CHAPTER -I

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"I like spring, but it is too young. I like summer but it is too proud. So I like best of all autumn because its tone is mellower, its colours are richer and it is tinged with a little sorrow. Its golden richness speaks not of the innocence of spring nor of the power of summer but of the mellow and kindly wisdom of approaching age, it knows the limitations of life and its content".

- Lin Yu – Tang

In India, the aged people constitute seven per cent of the population numbering sixty million. It is a problem of almost every family, involving strains of caring and stresses of intergenerational interactions, and it has become an important socio psychological issue in the community. Increasing modernization, urbanization and social change have made elder care more problematic, and with longevity on the rise ‘the empty’ years at the end have increased, with its attendant problem of disease, disability and psycho-physical deterioration. Ageing is everybody’s problem as everyone, willy nilly, is bound to age and experience the impact. These and many more reasons, justify amply the urgency to examine this multifaceted, multipronged psycho-social issue of the elderly. Unless it is handled deftly by its forelock, now and here, and take appropriate preventive steps, the problem will reach a point of no return.

India is in the pre-middle era of demographic transition. In the coming decades, with further fall of birth rate and death rate and infant mortality, the base of

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1 Quoted, in S Chandra, _Hale and Hearty Every After Fifty_, Delhi: Pustak Mahal, January 2001, p.15.
the age pyramid may narrow and the middle portion may broaden, pushing up the median age. By the fourth decade of the 21st century the bulge in the pyramid would shift further upward making the pyramid more rectangular. This means a higher proportion of the younger groups than of now. The aged population may be crossing one hundred million and thus increasing the aged dependency ratio.3

The twenty-first century is often called the age of ageing. One of the world's greatest challenges of the present century is the enormous increase in the absolute numbers and proportions of older persons in the world. Population explosion in India is almost alarming in its proportions. The percentage of elderly citizens above 60 years, in the population went from 5.5 percent in 1951 to 6.8 percent in 1995 and is expected to rise to 8.9 percent of the population in 2013. From 25.6 millions in 1961, the number of senior citizens above 60 years is expected to reach 300 millions in 2016. Today, India houses over 73 million of elderly people, of this around 34 million are women and more than half of them are widows.4

The reasons are simple—declining birth rates coupled with a higher life span. In India, life expectancy at birth was only 57.2 years in 1990 but is now expected to increase to 77 years by 2050. On the other hand, the birth rate will decline from 31 babies born per thousand in 1992 to 13 babies born per thousand by 2050, states the US census bureau.5

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3 Ibid.
4 Syed Maswood, "Old Age A Curse: Dearth of Enabling Laws to Protect this Vulnerable Group" AIR Journal 2003, p.103.
A rather alarming aspect is that in the next 25 years the number of those above 75 years of age will swell vastly and will need to be taken care of with all the multiple problems faced by them, physical, mental and psychological.\(^6\) The Statistical Dimension of Senior Citizens as per 2001;\(^7\) conclusively establishes the enormity of the problem. According to it: 90% with no Social Security; 30% of older persons live below the poverty line; 33% of older persons live just marginally over the poverty online; 80% of older persons live in rural areas; 73% are illiterate, and can only be engaged in physical labor; 55% of elderly women are widows. There are nearly 200,000 centenarians in India. Elderly populace is the fastest growing section of society in India the reasons being, increased life expectancy, advancements in medical/health technologies, better nutrition, gradual fall in mortality rate, low fertility rates, increased awareness. While the numbers are going up, the major concerns are quality of life, dignity, support systems and security.

A great anxiety in old age relates to financial insecurity. When the issue is seen in the context, one-third of the population is below the poverty line and about one third are above it but belong to the lower income group, the financial situation of two-thirds of the population of people aged sixty and above can be said to be fragile.\(^8\)

This phenomenon, unprecedented in human history, has generated both a growing general interest in ageing and old age in particular.\(^9\) Since a long time the

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\(^7\) <http://www.helpageindia.org/ageing.html>, visited on 02.09.2006.


phenomenon of ageing has attracted the attention of the scientist and the common 
man alike. All persons, who live long enough, willy nilly, experience the effects of 
ageing. The changes, in body and mind, seen in the latter half of the life span are 
popularly referred to as ageing. Understanding the ingredients of the process of 
ageing helps to manage it better, than otherwise.\textsuperscript{10} The graying phenomenon is not 
afflicting the world uniformly and varies from country to country. \textsuperscript{11}

