

Legal Protection to Elderly Person's Rights in India: A Socio- Legal Study in Present Context

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ABSTRACT

Modernization has enabled people to be able to live longer and healthier in the 21st Century. In traditional Indian society, the elderly people are respected and considered as the backbone of society in the civilized society. Our society is shifting towards individuality, with more people having senior family members who view them as a burden to themselves or their loved ones. As the global population of the elderly continues to grow, many of them encounter issues including poverty, loneliness, lack of access to healthcare, and age-based prejudice. Isolation, dependence, cognitive decline, and cultural attitudes are some of the factors that make older persons more vulnerable to abuse and they are subject of abuse, neglect, and financial exploitation. The present legal frameworks intended to protect the elderly, but their legislative enactments are not appropriate. Through this article, discusses the rights of older persons and to propose a comprehensive legislation for the legal protection of elderly persons by looking into the existing laws and policies. It also highlights the gaps in legal systems and suggests reforms to strengthen the protection of senior citizens. Advocating for enhanced awareness, legal enforcement, and accessible reporting mechanisms is essential to safeguarding the dignity and rights of the elderly.

Keywords: Elderly Rights, Ageing Population, Indian Constitution, Senior Citizens, Maintenance Act 2007, CRPD, Social Protection, Age Discrimination, Legal Support for Elderly

INTRODUCTION:

The Sanskrit versus of “Matru Devo Bhav”¹ and “Pitru Devo Bhav”² from Taittiriya Upanishad derives its roots from the ancient Indian Vedic era. According to which the parents were placed at a very high position by giving them the status of living Gods and Goddesses. These were considered as a philosophical advice on morals and ethics for the students who graduated from Gurukuls.³

In every aspect of everyday life, discrimination based on age is mirrored in the attitudes of society. Institutions must respond to this scenario by addressing the acknowledgement of older people's rights, since it has created social and legal vulnerability. Growing older is a normal part of the human life cycle. It is the reduction of an organ's ability to operate in the human body. However, they constitute a reservoir of human resource, gifted with knowledge, deep insights and varied experiences in many walks of life. They are the senior participants of the family system who recognize better the faith, family history, values and related customary

practices. They own better information of the family values and society. As people's exposure to industrialization increased over the 20th century, the number of elderly people has been rising. The ensuing rush towards materialism has severely damaged the social fabric. As a result, the elderly are subjected to a variety of forms of prejudice, abuse, and neglect in society.

India has by tradition consists of societies wherein ageing persons are paid utmost respect and regard but with the rapidly changed of our societal norms, cultural values and westernization of Indian society, occupational needs and professional lifestyle, senior citizens are losing the respect and dignity now days. The traditional norms and values of the Indian society laid stress on showing respect and providing care for the aged. Members of their own family refuse to provide them the right food and medicine. They are occasionally evicted from their homes, made to sign property documents against their will, and even shunned by their own children. They become extremely powerless as a

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result of the physical, mental, financial, and psychological abuse that results from this.

As a human person, the preservation of senior people's rights has been a pressing and crucial problem due to the shifting character of society. Issues pertaining to senior citizens are unaddressed and continue to be a "silent process." Through constitutional authority and other laws or policies, such as the 1999 National Policy on Older Persons (NPOP), the government aims to address the needs and issues by providing food, shelter, financial stability, health care, protection from exploitation and abuse, and other necessities to raise the standard of living for the elderly. Articles 41 and 46 of the Indian Constitution were used to create a number of additional policies. There was no specific law safeguarding the rights of the elderly until 2007.

After the unsuccessful attempt made by Smt. Sushma Swaraj by on 3rd March 2006, the 'Ministry of Social Justice and Empowerment' of the Government of India finally introduced 'The Maintenance and Welfare of Parents and Senior Citizens Bill, 2007' on 9th March in the lower house of Parliament. This bill received the final assent from the President on 31st December, 2007 and became an Act. The object of the Act is to provide effective legal remedies for the Maintenance and Welfare of Parents and Senior Citizens who are unable to maintain themselves or are above the age of sixty years.

