



## Legal protections to old aged persons in India

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### Abstract

This paper contains many provisions, scheme for senior citizens at national level includes constitution, Hindu law, Muslim law, Cr. p. c., Christian & Parsi law, The Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

“Old Age” is usually associated with declining faculties, both mental and physical, and a reduction in social commitments (including sport participation) of any person. The precise onset of old age varies culturally and historically. It is a social construct, rather than a biological stage. The persons in India, who have attained the age of sixty years and above, are defined as elderly for the purpose of availing old age benefits.

**Keywords:** human rights, old aged person, elder people, constitutional protection

### 1. Introduction

Population aging is a worldwide wonder, and India is no exemption. Indian population has around tripled amid the most recent 50 years, yet the quantity of elderly Indians (60+) has expanded in excess of four folds. The 2011 census has demonstrated that the elderly population (60+) of India represented 98.3 million, which was anticipated to cross the 100 million stamps amid that year. It took over 100 years for the aged population to twofold in the vast majority of the countries in the world, yet in India it has multiplied in only 20 years. The life anticipation has likewise gone up to more than 70 years today. Better medicinal offices, care and liberal family arranging arrangements made the elderly the quickest developing segment of the society in India. By 2025, the world will have more elderly than youngsters and cross two billion check by 2050. In India additionally, the population of elder persons population stamp will cross 18% by 2025. With quick evolving financial situation, industrialization, quick urbanization, higher yearnings among the young and the expanding investment of women in the workforce, foundations of traditional joint family system has been disintegrating quick. In urban regions of the country traditional joint family system has moved toward becoming thing of past. In such evolving circumstances, larger part of older people, who have passed most piece of their life with their joint/more distant families are very nearly seclusion or underestimation in old age. At this age, when they require family bolster most, they need to live without anyone else. Indeed, even essential needs and rights of a considerable lot of them are not tended to. Social underestimation, forlornness, segregation and even carelessness in old age lead infringement of Human Rights of Older people.

Incidentally, in India older ages don't know about their human rights because of high commonness of absence of education and absence of mindfulness. Then again, due to relatively high physical and also mental powerlessness their sobs for help stay inside four-dividers, that is the reason just a couple of

instances of infringement of human rights of elderly turn out. Regularly expanding quantities of pain calls from older people plainly demonstrate aggravating state of Human Rights of Older people in India.

### 2. Constitutional Protection

**Sec. 38.** State to secure a social order for the advancement of welfare of the people

1. The State should endeavor to advance the welfare of the people by securing and ensuring as adequately as it might a social request in which equity, social, monetary and political, should advise every one of the foundations of the national life.
2. The State might, specifically, endeavor to limit the imbalances in pay, and attempt to take out disparities in status, offices and openings, among people as well as among gatherings of people dwelling in various zones or engaged in various employments.

**Art. 41:** Right to work, to training and to open help with specific cases: The State might, inside the points of confinement of monetary limit and advancement, influence compelling arrangement for securing the right to work, to instruction to and to open help with instances of joblessness, seniority, disorder and disablement, and in different instances of undeserved need.

**Art. 46.** Promotion of educational and financial interests of Scheduled Castes, Scheduled Tribes and other weaker sections - The State should advance with exceptional care the educational and monetary interests of the weaker sections of the general population, and, specifically, of the Scheduled Castes and the Scheduled Tribes, and might shield them from social injustice and all types of misuse.

**Art.47.** Duty of the State to raise the level of sustenance and the way of life and to enhance public health <sup>[1]</sup>.

<sup>1</sup> Art.38,41,46,47 of Constitution of India (Directive Principle of State Policy)

### a. Personal Laws Protection

The moral duty to keep up parents is perceived by all people. Be that as it may, so far as law is concerned, the position and degree of such risk changes from group to group.