The ageing poses a serious human problem. Since they are considered ‘non-
productive’ and as they also do not generate any hope, it is all the more necessary that 
serious attention be paid to them. They raise moral questions and direct our attention 
towards transcendental values. In the past, ageing was not a serious issue and societies 
did not give it priority. They dealt with it as a natural phenomenon. Family members 
were responsible for the care and management of the old.\textsuperscript{12} Family has been the 
most vital non-formal social security for senior citizens in India. Most senior citizens 
reside with one or more of their children, particularly when independent living is no 
longer feasible.\textsuperscript{13} The Joint family system, prevalent in the Country, ensured that the 
needs of the elderly are taken care of, at a stage where they are unable to look after 
themselves, both financially and otherwise. In India it is the family, with its 
community linkages, which constitutes the social capital and provides the real social 
security net. Prof.R.Vaidhynathan, a professor from IIM Bangalore said, “with limited 
social security and a large unorganized workforce, social capital-the family and

\textsuperscript{10} \textit{Ibid}, p. xiii.
\textsuperscript{11} The \textit{Deccan Herald}, supra note 6.
\textsuperscript{13} National Policy on Older Persons, supra note 8, para 80.
community linkages is the best safety net for the elderly in India. Only nurturing this capital can save the country from a societal crisis.”

The Traditional Indian value system inculcates respect for elders. The legend of Ram and Yayati proves how a father was respected and worshiped by the young sons. Not only the orders but also the wishes of the old patriarch were treated as commands and were carried out without a word of protest. Ram, the legal heir to the throne of Ayodhya relinquished it because the favourite queen of Dashrath, wanted so. Yayati, the King of Hastinapura becomes old but still longed for beautiful women. He asked his sons Puru and Yadu to give their youth to him. The sons did so without a moment’s hesitation. The story may not be a true one but it shows the extent of reverence, which the young generation showed to their old. The old persons were considered the repositories of learning and wisdom.

In this connection a well-known story of a young king who ordered to kill all the older persons of his kingdom, because he thought that the elderly are the burden to the society. But after some days when a natural calamity struck his kingdom, surprisingly asked his ministers for a old and experienced person who could guide him properly with long experience in the moment of disaster. Finally one day a citizen came and suggested the king the remedies to solve his problems and told that he got those guidance from his grand father whom he kept underground to save his life after the order of killing of older persons by the king. From that day the king understood the needs of elderly in the social structure.

14 S Gurumurthi, “Not just break homes, bring down the economy too”, The New Indian Express, Belgaum, Tuesday, December 5th 2006, p. 11.
15 S. Chandra, supra note 1, p.18.
Old age was not considered as a period of infirmities and diseases and was a boon to be solicited from gods. In *Yajur Veda*, the *Rishis* seek the blessings of the Almighty to enable them to live for hundred years. Elders are considered an intrinsic part of the family. Children turn to their elders for advice on every aspect of their life.

The problems posed by ageing are by no means accidental and isolated. They have grown as a result of the development process itself. The entire emphasis of development is on individual success, career promotion, entrepreneurship, investment, capital building and profit. In such a scheme of things, there is hardly any scope for thoughts about human development. At family, community and government level the problems of the ageing get no or very low priority. It is taken for granted that the problem will get solved on its own or that it is a problem of individual families, with communities and governments having nothing to do with it. The family, where the ageing are supposed to get care and comfort, is on the rocks and in any case shrinking. The members of the family are spread around in pursuit of their careers.

With couples working, lifestyles changing, values eroding, western ideas gnawing at tradition and the power of money rising, it is the elderly population that is facing the heat. The developmental evolution has taken the women folk out of home and transformed the family structure to be nuclear, which results in deprivation of

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16 Ibid.
18 The *New Indian Express*, *supra* note 14, p. 4
care for the needy at home. Various research studies in this aspect conclude that the status of the elderly is deteriorating in the transient Indian family structure.

New standards of behaviour, new ways of spending time and money and the like in present nuclear family setup, provide specific ground for conflict between generations. The disagreement, which would have remained suppressed in the past, is now openly expressed. This conflict among generations was noticed at the recent Mahakumbha Mela. Wherein many sons and daughters who came to cast away their sins in the holy Triveni Sangam of Allahabad. Have left behind their elderly parents and other aged relatives. This desertion at the Mahakumbha is a curse on the so-called rich Indian traditional family setup which requires to analyze all such factors, social, moral and legal, affecting the aged population by an exploration of the statistics available on them.

The socio-economic implications of population ageing go beyond demographic data, statistics and projections. Moreover, this phenomenon poses unique challenges to every society because, unlike other population growth variables such as fertility and mortality rates which, to a considerable extent, have been influenced by government policies, the process of population ageing is in actual fact irreversible. Consequently, the attention of every government should not be aimed on whether it...

