

Existing Legal Protection Available to Senior Citizens: An Indian Context

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Introduction

Senior citizens are the treasure for our society. They are a link of past, present and future. As they lived their life, they saw past and pace of progress throughout their life, they are in a better position to evaluate the present and predict about the future. They are the senior members of the family who know better about the religion, family history, values and related customary practices. They possess better understanding of the family values and society. They pass these family values and societal knowledge to the upcoming generations. This was an automatic system of Indian family system to disseminate the past values and knowledge. Young generations while living in their own ways and style, also kept these values and information and lived their life. This is how our society moved on and still following the path.

But now a day's condition and situation of senior citizens are no more similar. With the decay in cultural values and westernization of Indian society, occupational needs and professional lifestyle, senior citizens are losing the respect and dignity which they earlier had. Presently our information technology field is changing very fast and young generation a very friendly to the technology. They can get any information by a single click of mouse. They can also get information about the past social values, culture and family system. Since the information is easily available and accessible which earlier, could be received only by a senior member of the family. I find this it as a major reason for the ignorance of senior citizens in the family by the young children.

In present Indian society, nuclear families are growing and it is happening sometimes by choice, where the young couple decides to live their married life alone in the name and lust of modernism and sometimes by compulsion where earning member of family is bound to leave the home due to occupational needs and compulsion. In both the cases senior citizens with spouse or alone, are bound to live a lonely life. In first case, senior citizens are obviously ignored but in the second case they are not. But the consequences of both the situations are same i.e. loneliness. Though, the mental status of senior citizens in both the cases may vary.

Sometimes both the situations can be under the category of ignorance from State's perspective as in both the situations senior citizens are abundant. It is also true that some senior citizens in rural and urban areas are totally neglected, mentally and physically abused are not getting two square meals a day. Here the role of State comes into picture. Hubert Humphrey has truly said that:

“moral test of government is how that government treats those who are in the dawn of life, the children; those who are in the twilight of life, the elderly; and those who are in the shadows of life, the sick, the needy and the handicapped.”

This is to submit that no effective measures have been adapted for protection of rights of senior citizens at international or national level. The present Article discusses the Constitutional and legal protection given to the senior citizens and also tries to give some suggestions.

A. Constitutional Protection

Though our Indian Constitution, categorically and specifically does not mention about the senior citizens and it also does not contain any direct provision for senior citizen but since it is applicable to all the citizens, therefore, all the rights and liberties provided by the Constitution can be claimed by the senior citizens as well. Below, an analysis of the Constitutional provisions has been given, under which they can be protected:

Article 21

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,¹ the right to health and medical care², emergency medical aid,³ the right to livelihood,⁴ and social security,⁵ and the right to live with human dignity and reputation of a person is his valuable asset.⁶ The rights that have been assimilated into Article 21 are from the Directive Principles of State Policy. For instance, the rights to housing and shelter⁷ cast a duty upon the state to provide house sites to the poor houseless.⁸

Article 41

Article 41⁹ is in the part IV of the Indian Constitution i.e. Directive Principles of State Policy. Article 41 of Directive Principles of State Policy has particular relevance to Old Age Social Security. This article says the State can make effective provision for old age for securing their right to work, to education and to public assistance in the case of their unemployment. Though it is not enforceable in the court of law and the state cannot be compelled by the courts to carry out any directive¹⁰ 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.¹¹

Article 309

Article 309 of the Constitution stipulates that acts of the appropriate legislature may regulate the requirement and conditions of service of persons appointed to public services in connection with the affairs of Union or of any State. The governments concerned frame rules and regulations from time to time laying conditions of service including retirement/terminal benefits to its employees.

This article clearly mentions that recruitment procedure, appointment and service condition rules of Union and States will have to pass through the test of Constitutionality meaning thereby that Union and State legislatures cannot make any rule which is against the fundamental or Constitutional rights of a person.

¹ Andhra Pollution Control Board v. Prof. M.V. Naidu, AIR 1999 SC 812 and Subhash Kumar v. State of Bihar, AIR 1991 SC 420.

² State of Punjab v. Mohinder Singh Chawla, AIR 1997 SC 1225.

³ Parmanand Katara v. Union of India, AIR 1989 SC 2039

⁴ Olga Tellies v. Bombay Municipal Corporation, AIR 1986, SC 180 and Indian Drugs and Pharmaceuticals Ltd. V. Workman, Indian Drugs and Pharmaceuticals Ltd., (2007) 1 SCC 408

⁵ Delhi Transport Corporation v. DTC Mazdoor Congress, AIR 1991 SC 101. ¹¹SR Kapoor v. Union of India, AIR 1990 SC 752.

