

Ineffectiveness of Law N° 30490 to guarantee the Fundamental Rights of Older Adults in a Peruvian Region

Ineficacia de la Ley N° 30490 para garantizar los Derechos Fundamentales de los Adultos Mayores en una Región Peruana

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Abstract: The need to seek alternative solutions to the situation of abandoned, unprotected, invisibility in which older people are in vulnerable conditions was the primary motivation for developing this study, the purpose of which was to analyze the ineffectiveness in the application of Law No. 30490, which protects the fundamental rights of the elderly in Peru. The research is applied descriptive; the doctrinal legal method is used, with a mixed approach and a non-experimental cross-sectional design. Magistrates, specialists in Family Law, and authorities of public entities were taken as study units, applying a questionnaire. The observation was used as a technique; documentary analysis, articles, laws, and doctrines. The family is considered to be the main responsible for the violation of the rights of the older adult and the state itself with its entities, which must fulfill the purposes of public function, prioritizing and optimizing the resources they have, following the Law of the Framework for the Modernization of State Management. The main contribution of this research is that it concludes in a proposal, type bill, that seeks to modify article 25, Law No. 30490 of Title III, Chapter I, for a new definition of Older Adult Person, to achieve the timely identification and protection of this age group.

Keywords: Demographic Aging; Older Adult Person; Vulnerability; Social Victimization.

Resumen: La necesidad de buscar soluciones alternativas a la situación de abandono, desprotección e invisibilidad en la que se encuentran las personas mayores en condiciones vulnerables fue la principal motivación para desarrollar este estudio. El propósito fue analizar la ineficacia en la aplicación de la Ley N° 30490, que protege los derechos fundamentales de los ancianos en Perú. La investigación es descriptiva aplicada; se utiliza el método jurídico doctrinal, con un enfoque mixto y un diseño transversal no experimental. Como unidades de estudio se tomaron magistrados, especialistas en Derecho de Familia y autoridades de entidades públicas, aplicándoles un cuestionario. Como técnica se empleó la observación; y el análisis documental, artículos, leyes y doctrinas. Se considera que la familia es la principal responsable de la violación de los derechos del adulto mayor y el propio estado con sus entidades, las cuales deben cumplir los propósitos de la función pública, priorizando y optimizando los recursos que poseen, siguiendo la Ley del Marco para la Modernización de la Gestión del Estado. La principal contribución de esta investigación es que concluye con una propuesta, tipo proyecto de ley, que busca modificar el artículo 25, Ley N° 30490 del Título III, Capítulo I, para una nueva definición de Persona Adulta Mayor, con el fin de lograr la identificación oportuna y protección de este grupo etario.

Palabras clave: Envejecimiento Demográfico; Adulto Mayor; Vulnerabilidad; Victimización Social.

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Suggested Citation (APA, 7th edition)

Cabrera Cabrera, X., Tapia Vásquez, L. M., & Pérez Nájera, C. (2023). Ineffectiveness of Law N° 30490 to guarantee the Fundamental Rights of Older Adults in a Peruvian Region. *Espergesia*, 10(2), 42-53. <https://doi.org/10.18050/rev.espergesia.v10i2.2623>



1. Introduction

The accelerated aging of the world population in this century leads us to a unique situation. More people overcome the chronological barriers that man has set as a stage of old age every day. Hence, aging has stopped being the exclusive preserve of some and has become an opportunity for several. The aging process as it is amid the Peruvian population has fortified the local government to come up with a normative background and the Ley de la Persona Adulta Mayor (older people's Law), which takes care of its political duties in the direction of aging amid the national population; though, slight has been efficiently done to look after this age group. Of even lower interest to the government is the middle-aged adult group, who is left as the second choice, given the prioritizing of other age groups by the existing government. Up to newly, the adult phase of one's life - if we study that this phase completed when we arrived 60 years old - would correspond to an average of 40 years. Nevertheless, if currently, we are living up until 80, 90, and even 100, it becomes apparent that emerging programs that could support the quality of life of people who are going to live 40 or 60 years more would make much sense (Cotrina et al., 2020).

