

Rights of Protection, Maintenance and Welfare of Parents and Senior Citizens in India

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Abstract – Human Rights are the basic rights which fundamentally and inherently belong to each individual. In other word these are the freedoms established by custom or international agreement that impose standards of conduct on all nations. These rights are distinct from civil liberties, which are freedoms established by the law of a particular state and applied by that state in its own jurisdiction. Thus, these are the Fundamental rights which human being possesses by the fact of being human, and which are neither created nor can be abrogated by any government.

Keywords: Rights of Protection, Welfare of Parents, Senior

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1. INTRODUCTION

Several international conventions and treaties (such as the United Nation's Universal Declaration of Human rights in 1948), these include cultural, economic, and political rights, such as right to life, liberty, education and equality, and right of association, belief, free speech, information, religion, movement, and nationality. Promulgation of these rights is not binding on any country, but they serve as a standard of concern for people and form the basis of many modern national constitutions. Although they were defined first by the English philosopher John Locke as absolute moral claims or entitlements to life, liberty and property, the best-known expression of human rights is in the US Declaration of Rights in 1776 which proclaims that —All men are by nature equally free and independent and have certain inherent natural rights of which when they enter a society they cannot by an compact deprive or divest their posterity.

Protection of senior citizens

Any person who is responsible for the protection and care of a senior citizen and intentionally abandons the senior citizen completely is liable to pay a fine of Rs 5,000 or be imprisoned for 3 months or both.

Additionally, senior citizens can file an application before the Maintenance Tribunal to declare the transfer of property void. The following conditions apply:

- The transfer of property, irrespective of whether it is a gift or not, must be after the commencement of the Act.

- The property must be transferred by attaching some conditions that require the person to whom the property is transferred to provide basic amenities and physical needs to the senior citizen.
- The other person must have failed to or refused to provide the amenities and physical needs to the senior citizen.

If senior citizens have the right to receive maintenance from an estate and the estate is transferred, either partly or wholly, then the right to maintenance can be claimed from the person to whom the property has been transferred when:

1. The person to whom the property has been transferred for consideration has the notice of the right; or
2. The transfer is gratuitous.

2. LITERATURE REVIEW

Recent decade has witnessed an array of literature focusing on the attention provided on problems faced by elders and rising complexity in behavioral issues prevailing in families. Increase in conflicts amongst families has faced difficulties in handling aged people, this scenario has insisted upon offering proper care to elderly people. Family is the supporting system to offer care, attention and nurture children and elderly people. The prior literature on family relationships emphasized issues related to children, elder people and adolescents. The structure of families has faced many transformations, which is visible on patterns of fertility, birth and

death. These features have provided a deep insight into intergenerational structures of family relationships in a vertical pattern. Whereas the intra generational relationships are shrinking in a horizontal pattern due to the nuclear family structures. The vertical pattern of relationships is becoming more complex and high to maintain durability than the earlier cases. The drastic behavioral changes have altered the persisting relationships in the vertical structure. The relationships across intergeneration are asymmetrical. In the earlier days, old age people survived by their children and grandchildren whereas in this scenario, it is evident that present generation do not have surviving grandparents due to high mortality index. Many people had lost their parents even before becoming adults (Quinn & Tomita, 1997). Harper (2005) insists that shift in family relationships and modernization has resulted in increase of generations but at the same time decreased the relatives.

Interdependencies upon each other are inevitable across families and its associated relationships. Caregiving to elder people by the family members is inevitable as the life time has doubled since before (Wolff & Kasper, 2006). There are various aspects related to caregiving such as offering personal care, helping in household works, preparing and serving meals, financial support, taking them for shopping, medical assistance, supporting their day-to-day activities, supervising their services and offering companionship to prevent their loneliness (Roberto & Jarrott, 2008)

In India, study of Ramamurti (2002) showed that factors which influence the intergenerational relationship between parents and children such as physical, economic, health, psychological, and socio-cultural, aspects. Contrary to this, the study of Singh (2004) revealed that age is a major factor and found out the attitudes of both generations could impact the relationship. Aged pensioners have sometimes highly emotional, weak, nagging, dependent and inactive while younger people showed other deficits unimaginative, disturbing, cognitively deficient and unsatisfied with their lives rigid. Though, mixed results was observed in few studies include Sonar and Prasad (2007) showed both positive and negative interrelationship in both parents and children. Negative relationship occurred due to children are not productive, the difference in lifestyle of youngsters and opinion as well. However, those people positively are given support to youngsters in some situation. Similarly, Batra and Bhaumik (2007) studied the intergenerational relationship and observed that the traditional culture of India had a nuclear family system. Hence, both young and aged people are interdependent (in economic) with each other. However, few aged people have a lack of support from children and grandchildren, loss of authority, feeling isolated from the family and lack of respect for the young generation.

