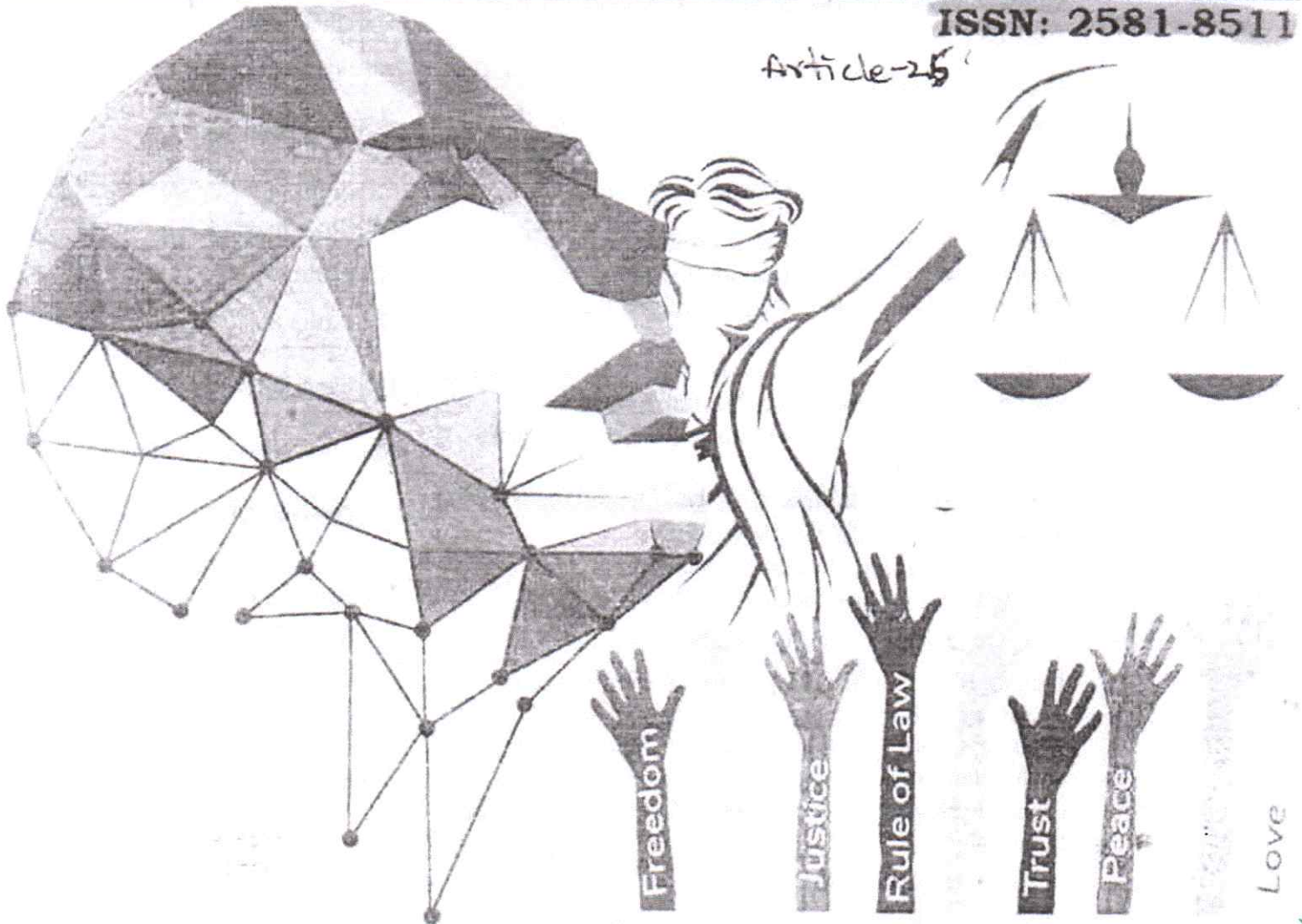
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Role of Judiciary in Protecting the Human Rights of the Tribal Peoples in Indian Perspective

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Abstract

Human Rights are those rights which every person has as being a human being. They are inherent rights to all human beings. The Constitution of India gives its sanction to the Indian Judiciary which is responsible for delivering justice. It's another important task is to safeguard the Human Rights of the Indian citizens. If there are any violations of the Human Rights, then one can move the justice machinery by going to the court. It has been observed that Indian Courts have been protecting Human Rights of Indian citizens with little success. Often the marginalized sections of Indian society become victim to the Human Rights abuse. Especially Tribal people are often forced to migrate in order to develop particular area. Thus, they are deprived of their right to live in the environment of their choice. While the legislation for the protection of the rights of Tribal people are in place, they are regularly flouted. Instead of ensuring that Tribal are ousted from the land to which they are historically and culturally connected, the state becomes more concerned about fulfilling contractual obligations towards the private investor. It is imperative, therefore, that there is continued struggle to form broader alliances against policies and especially so given the judicial reluctance to intervene in matters of policy. The Judiciary with no doubt has played a vital role in protection of Human Rights over the decades. There is also a great need for amending old laws which are ill equipped to handle modern day situations. The main theme of this paper is to make judiciary more sensitive and responsible in the protection of Human Rights of Tribal People.

Keywords: Human Rights, Constitutional Rights, Judiciary, Rights of Tribes, Marginalised People.

Introduction

Tribes denote a group of people living in primitive and ruthless conditions. These tribes are a social group living in a fixed territory having no such specialization of functions and the people living in these social groups are known as Tribes or Tribal People. Tribes also have several sub groups and collectively they are known as Tribal Society. Tribes are the inhabitants of forests, since prehistory and even in this modern world this trend is followed by many people. Tribes constitute around 8.6 percent of the total Indian population and of the total Tribal population around 80 percent are found in Central India. Today there are two sets of laws in practice almost all across the world. One the colonial legal system and its existing structures incorporating substantive and procedural laws which have been in existence ever since the colonial rulers.



took over the major part of the world through the Doctrine of Discovery. The other is Humanitarian Law or the law most commonly known as Human Rights. Laws meant for the people by the people and accepted by the people world over without any prejudice. These two set of laws are practically poles apart in a number of aspects including the upliftment of the condition of living of the vulnerable section of the society. But it must be admitted that both these two sets of laws are indispensable in the modern legal system even when neither of their applicability is possible strict sense in the absence of the other¹. The Indian Judiciary in the 20th century has tried to come out of the shackles of the colonial prowess through Judicial Activism. Upliftment of Human Rights in the modern world structure has been one of the promising roles played by the judiciary today. The judiciary has felt this need to provide justice and equality to those who have not got justice throughout. These vulnerable classes have to a considerable extent been recognized by the judiciary as being a part of the bigger society and also their right to get justice like any other person of the society². India has the second largest Tribal population in the world. Tribals are mainly spread across the forests and hilly regions of India. Tribals in India are mainly characterised by their geographical location and distinct culture. In India, Tribes are treated very low, are execrated and are even treated as untouchables by the prevailing adherence to social norms and caste system. The Tribal People were compelled to perform duties which were considered inferior because of their economic backwardness and illiteracy. Since, these people were ill treated and were not enjoying equal status with other people which are guaranteed to all the citizens of India by Article 14 of the Constitution of India.