LEGAL FRAMEWORK FOR ELDERLY CITIZENS IN INDIA

2.1 Constitutional Regimes:

The framers of our constitution were well aware of the plight of our country's elderly people. They knew that it is quite difficult to meet ends when one hits their 60s. They would face problems like those of housing, taxes, healthcare facilities, and psychological help for ageing and social support. Hence, they gave ample provisions to the lawmakers of our country to make laws for them. A few of the provisions in the constitution are:

1. Article 41: This article is part of the Directive Principles of State Policy and directs the state to make effective provisions for securing the right to work, education, and public assistance in cases of unemployment, old age, sickness, and disablement, and in other cases of undeserved want.
2. Reference towards the welfare of elderly people can also be drawn from the wordings of Art. 38 of the Constitution which casts a duty on the State to promote the welfare 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 the national life.

3. Article 46: This article focuses on the promotion of the educational and economic interests of Scheduled Castes, Scheduled Tribes, and other weaker sections. While it primarily addresses these groups, the underlying principle of promoting the welfare of weaker sections, including senior citizens, can be inferred.
4. Article 21: This article guarantees the right to life and personal liberty, which has been interpreted by the Indian judiciary to include the right to live with dignity.
5. The Entry 24 of the Concurrent List of Seventh schedule is also directly related to welfare of elderly persons. This provision empowers both the Central and State governments to enact laws and policies for the welfare of the elderly.

2.2 Criminal Justice System

The Sections 125-128 of Criminal Procedure Code, 1973 and Sections 144 to 128 of BNSS are enacted to provide maintenance against those persons who neglect or refuse to maintain their dependent wives, children and parents who are unable to maintain themselves.

2.3 The Hindu Adoption and Maintenance Act, 1955

Under section 20 (3)4 of the Hindu Adoption and Maintenance Act, 1955, Only Hindus are eligible for maintenance, which is given to elderly parents who are ill. Children of both sexes are legally required to care for their elderly and disabled parents. Additionally, the duty is personal and unrelated to property ownership. In accordance with the Act's Section 3(b), maintenance always includes funding for housing, food, clothes, and medical care.

The section's phrasing makes it clear that females have an equal responsibility to their parents and that sons are not the only ones who have this duty. Only sons had the responsibility to support their parents under the previous legislation. The explanations were clear. Only the sons received inheritances. The girls did not inherit anything or have any other sources of personal income. With the changing times, the law has recognized that daughters also should have a duty to maintain parents⁵.

In *Merubhai Mandanbhai vs. Raniben*⁶, it has been held that a claimant is not entitled to maintenance simultaneously under all the Acts, which provide for maintenance except where the maintenance order is under Cr.P.C. which has a ceiling for such grant of maintenance.

In *Anandhi D. Jadhav vs. Nirmala Ramachandra Kore*⁷, referring to Sec 20 of the Hindu Adoptions and Maintenance Act, 1956 the Court held that though an old

mother is entitled to be maintained by her son that does not mean that she is entitled to live along with her son's family.

2.4 The Maintenance and Welfare of Parents and Senior Citizens Act 2007

With the goal of establishing more efficient measures for the support and welfare of parents and senior people, the Central Government established the support and Welfare of Parents and Senior people Act, 2007, another secular legislation. According to the Act, a senior citizen is defined as "any Indian citizen who has reached the age of sixty or older, including parents, whether or not they are senior citizens."8," it means that the children are responsible to maintain their parent even they have not completed the age of sixty.

Right to Maintenance: This Act seeks to make it a legal obligation for children (including grandchildren) and heirs to provide maintenance to senior citizens. It includes in its purview all Indian citizens, including those living abroad.⁹

Maintenance Tribunal: In order to decide maintenance claims, the Act calls for the creation of sub-divisional Maintenance Tribunals. The Tribunal can issue a court order requiring older persons to receive monthly allowances.

Obligations of Children and Relatives: The Act imposes a legal obligation on children and relatives to maintain their elderly parents or senior citizens. Failure to do so can result in penalties, including imprisonment for up to three months or a fine.

Protection of Life and Property: The Act further ensures that older folks' property and lives are protected. A guardian may be appointed by the Tribunal to handle the affairs of elderly individuals who are incapable of managing their property. **Measures for Welfare:** The Act requires that older individuals, especially those who are homeless or abandoned, have access to medical facilities and old age institutions.