Later, some positive response was observed in few studies. For instance, Raju (2002) noted the positive relationship with their youngsters. Sonar and Prasad (2007) found aged pensioners who are educated getting active support from their youngsters. Likewise, the report of IUSSP (2009) and Wangmo (2010) showed that the interrelationship among family members especially parents and children are positive. Contrary to this, there is a lack of intergenerational relationship leads to aged pensioners depend on old age homes (Panigrahi & Syamala, 2012). The study observed that aged pensioners felt few issues in the family include ill health, lack of money and family health. Hence, they depend on old age homes. However, this study showed that most of the aged pensioners want to live with their families due to their preference of traditional culture. In spite of this, aged pensioners prefer old age homes for poor, no family and sick conditions. From the above studies, it is clear that the understanding of intergenerational relationship is a comprehensive and holistic approach. To our knowledge in India, limited studies focused on the issues related to aged abuse in India (Pichaipillai & Kalyani, 2012). Hence, the present study aims to address the prevailing gap through understanding and identification of present elderly laws in India.

RIGHTS OF PROTECTION TO ELDER PERSONS IN INDIA

A human being is not beyond the reach of the old age in its general cycle of the life. Ageing is a natural process, which inevitably occurs in human life cycle. It brings with a host of challenges in the life of the oldage, which are mostly engineered by the changes in their body, mind, thought process and the living patterns. Ageing refers to a decline in the functional capacity of the organs of the human body, which occurs mostly due to physiological transformation, it never imply that everything has been finished. The senior citizens constitute a precious reservoir of indispensable human resource coupled with knowledge of various dimensions, varied experiences and deep insights. May be they have formally retired, yet an overwhelming majority of them are physically fit and mentally alert. Hence, they should be given an appropriate opportunity as they remain in a position to make significant contribution to the socio-economic development of the nation.

- a) **Problems of the Old Age Person:** From past to present study of various enriched resources during different periods comprehensibly consolidated following major problems of the aged for which they have been suffering deeply and required thorough implication not only through legal measures instead requires socio-legal mechanism to curb out this long waited problem: i. Economic problems include

problems like loss of employment, income deficiency and economic insecurity. ii. Physical and physiological problems including health and medical problems, nutritional deficiency, and the problem of adequate housing etc. iii. Psycho-social problem which cover problems related with their psychological and social maladjustment as well as the problem of elder abuse etc.

b) Growing Population of Old Age Person:

The population of the oldage persons has been increasing over the years. As per the UNESCO estimates, the number of the aged (60+) is likely to 590 million in 2005. The figure will double by 2025. By 2025, the world will have more Oldage than young people and cross two billion mark by 2050. In India also, the population of elder persons has increased form nearly 2 crores in 1951 to 7.2 crores in 2001. In other words about 8% of the total population is above 60 years. The figure will cross 18% mark of total population by 2025 in India.

c) Abuse of Oldage Person:

Older abuse is also very often the result of longterm family conflict between parent and child or between spouses. Increasingly, the relationship between domestic violence and older abuse is understood to be important. In few studies which examine the CHHATTISGARH, phenomenon as a specific category, domestic violence accounts for a significant percentage of cases identified as 'elder abuse'. In many of these cases, the abuse is the continuance of long-term domestic violence into old age. With the onset of disability and the intervention of community services, behaviour which has long been carefully concealed is exposed and labeled as —older abuse. However, once again, the relationship is not straightforward. In some cases, the situation is reversed—the long-term perpetrator becomes dependent upon their victim and the domestic violence victim now becomes the abuser under changed power relations. As well as domestic violence, a history of other forms of family violence such as child abuse plays an important role. An abusive care may also be the victim of domestic violence or the adult survivor of child abuse who is now in a position of power over their past perpetrator. A full understanding of older abuse must also move beyond individual risk factors, and concentrate upon the problem as a function of broader social structural issues such as poverty, isolation, ethnicity and gender.

