CHAPTER I

INTRODUCTION

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1 STATEMENT OF PROBLEM

India is having great heritage and culture. When we look in the ancient history, found the moral values are adopted and nourished. Since then we find one important feature of our culture that, to respect our parents and fore fathers. The Sanskrit phrases like "Matru Devo Bhav" and "Pitru Devo Bhao", reflects the sentiments to one's parents. During the ancient period parents were worshiped as living Gods and Godesses and placed at a very high position. The instances namely, of Shravana Kumar, whose aim was to render selfless services to his aged and blind parents, strived hard for the same and ultimately sacrificed his life for the cause. Lord Rama, the Prince of Ayodhya, who at the time of Royal installation ceremony, gave up right to rule Kingdom just to honour and abide the words of is father\(^1\). In recent past, the life of Sane Guruji and his commitments towards his mother and elderly persons, stand the testimony to the sanctity attached to values in the past.

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But the present scenario is something different. The respect towards old parents is something different as it was found in ancient times. The analysis of this drastic changed situation reveals that, in the immense growth of industrialization and technological development, presently the life of man has come to much too mechanical. It is the root cause for the change of lifestyle and approach in human behavior. As a consequence of it, the old people, the aged and sick parents are no more cared. They have turned out to be destitute.

The modern culture, breaking up joint families, retirement and the changing social values caused adversely and lowered down status of aged. The young one’s look after by their parents and guardians, are now no more given much attention by their sons and daughters. Most of the aged parents are experiencing miserable life.

In this backdrop, from human rights perspective, there is need to help them, to make their life prestigious, dignified and cheerful and to infuse confidence in them and to strive hard to improve their life. There is an urgent need to provide a secure environment for the elderly and evolve mechanism in our legal system in the interest of and suitable to old population. These are some of important elements inspiring for research in Gerontology.

Gerontology is the branch of study which is concerned with the aged and aging. In other words, it is an approach towards aged people. Gerontology is the scientific study of the phenomenon of aging. By aging is meant the progressive changes that take place in a cell and tissues, an organ system, a total organism or a group of organisms with the passage of time. Aging is part of the
developmental sequence of the entire life span. However, Gerontology is concerned primarily with the changes that occur between the attainment of maturity and the death and with the factors that influence these changes.

India, like many other countries is heading towards phenomenon of population aging. Improved health care facilities, awareness and spread of life saving drugs coupled with socio-economic progress have resulted in the number of aged people. The Indian aged population is currently the second largest in the world the absolute number of 60+ populations in India which was 56.7 million in 1991 reached to 72 million in 2001. The population projection made by the Registrar General of India, indicates that, this number would be 100 million by 2016 and further expected to rise 137 million by 2021. So the proportion of the population aged 60+ is expected to increase from 4% in 1990 to 9% by 2030.

The sudden increasing absolute and relative number of older people means that, more and more people will be entering the age when the risk of developing certain syndromes of frustration and chronic disease would be higher. In these circumstances, population aging will lead to serious challenges for national peace and public health. Growing population of elderly or aged will put financial burden on pension schemes, health insurance, travel benefits or exemptions etc. It also leads to the mental health problems. The growing social, economic and public health consequences thereof of aged people are required to be taken very seriously. In this circumstance there require some mechanism to coup up with this situations. From this viewpoint also gerontology plays an important role.
Traditionally it is the culture that, responsibilities to look after and maintain the elders or aged by the families on their own. Also it is the tradition that, the aged preferred to live with the eldest son\(^2\). But due to different problems and nuclear family system, these aged parents are taken by their own son/s or daughter/s as burden. As a consequence of this there is shifting of responsibilities from family members to government or State.

To tackle all these things, it requires legislative measures. The analysis and scrutiny of our legal system, it reveals that, there are different legislations in India and provisions applied in the field of aged people for their protection and up liftment. It covers the aged people having family, relatives and those who do not have. The prominent among them is our Constitution.

Article 41 of Constitution of India recognizes the need of the elderly and enjoins upon State the responsibility of making effective provisions for public assistance in case of old age. Under Hindu Adoption and Maintenance Act 1956, every Hindu, son/daughter is under a legal obligation to maintain his/her parents who are aged has been made mandatory. In section 125 of Criminal Procedure Code, the Indian cultural attitude has been reflected. In addition to these there is some more legislation like the Workman Compensation Act 1923, The Employees State Insurance Act 1948, The Employees' Provident Fund and Miscellaneous Provisions Act 1952, Payment of Gratuity Act 1972, The Pension Act 1871, Income Tax Act 1961, wherein one finds the different provisions in the interest of elderly people.