This is one of humanity's most outstanding achievements, which can be transformed contradictorily into a significant social problem, into a severe challenge, if different societies cannot provide adequate solutions to its consequences (Pérez Nájera, 2012). This situation with greater attention in underdeveloped countries of Latin America has become a problem of surprising dimension for which the top concern and intervention of the States and Governments in those nations is required; Said intervention must be aligned with the complexity of the problem and be based on multidisciplinary alternatives that include socio-community approaches to prevention and social care to improve the quality of life of the elderly, which must be expressed through social security reforms (Amaro & Afonso, 2018). The early 21st century presents an enhancing reevaluation of the family's role in society. From a spiritual point of view, the family always seems like the basic unit of humankind. The major religious views of the world stressed that its moral and affective weight had decisive importance for life. In recent years, such perspective was supplemented by social science research findings, which presents that the family unit also makes valuable contributions in very concrete areas (Kliksberg, 2004). In the 20th century, the world population growth rate peaked in the latter half of the 1960s. Meanwhile then, the tempo of growth has been unceasingly decelerating down, owing to substantial fertility declines in a host of established economies and a growing number of developing economies. Consequently, in the past few decades, population aging has been detected worldwide (Yuan et al., 2021). The population aging process must be treated from two angles: collectively, related to the growth of the percentage of elderly subjects who have already reached the age of sixty years upwards, concerning the total population that includes adults, young people, and minors respectively, a situation that has generated a change in the shape and structure of the population (Chesnais, 1990), becoming an age structure that had a pyramidal shape in the 1950s. Currently, this has been reversed, finding two of the factors that have had the most influence on it: technological advance and human medicine (Huenchuan & Rodríguez-Pinero, 2010).

Situations of poverty and abandonment cause in older people (PAM, for its acronym in Spanish) an extreme emotional deterioration, and as a result, they literally lose the will to live. This fact is exacerbated when these people are subjected to physical and survival abuse, often preferring to remain on the streets, becoming their home and people in the same living conditions (Tasilla Vásquez, 2015). To correct this, it is essential to disseminate information on the rights of PAMs to Civil Society, the community, family communication that allows a dignified life to these vulnerable people (Fuster-Guillén et al., 2020). PAMs are often considered under permanent high-risk conditions because they are in the last stage of their lives. However, more than by old age itself, this diverse population group is harmed, hurt, and stigmatized by the preconceived opinions held about them, generating discrimination, exclusion, and isolation in all areas of their lives (Mamani, 2018).

One of the countries with the most significant population aging is Uruguay, with levels similar to some European countries and; however, it is one of the first that began its demographic transition earlier in the region, in which there are older adults. Conversely, the number of births decreases for two reasons: people die less and have planned for procreation (Rofman et al., 2016). According to studies carried out by the World Bank for International Development on demographic changes and economic challenges in Uruguay, progress in recent decades has been manifested in various dimensions, among which the fall in mortality and the decline in fertility are noted. , which reflect the growing capacity of that country to decide on the size of their families (World Bank, 2016), so it is clear that these changes would affect the age structure of the population that will continue in the coming years with greater affectation and that motivates the reflections of this research. These demographic trends could be interpreted as good news since the aging of the population is also considered a good indicator of development. However, at the same time, this phenomenon has become a growing problem of global scope (Alomoto Mera et al., 2018), whose magnitude poses significant challenges that go beyond conventional health care (Tornés Bernal et al., 2020). Following this, the conclusions of a study carried out in 1110 adults aged 60 years and over, both sexes, found an intimate relationship between cognition and functional capacity through the activities of daily living that are essential determinants for healthy aging and well-being in old age (Espinoza et al., 2020).

In the case of Peru, the country presents situations of vulnerability in the PAM since worrying numbers of these people are surviving and spending the night on the streets in situations of poverty and abandonment. This panorama is an indicator that in Peru, the PAM suffer from effective legal distress; a worrisome situation and much more unsustainable in the future due, among other factors, to the significant discrimination that they suffer when they turn 60 years or more; an age at which they are considered severely deficient individuals. Among them are not receiving their income, lack of affection, feeling useless and unproductive, and mainly, feeling without rights before a society marginalizing them. However, in Peru, there is very incipient protection for the elderly by the state. The regulatory framework and public policies are not implemented or executed due to a lack of budget. However, the Peruvian state has signed treaties that defend the fundamental freedoms of senile subjects, with a firm commitment to take care of them when they cannot do it themselves. However, the reality is different (Choy, 2015) and what is found in the elderly in a state of abandonment both family and government. However, the growing needs and new challenges generated by progress in the elderly are significant achievements for humanity (Dabove, 2016). Addressing the problem of PAM from a civilized and emancipating vision means recognizing the need to eliminate barriers that prevent the reconstruction of a community where all generations coexist, which is considered from this research a reality that is still very distant for these people who are discriminated against for their own family and the state, without their having a say in the decisions regarding their lives.