d) Risk Factors for Older Abuse: Most of the research on risk factors has concentrated upon identifying individual pathologies, either on the part of the victim or of the perpetrator, or pathologies of the family environment. Studies have shown the important influence of dependency of the abused upon the abuser. In some cases, this is due to some form of cognitive or physical impairment of the abused (Kurrle et al. 1992; Sadler 1994). Carer stress, the most common early explanation for the existence of elder abuse, appears to be a less influential factor than first thought. Rather, where carer stress is a contributing factor, it is usually associated with dependency or other mediating influences. Predisposing individual factors in the abuser, such as dementia, substance abuse or psychiatric illness, have also been identified (Kurrle et al. 1992; Sadler 1994; Sadler & Weeks 1996). Older abuse is also very often the result of long-term family conflict between parent and child or between spouses. Most of the early work on abuse of the elderly was limited to domestic settings and carried out in developed countries. In seeking explanations for elder abuse, researchers drew from the literature in the fields of psychology, sociology, gerontology and the study of family violence. To accommodate the complexity of older abuse and many factors associated with it, many other researchers have turned to the ecological model, which was first applied to the study of child abuse and neglect⁷ and has been applied more recently to older abuse^{8 9}. The ecological model can take into account the interactions that take place across a number of systems¹⁰.

e) The Consequences of Older Abuse: For oldage people, the consequences of abuse can especially serious. Oldage people are physically weaker and more vulnerable than younger adults, their bones are more brittle and convalescence takes longer. Even a relatively minor injury can cause serious and permanent damage. Many Oldage people survive on limited incomes, so that the loss of even a small sum of money can have a significant impact. They may be isolated, lonely or troubled by illness; in that case they are more vulnerable as targets for fraudulent schemes.

f) The Example of Oldage Abuse in India: An eighty four year old women living with her son and daughter- in-law, she was ill treated by her family members putting her in the corridor of the house and she cannot go

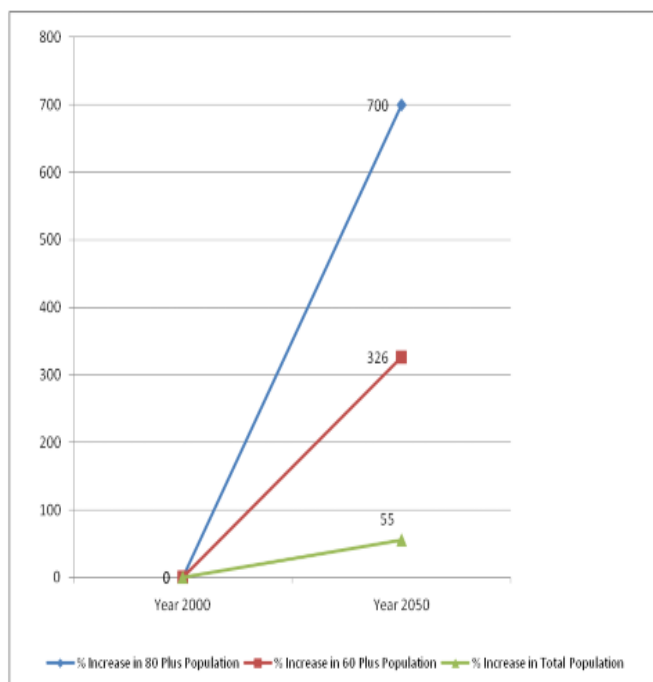
anywhere just like prisoner she was treated and also she was forced to do all the work of the house. The cruel part of the story is that her daughter-in-law was forcing her to bath by the toilet water.11

NATIONAL POLICY ON SENIOR CITIZENS 2011

Demography of Indian Ageing The large increase in human life expectancy over the years has resulted not only in a very substantial increase in the number of older persons but in a major shift in the age groups of 80 and above. The demographic profile depicts that in the years 2000-2050, the overall population in India will grow by 55% whereas population of people in their 60 years and above will increase by 326% and those in the age group of 80+ by 700% - the fastest growing group (see table and graph).

Years	Total Population (millions)	60+ (millions)	80+ (millions)
2000	1008	76	6
2050	1572	324	48

Source: World population Ageing: 1950-2050; Department of Economic and Social affairs, Population Division, United Nations. New York.2002



The absence on savings will result in sharp declining in living standards that for many can mean destitution. Therefore this is the challenge of old age income security in India.

