

An Analytical Study of Legal Framework for the Protection of Rights of Senior Citizens in India

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Abstract: *The sociocultural changes associated with globalization and development have weakened the traditional values and family support systems for senior citizens (age 60 years and above). There is an increase in the prevalence of elder abuse and difficulties in getting appropriate care and support. This has mandated legal measures to protect the rights of the senior citizens and provide them care and support by the family and other stakeholders.*

There have been numerous instances of abandonment and ill-treatment to elders becoming a cause for concern. The existing legal set up provides for maintenance of the elderly persons by their younger ones in the families. In this paper the authors have examined the maintenance issues of the elderly persons in the light of current social and legal set up.

Keywords: Globalization; Abuse; Maintenance; Socio cultural

I. INTRODUCTION

Ageing of human beings has become a major social challenge in the present time. More than one in five of the world's population will be aged 60 or older by 2050. ¹Generation gap, technological advancements, nuclear families, increased longevity, decreased resources in old age and other such issues result in neglect, isolation and insecurity of the older persons. Generally, increased expenses related to health care and increased dependency in the old age are seen as a burden by the younger ones in the family. In this backdrop it becomes pertinent to critically analyse the legal provisions relating to the maintenance of elderly persons in India their application and efficacy in the present social context. Old age is a real truth of life which considered the second childhood of a person. This is the time when old persons want to receive something from them to whom they have devoted their whole life and at that time they need more love, respect and time from their children but children are busy to give a beautiful life to their own children. In this way old persons are being neglected by their children and society and forced to live a meaningless and painful life either in old age home or in their own home. In ancient time the position of parents was very good and they were treated as living God or Goddess for their children. Grand Parents plays a very important role to develop a child to be a well cultured person. But in present scenario due to the nuclear family system the feelings of the children towards their parents are changing day by day. Nowadays children are become so practical and they want to live their life without any interfere and parents are only a burden for them. So the responsibility to maintain the parents has been shifted from children to Government. No doubt different legislation and welfare schemes and policies for elderly have been implemented by the Government. Till 2007 there were no special or separate legislation exclusively for Senior Citizens. the Government of 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" in Lok Sabha. The statement of objects and reason stated makes it clear that, the Act provides for medical facilities to the senior citizens and provisions for protection of their life and property. 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. As per UNESCO estimates, the number of aged (60+) is likely to 590, million in 2005. The figure will be double by 2025. In India, the population of elder



persons has increased from nearly 2 crores in 1951 to 7.2 crores in 2001. In the other words about 8% of total population is above 60 years. The figure is to cross 18% by 2025.

Historical Development

In pursuance of the understanding at International level, Government of India initiated and declared National Policy on Older Persons in 1999. This NPOP recognized certain rights of the aged people and further declared government's responsibility towards providing economic and social security along with healthcare facilities and protection of life and property of the aged people. In spite of the fact that the said policy was declared in 1999, even after decade no steps were taken to implement said policy. There was strong and consistent pressure from different NGOs and demand by aged people, senior citizens organizations etc. on the government regarding implementation of the same by appropriate legislation. This resulted in the passing of the said legislation in 2007.

Old age as discussed above is a natural process therefore elderly people should enjoy human rights available to persons in general and certain additional rights in particular to balance the human rights scale. However, the laws and policies governing the welfare of elderly people are very scattered in India. In this regard the problems relating to research on elderly people are as follows: Firstly, there is no set parameter to identify and define the term elderly person? It gets more complicated in a country like India where birth registrations are still not mandatory to calculate the exact age of a person. Secondly, there are various categories of elderly people and accordingly they have varying problems as well. Therefore studying the nature of their social, economic and other problems itself a big task, Thirdly, this research will focus upon the, human rights of the elderly people are violated on a continuous basis.

Object

The statement of objects and reason stated makes it clear that, the Act provides for medical facilities to the senior citizens and provisions for protection of their life and property. In addition to this there some more objectives of the Act; First, it is the object of this Act to provide appropriate mechanism to be set up to provide need-based maintenance to the parents and senior citizens. Second, provides institutionalization of a suitable mechanism for protection of life and property of older persons. Lastly, setting up of Old Age Homes in every district. From the aforesaid provisions it is clear that the Act contains and brings almost all aspects of the life of aged people in India in the ambit of this legislation with pious objective to provide them life with dignity.

BASIC PROBLEMS FACED BY ELDERLY

The International Institute for Population Sciences (IIPS) and the United Nations Population Fund (UNFPA) published the India Ageing Report 20235, which lists several problems that India's elderly population faces[1].