The National Institute of Statistics and Informatics (INEI, for its acronym in Spanish), Peru, based on the census carried out in 2017, found that the total population in the country amounts to 31 237 385 inhabitants, of which 10.7% concerning of the total population are PAM (3 016 621 people); therefore, this figure is likely to almost double to 6.5 million by 2050 (INEI, 2018). This situation is latent in all of Peru, but in the Lambayeque region, it takes on special validity. The situation in Lambayeque responds to various problematic manifestations, among which are old age related to chronological age, degenerative diseases typical of their age, a disability that makes them dependent, or simply because PAMs are judged. Based on the same productivity patterns of the new generations, a situation that puts them at the mercy of minimal pecuniary income, many of these people are still the head of the family nucleus. Likewise, many of these PAMs are in total abandonment, sleeping in the open in all kinds of places because they do not have a home: parks, ditches, and churches. There are no specific institutions where these abandoned people can spend the night and feed themselves. There is no perceived articulation between the public entities in charge of protecting the PAM. On the contrary, they avoid responsibilities either due to ignorance of the current regulations or due to indolence.

To counteract situations such as those described so far and guarantee the fundamental rights of PAMs, the Peruvian government, through SUPREME DECREE No. 007-2018-MIMP, approves the Regulation of LAW No. 30490 (Law of the Elderly Person) in response to an integral part of the state facing the needs of this population. The objective of this Law that in Article 1. The object of the Law states: “The present Law aims to establish a regulatory framework that guarantees the exercise of the rights of the elderly person, to improve their quality of life. Moreover, promote their full integration into the social, economic, political and cultural development of the Nation” (Law No. 30490, 2018). However, there is no efficacy in the application of this Law.

From the problematic manifestations mentioned, the following research problem emerges ineffectiveness in applying Law No. 30490 limits the fundamental rights and freedoms of PAMs living in a situation of abandonment in a region of Peru. For this reason, the investigation is framed in specifically treating PAMs in a state of distress and abandonment, based on the following: how effective is Law No. 30490 as a guarantee of the fundamental rights of PAMs in abandonment in a Peruvian region? Why is it important to pay special attention to the situation of PAM in the country? What should be the concern of the Peruvian state regarding the situation of PAM in the country? The purpose of this research is to analyze the effectiveness of Law No. 30490 as a guarantee of the fundamental rights of abandoned PAMs in a Peruvian region through a normative and doctrinal study that culminates with a proposal to modify the Law N ° 30490.

2. Methodology

The research is applied of a descriptive non-experimental type, considering an observational cross-sectional study, which starts from a disturbing reality described, given that the events have already occurred, so the study variables are not manipulated or correlated (Hernández Sampieri et al., 2014): Independent Variable: Analysis of Law N ° 30490, Law that protects the fundamental rights of the elderly and the Dependent Variable: Ineffectiveness of the normative instruments that protect the Elderly.

The theoretical and scientific methods used are historical-legal, inductive-deductive, legal-descriptive, hermeneutical-legal, and exegetical-doctrinal. These methods allowed the interpretation of the regulations relevant to the study. We worked with a mixed approach (quali-quantitative), taking advantage of the particularities of each one to obtain a more comprehensive analysis of the problem in question.

An intentional non-probability sampling was carried out. The units of study chosen were judges and prosecutors, specialists in Family Law and Constitutional Law of the Judicial District and prosecutors in the region; as well as authorities of public entities belonging to Ministry of Women and Vulnerable Populations (MIMP), Regional and Local Governments, INEI and the Center for Integral Development of the Family.

The techniques used were observation, legal documentary analysis, and survey. As an instrument, the questionnaire was structured by nine questions and was validated by expert judgment. The internal consistency of the instrument was measured by Alpha Cronbach, yielding a value of 0.73. Therefore, the instrument yielded excellent reliability for the investigation (Hernández Sampieri et al., 2014).

The data analysis procedure was used from the direct observation of the complex reality where the manifestations of the problem were defined; and then proceeded to its analysis, which was contrasted with the results obtained from the interviews and the survey, which were coded through a systematic register of tables through Excel, in which ethical criteria and scientific rigor prevailed.