\(^2\) Ibid, p5
In addition to the above referred legislative provisions, the government of India have formulated and implemented different welfare schemes. Under these schemes certain benefits and facilities are conferred upon the senior citizens. Prominent among them are, pension to retired servicemen, pension to those who actively participated in India’s freedom struggle, provident fund, travel concession, Life Insurance schemes, old age pension for the poor and destitute, Old age homes in the State sector etc.

No doubt different legislation and welfare schemes and policies for elderly have been implemented by the Government. The legislators came up with various Bills like Destitute and Needy Senior Citizens (Care, Protection and Welfare) Bill, 2005, Needy and Neglected Senior Citizens and Orphans and Runaway Children (Care and rehabilitation and Welfare) Bill, 2005, Destitute Abandoned and Neglected Widows and Old Women (Welfare and Rehabilitation) Bill, 2007, Destitute, Indigent and Neglected Citizens (Maintenance and Welfare) Bill, 2007, were said to have been introduced with some serious thought before they were rejected to formulate an Act.

As yet there were no special or separate legislation exclusively for Senior Citizens. However, there are efforts made by the Government to initiate a special law to govern and regulate important problems of Senior Citizens. In 2006, on 3rd March, Ms. Sushma Swaraj of BJP has tried to introduce the Bill titled as Senior Citizens (Maintenance, Protection and Welfare) 2006, but the Bill could not proceed further. Thereafter, the Government of

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3 Bharat S. Kumar, Abandonment During Sunset Years, LAWZ, June, 2009, p34.
India, through its Ministry of Social Justice and Empowerment, through then Minister, Smt. Mira Kumar introduced the Bill on 9th March, 2007, titled as “The Maintenance and Welfare of Parents and Senior Citizens Bill 2007” (No. 40) in Lok Sabha. The basic object of the Bill of 2007 was to provide effective remedies for the maintenance and welfare of Parents and Senior Citizens. The above referred bill is now became the Act, which received an ascent of the President of India on 31 December, 2007.

The institutional mechanism to carry out the provision of maintenance of the senior citizens was necessary; hence it has been provided under this Act, the establishment of Old age Homes for Senior Citizens in different parts of India. The Act also provides for the establishment of different authorities like Maintenance Officer, Tribunal and Appellate Tribunal. The purpose behind these provisions is to implement the spirit of the new law. The Act no doubt has a laudable object that is to maintain and look after the welfare of Senior Citizens and Parents. However, the effect of these provisions depends upon implementation of the other provision of the law.

The review of different legislations pertaining to Senior Citizens is found to be contradictory with each other in terms of its policies, contents and also the benefits. The comprehensive Act perhaps would bring uniformity in the law and also implement the spirit of human rights philosophy with Gerontological perspective. One of the objects of this research was to prepare a theoretical framework for arranging the basic elements of law which satisfy the expectation and aspirations of aged people.
II OBJECTIVES OF THE STUDY

The goal of research is to highlights the gerontological aspect of law in India. It is specifically concern about the problems of aged people and its legal solution so far has been arranged through schemes and programs. In fact, every individual, whatever, he or she is, bound to undergo aging in his or her life. The study examines law which have been suggested or on the agenda of the government for the protection and promotion of the interest of aged population. Gerontology is a new branch of knowledge which has opened the investigation into the problems of aged population, which specifically treats aging process, not for the purpose of extending the life span but reduce the hardship of the people suffering from disabilities and handicaps of old age. The legal framework would support the parameters of gerontological perspective. This study provides the analysis of various elements of law concerned with aged people from gerontological perspective. Some of the objectives of research are, to find out status and problems of aged people, legal protection and social security provided various schemes, programs and policies for the aged people. Further, to examine various issues regarding aged people viz. protection of old people under Indian legal system, whether special provisions are required on the basis of gender, the role played by the NGO’s in the protection and promotion of interest of aged people. It is yet another province of the present research to evaluate the legal provisions, welfare schemes, government policies and remedial programs for the aged in the context of Gerontological perspective. It is also necessary to ascertain the global standard regarding the justice to aged people.
III HYPOTHESIS

For proper understanding and in depth study on the present subject certain propositions were formulated as hypothesis which is mentioned herein. Socio-economic condition of the aged people is not satisfactory, the aged people are facing number of socio-economic and legal problems in their day to day life, the functioning of NGO’s and other care organizations though it is important, are not satisfactory, and legal provisions and schemes are not adequate and sufficient to cope-up with the problems of aged people.