Historical Background

The Tribal people in India have a long history even before the arrival of the colonial government. The Tribal societies that existed prior to the colonial intervention had their own rights and duties within their autonomous sovereign framework. Apart from the encounter of the Tribals with the various civilizations, there was also the influence of the foreign missionaries in the past and of the dominant society through the fundamentalist forces in the recent past. There is a little doubt that Tribal communities continue to be the most marginalized group in India. The Tribal People were considered unclean by most of the people of Indian society and they were socially distanced and often used to face violence from the society. Apart from the encounter of the Tribes with the various civilizations, there was also the influence of the foreign missionaries in the past and of the dominant society through the fundamentalist forces in the recent past. In the past, there were several Human Rights violations and brutality, particularly on Tribal women. Tribal communities also used to face isolation and social discrimination from the mainstream society which always used to oppress them³. Today, Tribal People are not even able to demand their rights due to poor response of the authorities. Moreover when they approach the authorities to claim their rights they are asked to produce certain documents which

¹Damon Gerard Corrie, "The India you Do Not Know People Land Truth" Intercontinental Cry, (2012), P.31

²Dr.S.Subramanian, Human Rights International Challenges, Vol.13, P.23

³Debal K. Singha Roy, Social Development and the Empowerment of Marginalised Groups, Perspectives and Strategies (2001), P. 203.



they generally do not have and thus they fall a prey to corruption. Despite so many efforts made by the Government, the Tribal people are still deprived of a life which they are entitled to. Tribal people are mainly dependent upon the forest products for their livelihood and many Tribes including their women are involved in agriculture, hunting and food gathering. But when outsiders or non-tribes start interfering and exploiting the natural resources, the life cycle of tribal life is greatly disturbed. The Tribes have gradually lost control over community resources such as forests. In some forests the Tribal People are not given access to forest produce and grazing of cattle is rendered illegal by the Government. These people live under the continuous threat of being ousted from their homes. They do not have any legal right and the only legal protection they have is the due process of law. Their demands for their rights are often subdued by the forest authorities and whenever they try to protest for their demands they are trampled to the extent that their right to life is taken away.

Constitutional Rights to Tribal People

The Constitution of India has provided special provisions to the Tribal People to safeguard their interests.

- Article 15 of the Indian Constitution states that the state shall not discriminate any citizen on grounds of religion, race, caste, sex, place of birth or any of them. This explains that every citizen of India is provided equal rights and opportunities without any discrimination.
- Government of India has made reservation for the Tribes in employment under Article 16(4) of the Constitution of India.
- Article 19(5) of the Constitution of India guarantees the Tribal people right to own property and enjoy it in any part of the country.
- Article 338 of the Constitution of India grants the right to appoint a Commissioner to look after welfare activities of Tribes.
- Under Article 275(1) of the Constitution of India the Central Government is required to give grant-in-aid to the State Government for approved Tribal Welfare Schemes.
- Art. 350 - Right to conserve Distinct Language, Script or Culture.

Schedule 5 of the Constitution of India and other state laws prohibits any transfer of property belonging to Tribal communities or the land which is being cultivated by these people for a long time. A right of Tribes over Forest is an inalienable and irrefutable historical fact. But in the colonial rule the Tribal People were deprived of their land rights and many people started encroaching lands of the Tribal People but encroachments on forestlands was made an offence under the Indian Forest Act, 1927. After Independence, the Forest Department ingenerated the right of Tribal People to the Forest land and passed the Forest Conservation Act, 1980 which regularised the encroachments of Forest lands. With regard to the protection of the Tribal rights over Community Forests and other lands, the central legislation introduced in 1996, the Gram Sabha (Village Assemblies) in the Tribal areas has been entrusted to protect the community



rights over community land and Forest. PESA (Panchayats Extension to Scheduled Areas) Act, 1996 is a law enacted by the Government of India to enable the Gram Sabhas of the Tribal regions to self govern and protect their natural resources. PESA imposed restriction on the State Legislature and Decentralized more power in the hands of the Gram Sabha or Panchayat. It may be observed that the powers that can be exercised by the Gram Sabha under this Act relate to the Tribes customs, traditions, religion, land and mineral resources. The act made the Gram Sabhas independent and competent to preserve and safeguard the customs and the traditions of the people and community resources. The act gave the power to the Gram Sabhas to commend the programmes, plans and projects made for the development of the Tribal People and they should be consulted before making any acquisition of land in Scheduled Tribe areas for the Development programmes. Overall this act provided the people, the right to preserve their land and natural resources and recommendation of the Gram Sabha at appropriate levels for any Developmental programme in the Tribal area⁴.

The Environment Ministry of India has also tried various measures to curb the problem of encroachments. The Scheduled Tribe and other Traditional Forest Dwellers Act in 2006 recognize the ownership rights of Tribes and other Forest Dwellers who are living or cultivating a specific land for a very long period of time. UNDP (United Nations Development Programme) in partnership with the Ministry of Law and Justice, Government of India, is helping the poor and marginalized to access justice and demand and access entitlements.

Role of Judiciary in Protecting the Rights of the Tribal People

Only provision for the fundamental rights does not fulfil the objective of 'protection of Dignity of an individual', but free enjoyment of the rights has to be ensured. Therefore, Article 32 guarantees right to Constitutional remedies, i.e. right to move to Supreme Court to enforce fundamental rights.

It is constitutional mandate of judiciary to protect Human Rights of the citizens. Supreme Court and High Courts are empowered to take action to enforce these rights. Machinery for redress is provided under Articles 32 and 226 of the constitution. An aggrieved person can directly approach the Supreme Court or High Court of the concerned state for the protection of his or her fundamental rights, redress of grievances and enjoyment of fundamental rights. In such cases Court are empowered to issue appropriate Order, Directions and Writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari. Judiciary is ultimate guardian of the Human Rights of the people. It not only protects the rights enumerated in Constitution but also has recognized certain unenumerated rights by interpreting the fundamental rights and widened their scope. As a result people not only enjoy enumerated rights but also unenumerated rights as well⁵.

⁴GauravRedhal and UpasanaDahiy, "International Journal of Socio-Legal Analysis and Rural Development (ISSN: 2455-4049), P. 119.

⁵Meena Kumar Alok, "Human Rights in India Concepts and Concerns", P.9



Supreme Court in *Menaka Gandhi vs. Union of India*⁶ interpreted the right to life and to widen its scope and deduced unenumerated right such as "right to live with Human Dignity". Supreme Court propounded the theory of "emanation" to make the existence of the fundamental right meaningful and active. Thereafter, in many cases court such as *People's Union for Civil Liberties and another vs. State of Maharashtra and others*⁷, *Francis Coralie Mullin vs. The Administrator, Union Territory of Delhi*⁸ held that right to life includes right to live with Human Dignity. Therefore, through the judicial interpretations various rights have been recognized though they are not specifically provided in Part III of the Constitution.