⁶ Sukhwant Singh v. state of Punjab, (2009)7SCC559

⁷ Gouri Shankarv. Union of India, AIR 1995 SC 55.

⁸ Chameli Singh v. State of U.P., AIR 1996 SC 1051.

⁹ According to this Article, "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 case of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

¹⁰ *In Re Kerala-Education Bill*, 1957, AIR 1958 SC 956.

¹¹ *The State of Madras v. Champakam*, AIR 1951 SC 226.

So if the conditions for compulsory retirement, rules for voluntary retirement or any other service condition which affects the rights of an aged can be challenged and struck down taking the help of this article. Supreme Court has held that if a compulsory retired person has not got proper opportunity to defend and rules of natural justice or requirements of Article 21 have not met with, his compulsory retirement order cannot be said to be valid.¹²

In the Constitution of India, entry 24 in List III of Schedule VII deals with the Welfare of Labour, including conditions of work, provident funds, liability for workmen's compensation, invalidity and Old age pension and maternity benefits. So Union and State both can make separate pension rules and schemes to provide social security and welfare to the aged. Our Constitution also empowers the states under entry 42 to frame the laws, to frame the rules and to make the schemes separately for the aged. Item No. 9 of the State List and Item 20, 23 and 24 of Concurrent List relates to old age pension, social security and social insurance, and economic and social planning.

The parameters laid down in the Preamble and the concepts of Welfare State are the guiding principles. The state has to promote the prosperity and well being of the people. For Security and protection of an effective social order through social justice, economic justice and political justice, the state shall strive to minimize the inequalities in income, endeavor to eliminate inequalities in status and also provide facilities and opportunities.

In order to secure these objectives in general, and the directive to public assistance in case of old age.... As laid down under Article 41, the state through its legislations has so far covered. For example- The Employees State Insurance Act, 1948 and the Employees Provident Fund Act, 1952.

B. Statutory Protection

There are a number of laws and measures intended to support the aged, for example pension scheme, and these form part of the social security measures introduced through legislation.

The government has realized that apart from the- destitute elderly who need economic support and care through institutionalization, a large portion of economically and physically fit elderly also require social, emotional and psychological security, and there is an urgent need to supplement the traditional family support systems at a local rather than national or state level.

Though there is no specific legislation for the benefit of the elderly, the elderly who are retired from the organized workforce are protected with retirement benefits, insurance for their old age as well as for their family members, provident funds and other superannuating benefits. The government has also introduced a small number of welfare schemes especially for the benefit of the elderly who are destitute and have no family support. Following are some of the legislations passed by the government which indirectly protect and promote the human rights and fundamental freedom of the aged persons:

1. The Pensions Act, 1871

The Pensions Act, 1871 applies both to Union pensions and State pensions. The word pension implies periodical payment of money, made by the government to a pensioner,

¹² Union of India v. Reddy, AIR 1990 SC 563

on account of past service consideration or merit. A pensioner has complete right to his or her pension. He/She can order the appropriate government the whole or any part of his pension to be commuted for a lump sum or any part which he may deem fit.¹³

A pensioner can nominate any person to receive after death, all money payable.¹⁴ The nominee then has the exclusive right to the pension. The nominee need not be a family member.

2. The Indian Succession Act, 1925

Under the Indian Succession Act, 1925, the father succeeds to the property of an intestate who dies without leaving any lineal descendants.¹⁵ The property would devolve on the mother in the absence of father and lineal descendants of the intestate. She shares the property of the intestate equally among the brothers and sisters and their children if they are living. This Law is applicable to all cases of intestacy except among the Parsis.¹⁶

In case of Parsis, the father inherits half the share, as that of a son of an intestate male, and the mother shares half of the share of a daughter of an intestate. The property of Parsi dying intestate without leaving lineal descendants or a widower of lineal descendants would devolve on the parents.

3. Employee's State Insurance Act, 1948

The health insurance scheme was proposed by the Adarkar Commission in 1944 which materialized in the Employee's State Insurance Act, 1948.¹⁷ It provides certain benefits to workers employed in factories, including government factories and seasonal factories, in the event of sickness, maternity and accidents during the course of employment. This Act is applicable where any manufacturing process which is being carried on with the aid of power, and where not less than 20 workers have been working during the preceding 12 months, in a factory.