1. Financial Security: Governments may be subject to substantial expenses as the elderly retire and their healthcare needs grow. Elder abuse has been proven to be connected with lower income or poverty. Low financial resources have been identified as a contextual or situational stressor that contributes to elder abuse. Over 90 million older people depend on their family, relatives, and other people for their financial requirements as they age, making up approximately 2/3 of the population today. To eliminate poverty among the elderly in India and achieve Sustainable Development Goals, the government at all levels must give priority to their plans, policies, and programs (AGEWELL, 2021).

2. Health Issues: In India, the elderly face a variety of health concerns, including chronic diseases, mental health issues, and impairments. Public Funded Health Insurance exclusively provides inpatient care, whilst Central Government Health Schemes (2.1%) and Employee State Insurance Schemes (0.7%) include outpatient care. Private insurance was held by 1.8% of the population, however, it solely covered inpatient care. The hospitalization rate for the elderly fell from 10.9% in 2014 to 8.5% in 2017-18 (National Sample Survey, 2017-2018). In India, one out of every five old people suffers from mental illness. Approximately 75% of them have a chronic condition and 40% have some kind of disability.

1. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007.



3. Psychological Problems: As humans age, their anatomical and physiological structures alter. The problem here did not appear to be a lack of funds, but rather a lack of time on the part of others to care for the elderly. The second most important concern was a lack of emotional support from family members. The study sought to determine the effect of the ongoing COVID-19 danger on the elderly. Every fourth senior (2495 out of 10,000) said that the pandemic had resulted in psychological issues, which were their primary concern.

4. Elderly Abuse: Emotional or verbal abuse can cause pain, grief, terror, abnormal emotional distress, and loss of self-respect or autonomy, among other emotional harms. Abuse includes physical, psychological, and emotional abuse, financial neglect and abandonment, and loss of dignity and respect. The rising number of reports of elder abuse implies that the vast majority of them are prone to it. As the population ages, elder abuse is predicted to increase, causing physical and psychological harm (HelpAge India, 2022).

Major problems of the aged are Economic problems (loss of employment, income deficiency, and economic insecurity), Physical and physiological problems (health and medical problems, nutritional deficiency, and adequate housing problem), Psycho-social problem (psychological and social maladjustment, isolation, loneliness, elder abuse, long-term family conflict, targets for fraudulent schemes).

CONSTITUTIONAL PROTECTION

The Constitution of India guarantees several rights that can be interpreted to protect the welfare of senior citizens, even though specific provisions addressing elderly care are rare. However, several articles under the Directive Principles of State Policy and the fundamental rights section offer indirect protection[2]:

Article 21 protects life and personal liberty of an individual. But the judicial expansion of the scope of Article 21 paved the way to include the right to enjoyment of pollution free and healthy environment, the right to health and medical care, emergency medical aid, the right to livelihood, and social security,[3] and the right to live with human dignity and reputation of a person is his valuable asset.[4]

2. Constitution of India, 1950.

3. Hindu Adoption and Maintenance Act, 1956.

4. Code of Criminal Procedure, 1973.

The rights that have been assimilated into Article 21 are from the Directive Principles of State Policy. For instance, the rights to housing and shelter cast a duty upon the state to provide house sites to the poor houseless.

Article 41: This article, under the Directive Principles of State Policy, 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.

Article 46: The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation[2].

Though it is not enforceable in the court of law and the state cannot be compelled by the courts to carry out any directive but as per the mandate of Article 38 the state while making any policy shall take into consideration the directives enshrined in Part IV. Therefore, Directives though have to be implemented by the State, they could do so only subject to limitations imposed by the different provisions of the Constitution with respect of legislative and executive power.

Legal Protection of rights and dignity

Law is an instrument of social welfare. Right is an interest granted, protected, and enforced by law. Human Rights are the basic rights and freedom which fundamentally and inherently belong to every person in the world. To curb out the problems from which old age people are suffering, the implementation of legal measures as well as socio-legal mechanisms are required.



Protection under Indian constitution

Article 38,41,42,46 and 47 deal with the State to secure a social order for the promotion of the welfare of the people; Right to work, to education and public assistance in certain cases; Provision for just and humane conditions of work and maternity relief; Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes, and other weaker sections; and Duty of the State to raise the level of nutrition and the standard of living and to improve public health respectively. Nevertheless, these provisions are included in the Directive Principles of the Indian Constitution.