The Human Rights jurisprudence relating to the protection of Tribal rights flourished in India with the aid and influence of the judgments of the Supreme Court and the High Court of different states. Some of the remarkable decisions relating to the protection of rights and recognition of certain rights within the ambit of Constitutional Rights have helped the Tribals to a great extent to retaliate in the Courts through a series of legal battles leading to further declaration of rights for the Tribals⁹. The most influencing aspect of these judgments is the right to use Article 32 and Article 226 to retaliate against the state administration. The case of *Olga Telis*¹⁰ needs special reference in this regard as the apex court declared that right to livelihood is an integral part of the right to life as has been enshrined in Article-21 of the Indian Constitution. The Apex Court declared that 'It would be great injustice to exclude the right to livelihood from the context of the right to life'¹¹

Another landmark judgment came in the case of *NCERT vs. State of Arunachal Pradesh*¹² where the Supreme Court ordered the rehabilitation of displaced Tribals. Again the Supreme Court in *N.D.Jayal vs. Union of India* stated that rehabilitation of the Tribals displaced is within the right of life under Article 21 of the Indian Constitution¹³. At the Domestic level, the Constitution provides autonomy to Tribal areas in matters of governance under the Fifth and Sixth Schedules, which is further, fortified by the *Samatha vs. State of Andhra Pradesh & Ors (1997)*¹⁴ judgment where the Supreme Court declared that the transfer of Tribal land to private parties for mining was null and void under the Fifth Schedule. The framework for protection of the rights of Tribal and indigenous people is further strengthened by the Recognition of Forest Rights Act, 2006 which protects the individual and community rights of Tribal people in forest areas and their right to free and prior informed consent in event of their displacement and resettlement.

⁶AIR 1998 SC 597)

⁷2014(10) SCC 635

⁸(1981) 2 SCR 516

⁹Alok K N Mishra, 'Tribal Court Prevail over Cops' (Mar 2,2013)

¹⁰*Olga Telis vs. Bombay Municipal Corporation* AIR 1996 SC 180

¹¹Ibid

¹²*NCERT vs. State of Arunachal Pradesh* 1996 (1) SCC 742

¹³*N.D.Jayal vs. Union of India* (2004) 9 SCC 362,P 394

¹⁴*The Hindu*, Feb 27, 2017

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Mr. Justice A. K. Mishra, Chairperson, NHRC, said that no Tribal should be evicted without the settlement of his or her claim related to land rights. He said that there is already a Supreme Court judgment in this regard. Justice Mishra further assured that the Commission will look into what best it can do with regards to the policy on the adjudication of the claim of Tribal People on their lands and distribution thereof.

The Supreme Court decision also highlights the consequences of lack of fair and effective implementation of the 2006 Forest Rights Act. The Act created a process for recognition of Community Forest Resources rights over collective lands within protected areas and other forest lands that include rights and responsibilities to use, manage, and conserve forests. Such recognition of community governance and management of forests both within and outside protected areas is a means for remedy and redress for lack of recognition of indigenous peoples and local communities collective tenure, sustainable forest uses, and the conservation outcomes of their collective forest governance and management.

There is an urgent need for the Government of India to respect and implement its own commitments under the International Conservation and Human Rights Conventions and to ensure that these are effectively communicated to and used by all concerned to safeguard the rights of Tribal and other traditional forest dwellers, including their rights to conserve, sustainably use, and protect forests. This would advance full and effective implementation of the 2006 Forest Rights Act and ensure that all efforts to scuttle or dilute the Act are sufficiently deflected.

The application of the concept of transformative Constitutionalism has been anchored in the decision in *Orissa Mining Corpn. Ltd. v. Ministry of Environment and Forests*¹⁵, wherein the Court for the first time invokes International Conventions and emphasises on the need to preserve social, political and cultural rights of the indigenous people. It harmonises local legislation with Constitutional and International obligations in order to secure rights implicit within the right to land and forest. The harmonious reading of Article 21 with Articles 25 and 26 establish various rights that are implicit in the right to land for Tribal People is unique in Indian jurisprudence. In contrast to the earlier decisions wherein displacement of the Tribals from their land in accordance with the National Laws and regulations and in the interest of national economic development which reiterated the Indian Government's stand against the terminology of indigenous people. This decision invoked the cultural and religious rights as against rights in minerals which are vested in the State. The pronouncement in this particular case promotes the participation of indigenous people and the recognition of customary or traditional land of indigenous people. It also aimed to ensure that indigenous people should not suffer from the adverse consequences of the development process. The court also takes the recourse of the Fifth Schedule of the Indian Constitution, the Bhuria Committee Report, and the deliberations around the PESA Act and concluded that the Gram Sabha shall have the authority to initiate the process for determining the extent of individual and community claims. Further, the

¹⁵ (2013) 6 SCC 476

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judgment moves into a novel paradigm of invoking the cultural rights component within the International Labour Organisation (ILO) Convention No. 107 along with the CBD. The Biodiversity Convention involves the local communities in the conservation of biodiversity¹⁶. The conceptual basis for the judgment is the need to analyse the indigenous rights vis-à-vis Human Rights that are likely to provide a more understanding of indigenous rights in the future¹⁷. It is also pertinent to note that there is a need to look at other rights including accommodating Tribal autonomy and sovereignty by taking a fresh look at the constitutional framework with regard to the V and VI Schedule areas. The decision of the present case is a small step towards the same.

Violation of PESA Act in India

It is the silver jubilee year of the Panchayat (Extension to the Scheduled Areas) Act, 1996 that was passed by the Parliament to empower people living in the fifth schedule areas, which are mostly dominated by Adivasi communities. However, the law popularly known as PESA remains disempowered as 40% of the states under its purview have not been able to frame their rules for its implementation even after 25 years of its existence. The sad reality of the law, once considered as one of the most powerful legislation supporting the Adivasi community which constitutes around 9% of India's population, is that it has been given a cold shoulder by those who were supposed to implement and execute it. A total of four states Chhattisgarh, Jharkhand, Madhya Pradesh and Odisha have not even framed the rules yet, while Gujarat used the rules of the Panchayati Raj Act to manage the fifth scheduled areas. But even in the states where the rules were formulated, the situation is not different. States were supposed to amend their law incorporating the provisions of PESA but even though some states managed to formulate the rules they performed quite poor on ensuring their implementation.

Dayamani Barla, a known journalist and activist based in Jharkhand said that, People living in fifth scheduled areas were excited as they thought that the new legislation will ensure their control over their resources, land, mines and minerals, minor forest produce etc. But their reality did not change even after 25 years of this law. Powerful people still have control over natural resources and the local community suffers at the hand of these people with clout, if they try to claim their ownership. The Government is acquiring land without the consent of Gram sabhas. Despite having a 26% Adivasi population Jharkhand has failed to formulate rules for the implementation of PESA, a law meant for the welfare of the Adivasi community.

In fact, in 2013, referring to the PESA, the Supreme Court of India, in a landmark case, had asked the Odisha government to go to the Gram sabha to get permission for bauxite mining in Kalahandi and Rayagada District of Odisha. Local forest dwellers were asked whether bauxite mining will affect their religious and cultural rights and they decided against the mining on

¹⁶Samatha vs. State of A.P., (1997) 8 S.C.T. 191, P. 46

¹⁷Dr. N. Vasanthi, Case Comment on the Niyamgiri Hills Case, (2014) CHITRADURGA

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Niyamgiri hills which led to the cancellation of a huge project. The case is considered a milestone that shows the power of the Gram sabhas but this one of the rare achievements of PESA even as underlines the possibilities the Act carries. But experts argue that, Law however has failed to achieve its potential and has not created any significant impact on the ground¹⁸.

In my opinion about PESA and its journey in 25 years, the Law has failed and the reason is that, the government enacted the law but never pushed to formulate necessary rules. There is another reason which made the act irrelevant is after enacting PESA, the Union Government brought several other legislations and included many provisions of PESA into these laws. For instance, the Land Acquisition Act, 2013 empowered Gram sabhas immensely. Similarly, the Forest Right Act, 2006 has provisions of PESA and now when people need to protect their rights and resources, they look up to these laws.


The Indian Institute of Public Administration has noted that PESA failed to achieve its desired target because it does not specify rule making powers or provide a time period by which the States have to frame rules. Even states have not framed appropriate rules under PESA, and therefore the official system has not operationalised PESA.