2.5 National Policy for Older Persons, 1999:

The Ministry of Social Justice and Empowerment created a National Policy for Older Persons in 1999 to address the issues facing the elderly. Assuring older people that their issues are national in nature and that they won't be left unprotected, disregarded, or marginalized is the goal of the 1999 National Policy for Older Persons. It seeks to support their rightful position in society and assist senior citizens in living their final years with dignity, purpose, and tranquilly. Its main features are as follows:

1. Old age Pension Scheme

2. Tax Exemption for Senior Citizens $\propto$ Subsidy in healthcare, mental health services, counseling facilities
3. Grants, land grant at concessional rates and private hospitals to provide economical and specialized care for the older person.
4. Earmarking 10% of the houses in housing schemes and easy access to loans.
5. Layout of housing colonies to be sensitive to the needs of the older persons.
6. Quick disposal of cases of property-transfer, property tax, etc.,
7. Assistance for construction/maintenance of old age home, Daycare centers, multi-service citizens center, outreach services, supply of disability related aids and appliances etc.,
8. Setting up a welfare fund for older persons.

The Policy also acknowledges the contribution of the non-governmental sector in offering easily navigable and reasonably priced services to support the State's efforts in this area. A review group headed by Dr. V. Mohini Giri was established by the Ministry in 2010 to evaluate the current state of several issues pertaining to senior persons and to create a new National Policy for Older Persons. The Committee submitted the draft National Policy for Senior Citizens, 2011 on March 30, 2011, following many stakeholder consultations and regional subcommittee meetings.

GOVERNMENT POLICIES AND SCHEME

3.1 The National Policy on Older Persons

The Government of India, Ministry of Social Justice & Empowerment is the nodal Ministry responsible for welfare of the Senior Citizens. It has announced the National Policy on Older Persons covering all concerns pertaining to the welfare of older persons. The National Policy on Older Persons recognizes a person aged 60 years and above as a senior citizen. The Ministry is also implementing following schemes for the benefit of Senior Citizens:¹⁰

This policy included the following major steps:

- (i) Setting up of a pension fund for ensuring security for those persons who have been serving in the unorganized sector,
- (ii) Construction of old age homes and day care centers for every 3-4 districts,
- (iii) Establishment of resource centers and reemployment bureaus for people above 60 years,
- (iv) Concessional rail/air fares for travel within and between cities, i.e., 30% discount in train and 50% in Indian Airlines.
- (v) Enacting legislation for ensuring compulsory geriatric care in all the public hospitals.

The similar scheme, called the National Policy for Senior Citizens (NPSC), 2011 aims to address issues concerning senior citizen, laying special focus on the needs of the 'oldest of the old' and older women in particular.

3.2 Atal Pension Yojana (APY)

The APY is focused on all citizens in the unorganized sector, who joined the National Pension Scheme administered by the Pension Fund Regulatory and Development Authority. The Atal Pension Yojana (APY) provides elderly individuals with a guaranteed minimum monthly pension (e.g., Rs. 1,000 to Rs. 5,000) starting at age 60, ensuring spouse's pension in case of the subscriber's death, and providing the remaining pension wealth to the nominee, offering financial security in old age.

3.3 Rastriya Vayoshri Yojana (RVY)

Rastriya Vayoshri Yojana was announced by Hon'ble Finance Minister in the Budget with aim and aid living devices. The beneficiaries of the Scheme shall include Senior Citizens of BPL Category suffering from any of the age related infirmities as indicated in ara 4 of the Scheme. For loss of vision, hearing impairment, loss of teeth and for loco-motor disability requiring wheelchair, a certificate from any Government Medical Officer shall suffice. For other simple devices stated in para 5 (items 1 to 4), the implementing agencies shall satisfy themselves as to the eligibility of the Senior Citizen to receive the device. The Scheme aims to address following types of disability/infirmity:-

- (i) Low Vision;
- (ii) Hearing impairment;
- (iii) Loss of teeth; and
- (iv) Locomotor disability.