**1. Hindus Laws:** Among the Hindus, the obligation of children to keep up their aged parents, who were not ready to keep up themselves out of their own winning and property, was perceived even in early messages. Also, this obligation was not reliant upon, or in any capacity qualified, by a reference to the ownership of family property. It was a personal legal obligation enforceable by the sovereign or the state. The statutory arrangement for maintenance of parents under Hindu personal law is contained in the Hindu Adoption and Maintenance Act, 1956 <sup>[2]</sup>. This Act is the principal personal law statute in India, which forces an obligation on the youngsters to maintain their parents. As is obvious from the wording of the section, the obligation to maintain parents isn't restricted to sons just, and daughters additionally have an equivalent duty towards parents. It is vital to take note of that lone those parents who are fiscally unfit to maintain themselves from any source, are qualified for look for maintenance under this Act.

**2. Muslim Law:** Children have a duty to maintain their aged parents even under the Muslim law. As per Mulla:

- a. Children in simple conditions are bound to maintain their poor parents, in spite of the fact that the last might have the capacity to gain something for themselves.
  - b. A child however in stressed conditions is bound to maintain his mom, if the mother is poor, however she may not be decrepit.
  - c. A child, who however poor, is gaining something, is bound to help his dad who wins nothing.
- As indicated by Tyabji, parents and grandparents in needy conditions are entitled, under Hanafi law, to maintenance from their children and grandchildren who have the methods, regardless of whether they can gain their vocation. The two sons and daughters have a duty to maintain their parents under the Muslim law. The obligation, in any case, is reliant on their having the way to do as such.

**3. Christian and Parsi Law:** The Christians and Parsis have no personal laws accommodating maintenance for their parents. Parents who wish to look for maintenance need to apply under arrangements of the Criminal Procedure Code <sup>[3]</sup>.

**4. under the Code of Criminal Procedure:** Before 1973, there was no provision for maintenance of parents under the code. The Law Commission, in any case, was not for making such provision. As indicated by its report: The Cr. P. C isn't the best possible place for such a provision. There will be impressively trouble in the measure of maintenance granted to parents distributing among the children in an outline continuing of this write. It is attractive to leave this issue for mediation by civil courts.

The provision, be that as it may, was presented without precedent for Sec. 125 of the Code of Criminal Procedure in 1973. It is likewise fundamental that the parent sets up that the

other party has adequate means and has disregarded or declined to maintain his, i.e., the parent, who can't maintain himself. It is essential to take note of that Cr. P. C 1973 is a mainstream law and represents persons having a place with all religions and communities. Daughters, including married daughters, likewise have a duty to maintain their parents.

### 3. Governmental Protections

1. The Government of India endorsed the National Policy for Older Persons on January 13, 1999 so as to quicken welfare measures and engaging the elderly in courses advantageous for them. This policy incorporated the following significant advances:
  1. Setting up of a pension fund for guaranteeing security for those persons who have been serving in the disorderly area,
  2. Construction of seniority homes and day watch over each 3-4 districts,
  3. Establishment of asset focuses and re-business bureaus for people over 60 years,
  4. Concessional rail/air fares for movement inside and between urban areas, i.e. 30% discount in prepare and half in Indian Airlines.
  5. Enacting legislation for guaranteeing mandatory geriatric care in all the public clinics.
2. The Ministry of Justice and Empowerment has declared with respect to the setting up of a National Council for Older Person, called age well Foundation. It will look for conclusion of aged on measures to make life simpler for them.
3. Endeavors to sharpen school children to live and work with the elderly. Setting up of a round the clock help line and debilitating social segregation of the older persons are being taken up.
4. The government policy energizes an incite settlement of pension, provident fund (PF), gratuity, and so forth to spare the superannuated persons from any hardships. It additionally urges to make the taxation policies senior delicate.
5. The policy additionally concurs high need to their health mind needs.
6. As per Sec.88-B, 88-D and 88-DDB of Income Tax Act there are discount in assess for the elderly persons.
7. Life Insurance Corporation of India (LIC) has additionally been giving a few scheme to the advantage of aged persons, i.e., Jeevan Dhara Yojana, Jeevan Akshay Yojana, Senior Citizen Unit Yojana, Medical Insurance Yojana.
8. Previous Prime Minister A. B. Bajpai was additionally dispatch 'Annapurana Yojana' for the advantage of aged persons. Under this yojana unattended aged persons are being given 10 kg nourishment for consistently.
9. It is proposed to allocate 10 percent of the houses built under government schemes for the urban and country lower salary portions to the older persons on simple loan. The policy notices.