A violation of the Act and its dilution highlights a pattern of developments which show the Centre and states' lack of commitment towards strengthening of gram sabhas. Instead there has been a push for corporate entry and control of resources, making it easier to surpass Gram Sabha consent. In one of the major moves of the Modi Government, the draft Environment Impact Assessment policy issued last year seeks to significantly water down the 2006 rules, making it easier for the Government and private sector to implement projects without environmental scrutiny. The dilution of the Forest Rights Act and the Government's interest in the eviction of forest dwellers, coupled with the latest dilution of powers of the state in forest matters under the Forest Conservation Act expose the focus on watering down provisions protecting Tribal Communities and Natural Resources. Moreover, as India privatises coal and brings in mining reforms, one of the biggest concerns of environmentalists lie in its conflict with the violations and undermining of the PESA provisions.

Conclusion

Role of judiciary is very important in providing protection to the Tribal People against the Human Rights violations. Supreme Court being the apex court in the country can through its judgments and decisions can set up a framework for adjudicating matters of Human Rights Violations. There is also a great need for amending old laws which are ill equipped to handle modern day situations. There is a great need to cut down the delay in getting the justice to the victims of the Human Rights violations. When the citizens of the Nation feel free and secure about their rights only then a country can prosper. Development happens in a society where people live in a state of harmony and free from any threat and get to enjoy their Constitutional rights to the fullest. Another role of judiciary is the activist role which is popularly known as "Judicial Activism." When there is no specific law for a specific offence in that case judiciary applies its activist power for the protection of our rights.

¹⁸<http://Scroll.in/India-Panchayati-Raj>


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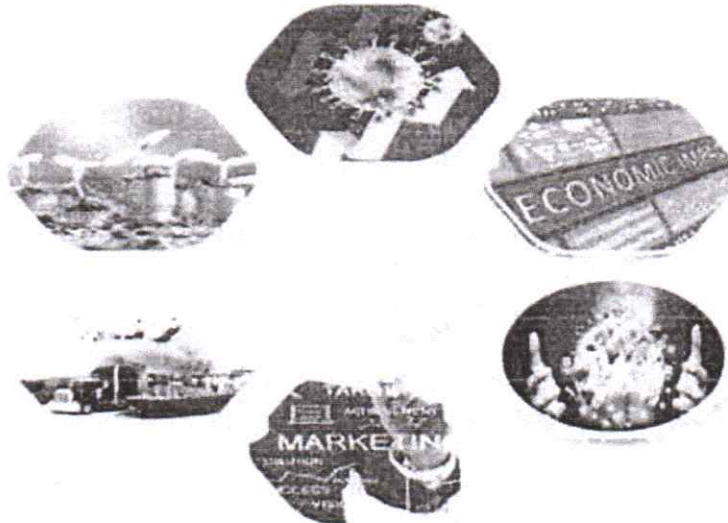
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¹⁸<http://Scroll.in/India/Panchayati Raj>


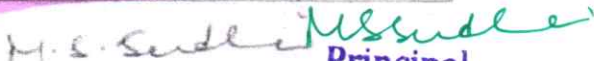

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An Empirical Study on Quality Related Issues and Challenges in Higher Education

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Abstract: *The issue of better quality in Higher Education has been a great concern for all who are directly or indirectly associated with the education and academic system. The reason is very obvious since the Higher Education could not keep required pace with the changes in technology, new trends of education system, occupational diversity, Global market trends and so on. Though the issue of quality in Higher Education is most talked about but it is equally true that this issue is least understood in its true spirit. In India, the graduates are assumed as products where their career prospects depend on the very quality of education they pursue. Quality education means quality of teachers, quality of learners, quality of courses, quality of planning and management, quality of infrastructure, quality of resource and quality of teaching and evaluation methods. Quality in education, at all the levels, is being encouraged in all the countries because of academic, social, political and economic advantages. If we want to succeed in the expansion of educational provision nationally and internationally, we have to improve and sustain the quality of our education system. To do this, it is quite requisite to identify and address challenges in quality education. These challenges are considerable to be addressed for the country as it is now engaged in the use of Higher Education as a powerful tool to build knowledge based information society of the 21st century. The quality education is not a onetime affair. It is a continuous process involving sustained efforts. This paper identifies and addresses challenges in quality Higher Education in India.*

Key Words: Higher Education, Quality assurance, Opportunities and Challenges, Privatization

INTRODUCTION:

India's Higher Education system is the world's third largest in terms of students, next to China and the United States. In future, India will be one of the largest education hubs. India's Higher Education sector has witnessed a tremendous increase in the number of Universities or University level Institutions and Colleges since independence. Rapid increase in the education level worldwide has caused a decline in qualified educational standards for countries. From the beginning of 2000's and until now, countries has increased their investments for Higher Education institutions. There are many Higher Education institutions which have advanced with these investments. Nevertheless, education problems in Higher Education institutions is increasing and understanding of quality education is decreasing. Today, Higher Education institutions initiate multiple studies and begin to take a different place in the developing countries within the decrease in quality standards. The fundamental problems facing in Higher Education in the country include inadequate infrastructure and facilities, large vacancies in faculty positions, low student enrolment rate, out dated teaching methods, declining research standards, unmotivated students, overcrowded classrooms and widespread geographic, ethnic and socio economic imbalances. There is a need for bringing qualitative improvement in the sector of Higher Education in the country. The government must promote collaboration between national research laboratories and research centres of the top institutions for better quality and collaborative research. Higher Education plays a remarkable role in the progress of the society and development of the economy. Given the massive demand for Higher Education from all the strata of society, other pressures are causing concerning accessibility equity, quality and resources. The Higher Education system has to face a great variety of challenges due to rapid advancement. Therefore, rigorous training of individuals is required in the interdisciplinary field. Higher levels of discipline and other contextual expertise are necessary for college and university teaching as it is a scholarly activity that draws an extensive professional skills and practices.



DESIGN OF THE STUDY:

The present study is a Descriptive exploratory survey. It is descriptive in the sense that it is concerned with the analysis of the relationship with non-manipulative variables in a natural setting as the events already exist. It is a systematic empirical inquiry to draw inferences about determinants of quality and efficiency due to the privatization of Higher Education. It involves the description and interpretation of the conditions that exist. The study was carried out in Private and Government Universities and Institutes of Higher Education in India.

OBJECTIVES OF STUDY:

The present study was carried out with the following objectives:

- To assess of Quality aspect of the Institutions.
- To assess the research culture and promotion of research activities in Private and Government, Universities.

