



Rights of senior citizens: Ensuring dignity and security

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Abstract

Human rights are for all, regardless of age. The elderly is seen as vulnerable because biological, psychological and social ageing predispose the ageing person to frailty, infirmity, and in many cases dependency, setting the older person apart from the rest of the population in need of special protection and rights. Although implementation of legislation, policies, and a package of integrated programmes and projects to cater to the needs of older persons had helped them to uplift their status, more has to be done to stem the increase of the reach of laws in a more fruitful manner.

Keywords: Senior citizen, aged person, citizen etc

Introduction

Ageing is a process which occurs naturally in the human life cycle. It is the decline in the capacity of the functioning of the organs of human body. However, they constitute a reservoir of human resource, gifted with knowledge, deep insights and varied experiences. The population of the aged has been increasing over the years. Their rights are being encroached upon each day and protection of them comes naturally to balance the human rights scale. They are the most vulnerable class of our society.

The perception towards old people varies from one society to another and the process is inevitable. From 1960 to 2023 the population of India increased from 450.55 million to 1.43 billion people. This is a growth of 216.5 percent in 63 years. The highest increase in India was recorded in 1974 with 2.36 percent. The smallest increase in 2023 with 0.61 percent. The average age in India rose by 2.63 years from 2012 to 2021 from 26.07 to 28.70 years. This created a lot of social, economic and political problems. When it comes to ageing population, the society and the government's focus is more on financial side, as when one gets older the dependency on others increases and the government has to allocate more money on making them stable and secure. India has the second largest global population of ageing people. In the years to come, the number of elderly persons may increase, but our country lacks basic expertise to support and respond to the needs of this section. Information gathered from various sources reveals that the senior citizens in our country are deprived of basic medical care, the expenses to maintain their livelihood, adequate financial support, and they face discrimination, mistreatment, lack of security and are isolated and abandoned too. The process of ageing is often associated with declining health, mental and physical ability, economic instability and to a certain extent, psychological problems.

Indian traditional society with its concept of joint family system was a strong pillar in ensuring the security and wellbeing of the elderly. But modernization and globalization paved way for the birth of nuclear families. The individualistic thoughts among the younger people encouraged them to live independently and this adversely disturbed the living arrangements of old people. In India, changes in the family pattern, existence of poverty, greater life expectancy, deterioration of the values, norms, beliefs

and the difficulty of the elderly people to adjust with these changes were also enlisted in the challenges faced by them.

Constitutional Provisions towards to senior citizens

Upon approaching old age, physical and mental problems become daily affair. Due to such afflictions, he is unable to work and earn his own livelihood which in turn makes him dependent on others. In order to protect the interest of the most valuable assets of the country i.e. elderly people, our Constitutional framers have inserted certain provisions on this subject under Part IV of the Constitution. i.e. Directive Principles of State Policy. Furthermore, although not explicitly stated as a Fundamental Right, the judiciary reads the rights of the elderly as a facet of Article 21 of the Constitution.

Although Directive Principles are not enforceable unlike Fundamental Rights, it is an accepted norm that they must be considered while framing the state policy. Article 41 of the Constitution provides that, "The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want." It places obligation upon the State to provide job opportunities and other help to the elderly so that they can earn and live a respectful and independent life. Article 38(1) enjoins the State to strive to promote welfare of the people by securing and protecting as effective as it may a social order in which justice social, economic and political shall inform all institutions of the national life. In particular the State shall strive to minimize the inequalities in status, facilities and opportunities. Article 39(e) requires the State to secure that the health and strength of workers, men and women and children of tender age are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their area of strength. To achieve these goals, State provides pensions as monetary benefit to former employees so that they can live meaningful life with dignity.

By keeping these Directive Principles in mind, legislations to protect the interest of the elderly have been enacted. This includes the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and Rules on the same along with other legislations.

Maintenance and Welfare of Parents and Senior Citizens Act, 2007

Until 2007, there was no specific legislation exclusively to address the elderly population. The Directive Principles, although mentions rights of the elderly, they were not applicable towards private citizens. For private citizens, two Acts—the Code of Criminal Procedure, 1973, and the Hindu Adoption and Maintenance Act, 1956—placed obligations regarding the care of parents by their children if they are unable to take care of themselves. It was only with the passing of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 that a specific legislation for the protection of senior citizens came into force in India. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 seeks to make it a legal obligation for children and heirs to provide sufficient maintenance to senior citizens, and proposes to make provisions for state governments to establish old age homes in every district.