3. Results

First Dimension: Regulations on the Elderly Person

The interviews showed that none of the three Magistrates had sufficient knowledge of Law N° 30490 and its regulations or any national social assistance program that protects this abandoned population. Much less about the institutions that have the responsibility to guarantee the effective exercise of their rights. As for the public authorities, four of them answered that they have no idea about the Law of the elderly, nor its regulations, and they do not know of any social program that helps the elderly, except for one of them who did demonstrate that - Know the content of the Law mentioned above. Regarding the institutions responsible for safeguarding these people, two explained that if they know of centers where help is provided to the elderly, they do not know which institutions or people are in charge of these PAM.

3.2. Second Dimension: Responsibility for the Elderly Person

To the question of why older adults are not valued or respected today? The three magistrates agree that it is due to the absence of moral values inside the home and consumerism, materialism, and individualism that take precedence over family relationships. Regarding the responsibility of the community to reverse the abuse of the elderly, everyone considers that society as a whole should be educated, that families assume their responsibility with their elderly adults, and encourage good treatment towards them. Regarding the institutional responsibility concerning the elderly, everyone considers that the State entities do not fulfill their primary function: to protect the elderly from abandonment.

The public authorities answered unanimously that there is no minimum respect for the elderly because parents and authority are absent at home. Many times, it is within the family nucleus where the rights of these people are most violated. Regarding the question of what to do to avoid or reduce elder abuse, the interviewees agree that dialogue should be promoted and reeducated in values and issues about the elderly. Finally, regarding the fulfillment of institutional objectives, they consider that the elderly are not protected; they do not respect their dignity as human beings.

3.3. Third Dimension: Actions for the protection of PAMs in the regulations

The magistrates' response regarding the definition of older adults living on the streets replied that they did not know but vaguely related it to older adults who went out to the streets to beg. Regarding demographic aging, they have a slight idea, but they are not aware of its manifestation's challenges. Regarding the actions to be taken into account to eradicate discrimination and social stigma on the neglected elderly, they agree that there should be more excellent supervision of the public entities responsible for national programs for this age group and promote the moral values in all sectors public and private.

Regarding older people living on the streets, the Public Authorities stated that they have not listened or have no idea who they are. Regarding aging, they consider that it is related to age changes in the population. On the measures to eradicate abuse or violence against older adults, they agree that there should be a single and exclusive control body to evaluate, supervise and sanction the institutions that fail to make viable the national programs of social assistance destined to older adults abandoned on the streets.

In summary, the results of the interviews regarding the regulations that are applied corroborate in the three dimensions that the Magistrates and public authorities are unaware of the existence of Law No. 30490 and its regulations. Regarding the responsibility of the elderly, it has been con-

firmed that no one assumes such responsibility. Regarding actions for protecting PAM in the regulations, the results are much more worrying since it shows that older adults living on the streets are invisible to society, the family, and the entities responsible for protecting them and guaranteeing their enjoyment and enjoyment. Exercise of their fundamental rights and freedoms. It also shows the ignorance about old age and the aging process and who is passing through it.

Regarding the results of the survey, it is found:

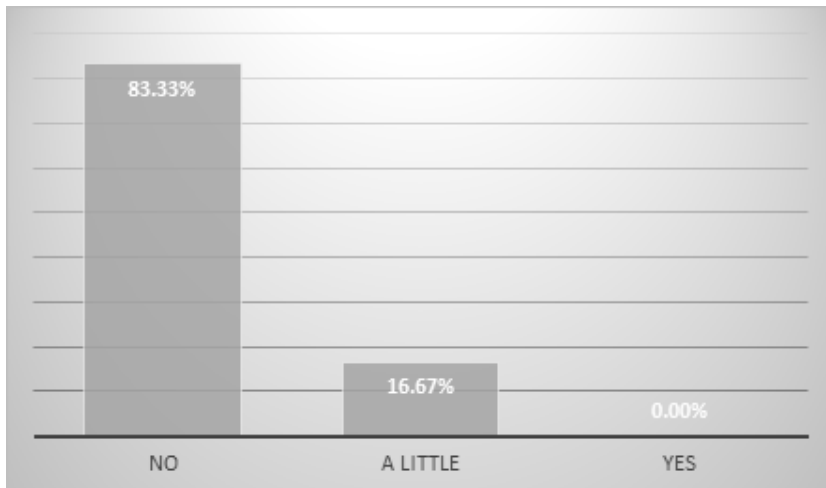


Figure 1. Knowledge of Law N ° 30490 and its regulations

As can be seen, 83.33% are not aware of the existence of Law N ° 30490 on the Elderly Person and its regulations, which corroborates the problem raised regarding the ineffectiveness of said current regulations to guarantee fundamental rights and freedoms of the PAM who live in a situation of abandonment on the streets.