HIGHER EDUCATION IN INDIA:

After more than 75 years of independence, India's Higher Education system has still not been developed fully. It is evidenced by its poor performance in institutional rankings i.e. not a single Indian university in top 100 universities of the world, the poor employment status of its students, poor track record in receiving national awards and recognition, poor share in research funding and so on. Moreover, the status of state public universities that produce over 90% of the graduates in India is more dismal. According to the All India Survey on Higher Education (AISHE) report 2018-19, the Gross Enrolment Ratio in Higher education in India is only 26.3%, which is quite low as compared to the developed as well as, other developing countries. With the increase of enrollments at the school level, the supply of Higher Education institutes is insufficient to meet the growing demand in the country. Ensuring quality in Higher Education is amongst the foremost challenges being faced in India today. However, the Government is continuously focusing on quality education. Still, a large number of colleges and universities in India are unable to meet the minimum requirements laid down by the UGC and our universities are not in a position to mark their place among the top universities of the world. Increasing interference of politicians in the management of Higher Education jeopardies the autonomy of HEIs. Also, students organise campaigns, forget their own objectives and begin to develop their careers in politics. Management of Indian education faces challenges of over centralization, bureaucratic structures and lack of accountability, transparency, and professionalism. As a result of the increase in the number of affiliated colleges and students, the burden of administrative functions of universities has significantly increased and the core focus on academics and research is diluted. Central government HEIs are hardly ever short of funding and patronage has been ensured by the Central government and its arms, national level parties, industries and businesses and the national elite and the intelligentsia. This appears to be the key factor for the better performance of Central government HEIs. However, similar arrangements have never been built between the State universities and State governments, State level political parties and organizations, industry and businesses and the elite and the intelligentsia. This may be because, the aims, goals, methods and priorities of these institutions are pretty much the same as those of the Central institutions. The only real value adds that the State universities are doing for the State and its people seem to be that of enabling a few lakhs to become graduates every year. Higher Education in India has expanded very rapidly in the last seven decades after independence yet its accessibility and quality both remain a concern. If India wants economic gains and development to percolate at the grassroots level, it needs to invest in education on a priority basis.

Quality Concept of Higher Education in India:

Higher Education in India has played a vital role in lifting the country from poverty and underdevelopment after Independence. It has been crucial in providing social mobility in a patriarchal and hierarchical society on the one hand and economic growth and national development on the other. India gave due priority to enhancing the access to education on equitable basis immediately after Independence. Only recently its focus has shifted to quality in HEIs to make them more fitting for the market economy in the wake of globalisation and technological innovations. India aspires to become a knowledge hub by equipping learners with the latest knowledge skills and competencies befitting the work environment at a more complex, highly uncertain and interdependent world. It requires inculcating not only the cardinal values of head and heart but also providing the proper base and right aptitude. It can be undoubtedly stated that, over the ages, the wealth or poverty of nations largely depends on the quality of Higher Education. Further, one can look forward to a lifetime of unprecedented economic fulfilment with a larger repertoire of skills and a greater capacity for learning. The education sector is a rapidly changing sector and this dynamic culture offers a challenge for the educational institutions to lead or to actually survive in this competitive environment. As the education sector, especially Higher Education, is a part of the overall service sector, this raises the need for a solid base to be developed



to reach for high quality service. With burgeoning growth of Higher Education sector in our country and the increasing competition at the National and International level, the need for improving the quality of education and employability of our graduates and postgraduates has acquired a new urgency. The major challenges in achieving excellence in Higher Education are many and difficult to achieve in comparison to other industries. Good quality means a predictable degree of uniformity and dependability with a quality standard suited to the customer. India has got huge achievement in the Higher Education and supplies huge number of Human resource not only in India but also in the global market. Large number of technicians from different technological institutions, Doctors, business managers, scientists and researchers are doing their business outside India with excellence that is the result of Indian Higher Education. But as cumulative results, the Quality of Indian Higher Education is still in very poor condition. The poor quality of Higher Education is a serious issue. It is the opinion of different stakeholders, academicians, office bearers, politicians and different policy makers that the quality of Higher Education could not keep the required pace of development with the changes in technology, new trends of education system, occupational diversity, global market trends and so on from time to time. The students who complete their UG and PG course have very low job opportunities. Another serious issue is the gap between demand and supply implying that the youths are not eligible for the job market. This leads to wide spread unemployment among the higher educated graduates. To improve the quality of Higher Education in India, we must maintain parameters of quality education. The parameters of quality Higher Education are, sufficient number of quality faculty members, profile of the students entering into the Higher Education, infrastructure of the educational institutions, curriculum, appropriate teaching method, examination pattern, learning resources, national agencies, government policies and institutional leadership etc. India has one of the largest education systems of the world. Therefore, different stakeholders must work on these parameters on their respective levels to maintain and improve the quality of Higher Education in India.

CHALLENGES TO QUALITY HIGHER EDUCATION IN INDIA:

Lack of Access and Equity: The lack of access and equity is the most serious challenge faced by Indian Higher Education. In some areas or town or states the access of Higher Education is absolutely fine for all the people. But in some areas where the even the Higher secondary schools or colleges are very scarce. There are some Districts with reasonable population and demand of Higher Education does not have even single universities. There is also disparity among different social caste and religious groups and regional disparities in the Higher Education. These challenges are needs to be addressed very soon.

Poor Government Budget: Low budget is a serious challenge in the field of education. Very meagre amount of fund is allocated for the education system. And the matter is that most of the allocated fund is spend in school education, very less amount is spend on Higher Education sector. The amount of scholarship is significantly low and Public expenditure on scholarships has been declining over the years. For education an extremely low percentage of graduates in India avail student loans. Sometimes the fellowship of research scholars are not transacted in the due time that leads to frustration among the scholars. Though some quantitative development is seen, but due to low budget quality of Higher Education is facing a serious challenge.

Gap between Demand and Supply: India has a huge growing young population. They demand education after finishing their higher secondary education. But it fails to meet the demand of the people. According to a study conducted by ASSOCHAM, 93 per cent MBA graduates are unemployable. It is because the availability is not up to the demand of industry. Another thing is that, due less job opportunity students continue their study after finishing their course of study. This leads to over demand of education in higher level.

Poor Infrastructure: Though India has tremendous development in the Higher Education, still there are large number of colleges, institution and universities where even the basic facilities are not available. Old classrooms are there, lack of sufficient building, staffrooms, library or resource rooms, laboratory, technological facilities, instruments for practical classes, toilets and urinals, drinking water facilities etc. are there. The poor infrastructure of institutions directly throwing challenges to the quality of Higher Education. This problem is found basically in rural areas.

Inadequate Number of Faculty members: Another serious challenge to the Higher Education is insufficient number of faculty members in the colleges and universities. Without the teachers the intended learning outcomes cannot be achieved. Even the single teachers have to teach number of different subjects to large number students along with other work load. Thus the student teacher ratio on the whole is at a lamentable state.

Improper Teaching Method: At the tertiary level there is no such formal training for the faculty members. Therefore, the unqualified or untrained faculty members are appointed. As they don't have knowledge of pedagogy and teaching techniques, their quality of teaching is very poor and the learning outcome is meagre.

Low Performance of the Teachers and Principals: In India, a large section of teacher community does not perform their duties well. The moment they have been appointed to the colleges, they thought that their learning is



complete. They just perform their daily basis duties to come to the colleges and make the attendance continue. Even in some colleges, teachers come in interval basis and perform their personal work. The principals of colleges remain absent and doing their own personal business. They do not take strict actions against the non-performing teachers as they themselves are engaged in forgery.

Lack of Available Resources: The quality of education is directly depending upon the learning process. The availability of learning resources is very less in Indian colleges. Most of the colleges have poor quality of library building. This leads to poor service of the library. Number of books are very less, no magazine, no journal that lead to the up gradation of new knowledge. There are also poor internet facilities to access the online database and resources.

Examination Ridden Curriculum: In India most of the universities have over loaded curriculum of theoretical knowledge. And this curriculum is only concerned with the passing of examination. Not only this, curriculum is not up to the mark in terms of market demand. Old and outdated curriculum is still being followed by most of the universities where due to globalization the demand of quality and skill is changing every day.