Areas of intervention The concerned ministries at central and state level as mentioned in the „Implementation Section“ would implement the policy and take necessary steps for senior citizens as under:

Income security in old age A major intervention required in old age relates to financial insecurity as more than two third of the elderly live below the poverty line. It would increase with age uniformly across the country.

Indira Gandhi National Old Age Pension Scheme

1. Old age pension scheme would cover all senior citizens living below the poverty line.
2. Rate of monthly pension would be raised to Rs.1000 per month per person and revised at intervals to prevent its deflation due to higher cost of purchasing.
3. The „oldest old“ would be covered under Indira Gandhi National Old Age Pension Scheme (IGNOAPS). They would be provided additional pension in case of disability, loss of adult children and concomitant responsibility for grandchildren and women. This would be reviewed every five years.

Public Distribution System The public distribution system would reach out to cover all senior citizens living below the poverty line.

Income Tax Taxation policies would reflect sensitivity to the financial problems of senior citizens which accelerate due to very high costs of medical and nursing care, transportation and support services needed at homes.

Microfinance

Loans at reasonable rates of Interest would be offered to senior citizens to start small businesses. Microfinance for senior citizens would be supported through suitable guidelines issued by the Reserve Bank of India.

THE MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS BILL, 2007 (Wolff & Kasper, 2006)

In 2007, the Maintenance and Welfare of Parents and Senior Citizens Act was passed to provide maintenance support to elderly parents and senior citizens. The Act establishes the Maintenance Tribunal to provide speedy and effective relief to elderly persons. Section 19 of the act also mandates the establishment of an old age home in every district and provides for the protection of life and property of the elderly.

Parents can opt to claim maintenance either under Section 125 of the Criminal Procedure Code, 1973 or under this Act – they cannot opt for both. If a person has an application under Section 125 pending before the court, a request can be made to

the court to withdraw the application. After the withdrawal, the person can file an application before the Maintenance Tribunal under this Act. (Roberto & Jarrott, 2008).

Highlights of the Bill

- The Maintenance and Welfare of Parents and Senior Citizens Bill, 2007 seeks to make it a legal obligation for children and heirs to provide maintenance to senior citizens. It also permits state governments to establish old age homes in every district.
- Senior citizens who are unable to maintain themselves shall have the right to apply to a maintenance tribunal seeking a monthly allowance from their children or heirs.
- State governments may set up maintenance tribunals in every sub-division to decide the level of maintenance. Appellate tribunals may be established at the district level.
- State governments shall set the maximum monthly maintenance allowance. The Bill caps the maximum monthly allowance at Rs 10,000 per month.
- Punishment for not paying the required monthly allowance shall be Rs 5,000 or up to three months imprisonment or both.

Who Can Claim Maintenance?

► Parents

Parents means biological, adoptive and step parents. The age of parents is irrelevant to claim maintenance.

► Grandparents

Grandparents include both maternal and paternal grandparents.

► Senior Citizen

A senior citizen is an Indian citizen who is 60 years of age or older.

The only condition for claiming maintenance under this Act is that the persons must be unable to maintain themselves from their own earnings and property.

Key Issues and Analysis

- It is unclear whether the creation of maintenance tribunals will ensure financial independence for senior citizens, or whether

parents will likely take their children to court to obtain a maintenance allowance from them.

- The definition of senior citizen includes both Indian citizens aged over 60 years, and all parents irrespective of age. Also, the Bill does not address the needs of senior citizens who do not have children or property.
- Relatives are obliged to provide maintenance to childless senior citizens. The Bill defines "relative" as someone who is in possession of or would inherit a senior citizen's property. As wills are changeable, it is unclear how one would determine who would inherit the property after death.
- Only parents may appeal against the decision of the maintenance tribunal. Neither childless senior citizens nor children are permitted to appeal.
- State governments may establish old age homes and prescribe standards for services provided by them. However, the Bill does not require them to do so.