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21 A news report in ‘The Indian Express’ dated 30th January 2001, which says that about fifteen thousand to twenty thousand old parents were abandoned of whom ten thousand are women.
can change the basic process of ageing, but rather to the very issues that arise from this process.\textsuperscript{22}

At the same time it cannot be ignored that the approach to these issues should not be treated in isolation. It should rather form an integral part of an over-all national development-planning programme of each country. The challenges and strains of an ageing population need to be studied as interacting with other social, economic, health and psychological challenges and strains. Its repercussions are so wide-ranging and manifold that they can be ignored at a tremendous cost to society.\textsuperscript{23} Various countries stand today at a critical turning point for confronting these challenges and issues.

The Western response to the problem has been liberating the old from various kinds of filial responsibilities, making them economically as viable as possible and handing over the problems of health and care to specialized institutions. In the United States of America, apart from schemes of pension, insurance and retirement benefits, the health care of the aged is linked with the social security system. Mobile home service for the aged has been devised in order to lessen the pressure on institutions and costly nursing homes.\textsuperscript{24}

At a time when the western world is reshaping programmes for the elderly, in order to contain costs as well as to mitigate the intergenerational conflict, many Asian countries have barely begun to think about their elderly; and, given the pace of

\textsuperscript{22} P.V. Ramamurti and D. Jamuna, \textit{supra} note 9, p.(iv).
\textsuperscript{23} \textit{Ibid.}
\textsuperscript{24} P. K. Misra, \textit{supra} note 12, p.4.
population ageing in Asia and the corresponding lack of adjustment mechanisms, a ‘time bomb’ or ‘age quake’ may not be very far.25

It is estimated that the majority of the world’s older persons, around 60 percent, live in rural areas. This percentage is still higher in developing countries. In India two thirds of its total population lives in rural areas. In spite of this fact, rural ageing has attracted much less attention and generated less research interest than that of ageing in urban areas, Muthayya’s study 26 focuses on the profiles of India’s older persons living in rural areas. Analyzing their economic, health, occupational, family status and their general dispositions. Keeping this in view, the Govt., of India, has formulated (in 1999) a National Policy for Older Persons (NPOP), an action plan and National Council for older persons to give a direction to the programmes for the older people. What actually needs to be done is to utilize the elderly human resource effectively, develop their income generating capability and reduce their dependence on the earning middle age 14-55 groups. This needs a great exercise on the part of planners, politicians and administrators to put their heads together and evolve a solution in the foreseeable future.27

The United Nations too, convened world Assembly on Ageing in Madrid in April 2002, twenty years after the first Assembly held in Vienna in 1982, to review


The metaphor of a ‘time bomb’ or ‘age quake’ used by some analysts to explain ageing trends may seem inappropriate. Bomb explosions or earthquakes occur with tremendous force, but such force is rapidly spent. A more appropriate metaphor for rapid ageing is that of glacier, since a glacier moves at a slow pace but with enormous effects wherever it goes and with a long-term momentum that is unstoppable.


27 Ibid, p. 31.
the progress and suggest a new plan of action. India is a signatory to this Action Plan. India is a country with a hoary tradition of good eldercare. Despite the fact that Ancient Indian culture had conceived of an “Ashrama Dharma” (duties at Various stages of life span as propounded by Sage Manu), Scientific interest in ageing is of recent origin. Starting with stray popular articles in the early 1950s, scientific writings appeared in the sixties. The organization of seminars, conferences, research projects and scientific organizations that followed strengthened the research output. In the last two decades, the pace of developments picked up substantially creating greater awareness of the problems of ageing.

1.1 Problem

Everyone has a right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social security in the event of unemployment, sickness, disability, widowhood, old-age or other lack of livelihood in circumstances beyond his control. The ageing poses a serious human problem.

Traditionally, the aged has always been an integral and important part of the family in Indian society. Even today the family is the mainstay for the aged, which caters to their economic, physical and emotional needs to a great extent. But the vulnerability of older people has been heightened as a backlash of social change. With couples working, lifestyles changing, values eroding, western ideas gnawing at tradition and the power of money rising, it is the elderly population that is facing the heat. Contraction of the joint family, urbanization, crunch on space, migration of

28 P.V. Ramamurti and D. Jamuna, supra note 9, p. xiv.
youngsters to cities and abroad, inflation, a visible assertion of individualism and weakening social norms are responsible for the marginalization and displacement of elderly. In India, provisions have been made under legislations such as the Code of Criminal Procedure 1973 and the Hindu Adoption and Maintenance Act 1956 to enable aged parents, with insufficient resources to meet their needs. However, the process under these legislations is cumbersome and time consuming. Some States like the State of Himachal Pradesh have enacted legislations enabling the elderly and other dependants to claim maintenance. However, there is no such central legislation applicable to all parts of India. Lack of social security measures and absence of single specific law for the benefit of the elderly added to the enormity of the problem.