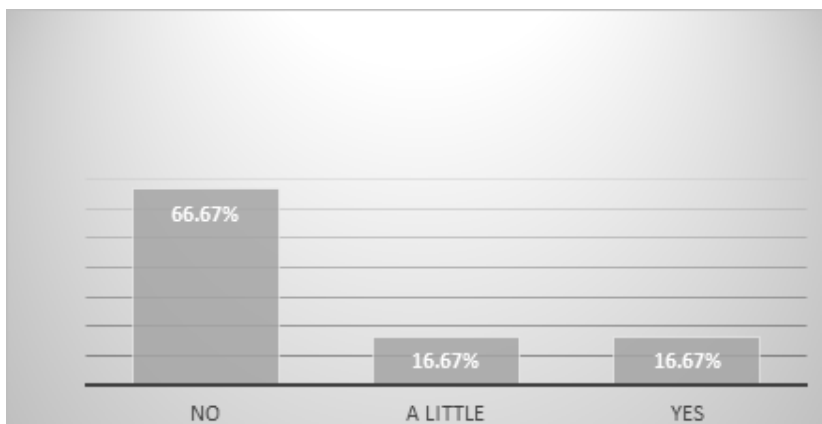


Figure 2. Knowledge about a National Program that protects the elderly in a state of abandonment

These results reaffirm that the highest percentage of people surveyed are unaware of the existence of these social assistance programs for the elderly, which corroborates the deficiencies found in the complex reality and the lack of protection by the authorities and public institutions that by functions they must know and attend.

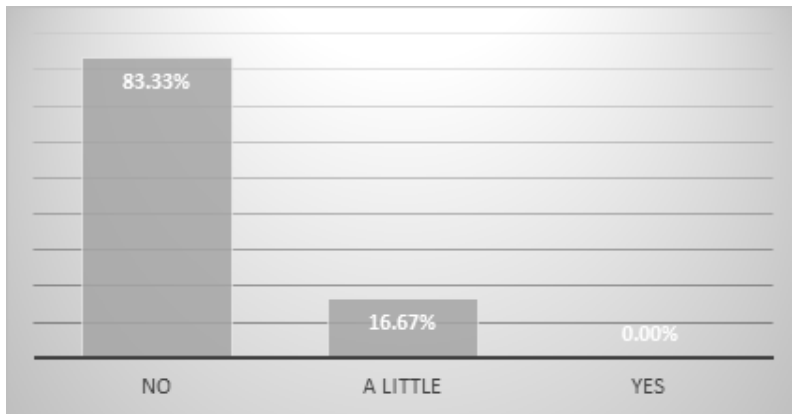


Figure 3. Knowledge about which are the institutions that house older adults in a state of abandonment

The results show that 83.33% are unaware of the existence of institutions that provide shelter or shelter to homeless PAMs, understanding either that these professionals and authorities do not know about these aid centers or that they. Clearly, in reality, they do not exist. In the same way, they consider the family as the main responsible for the violation of the rights of the elderly, removing all responsibility from the state. This shows that the institutions have to work more on their work efficiency since they almost all consider it an absent institutionalization.

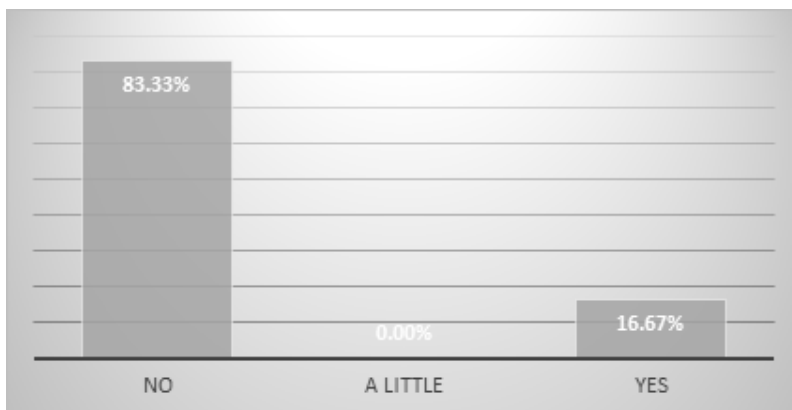


Figure 4. Knowledge about the definition of: “Older Adults in a street situation” that the Law indicates