Poor Financial Condition of the students: It is major setback for Indian Higher Education that due to lack of financial support, many large numbers of students compel to drop their study. This is because, among Indians, even after the 75 years of Independence, the economic disparity is very high. While successive governments have declared financial aid for different weaker section but many more people still do not get this benefit. Due to financial problem students are not able to get admission in quality institutions, could not buy books and available technological accessibility.

Privatization: Due to the lack of public fund and degrading quality, privatization of higher education is developing in fast speed. Though it seems that privatization can improve the quality, but somehow it is found that in some areas of education it leads to very poor quality of education and management. This also leads to disparity in quality education. Education sector is being grabbed by education mafias who have huge money power.

Political Turmoil: Indian Higher Education is facing very bad political turmoil. Due to this, no stability is found in the education policies that can promote the quality education. Whenever the government change, different political parties frame new policies according to their vested interest. Therefore, with change of power, the educational policies also change that leads to overwork and frustration among the learners and different stake holders.

SUGGESTIONS TO MAINTAIN QUALITY HIGHER EDUCATION:

Promote Access and Equity: It is the most serious issues that need to be addressed as soon as possible. Regional, religious, financial and caste disparities have to be removed to give access and equity. Different welfare schemes for different groups have to be introduced to promote access and equity to all the groups involved in the teaching learning process.

Framing Realistic Financial Plan: The concerned governments in the central and the state need to frame realistic financial planning to achieve the target. Any mismatch with the budget and target of the policy makers will lead to the poor quality of education. Therefore, the government need to allocate more funds.

Bridge the Gap between Demand and Supply: As there is huge demand of Higher Education among the growing young population, their demands need to be urgently supplied. Establishment of new institutions and increase the strength of the old institutions can solve this issue.

Infrastructural Development: To improve the quality infrastructural development is essential. The government must ensure proper physical access to these communities and emphasize on construction of Higher Education institutions in closer proximity to villages. All the accessibility must be ensured in the name of infrastructure to improve the quality of Higher Education.

Appointment of Sufficient and Quality Faculty Members: It is an alarming issue needs to be urgently addressed. First of all a large number of teachers needs to be appointed either adhoc or guest basis or permanent basis. At least there must be one teacher for a particular subject. After that we need to focus on the quality of the teachers for the permanent basis. Strict rules and regulation must be followed, academic background, research and experience must be taken into consideration.

Training of Faculty Members at Tertiary Level: The faculty members of college and universities need to be trained in regular interval basis. Basically all the newly appointed members must be given different exposures for training with intensives. In service training every year has to be made obligatory for every serving teacher so as to update or refresh his existing knowledge and skills.

Vigilance and Supervision or Inspection: Vigilance or supervision is essential for all the public sectors, it may be in government offices or schools or colleges. Sudden visits or regular inspection surely improve the performance of the faculties in school or colleges. In this case strict actions must be taken if any irregularities are found. All the serving



teachers need to be made to take performance related tests regularly and their salary and perks should commensurate with the outcome of these tests.

Provision for Online Resources and Books: At the present time ICT facilities is an essential part of any institution. Therefore, use of computers and online access must be established in different institutions to avail the online learning resources. Seminars, workshops and conferences have to be organized in the relevant field of study and that should be the regular feature of on the job training regimen.

Job Oriented Curriculum: This is an urgent need to update the curriculum with the changing global scenario. In today's world, everything in the Higher Education affected by the globalization. Hence the curriculum must be frame according to the local as well as global perspectives.

Welfare Schemes and Scholarship: The government has to sanctions fund for different schemes and scholarship so that needy students can avail education. If it is possible then, they can also take part in the process of nation building.

Controlled and Monitored Privatization: Privatization to some extent has important contribution to the quality Higher Education. But the rate in which it is growing without quality concerns needs to be urgently monitored and controlled. The money oriented approach of the private institutions needs to be changed.


Strong Policies for Higher Education: The government have to frame stable and strong rules, regulation and policies. This will create stable mind set about Higher Education among different stakeholders of education.


CONCLUSION:

India is today one of the fastest developing countries of the world with the annual growth rate going above 9%. Still a large section of the population remains illiterate and a large number of children's do not get even primary education. This is not only excluded a large section of the population from contributing to the development of the country fully but it has also prevented them from utilising the benefits of whatever development have taken place for the benefit of the people. A developed nation is inevitably an educated nation. But all it requires is adequate resources. The Universities have the research potential and the industry can provide financial support to carry out researchers befitting their needs and requirements and bring about desirable changes in the system. In order to achieve this, we need good governance in the Higher Education system which would encourage optimisation of resources and infrastructure. Initiatives also need to be taken to take care of the human sides of enterprise in terms of good salary, parity and other world class benefits. Steps should be taken to have world class multidisciplinary institutions of research. Despite the increased access to Higher Education in India, challenges remain. The quality education is not a onetime affair. It is a continuous process involving sustained efforts.

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CONSTITUTIONAL PROVISIONS ON LEGAL AID IN INDIA

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Abstract: Constitution has given so many rights for the welfare of the people among them free legal aid is one of the fundamental rights guaranteed to all the citizens of the country. Article 21 and 39A of the Indian Constitution provides for free legal aid to the poor and weaker sections of the society, to promote justice on the basis of equal opportunity. Legal aid is regarded as one of the important tool to access to justice by ensuring -Equality before the law -Right to counsel - Right to Fair trial. It is to ensure welfare provisions by providing access to legal advice and the courts. Legal Aid providing free legal services to the poor and needy peoples who are unable to afford the services of an advocate for the conduct of a case or a legal proceeding in any court, tribunal or before an Judicial authority. The Legal Services Authorities Act, to constitute legal services authorities to provide free and competent legal service to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizens by reason of economic or other disabilities. This paper based on the doctrinal method collection of data from primary and secondary data, this paper mainly focus on the international national provisions in international provisions convention and declaration in national provisions Constitution and other legal provisions judicial contribution also.

Key Words: Free Legal Aid, International Convention and Declaration, Constitution.

INTRODUCTION:

Legal Aid which means giving free legal services to the poor and needy who are unable to afford the services of an advocate for the conduct of a case or a legal proceeding in any court, tribunal or before an Judicial authority. An act to constitute legal services authorities to provide free and competent legal service to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizens by reason of economic or other disabilities. Legal aid is a Constitutional right supported by Articles 21¹ and 39-A² of the Indian Constitution. Free legal aid is one of the fundamental rights guaranteed to all the citizens of the country. Article 21 and Article 39A of the Constitution of India provides for free legal aid to the poor and weaker sections of the society, to promote justice on the basis of equal opportunity. Legal aid in India has been incorporated under Article 39A of the Indian Constitution and Legal Services Authorities Act, 1987. The 'Legal Services Authorities Act' was enacted by Parliament, it provide nationwide uniform network for providing free and competent legal services to the weaker sections of the society. The National Legal Services Authority (NALSA) has been constituted under the Legal Services Authorities Act, 1987 to provide free legal services to weaker sections of the society.