2. Constitution of India, 1950.

The DPSPs, as laid down in articles 36- 51, are not executory by any court of law but they impose positive obligations on the state, i.e., what it should do. The DPSPs have been declared to be essential in the governance of the country and the state has as an implication to apply them in making laws. The courts, however, cannot impose a DPSPs as it does not create any legitimate right in favour of any individual.

Protection under Personal Laws:

The duty to maintain parents is recognized by all people. By legal prospect, the extent of such liability varies from community to community.

Protection under Hindu Laws: Hindu Adoption and Maintenance Act, 1956 Part IX (Chapter III) is the first personal law statute in India, which imposes an obligation on the children to maintain their parents. Laws and rights under this Act can be accessed by only Hindus but not non-Hindu citizens of the country. Section 20 and 23 of the HAMA, 1956, deals with the maintenance of children and aged parents; and the amount of maintenance that is to be paid to the old and aged parents respectively. This section contains the discretionary power with the court to decide the amount or alter the amount already agreed upon to be paid to the aged parents if it founds the original amount to be insufficient. Under the modern codified Hindu laws, the responsibility to maintain the aged parents is not only upon the son but also upon the daughter to maintain them. Right to maintenance is both with the natural and adoptive parents. Although, step-parents, having their children did not have the right to maintenance under this Act.

Protection under Muslim Law: According to Mulla, a son is entitled to maintain his mother even under “strained” circumstances, if she is poor or infirm. The son is also bound to maintain his father if he is earning nothing. Under the Muslim laws, no concept of adoption is in existence. Hence, no provision for the maintenance of adoptive parents is in existence.

Protection under Christian and Parsi Laws: The Christians and Parsi have no personal laws for the maintenance of parents. Parents who wish to seek maintenance have to apply under provisions of the CRPC (National Human Rights Commission (NHRC)).

Protection under Criminal Laws:

Section 125 of Cr.P.C.1973 deals with the maintenance of old parents. Under this section, maintenance can be claimed by parents irrespective of their religion. If any individual with sufficient means refuses or neglects to maintain his parents, unable to maintain himself or herself, upon proof of such refusal or neglect, a Magistrate of the first class may order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct. (National Human Rights Commission (NHRC))

Protection under The Maintenance and Welfare of Parents Act, 2007

This Act provides deals with more effective provisions for the welfare and maintenance of elders guaran teed and recognised under the Constitution and for matters connected therewith or incidental thereto. This Act defines a senior citizen as a person who is above 60 years of age and is a citizen of India. As per section 5(1) of this Act, any senior citizen who is also a parent is entitled to get maintenance; where “parent”, as per section 2 refers to “father or mother whether biological, adoptive or stepfather or stepmother, as the case may be, whether or not the father or the mother is a senior citizen”. The Act also provides that child-less senior citizens may be maintained by their legal heir or the person



to whom the property may be transferred after the death of such a citizen. In case the elder or parent is incapable, they can authorize any other person or a voluntary organization to apply for maintenance on their behalf. This provision helps senior citizens or parents as most of them do not have the time and energy to approach courts and tribunals. Section 24 of the Act provides punishment. Thus, this Act is very useful in protecting the dignity of our senior citizens. Benefits under The Income Tax Act, 1961: Section 80C of this act extends to the investments made under the 5-Year Post Office Time Deposits Account and Senior Citizens Savings Scheme. Senior citizens should refer to the Indian Income Tax Department for rebates admissible to senior citizens.

Prominent Cases

In case of Promil Tomar and Ors. v. State of Haryana and Ors. the High court upheld the decision of the tribunal in declaring the transfer of possession of the property under section 23(1) as void on the ground that his son and daughter-in-law have assaulted and maltreated them and have also failed to provide the basic amenities and needs to the respondent.

In the case of Rajeshwar v. State of Punjab[, the Punjab and Haryana High Court emphasized that the Maintenance Tribunal's primary purpose is to provide immediate relief to elderly citizens. The court held that elderly parents are entitled to financial and physical care, regardless of their children's financial condition, and the tribunal must act expeditiously to protect the dignity of senior citizens.

II. CONCLUSION

The rights and maintenance of senior citizens in India are protected under a comprehensive legal framework, with the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, being the primary legislation. However, the effective implementation of these laws remains a challenge due to lack of awareness, social stigma, and inadequate infrastructure. By strengthening the legal and social support systems, raising awareness, and ensuring strict enforcement of maintenance orders, India can ensure that its senior citizens live with dignity and security. As the aging population continues to grow, it is imperative for the government, civil society, and individuals to work together to uphold the rights and welfare of senior citizens.

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