The employer, the State and the person concerned make contribution in order to provide for sickness, old age and other contingencies. Contributions are paid weekly to the Employee's State Insurance Corporation. Under this Act, the person insured or his/her dependents are entitled to certain benefits during sickness, confinement, miscarriage or sickness arising from pregnancy, disablement as a result of employment injury, medical treatment, payment to the dependents on the death of the insured person, and payment to the eldest surviving member of the family of an insured person towards expenditure on the funeral of the deceased insured person.

4. Employee's Provident Fund and Miscellaneous Provisions Act, 1952 (EPFMPA)

Without distributing the arrangement of pension and gratuity, under the Employee's Provident Fund Scheme the government has introduced another mode of social security for workers who have given the best part of their life to the industry. This Act has been a step towards making welfare provision for the future of an industrial worker after his or her retirement or for his benefit of his or her dependents in case of early death.

¹³ persmin.nic.in/Pension_pact1871.asp (26-12-13)

¹⁴ persmin.nic.in/pension/rules/pencomp-app11.htm (26-12-13)

¹⁵ districtcourtsnamchi.nic.in/laws/indian_succession_act_1925.pdf (no dessecca12-12-12)

¹⁶ districtcourtsnamchi.nic.in/laws/indian_succession_act_1925.pdf (no dessecca26-12-13)

¹⁷ available at www.hivos.nl/dut/content/.../The%20long%20road_paper%20x.pdf (no dessecca26-12-13)

The provident Fund is an effective old age and survivorship benefit. However, when an employee dies prematurely, the accumulation in the Provident Fund is too meager to render adequate and long terms protection to his or her family. With the a view to providing long term financial security to the families of industrial employees in the event of premature death, a Family Pension Scheme has been introduced.

5. The Hindu Adoption and Maintenance Act, 1956 (HAMA)

The Hindu Adoption and Maintenance Act, 1956 lays down obligation on a person to maintain his/her aged or infirm parents. Section 20(3) of this Act deals with obligation of a Hindu to maintain his/her aged or infirm parents in so far as they are unable to maintain himself or herself out of his or her own earnings or other property.¹⁸ Explanation to this provision states that parent includes a childless step mother. This obligation to maintain the aged and infirm parents under this section is placed both on male and female Hindu. The obligation is personal and independent of possession of property. A daughter's obligation to maintain her aged or infirm father, mother or childless stepmother does not cease on her marriage.

The word 'aged' is not defined in this Act. Therefore, it is to be construed in its ordinary meaning i.e. aged means old. The word 'infirm' includes parents who may be 'Young or old' and the infirmity may be physical, or mental such as lunacy, leprosy, blindness, deafness, dumbness, incurable disease etc. The parent in this section denotes only a relationship and thus it is not restricted to legitimate relationship. Therefore, aged or infirm father or mother or childless stepmother is entitled to maintenance not only from his or her legitimate son or daughter but also from her illegitimate son or daughter. Where such parents have more children than one, the parent entitled to maintenance from any or all of them proportionately.

The obligation of maintenance under this section extends to the following relations and conditions.

1. The Persons liable for a claim of maintenance under section –2(1) should be a Hindu.¹⁹
2. The person entitled to maintenance under this section should be a Hindu²⁰
3. The obligation in case of aged or infirm parents arises only when he or she is unable to maintain himself or herself.

It must be noted that the obligation under this section is legal and can be enforced by a decree. The obligation in the case of aged or infirm parents continues during his or her lifetime. It must also be noted that the age of the parents is not the criterion, under this section, to claim maintenance. Parents of any age even those who are not old enough and less than 60 years of age, are entitled to claim maintenance.

The Calcutta High Court is of the opinion that the stepmother though aged or infirm is not entitled to maintenance from his stepson under this section where the stepson has not acquired any property of the deceased father and stepmother is not childless.²¹

¹⁸ tanaysaraf.wordpress.com/category/family-law/ (accessed on 26-12-13)

¹⁹ The word "Hindu" has been defined u/s 2(1) of HAMA, 1956

²⁰ Section-2(1) of The Hindu Adoption and Maintenance Act, 1956

²¹ Pannalal Hazara v. Fulmoni Hazara, AIR 1987 Cal. 368.

These may sound like far-fetched measures for a country where a substantial number can barely get a minimum level of subsistence and comforts. But these neglected groups must at least be aware about what the future has in store for them.