The Act places an obligation on children and relatives to maintain a senior citizen or a parent to the extent that they can live a normal life. The definition of senior citizen includes both Indian citizens aged over 60 years, and all parents irrespective of age. This obligation applies to all Indian citizens, including those residing abroad. The Act defines “children” as sons, daughters, grandsons and granddaughters and “parents” includes biological, adoptive or step parents. A senior citizen who is unable to maintain himself based on his own earnings or property shall have the right to apply to a maintenance tribunal for a monthly allowance from their child or relative. If he is incapable of filing the application on his own, he may authorize any other person or registered voluntary association to apply on his behalf. The maintenance tribunal may also, on its own, initiate the process for maintenance.

In case of childless senior citizens, relatives are obliged to provide maintenance. The Act defines “relative” as someone who is in possession of or would inherit a senior citizen’s property. The Act, however, doesn’t seek to make it an absolute obligation on the relatives of a senior citizen; it states that a relative from whom such maintenance is being claimed must have sufficient means to maintain such claimant. Further, the Act also attaches a proviso to it, which states that such person should either have the possession of the property of such senior citizen, or he would inherit the property of such senior citizen. If more than one relative would inherit such property, the Act proposes proportionate payment by all relatives where the maintenance shall be payable by such relative in the proportion in which they would inherit his property. It is only on fulfillment the above-mentioned conditions that a relative can be asked to maintain the senior citizen. However, the Act fails to address instances where the senior citizen sells his property to a third party or if the relative who is said to inherit the property intends on refusing to accept it. Further, as wills are changeable, it is unclear how one would determine who would inherit the property after death, and therefore who would be obliged to maintain the senior citizen.

Another controversial area is with regard to gift deeds; Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, deals with instances where the transfer of property is void in certain circumstances. This including when a gift deed is made with the condition that transferee shall provide the basic amenities and basic

physical needs to the transferor, if the transferee does not do so, then the transfer is deemed to be made through coercion or such fraudulent means. This is in contradiction to what is provided in the Transfer of Property Act.

Section 5 of the Act specifies that application for maintenance shall be disposed of within 90 days. The Act also prescribes punishments to be awarded if there is default in payment of maintenance and establishes the Maintenance Tribunal to provide speedy and effective relief to elderly persons. Under Section 12 of the Act, 2007, an option has been given to the parents or senior citizen to claim maintenance even under Section 125 of Code of Criminal Procedure, 1973 but it cannot be claimed under both the Acts. Section 125 of Cr.P.C does not put any limit for the maintenance, whereas under the 2007 Act, the maximum limit of maintenance to be awarded is fixed as 10,000 /- under Section 9 of the Act.

The Act empowers the State with the entire responsibility of establishing Tribunals, enacting rules and such. Since there is no mandatory provision in the Act, State may or may not establish Tribunal to adjudicate the cases of senior citizens. Further, the Act grants only parents the right to appeal. There is no facility for appeal available to childless senior citizens, children or relatives. According to the provisions of the Act entry of Advocates is prohibited; while senior citizens and parents may be represented by a maintenance officer designated by the state government, neither relative nor children can have representatives.

The Act mentions various duties of the State Government. The Act states that the state government may establish and maintain at least one old age home per district with a minimum capacity of 150 senior citizens per home. The state government may also prescribe a scheme for the management of such homes which shall specify standards and services to be provided including those required for medical care and entertainment of residents of these old age homes. It shall ensure separate queues for senior citizens, expand facilities for treatment of diseases and expand research for chronic elderly diseases. While these are positive steps from the part of the State government, these are not mandatory. Further, the Act is silent regarding management and administration of such Old Age Home. Considering the current destitute conditions of old age homes established prior to this Act, it is clear that if no legal obligation or responsibility is specified, these provisions will not be fulfilled.

The Act also directs the state government to ensure that government hospitals and those funded by the government provide beds for all senior citizens as far as possible. These provisions are found to be ornamental only as very few hospitals have geriatric care and medicine experts in India. In absence of expertise how senior citizens will get proper treatment and care is the important question. In that event senior citizen will have to approach such hospitals having expertise in Geriatric care and will have to pay exorbitant fees for the same.