CONCEPTUALIZATION LEGAL AID:

The Legal Services Authorities Act, 1987, Section 2(1)(c) define the term "Legal Service" includes the rendering of any service in the conduct of any case or other legal proceeding before any court or other authority or tribunal and the giving of advice on any legal matter: To provide free and competent legal services to the weaker section of the society is the basic object of enacting the aforesaid Act. Justice - social, economic and political, is our Constitutional pledge enshrined in the Preamble of the Indian Constitution. The incorporation of Article 39-A in the Directive Principles of State Policy, enjoined upon the State to ensure justice on the basis of equal opportunity by

¹ Article 21. Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law

²Article 39A, The 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 disabilities, this article was inserted by the Constitution (Forty- Second Amendment) Act 1976.



providing free legal aid. The assumption of our legal system is that all citizens have equal access to means of legal redress. Access to inexpensive and expeditious justice is a basic human right. But, in practice, legal services of all kinds have gone to the highest bidders. Wealthy persons and large corporations receive the highest quality advice. There should be a system of administration of justice of which the poorest are able to take advantage. Equal access to the law for the rich and the poor alike is essential for the maintenance of the rule of law.

Legal aid is required in many forms and at various stages, for obtaining guidance, for resolving disputes in Courts, tribunals or other authorities. The explosion in population, the vast changes brought about by scientific, technological and other developments, and the all round enlarged field of human activity reflected in modern society and the consequent increase in litigation in Courts and other forums demand that the service of competent persons with expertise in law is required in many stages and at different forums or levels and should be made available.

International provisions on legal aid

In order to have an idea regarding the right to have fair trial, we can have a look on various human right conventions and charters at global level. Here brief mentioned few important provisions on the concept of fair trial from some of the very important human right conventions like Universal Declaration on Human Right, United Nations Convention on Civil and Political Right, the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950.

Universal Declaration of Human Rights, 1948:

Article 7 of UDHR recognizes all are equal before law and are entitled to equal Protection of law without any discrimination.

Article 8 recognizes everyone's right to an effective remedy by the competent national Tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 10 entitled everyone rights to a fair and public hearing by an independent Tribunal.

Article 11(1) refers everyone's rights to be considered innocent until proven guilty According to law in a public trial.

International Covenant on Civil and Political Rights, 1966:

Article 14(1) recognizes that all persons are equal before the courts and tribunals in the hearing of civil actions and criminal charges

Article 14(2): Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

Article 14(3): In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

- To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
- To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing;
- To be tried without undue delay;
- To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay it;
- To examine, or have examined the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- To have free assistance of an interpreter if he cannot understand or speak the language used in court.

The European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950:

Article 6: Right to Fair Trial. It reads:

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
 - a. To be informed promptly, in a language which he understands in detail, of the nature and cause of the accusation against him;
 - b. To have adequate time and facilities for the preparation of his defense.



- c. To defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
- d. To examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- e. To have the free assistance of an interpreter if he cannot understand or speak the language used in court.

All the conventions and charters mentioned above talks about a criminal justice system which does not incriminate a person unless his crime is proved beyond all doubt. The accused should be given all opportunity to represent his case in proper way in public trial, and then only a person may be held guilty. All these rights mentioned in all this supremely important international documents related to fair trial will be of no use if a person is not given proper scope to represent himself. In a world where though the ignorance of law is no excuse, yet very few are actually aware about the law in truest sense of term, no one can represent himself or herself properly unless that person is assisted by someone acquainted with the terms and jargons of law. Thus to prevent the notion of fair trial from becoming dead letter the alleged accused or retractor of law is required to be represented by someone who knows and can practice law that is an advocate or a lawyer.

Legal Aid provisions under Indian Constitution:

The Constitution is the supreme law of India. It incorporated various provisions of UDHR, 1948 for streamlining

- Human rights and fundamental freedom,
- Civil and political rights and
- Economic, social and cultural rights for its citizens.

Part - III of Indian Constitution recognises the fundamental rights and also contains the civil and political rights of the people that are guaranteed are judicially enforceable. The fundamental right provides a number of safeguards to the society.

Some of them are –

- Equality before the law.
- Right to protection of law.
- Right to life and personal liberty.
- Safeguards as to arrest and detention.
- Right to speedy and fair trial - Every person accused of a criminal offence shall have the right to a speedy and public trial by an independent and impartial court established by law.
- No person in a case against him can be his own witness.

Article 39(A) of the Indian Constitution states that, "The state shall secure the operation of the legal system that shall promote justice, on the basis of equal opportunity, and shall especially, provide free legal aid, by appropriate legislation or schemes, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disability." Articles 14¹ and 22(1)² of Indian Constitution also make it obligatory for the State to ensure equality before law and a legal system which shall promotes justice on a basis of equal opportunity to all. In that sense "Legal aid" strives to ensure that the constitutional pledge is fulfilled in its letter and spirit and equal justice is made available to the poor as well as downtrodden and weaker sections of the society.

Legal Aid in India: Statutory Recognition:

Though there was a statutory procedure providing free legal aid³ by appointing the advocate for defending criminal case and by exempting court fees in civil cases, it was not really making any significant impact on the ability of the underprivileged people to get the judicial redressal for their grievances. Hence under tremendous constitutional persuasion from the Supreme Court the Legal Services Authorities Act, 1987 was passed by the parliament of India. The Act prescribes the criteria for giving legal services to the eligible persons. It makes a person eligible for assistance under the act if he is –

- a. a member of a Scheduled Caste or Scheduled Tribe;
- b. a victim of trafficking in human beings or begar as referred to in Article 23⁴ of the Constitution;

¹ Article 14, Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

² Article 22(1), No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

³ Section 304(1) of Code of Criminal Procedure and Order 33, Rule 17 of Code of Civil Procedure

⁴ 23. Prohibition of traffic in human beings and forced labour



- c. a woman or a child;
- d. a mentally ill or otherwise disabled person;
- e. a person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or
- f. an industrial workman; or
- g. in custody, including custody in a protective home or in a juvenile home
- h. of in a psychiatric hospital or psychiatric nursing home within the meaning of clause of section 2 of the Mental Health Act, 1987; or
- i. A person whose annual income less than rupees fifty thousand or such other higher amount as may be prescribed by the State Government⁷. This limit on income can be increased by the state governments. Limitation as to the income does not apply in the case of persons belonging to the scheduled castes, scheduled tribes, women, children, handicapped, etc. Thus by this the Indian Parliament took a step forward in making the legal aid possible in the country.

According to the Act the 'court' is a civil, criminal or revenue court and includes any tribunal or any other authority constituted under any law for the time being in force, to exercise judicial or quasi-judicial functions⁸. Under the Act 'legal service' includes the rendering of any service in the conduct of any case or other legal proceeding before any court or other authority or tribunal and the giving of advice on any legal matter⁹. Legal Services Authorities after examining the eligibility criteria of an applicant and the existence of a prima facie case in his favour provide him counsel at State expense, pay the required Court Fee in the matter and bear all incidental expenses in connection with the case. The person to whom legal aid is provided is not called upon to spend anything on the litigation once it is supported by a Legal Services Authority.

BODIES UNDER THE ACT AND THEIR HIERARCHY:

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.

In every State a State Legal Services Authority is constituted to give effect to the policies and directions of the Central Authority (NALSA) and to give legal services to the people and conduct Lok Adalats in the State. State Legal Services Authority is headed by the Chief Justice of the State High Court who is its Patron-in-Chief. A serving or retired Judge of the High Court is nominated as its Executive Chairman.

District Legal Services Authority is constituted in every District to implement Legal Aid Programmes and Schemes in the District. The District Judge of the District is its ex-officio Chairman.

Taluk Legal Services Committees are also constituted for each of the Taluk or Mandal or for group of Taluk or Mandals to coordinate the activities of legal services in the Taluk and to organize Lok Adalats. Every Taluk Legal Services Committee is headed by a senior Civil Judge operating within the jurisdiction of the Committee who is its ex-officio Chairman.