6. The Hindu Succession Act, 1956

In case of the death of a son, the mother inherits the property of the deceased son along with other heirs. She takes her share absolutely. Chastity, divorce or remarriage of the mother is no bar to his benefit. The adoptive mother as well as mother of an illegitimate child is covered under this act, to the exclusion of a stepmother. The father inherits the whole property of the intestate son in the absence of any other heir. He can inherit property from his adoptive son, but not from his illegitimate son or his stepson.

In the case of a daughter dying intestate her Hindu parents inherit her property only in the absence of children and a husband. However, there is no bar to the disposition of female Hindu or of a Hindu male regarding his self earned property.

7. The Income Tax Act, 1961

The Income Tax Act, 1961 provides income tax rebates in case of senior citizens which are as follows²²:

1. Higher Tax Exemption Limits:

Senior citizen or super senior citizen is entitled to higher tax exemption limits against normal citizen. The basic income tax exemption limit for the both category for AY 2013-14 and 2014-15 is as under:

Senior Citizen(60-65)	Rs. 240000/-
Super Senior Citizen(65+)	Rs. 500000/-

2. Increased Deductions under Chapter VIA

A senior citizen or super senior citizen is entitled to higher deductions under the following sections of Chapter VIA of Income Tax Act.

(a) Deduction in respect of Senior Citizen Saving Scheme [Section 80C]

Under section 80C a deduction up to Rs. 100000/- (One lakh) is allowed for amount paid or deposited in specified modes.²³

(b) Deduction in respect of Medical treatment etc. [Section 80DDB]

Section 80DDB provides for a deduction of Rs. 40000/- (Forty thousand) to a resident assessee for medical treatment of disease specified in Rule 11DD. However if the amount is paid for the medical treatment of a senior citizen, then a higher deduction of Rs. 60000/- is allowed.

²² available at <http://abcaus.in/articles/senior-citizen-income-tax-act.html> (accessed on 28-12-13)

²³ W.e.f. 01-04-2008, an amount deposited in an account under the Senior Citizens Saving Schemes Rules, 2004 is allowed as qualified under section 80C.

(c) Deductions in respect of health insurance premia [Section 80D]

Section 80D provides for a deduction up to Rs. 15000/- (Fifteen Thousand) for medical insurance or preventive health check-up. Under the section, in case of payment made for medical insurance of a senior citizen, deduction is available up to Rs. 20000/-.

3. Exemption to pay Advance Tax under Section 207

As per section 209, where the income tax payable by an assessee for any financial year (after deducting tax deducted at source) is Rs. 10000/- or more, the tax shall be payable in advance during the financial year itself. However senior citizens have been exempted for payment of advance tax if they are not engaged in business or profession.

4. No Deduction of Tax at Source in certain cases by submission of Form 15H

A resident senior citizen can receive certain incomes (interest, furnish a clarification under sub-section (1C) of section 197A to his Assessing Officer in Form 15-H stating that tax on his estimated total income of the previous year in which such incomes is to be included in computing his total income will be *nil*. Senior citizens can give this declaration even if such incomes exceed the maximum amount which is not chargeable to tax. (i.e., Rs. 250000/- and Rs. 500000/- for senior citizens and super senior citizens respectively)

5. Reverse Mortgage Scheme - Section 47

The Finance Minister in his Union Budget 2007-08 had announced that the National Housing Bank (NHB) will introduce reverse Mortgage Scheme for senior Citizens. As of now, almost all the banks have come up with this scheme. Reverse mortgage is a scheme under which a senior citizen of the age of 60 years or more who is the owner of a house can avail of a monthly income against the mortgage of his/her house, while remaining the owner and occupying the house throughout his/her lifetime, without repayment or servicing of the loan. On the borrower's death or on the borrower leaving the house property permanently, the loan is repaid along with accumulated interest, through sale of the house property. Section 47 of the Income Tax Act, 1961 has been amended to provide that mortgage of house property for obtaining a loan under reverse mortgage shall not be considered a transfer of house property and accordingly shall not attract capital gain tax.

8. The Payment of Gratuity Act, 1972

The payment of gratuity is a retirement benefit, in addition to Provident Fund and Family Pension Benefits, for employees engaged in factories, mines, oil fields, ports, plantations, railways, companies, shops and other establishment.