In this context, there is a need to examine problems faced by the aged people and develop suitable legal mechanism to solve them, which haunt the society as a whole.

1.2 Objectives of the Study

The objectives of the study were as follows:

(i) The primary objective of this study was to investigate the adequacy of social security measures and legal protection available to the aged people in India;

(ii) To make a conceptual analysis of the social security and trace its historical evolution with a special focus on the need for social security;

(iii) To analyze the mandate of the Constitution of India in regard to social security measures in general and for the aged in particular;
(iv) To ascertain the role of United Nations Organization, International Labour Organization, World Health Organization, in regard to providing of social security measures to the aged;

(v) To discuss and ascertain the social security measures in United Kingdom and United States for the aged with a view to make a comparative analysis;

(vi) To investigate and understand the various problems like social, psychological, economic, health and miscellaneous, etc, of the aged in India.

(vii) To examine the existing social security policies and programmes of the Government relating to aged in India;

(viii) To ascertain the role of voluntary organizations and Non-Governmental Organizations in providing social security to the aged;

(ix) To make an analysis of the legislative measures for providing social security for the aged in India and also the role played by the judiciary in this regard; and

(x) To make suitable suggestions for providing better social security measures for the aged in India.

1.3 Methodology

The methodology adopted for the study is completely doctrinal, involving content analysis. The documents analyzed include international conventions; declarations, treaties, statutes and judicial decisions for which original sources were consulted and for critical appraisal, secondary sources such as juristic writings were consulted. Relevant books, Articles, Empirical studies, Reports, etc., have been
studied to get the true picture of the problem of social security measures for the aged in India and to outline the remedial measures for it. The standard forms of citations and references are used in the work.

1.4 Importance of the Study

The importance of the study lies in the fact that it helps in having a comprehensive grasp of the problems faced by the aged people and the adequacy or otherwise of the governmental measures for their welfare. The study will be useful to legislators, academicians, lawyers and social activists, especially voluntary organizations to approach the problems of the aged more systematically so that suitable legislative measures can be initiated to ensure appropriate social security measures for the aged. Lastly, the importance of the study lies in its purpose of making an original contribution to the discipline of law.

1.5 Limitations

After selecting the general area or aspects of subject matter where the researcher would like to enquire into his area of enquiry to make research more specific and meaningful, the study is conducted subject to following limitations. The first limitation of the study is that, it has taken only those provisions from the statutes, which deal with the social security measures for the aged.

The second limitation is that, it has focused on legislations of United Kingdom and United States because these two countries are dominant and advanced in the world for providing social security network in which effective social security laws exists.
Since it is not possible to cover all problems and issues concerning the aged within the limited time available, the study is limited to the social security problems of the aged, which is of great concern to all.

1.6 Scheme of the Study

The investigation into the problem pertaining to the social security measures for the aged in India is planned and spreads in ten chapters as follows.

1.6.1 Introduction

This Chapter is concerned with an elucidation of the problem, the objectives of the study, its importance and the methodology adopted for the study.

1.6.2 Social Security: An Analysis

It is difficult to understand the source of present-day social security measures for the aged without looking at the historical evolution of the concept. The analysis in this Chapter has traced the evolution of social security provisions made by the State for the protection of the orphans, the widows and the old in the seventh century AD. Further, the main elements of social security, rights based approach to Social Security and social security in general is being discussed in order to understand the dimension, scope and nature of social security as a whole.

1.6.3 The Indian Constitution and Social Security

The Indian Constitution was conceived and drafted in the mid-twentieth century when the concept of social welfare state was the rule of the day. India, being a welfare State, has taken upon itself the responsibilities of extending various benefits of Social Security and Social Assistance to its Citizens. The social security legislations in India derive their strength and spirit from the Directive Principles of the State Policy as contained in the Constitution of India. Although the Constitution of
India is yet to recognize social security as a fundamental right, it does require that the State should strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice social, economic and political shall inform all the institutions of national life.

In this **Chapter** the concern of the Constitution to provide social security to the needy deservedly claiming the status of fundamental right is discussed.