As can be seen, 83% do not know and are the operators of the Law and officials of institutions in charge of this problem, which corroborates that the Law is ineffective and inoperative, having a regulatory vacuum due to lack of application and ignorance.

4. Discussion

In the analysis and interpretation of the results from the theory in the doctrinal study carried out, establishing articulation from the study carried out with similar investigations and cited in this investigation, contrasting with the doctrinal theory related to the subject of demographic trends, the aging of the population and violence of the PAM as a phenomenon that is reflected in the traditions, singularities, and manifestations of the peoples; It was decisive to find the affectations suffered by the PAM, in which socio-demographic factors and consequences intervene that have to be treated with public policies by the states parties, which was corroborated in the diagnosis of the current state carried out in the Lambayeque region, Peru.

The theoretical and legal foundation of the situation of vulnerability faced by the PAMs shows that the fundamental rights of these people established in Article 5 of Law N ° 30490 are invisible or dead letter; since this population group is in a vulnerable situation not only in the streets but also in the family nucleus, where care and attention to them should be an ethical and filial duty of natural compliance. Likewise, it is highlighted that the government is also responsible for ensuring compliance with the provisions as part of its public function, which is based on providing better service to citizens, prioritizing and optimizing the resources they have following the Law of the State Management Modernization Framework. In this sense, the expected effects of the Law that guarantee PAMs as a dignified life free from injustice is a utopia due to the negligence of the responsible authorities and due to stigmatization and social insensitivity (Cuyún González, 2007). One more example is that the pain and suffering of these PAMs abandoned on the streets does not distinguish between gender or social or economic condition; their rights are violated, without life expectancy, and for those abandoned in the streets.

With the aging of populations in many countries worldwide, increasing attention is being paid to the role of technology in supporting healthy aging and the lives of people with disabilities. Nevertheless, technology enhances complex questions regarding the meaning of vulnerability in aging and the interface between technology and human rights. In Australia, for instance, the proportion of the population aged over 65 years is projected to enhance from around one in seven Australians in 2012 to one in four by 2060 (Bennett, 2019). In the characterization of the national regulations on the Rights of PAMs and their scope in the institutions responsible for applying the Law, the ignorance of those who should know it is corroborated. These institutions must take into account that the application of the human rights approach related to old age and the world assemblies on aging has set an important precedent in the lives of these people to progressively generate a more inclusive and supportive society, being respectful of the laws and their timely application (Huenchuan & Rodríguez-Pinero, 2010). Likewise, that the growing needs and new challenges generated by progress in elderly people are an excellent achievement for humanity; However, they carry with them injustices and abuses for the mere fact of becoming “old, and despite the intention to eliminate the barriers that prevent intergenerational and inter-institutional relations, this is a chimera (Dabove, 2016).

Finally, the scientific problem given by the ineffectiveness in the application of the current regulations that guarantee the fundamental rights and freedoms of PAMs living in a situation of abandonment is corroborated, for which the elaboration of a legislative proposal is proposed to add to the Law N ° 30490, mechanisms of immediate application, such as promoting, disseminating, training and sensitizing those in charge of guaranteeing the integral well-being of this population group and promoting its effectiveness in the short term.

Proposal

LAW TO ADD IMMEDIATE APPLICATION MECHANISMS IN LAWN ° 30490 FOR THE IMMEDIATE RECOGNITION AND ADDRESS OF THE SITUATION OF THE STREET OF THE ELDERLY ADULT

Article N° 1. Modification

Modify article 25 of Law N ° 30490, Law of the Elderly Person, to add the definition of the risk situation in the open in which older adults are found.

Article N° 25° - A. Older adult in a street situation

People 60 years of age or older live on the streets permanently, both in public or private places and do not have any family or state ties, and are not part of any social assistance program.