Judiciary and Senior Citizens

The Judiciary plays a very important role as the protector of the Constitution and the basic guarantees given to citizens of the country. The rule of law is the bedrock of democracy, and the primary responsibility for implementation of the rule of law lies with the judiciary. It is in the ambit of judicial review, to ensure that democracy is inclusive and

that accountability is imposed on everyone who wields or exercises public power.

The Supreme Court has held that any legislation is amenable to judicial review, be it amendments to the Constitution or drawing up of schemes and bye-laws of municipal bodies which affect the life of a citizen. Judicial review has empowered the Courts to look into matters such as the President's power to issue a proclamation on failure of constitutional machinery in the States like in Bommai case, and even issues relating to the highly discretionary exercise of the prerogative of pardon like in Kehar Singh case or the right to go abroad as in Satwant Singh case. Judicial review knows no bounds except the restraint of the judges themselves regarding justifiability of an issue in a particular case.

By expanding the concept of locus standi to include any public-spirited individual and thereby promoting the advent of Public Interest Litigation was the first step towards expanding the horizons of Human Rights in India. The scope of writ jurisdiction has also been expanded to uphold the Human Dignity and other Fundamental Human Rights.

Cases dealing with issues of older persons

Yogesh Sadhwani v. Commissioner of Police, 2015 SCC Online Bom 959

A PIL was filed on behalf of Mrs Jayashree Gholkar. This case brought forth a complete failure of the execution of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The Court directed the State Government to file affidavit mentioning therein the steps taken:

- To establish tribunal under Sec. 7.
- Designate a maintenance officer under Sec. 18.
- For establishment of old age homes under Sec 19.
- To give medical support to the senior citizen as under Sec. 20.
- for publicity, awareness, etc. for welfare of senior citizen under Sec. 21

This case therefore is an example of judicial intervention to question the efficacy of the Executive.

Santosh Surendra Patil v. Surendra Narasgopnda Patil, 2017 SCC Online Bom 3053

The litigating parties in the case were parents and their sons. The respondent was the son of the Petitioners and was appealing against an order of vacation of the residential premises owned and constructed by the Petitioners. The court went on to discuss the need for the enactment of Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The moral duty to take care of one's parents was crystallised as a legal responsibility under this Act. The State also takes it upon itself the guardianship of Senior Citizens and old infirm parents. The eviction order was upheld by the court as such an order is permissible under Sec. 23 of the Act of 2007.

People's Union of Civil Liberties v. Union of India, 2007 1 SCC 728

As part of interim measures several directions were given by the Court regarding several schemes. Specifically, in regard to older persons the following order was made; The States were directed to identify the beneficiaries and state payments under the National Old Age Pension Scheme. Such payments were to be made promptly by the 7th of each month.

H. MariyamBeevi v. The Secretary to Government, Government of Tamil Nadu, Social Welfare and Nutritious Meals Scheme Department, W.P.No.22122 of 2010

A writ petition was filed challenging an order passed by the Special Tahsildar of Social Security Scheme. The petitioner was informed that her claim for pension for the old age will be taken up only if her name was included in the list of persons who are living Below Poverty Line.

As per the Muslim Personal law applicable to the petitioner, there is no obligation for the son-in-law to maintain the mother-in-law and her elder daughter had underwent an operation and incurred huge expenditure. Therefore, the impugned order stands set aside and the respondents were directed to grant old age pension in accordance with the Indira Gandhi National Old Age Pension Scheme.

H.S. Subramanya v. H.S. Lakshmi, ILR 2014 Karnataka 4978

The petitioners have called in question invalidity of the order whereby the Maintenance Tribunal and the Assistant Commissioner has directed the petitioners and the third respondent to pay maintenance to their mother under Section 9 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

The first respondent was a widow whose husband had executed a Will bequeathing his properties in favour of his children. A provision was made in the Will for payment of maintenance to her and she was to be paid an amount by each of her sons. The petitioners stated that they were paying monthly maintenance to their mother regularly while the 3rd respondent did not do so. It was stated that the 3rd respondent pockets the maintenance amount paid to their mother which lead to the petitioners to stop payment of maintenance.