1.6.4 Social Security for the Aged: The Role of United Nations and other Organizations

The ageing is a global phenomenon and all the countries of the world are being affected by it. Being aware of the problems faced by the aged all over the world the international community has initiated certain measures for their welfare. In this regard United Nations Organizations (UNO) and International Labour Organizations (ILO) have passed many resolutions and recommendations for member states to implement in order to provide social security to the aged. In this **Chapter** an analysis of the Recommendations of the First World Assembly on Ageing, Vienna, Austria, 1982, and Political Declaration of the Second World Assembly on Ageing, Madrid, Spain 2002 is made. Further, reference has been made to Convention No.102 of the International Labour Organization (ILO) on Social Security. Art.25 of Universal Declaration of Human Rights, which provides the right of everyone to social security, and International Covenant on Economic, Social and Cultural Rights which focuses on social security. And other guidelines of UN, which help to have a standard practice, programmes and policies for the aged, have been analyzed.
1.6.5 Social Security for the Aged in United Kingdom and United States of America: a Comparative Analysis

There has been a remarkable development in the United Kingdom (U.K) and United States (U.S) in the field of social security for the aged. Number of Laws are enacted and many governmental, semi governmental bodies have been set up to formulate and implement policies to safeguard the interest of the aged people. A comparative study of social security measures for the aged provided in advanced countries like U.K and U.S.A. is made with a view to understand their experience and draw inspiration.

In U.K., Sir William Beveridge Report submitted on 20th November 1942, is a landmark in the field of social security. It provides “social security from cradle to grave”. Regarding the age of retirement sir Beveridge was against a rigid structure. He supported the view that a person who could work for a longer period should be allowed to do so. In 1946 all the old age pension schemes were consolidated under one co-ordinated Ministry known as National Insurance Ministry. National Insurance and Industrial Injury Act 1948, and Civil Partnership Act 2005, is another important legislation, which provides for benefits such as income support, pension credit, income-based job seekers allowance and housing and council tax benefit. In U.S also important legislations like Social Security Act 1935, Public Health Service Act 1944, The Employment Act 1946, Civil Service Retirement Act 1962 have been analyzed. Further, old Age survivors and Disability Insurance (OASDI); Federal Medical and Hospitalization Insurance; and supplemental security income other schemes which take care of the aged people are examined in this Chapter.
1.6.6 Problems of the Aged People in India: An Analysis

In this Chapter the various problems like Social, Psychological, Economical and Medical, faced by the aged people in India are analyzed. The analysis has revealed that the problems faced by the aged are quite complicated and for resolving them a multi pronged comprehensive plan is required.

1.6.7 Social Security Programmes and Policies for the Aged in India

In this Chapter the various social security policies and programmes of the Government for the aged are discussed, with a view to understand their adequacy, effectiveness and implementation.

1.6.8 Role of Non-Governmental Organizations and the Aged in India

The active participation and involvement of voluntary organizations, and non-governmental organizations is very important in providing social security to the aged. The NGOs working for the elderly in India have contributed immensely for the welfare and care of the elderly. It is the “Friend in Need Society” of Madras, which was the first organization, started in 1840 to devote itself to the care of the aged and the “Little Sisters of the Poor”, formed in 1882 in Calcutta. The Handbook of Information published by the Association of Senior Citizens has listed 665 Organizations in India working in the field of welfare of the aged. The role played by National and International NGOs is critically analyzed in this Chapter.

1.6.9 Legislative Measures for Providing Social Security for the Aged in India: an Analysis

Everyone has a right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social security in the event of unemployment, sickness, disability,
widowhood, old-age or other lack of livelihood in circumstances beyond his control. It is the primary duty of the state to enact legislations for providing social security to the aged people but unfortunately so far no specific legislation has been passed in this regard by the Central Government.

Though, there is no single specific law for the benefit of the elderly, yet the elderly are benefited along with other persons under various laws like:

(i) Hindu Adoption and Maintenance Act 1956; (ii) The Code Criminal of Procedure 1973; (iii) The Hindu Succession Act 1956; (iv) The Indian Succession Act 1925; (v) The Shariat Act 1937; (vi) Income Tax Act 1961; (vii) Hindu Marriage Act 1955; (viii) Indian Divorce Act 1869; (ix) The Parsi Marriage Act 1954. However, the State of Himachal Pradesh has enacted, the Himachal Pradesh Maintenance of Parents and Dependants Act 2001, which is a unique piece of legislation as it is a specific law providing for the welfare of the senior citizens. Lastly the provisions of the Parents and Senior Citizens (Welfare and Maintenance) Bill 2006, which is currently under the consideration of the Parliament of India, have been examined. Lacunae present in the Bill have been highlighted.

1.6.10 Conclusion and Suggestions

The last Chapter deals with the findings of the study. In the light of the findings several suggestions are made the implementation of which would improve the position of the aged.