Article N° 2°. Incorporation

Incorporate Chapter V in Title III of Law N ° 30490, Law of the Elderly Person, to add article 38 in the following terms:

CHAPTER V

NEW MECHANISMS FOR THE EFFECTIVENESS OF THIS LAW

Article N° 38°. Mechanisms of immediate application for the effectiveness of this Law

To guarantee the effectiveness of the legal provisions of this Law in the short term and, taking into account the responsibility of execution of public entities, the following mechanisms will be developed and applied:

1. Prepare and put into effect a National Plan for disseminating educational policy on Human Rights, Aging, and values, following the provisions of Law No. 30490.
2. Provide advice and promote institutional cooperation to ensure the effective application of the regulations that guarantee the rights of PAMs.
3. Carry out sensitization and awareness campaigns on the elderly and their rights, which impact the personal and social growth of children, adolescents, youth, families, and citizens in general.
4. The MIMP, with the governing body of public policies that protect the elderly, in coordination with the Ministry of Health, the Ministry of Justice and Human Rights, and the Ombudsman's Office, must develop strategic actions that facilitate the teaching-learning process in the short term. Term concerning the older adult.
5. The MIMP, the MINEDU, and the local governments, in a coordinated manner, must simplify access to population groups where it is necessary to focus campaigns and training on older adults.

5. Conclusions

In the first place, the family must value and respect the PAM, prioritizing their affective, social, and family needs; This demands the need to practice those values such as respect, family responsibility, and justice over individualisms that end up putting the PAM at a disadvantage and marginalizing them. For this reason, the family, being the fundamental basic cell of society, is also the ideal space to guarantee the quality of life of the PAM under study. About institutional responsibility, public authorities must enforce Law N ° 30490, the purpose of which is to "... establish a regulatory framework that guarantees the exercise of the rights of the elderly person, to improve their quality of life and promote their full integration into the social, economic, political and cultural development of the Nation (Law No. 30490, 2018). In strict compliance with the Law, public authorities must generate social inclusion, family awareness, and recreation programs; focused on making viable the PAM understudy's quality of life, especially those in a situation of vulnerability. There is a need to update Law No. 30490 and its strict compliance by regulatory, governmental, and social intuitions. This would be decisive to improve the quality of life of the PAM understudy in vulnerable situations based on timely protection and assistance. Therefore, updating Law N ° 30490 will be decisive to guarantee the joint participation of all the direct and indirect responsible actors related to the PAM's protection and quality of life.

Contribution to Scientific Knowledge

The study addresses a significant issue related to the protection and rights of the elderly in Peru, and its analysis offers valuable insights. Firstly, by proposing a redefinition of "Elderly in a street situation," this work provides an essential precision previously missing in current literature and

legislation. This redefinition seeks a more appropriate and effective identification of this population segment, allowing for better resource orientation and protection policies. Secondly, beyond merely identifying deficiencies in the application of Law N° 30490, the study proactively advances by offering concrete mechanisms for its immediate application. These proposals might be crucial for the practical implementation and reform of public policies in the future. Finally, by emphasizing the dual responsibility of the family and state entities, the study underscores the need for a combined approach to ensure the quality of life of the elderly, integrating family dynamics with institutional efforts

Limitations

Despite its contributions, it's essential to consider certain limitations inherent to the study's design and approach. Using intentional non-probability sampling raises questions about the representativeness of the selected sample. While judges, prosecutors, and specialists in Family Law and Constitutional Law offer foundational views, these results may not be generalizable to all regions of the country or all perceptions within the legal system. Moreover, even though the study clearly articulates the independent and dependent variables, the causal link between the analysis of Law N° 30490 and the ineffectiveness of the normative instruments to protect the elderly could have been explored more deeply. Finally, while legal documentary analysis is indispensable for understanding the normative framework, it may not fully capture the realities and challenges on the ground. Interpretations based solely on legal texts could benefit from more varied data and a broader perspective.

Authors' Contributions

Xiomara Cabrera Cabrera: Conceptualization, Data Analysis, Methodology, Investigation, Resources, Writing the Original Draft, Review, and Editing.

Lilia Marina Tapia Vásquez: Conceptualization, Data Analysis, Methodology, Investigation, Resources, Writing the Original Draft, Review, and Editing.

Celin Pérez Nájera: Conceptualization, Methodology, Investigation, Resources, Writing the Original Draft, Review, and Editing.

Conflicts of Interest

The authors declare that there are no conflicts of interest.

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