The Tribunal directed all the sons to pay a sum of Rs. 3,000/- every month for the sustenance of their mother, who is unable to maintain herself. The allegation made by the petitioner that that third respondent will be the beneficiary if maintenance amount is paid to the 1st respondent does not hold as the amount is insufficient for the maintenance of the 1st respondent. The petition was dismissed.

Senior Citizen Act provision in Karnataka

The Karnataka State Policy for Senior Citizens has come into force on 5-9-2003.

Objectives of the Policy

- The goal of the State Policy is to maintain the well-being of the older persons.
- The state shall extend support for financial security, health care, shelter, welfare and other needs of older persons provide protection against abuse and exploitation.
- Programme should be drawn for the older persons living in rural areas to ensure that they should be provided with equal opportunities as prevailing in urban areas
- The Senior citizens shall be provided with the opportunities to run active, creative, productive and satisfying life.
- The policy aims at having an age-integrated society.
- The State recognizes that elderly persons are also resourceful and render useful services to the family and the society.

- The policy recognizes the importance of proper budgetary allocation for the welfare of poor elderly persons.

A task force committee headed by Chief Minister is formed to implement the policy

1. **Old age Homes:** State Govt. extend the financial assistance to NGOs to run Old Age Homes to take care of the elderly persons providing all the basic amenities and care protection to life etc.,
2. **Monthly Pension scheme for older person (Implemented by Revenue Dept.):** Rs.1200/- is given as monthly pension to needy elderly persons to maintained themselves

Eligibility Criteria

- a. He / She should be 65 years or more in age.
- b. The combined annual income of the proposed pensioner and his or her spouse shall not exceed Rs. 20,000/- as certified by the local revenue authority.
3. **Help Line for Senior Citizens:** Help lines are established at 14 places in the State i.e., Bangalore, Mysore, Hubli-Dharwad, Gulbarga, Mangalore & Belgaum 47 Davangere, Raichur, Bellary and Shimoga with the help of Police Dept. and NGO's to redress the difficulties of senior citizens. (other 4 help lines)
4. **Day Care Centre for Senior Citizens:** Day care centres are established at Bangalore, Hubli-Dharwad, Gulbarga and Belgaum corporation areas. The main objectives of Day Care centre is to maintain the well-being of older persons, to provide social and emotional services, recreation, Health care etc.,
5. **Identity Cards for Senior Citizens:** The Deputy Director Women & Child Development Department of the concerned district will identify NGOs to issue Identity Cards to Senior Citizens. The NGOs can collect Rs. 25 towards issue of Identity Cards to Senior Citizens.
6. **Sandhya Surkasha Scheme (Implemented by Revenue Dept.):** The purpose of the scheme to provide some relief to the age to providing financial assistance in the form of social security pension. The Persons will eligible for pension of Rs.400/- per month under this scheme if she / he satisfy the following conditions.

He / She should be 65 years or more in age

1. The combined annual income of the proposed pensioner and his or her spouse shall not exceed Rs.20,000/- as certified by the local revenue authority.
2. If the income is declared by beneficiary himself / herself, the income of Adult children will not be counted for calculation of the income of the proposed social security pensioner.
3. The total value of combined deposits held by the pensioner and his spouse shall not exceeding Rs.10,000/-.
4. Such of the persons availing of old age pension, Destitute widow pension or physically handicapped

pension or any other form of pension from public or private sources are not eligible for this scheme.

5. The beneficiaries under this scheme will be chosen from the following categories.
 - a. Small farmers
 - b. Marginal farmers
 - c. Agricultural labourers
 - d. Weavers
 - e. Fishermen
 - f. Labourers from unorganized sector but it shall not applicable to person covered under the Building and other construction workers" (Regulation of Employment and conditions of services) Act 1996.
7. **Concessional Bus Pass:** Elder persons above the age of 60 living in Karnataka are eligible to avail concessional monthly bus passes in KSRTC.

Conclusion

A comprehensive approach is required for the well-being of senior citizens, integrating government welfare schemes with strengthened family, community, and social support systems to ensure their dignity, security, and active participation in society. This includes enhanced healthcare, financial support, and measures to combat ageism, while also leveraging their vast experience through meaningful engagement. Ultimately, creating an inclusive and age-friendly society that values and respects older persons is paramount.

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