Types of Physical Aids and Assisted-Living Devices to be provided under the Scheme

1. Walking sticks
2. Elbow crutches
3. Walkers / Crutches
4. Tripods / Quadpods
5. Hearing Aids
6. Wheelchair
7. Artificial Dentures
8. Spectacles

3.4 Integrated Programme for Senior Citizens (IPScC)

A Central Sector Scheme to improve the quality of life of the Senior Citizens provides up to 100% of the project cost for the running and maintenance of the following projects:

- A. Senior Citizens' Homes/ Senior Citizens' Homes for 50 Elderly Women.
- B. Continuous care Homes and Homes for senior citizens affected by Alzheimer disease.
- C. Mobile Medicare Units.
- D. Physiotherapy Clinics
- E. Regional Resources and Training Centers

3.5 Vayoshreshtha Samman

The Ministry of Social Justice and Empowerment has launched a Scheme (2013) of National Awards for the senior citizens called 'Vayoshreshtha Samman' which is confirmed every year on the occasion of International Day of Older Persons (IDOP).

3.6 National Council of Senior Citizens (NCSRC)

National Council for Older Persons (NCOP), now known as National Council of Seniors Citizens (NCSRC). The NCSRC advises the central Government and State Governments on the issues related to the welfare of senior citizens and enactment of their quality of life.

3.7 Senior Citizens Welfare Funds

The Senior Citizens Welfare Funds was established in the year of 2016. The fund is administered by an Intra-Ministerial Committee, with the Ministry of Social Justice and Empowerment acting as the nodal Ministry. The fund is utilized for senior citizen welfare schemes in line with the National Policy on Older Persons (NPOP), including schemes for promoting financial security of senior citizens, healthcare and nutrition, welfare of elderly widows, scheme relating to old age homes, day care center etc.

CONCLUSION

An essential component of India's dedication to social justice and diversity is the protection of older persons' rights. Even while laws are in place to safeguard the elderly, it is still crucial to spread knowledge of these rights and make sure they are applied effectively. India's attempts to provide an atmosphere in which elderly people may age with respect, safety, and the ability to exercise their rights must also change as the country does. In India, the Maintenance and Welfare of Parents and elderly persons Act, 2007 is the key piece of law that protects the rights and maintenance of elderly persons. But according to the Indian Constitution, among other things, no person may be denied the opportunity to exercise their freedom to labour because of their age. But in actual practice, employers are generally reluctant to employ older people. With the rise in life expectancy, the age of retirement has been raised for government jobs. But it still leaves a vast number of people, whose productive capacities can be put to good use, outside the job market.

The fundamental legal foundation for safeguarding the rights of senior citizens in India is provided by the Maintenance and Welfare of Parents & Senior Citizens Act, a federal law enacted by the Indian government in 2007. The Act outlines simple, hassle-free procedures for senior citizens to pursue justice. In addition to not having to pay court costs, they are entitled to priority hearings and a certain amount of time for their cases, as well as interim maintenance while the matter is resolved. Additionally, it lays forth penalties for kids who desert their parents.

REFERENCES

1. Honour thy Father as God.
2. Honour thy Father as God.

3. Ancient Vedic schools.
4. See Sec.2 (h) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.
5. See Sec.4 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.
6. Prof..G.C.V.Subba Rao revised by Dr.T.V.Subba Rao &Vijender Kumar, Family Law in India, 10th Edition, Reprint 2016.
7. Sec.20 of the Hindu Adoptions and Maintenance Act, 1956 runs as follows:-
8. Subject to the provisions of this section, a Hindu is bound, during his or her lifetime, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents.
9. A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor.
10. The obligation of a person to maintain his or her aged or infirm parent or a daughter who is unmarried extends in so far as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or other property.
11. Explanation:- In this section "parent" includes a childless step-mother.
12. AIR 2000 Guj. 277.
13. AIR 2000 SC 1386; (2000) 3 SCC 703.
14. Annual Report of the Ministry of Social Justice & Empowerment, Govt. of India, 2012-13 and <http://socialjustice.nic.in>
15. Formulated by the Govt. Of India, Social Justice and Empowerment Ministry and adopted by the Union Cabinet on 13th February 1999.