JURISDICTION AND PROCEDURE

1. The proceedings under section 5 may be taken against any children or relative in any district (Ramamurti, 2002)-
 - where he resides or last resided, or
 - where children or relative resides.
2. On receipt of the application under section 5, the Tribunal shall issue a process for procuring the presence of children or relative against whom the application is filed.
3. For securing the attendance of children or relative the Tribunal shall have the power of a Judicial Magistrate of first class as provided under the Code of Criminal Procedure, 1973.
4. All evidence to such proceedings shall be taken in the presence of the children or relative against whom an order for payment of maintenance is proposed to be made, and shall be recorded in the manner prescribed for summons cases: Provided that if the Tribunal is satisfied that the children or relative against whom an order for payment of maintenance is proposed to be made is wilfully avoiding service, or wilfully neglecting to attend the Tribunal, the Tribunal may

proceed to hear and determine the case *ex parte*

5. Where the children or relative is residing out of India, the summons shall be served by the Tribunal through such authority, as the Central Government may by notification in the official Gazette, specify in this behalf.
6. The Tribunal before hearing an application under section 5 may, refer the same to a Conciliation Officer and such Conciliation Officer shall submit his findings within one month and if amicable settlement has been arrived at, the Tribunal shall pass an order to that effect.

Explanation - For the purposes of this sub-section "Conciliation Officer" means any person or representative of an organisation referred to in Explanation to sub-section(1) of section 5 or the Maintenance Officers designated by the State Government under subsection (1) of section 18 or any other person nominated by the Tribunal for this purpose.

POWER OF STATE GOVERNMENT TO MAKE RULES (Ramamurti, 2002)

1. The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.
2. Without prejudice to the generality of the foregoing power, such rules may provide for
 - The manner of holding inquiry under section 5 subject to such rules as may be prescribed under sub-section (1) of section 8;
 - The power and procedure of the Tribunal for other purposes under subsection (2) of section 8.
 - The maximum maintenance allowance which may be ordered by the Tribunal under sub-section (2) of section 9;
 - The scheme for management of old age homes, including the standards and various types of services to be provided by them which are necessary for medical care and means of entertainment to the inhabitants of such homes under sub-section {2) of section 19;
 - The powers and duties of the authorities for implementing the provisions of this Act. under sub-section (1) of section 22;
 - A comprehensive action plan for providing protection of life and property of senior citizens under sub-section (2) of section 22;
- Any other matter which is to be, or may be, prescribed
3. Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of State Legislature, where it consists of two Houses or where such legislature consists of one House, before that House.

REFERENCES

- Batra, S. & Bhaumik, K. (2007). Intergenerational Relationships: A Study of Three generations. In: K. . Sharma (ed.). *Studies in Gerontology-Intergenerational Perspective*. New Delhi: Rawat Publications.
- Quinn, M.J. & Tomita, S.K. (1997). *Elder Abuse and Neglect: Causes, Diagnosis, and Interventional Strategies*. New York City: Springer Publishing Company.
- Raju, S.S. (2002). *Health Status of the Urban Elderly: A Medico-Social Study*. New Delhi: B. R. Publishing Co.
- Raju, S.S. (2011). *Studies On Ageing In India*. Building knowledge base on Population Ageing in India. [Online]. Delhi. Available from: <http://www.isec.ac.in/BKPAI Working paper 2.pdf>.
- Ramamurti, P.V. (2002). Intergenerational Relations. In: K. R. Gangadharan (ed.). *Aging in India: Emerging Trends and Perspectives*. Hyderabad: Heritage Hospital, pp. 24–26.
- Roberto, K.A. & Jarrott, S.E. (2008). Family Caregivers of Older Adults: A Life Span Perspective. *Family Relations*. [Online]. 57 (1). pp. 100–111. Available from: <http://doi.wiley.com/10.1111/j.1741-3729.2007.00486.x>.
- Singh, S. (2004). *Intergenerational Relationship: Study of Life Satisfaction, Attitude, Role and Expectation*. University of Delhi.
- Sonar, B.G. & Prasad, S.R. (2007). Intergenerational Issues in Old Age: A Study in Gulbarga District of Karnataka. In: K. . Sharma (ed.). *Studies in Gerontology-Intergenerational Perspective*. New Delhi: Rawat Publications.
- Wolff, J.L. & Kasper, J.D. (2006). Caregivers of frail elders: updating a national profile. *The Gerontologist*. 46 (3). pp. 344–356.

Web links-

<http://socialjustice.nic.in/writereaddata/UploadFile/dnpsc.pdf>

<http://www.prsindia.org/billtrack/the-maintenance-and-welfare-of-parents-and-senior-citizens-bill-2007-441/>

<https://factly.in/understanding-the-maintenance-and-welfare-of-parents-and-senior-citizens-act/>

<http://vikaspedia.in/social-welfare/senior-citizens-welfare/policies-and-acts-1/maintenance-and-welfare-of-parents-and-senior-citizens-act-2007>

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