IV RESEARCH METHODOLOGY

Any legal research consist systematic investigation of concepts, analysis of the legal provisions and modality of welfare institutions. So far as the present research is concerned both doctrinal as well as non-doctrinal method has been followed. The doctrinal part consists of analysis and explanation of different concepts involved in the protection and promotion of interest of aged people. Various concepts and doctrines related with the aged people particularly the protective and remedial rights etc. are discussed in detail in this part. The review of Indian legal framework and provisions for the protection of interest of aged people is also taken up. In addition to this the review of international instruments/documents has also been taken. There are various policies and schemes implemented by government for the protection of interest of aged people; it has also been dealt with in this part of present research. Non-doctrinal part of the present work
is restricted and concerned with the survey carried out in district Sangli. For collection of data informal interview and questionnaire method has been followed. The analysis and interpretation of data have been consequently culminated into the conclusion and recommendations in this work. For in depth study, appreciation and analysis of the concepts, legal provisions and the data collected, the present topic is divided into different chapters discussed herein after.

V ORGANIZATION OF THE STUDY

Chapter I explains the introductory matters.

Chapter II deals with gerontological perspective and its relevance in the study of law in India. This chapter deals with the analysis of the concept gerontology and geriatrics, the meaning of the same, parameters and legal implications etc.

Chapter III Social, Economic and Demographic Dimensions of the Problems of Aged People in India. In this chapter an attempt is made to identify various problems faced by the aged people in India and its magnitude.

Chapter IV Global Standard under International Human Rights Law for the Protection and Promotion of Aged People. This chapter deals with the details regarding international efforts in the protection and promotion of the interests of aged people. It is an attempt made by the researcher to take the review of the global standards under human rights law and various international instruments/documents, conventions and conferences and plan of actions taken up at international level for protection and promotion of interests of aged people.
Chapter V Indian Legal System and Government Policies for the Aged People. In this part of the research, the researcher has made an attempt to take the review of the existing laws in India and the government policies for the promotion and protection of rights and interest of aged people.

Chapter VI Gerontological Perspective and Evaluation of Existing Provisions with Respect to Privileges and Facilities Under Legal System. In this part of the research, the researcher has made an attempt to take the review of the existing provisions with respect to privileges, concessions, benefits and facilities etc provided by central and state governments for the promotion and protection of rights and interest of aged people.

Chapter VII Role of NGO’s in the Protection and Promotion of Interest of Aged People. The government by enacting various legislations, framing different schemes and implementing various social security’s policies and taking measures for the care and protection of aged people, still have certain constraints or limitations. To overcome this situation, the government has encouraged the Non Governmental Organizations. NGO’s are playing important role in advocating, protection and promotion of the interests of aged people in India. In this part of the research, an attempt has been made to find out various non-governmental organizations working in the field of aged people, to analyze their working and to assess their role in the promotion and protection of interests of aged people.

Chapter VIII A Socio-Legal Survey of the Aged in Sangli District. This chapter is devoted to empirical part of the research.
i.e. socio-legal survey, carried out by the researcher within the district Sangli. The researcher has made some efforts to identify the status and problems of aged people by collection and analysis of data. Further the researcher tried to find out the knowledge and awareness about the "The Maintenance and Welfare of Parents and Senior Citizens Act, 2007". The researcher while carrying out survey got opportunity to interact with different people from the different parts of district Sangli.

Chapter IX Review of a Recent Parliamentary Bill. The researcher in this work was intending to take the review of the Bill pending in the Loksabha. When this work commenced at that time there were one Bill pending in the Rajyasabha, which were introduced by Smt. Sushma Swaraj M.P. on 3rd March, 2006. Thereafter yet another Bill were introduced in the other house of Parliament, on 9th March, 2007, by Meera Kumar, Minister Social Justice and Welfare Department, Government of India.

Hence it was intended to make review of these Bills in the present work. However, the Bill of 2007 is now converted into an Act. i.e. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007. In this circumstance now an attempt is made to take the review of these bills and the Act to find out similarities, important provisions and nature of legislation from the view point of welfare of senior citizens in India.

Chapter X Conclusion and Recommendations. The analysis of different provisions of the law, legal principles, policies, schemes, the important documents at International level etc. and the results of socio-legal survey carried out by the researcher is presented in this part.