In order to provide free and competent legal service, the NALSA has framed the National Legal Service Authority (Free and competent Legal service) Regulations, 2010. The salient feature of Regulation is engaging senior competent lawyers on payment of regular fees in special cases like where the life and liberty of a person are in jeopardy.

Supreme Court of India has also set up Supreme Court Legal Services Committee (SCLSC) to ensure free legal aid to poor and under privileged under the Legal Services Authorities Act. It is headed by a judge of Supreme Court of India and has distinguished members nominated by Chief justice of India. The SCLSC has a panel of competent Advocates on record with certain minimum number of years of experience who handle the cases in the Supreme Court. Apart from that the SCLSC has full time Legal Consultant who provides legal advise to poor litigants either on personal visit or through the post.

(1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purpose, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them

⁷ Section 12 of the Legal Services Authorities Act, 1987.

⁸ Section 2(1) (a) of the Legal Service Authority Act, 1987.

⁹ Section 2(1) (c) of the Legal Service Authority Act, 1987.



FREE LEGAL AID IN INDIA: THE POSITIVE CONTRIBUTION OF JUDICIARY:

The Supreme Court of India got a major opportunity to make an emphatic pronouncement regarding the rights of the poor and indigent in judgment of *Hussainara Khatoon*¹⁰, where the petitioner brought to the notice of Supreme Court that most of the under trials have already undergone the punishment much more than what they would have got had they been convicted without any delay. The delay was caused due to inability of the persons involved to engage a legal counsel to defend them in the court and the main reason behind their inability was their poverty. Thus, in this case the court pointed out that Article 39-A emphasized that free legal service was an inalienable element of reasonable, fair and just procedure and that the right to free legal services was implicit in the guarantee of Article 21.

Two years later, in the case of *Khatri v. State of Bihar*¹¹, the court answered the question the right to free legal aid to poor or indigent accused who are incapable of engaging lawyers. It held that the state is constitutionally bound to provide such aid not only at the stage of trial but also when they are first produced before the magistrate or remanded from time to time and that such a right cannot be denied on the ground of financial constraints or administrative inability or that the accused did not ask for it. Magistrates and Sessions Judges must inform the accused of such rights. The right to free legal services is an essential ingredient of reasonable, fair and just procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21 and the State is under a Constitutional mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so require. The State cannot avoid this obligation by pleading financial or administrative inability or that none of the aggrieved prisoners asked for any legal aid.

In *Suk Das v. Union Territory of Arunachal Pradesh*¹², Justice P.N. Bhagwati, emphasized the need of the creating the legal awareness to the poor as they do not know their rights more particularly right to free legal aid and further observed that in India most of the people are living in rural areas are illiterates and are not aware of the rights conferred upon them by law. Even literate people do not know what are their rights and entitlements under the law. It is this absence of legal awareness they are not approaching a lawyer for consultation and advice. Moreover, because of their ignorance and illiteracy, they cannot become self-reliant and they cannot even help themselves. That is why promotion of legal literacy has always been recognized as one of the principal items of the program of the legal aid movement in the country. I would say that even right to education would not fulfill its real objective if education about legal entitlements is not made accessible to people and our constitutional promise of bringing justice to the door stepson the people would remain an illusion. Justice Krishna Iyer, who is crusader of social justice in India, had rightly said that "if a prisoner sentenced to imprisonment is virtually unable to exercise his constitutional and statutory right of appeal inclusive of special leave to the Supreme Court for want of legal assistance, there is implicit in the Court under Article 142 read with Articles 21 and 39-A of the Constitution, the power to assign counsel for such imprisoned individual for doing complete justice".¹³ It is a statutorily recognized public duty of each great branch of government to obey the rule of law and uphold the trust with the constitution by making rules to effectuate legislation meant to help the poor.¹⁴ Though the law has been enacted to protect the poor the governments are lazy to implement the enacted law. The same was observed by Supreme Court in *State of Haryana v. Darshana Devi*¹⁵, that "the poor shall not be priced out of the justice market by insistence on court-fee and refusal to apply the exemptive provisions of order XXXIII¹⁶, CPC". The state of Haryana, mindless of the mandate of equal justice to the indigent under the Magna Carta¹⁷ of republic, expressed in article 14 and stressed in article 39A of the Constitution, has sought leave to appeal against the order of the high court which has rightly extended the 'pauper' provisions to auto-accident claims. Order XXXIII will apply to tribunals, which have the trappings of the civil court...even court also expressed its poignant feeling that —no state has, as yet, framed rules to give effect to the benignant provision of legal aid to the poor in order xxxiii, rule 9A¹⁸, civil procedure code, although several years have passed since the enactment.

¹⁰ *Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 98.

¹¹ *Khatri v. State of Bihar*, AIR 1981 SC 262.

¹² AIR 1986 SC 991.

¹³ *M.H. Hoskot v. State of Maharashtra* (1978) 3 SCC 81.

¹⁴ Order 33, Rule 9A, Code Civil Procedure, 1908.

¹⁵ AIR 1972 SC 855.

¹⁶ Order 33 of CPC (suits by indigent persons)

¹⁷ The Magna Carta ("Great Charter") is a document guaranteeing English political liberties that was drafted at Runnymede, a meadow by the River Thames, and signed by King John on June 15, 1215, under pressure from his rebellious barons. By declaring the sovereign to be subject to the rule of law and documenting the liberties held by "free men," it provided the foundation for individual rights in Anglo-American jurisprudence.

¹⁸ Order xxxiii, rule 9A 9A. Court to assign a pleader to an unrepresented indigent person.



Parliament is stultified and the people are frustrated. Even after a law has been enacted for the benefit of the poor, the state does not bring it into force by wilful default.

CONCLUSION:

Legal aid is not a charity or bounty, but is an obligation of the state and right of the citizens. The prime object of the state should be —equal justice for all. Thus, legal aid strives to ensure that the Constitutional pledge is fulfilled in its letter and spirit and equal justice is made available to the down-trodden and weaker sections of the society. But in spite of the fact that free legal aid has been held to be necessary adjunct of the rule of law, the legal aid movement has not achieved its goal. There is a wide gap between the goals set and met. The major obstacle to the legal aid movement in India is the lack of legal awareness. People are still not aware of their basic rights due to which the legal aid movement has not achieved its goal yet. It is the absence of legal awareness which leads to exploitation and deprivation of rights and benefits of the poor.

SUGGESTIONS:

- It is suggested that it is the need of the hour that the poor illiterate people should be imparted with legal knowledge and should be educated on their basic rights which should be done from the grass root level of the country. For that judiciary needs the support from state administration to conduct legal literacy programme.
- The judiciary should focus more on Legal Aid because it is essential in this present scenario where gulf between haves and have-nots is increasing day by day. And elimination of social and structural discrimination against the poor will be achieved when free Legal Aid is used as an important tool in bringing about distributive justice.
- There are number of precedents as well as legislations to up hold, the right to free legal aid but they have just proven to be a myth for the masses due to their ineffective implementation. Thus the need of the hour is that one should need to focus on effective and proper implementation of the laws which are already in place instead of passing new legislations to make legal aid in the country a reality instead of just a myth in the minds of the countrymen.
- In providing Legal Aid, the Legal Aid institutions at all level should use proper ADR methods so as to speed up the process of compromise between parties to the case and with that matter will be settled without further appeal.
- Free Legal Services Authorities must be provided with sufficient funds by the State because no one should be deprived of professional advice and advice due to lack of funds.

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