It might be brought up that as of late the Madurai Bench of the Madras High Court has decided that the advantages gave on a Government representative, who is incapacitated amid his/her

<sup>2</sup> Sec 20

<sup>3</sup> Sec.125 of Cr. p. c.

administration period, under Section 47 of Persons with Disabilities (measure up to opportunities, protection of rights and full interest) Act, 1995 can't be bound just seven sorts of medical conditions characterized as 'disability' in the Act. The seven medical conditions are blindness, low vision, leprosy-cured, hearing impaired, locomotors disability, mental retardation and mental illness.

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

Under the act, maintenance <sup>[4]</sup> application can be filed by parents <sup>[5]</sup> and old aged persons (above 60 years) unable to maintain himself/herself, against children or relatives.

The maintenance application can be filed by the old aged individual or a parent or someone else or association approved by him, as enrolled NGO, if unequipped for doing as such himself. Abandonment of the elderly is currently a cognizable offense. Anybody in charge of caring for or securing the old aged persons, abandons him/her in wherever with the expectation of entirely abandoning, should be rebuffed with detention which may stretch out to 3 month and fine up To Rs.5,000/- <sup>[6]</sup>.

The Act give Maintenance not surpassing RS.10,000/- every month, likewise essentially intrigue at the very least 5% and not over 18% from the date of making application. The Act perceives Maintenance understanding against exchange of property by old aged individual, when transferee neglects to give such guarantee, exchange of property is regarded to be false and void <sup>[7]</sup>. State Government should set up seniority home in each district and provide facilities. <sup>[8]</sup>

#### 5. Conclusion

In view to accomplishments we can't overlook the current maturing populace of old aged individual and their scholarly capacity. In different field the scholarly capacities of old aged individual have been felt. Our Hon'ble retired judges of Apex court, High court have demonstrated that retired isn't seniority. Learned individual from legal calling have released their obligations in different quasi-judicial bodies, tribunals, law commission even after retirement. In fact old aged individual need efficient and physical satisfaction as well as they require kind of adoration, friendship, enthusiastic help which can't guaranteed by any law, rather than this it is important to give right and benefits to old aged individual and likewise to execute them in practice for improvement of old aged individual.

A particular provision for giving security of living arrangement, as in Domestic Violence Act, ought to be joined in the Act. Govt. should take fitting measure to give wide publicity about right of old aged individual. Public-private association by means of media is necessary for mindful about right of old aged individual. Society should mindful about their moral and legal responsibility towards old aged

individual.

In view to achievements we can't disregard the current developing masses of old aged individual and their insightful limit. In various field the insightful limit of old aged individual have been felt. Our Hon'ble retired judges of Apex court, High court have shown that retired isn't rank. Taken in individual from legal calling have discharged their obligations in various quasi-judicial bodies, tribunals, law commission even after retirement. In fact old aged individual need productive and physical satisfaction and in addition they require sort of worship, fellowship, excited help which can't ensured by any law, as opposed to this it is essential to give right and advantages to old aged individual and moreover to execute them in practice for development of old aged person.

A specific provision for giving security of living course of action, as in Domestic Violence Act, should be participated in the Act. Govt. should take fitting measure to give wide publicity about right of old aged person. Public-private relationship by methods for media is important for careful about right of old aged person. Society should careful about their moral and legal responsibility towards old aged person.

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<sup>4</sup> Sec.2(b) Maintenance includes food, clothing, residence, medical assistance and treatment

<sup>5</sup> Sec2(d) Parents means father or mother, adoptive-step father or mother, as case may be whether or not father or mother is old aged person

<sup>6</sup> sec.24

<sup>7</sup> sec.23

<sup>8</sup> sec.19