It is payable to an employee on the termination of his/her employment often he or she has rendered continuous service of not less than five years. However, the payment is made on his or her superannuation, retirement, resignation, disablement due to evident or disease or death. In case of disablement and death the requirement of continuous service of five years is relaxed. A protection similar to that the Provident Fund and the Pension Fund is

given in respect of the amount of gratuity. It is, therefore, not liable for attachment in execution of any decree or order of any civil, revenue or criminal court.

It is very clear that the gratuitous payment received from the employer is available to the employee both when he or she retires by choice or due to advanced age. This amount definitely helps the retiring person to plan for old age.

9. Code of Criminal Procedure, 1973

Section 125 of Code of Criminal Procedure (hereinafter referred as Cr. P.C. 1973) is made if any person having sufficient means neglects or refuses to maintain his father or mothers who are unable to maintain himself or herself.²⁴

This provision is made to give effect to the natural and fundamental duty of a child to maintain his or her parents. This section is applicable to all, irrespective of their religion, and includes adoptive parents. The Supreme Court has interpreted this section so as to make daughters and sons, married or unmarried, equally responsible to maintain their parents.²⁵

Parents can make application for maintenance against one child alone, it is not necessary that all the children are made party to such application.²⁶ In this regard the Law Commission of India in its 132nd report suggested that the right of the parent who has been awarded the monthly allowance should not be defeated by a son who transfers properties in order to deprive the awardee.

As per Section 125(1) (d) of Cr. P.C. 1973, a Magistrate of the first class may, upon proof of such neglect or refusal, orders such person to make a monthly rate as he thinks fit for the maintenance of his father or mother. Such rate shall be payable from the date of the order or if so ordered from the date of the application for maintenance²⁷ If any person so ordered fails without sufficient cause, to comply with order, any such Magistrate may for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines and may sentence such person for the whole or any party of each month's allowance remaining unpaid after the execution of the warrant to imprisonment for a term which may extend to one month or until payment if sooner made.²⁸

This provision is a measure for social justice and specially enacted to protect not only women and children but also old and in firm poor parents. It falls within the Constitutional sweep of Article 15(3) [Special Provisions for Women and Children] reinforced by the Directives by Articles 38, 39 and 41 of the Indian Constitution

This section gives effect to the natural and fundamental duty of a man to maintain his parents so long as they are unable to maintain themselves and they may seek an order from the magistrate of the first class in this regard.

²⁴ Section 125(1)(d), Code of Criminal Procedure, 1973.

²⁵ Vijaya Arbat v. Kashirao, 1987, GLJ 977(SC).

²⁶ A. Athathinamiligai v. Arumughnam, 1988 Cr. L.J.,6 (Mad)

²⁷ Section 125(2), Code of Criminal Procedure, 1973.

²⁸ Ibid, Section 125(3)

10. The Finance Act, 1992

Section 88 of the Finance Act, 1992, provides income tax rebate of up to Rs. 15,000/- or actual tax whichever is less to senior citizens who have attained the age of 65 years at any time during the relevant previous year.²⁹

11. The maintenance and Welfare of Parents and Senior Citizens Act, 2007

The purpose of this Act is to cast an obligation on the persons who inherit the property of their parents and aged relatives to maintain such aged and also to make provisions for setting-up old age homes for providing maintenance to the indigent older persons. This Act further proposes to provide better medical facilities to the senior citizens and provisions for protection of their life and property.

This Act, therefore, proposes to provide for:

- (a) Appropriate mechanism to be set-up to provide need-based maintenance to the parents and senior citizens;
- (b) Providing better medical facilities to senior citizens;
- (c) For institutionalization of a suitable mechanism for protection of life and property of older persons;
- (d) Setting-up of old age homes in every district.

12. Social Security to Senior Citizens Bill, 2010

This is a private members bill which is introduced by Sri J.P. Agrawal and discussed in the parliament on 22nd Feb., 2013. Prior to this, this bill was also attempted to be introduced in 2010 and 2012. This bill seeks to provide social security to the senior citizens.³⁰

For the welfare and protection of rights of senior citizens, several state legislatures have also passed legislations/rules namely:

1. Himachal Pradesh Maintenance of Parents and Dependents Act, 2001
2. Delhi Maintenance and Welfare of Parents and Senior Citizens (Amendment Rules), 2010
3. Bihar Maintenance and Welfare of Parents and Senior Citizen Rules, 2012

Concluding Remarks

Though there are number of laws and government policies made for the protection of senior citizens but nothing much have been achieved so far. Since our Indian society has always been duty oriented and culture of India has been such that senior citizens do not want to drag their children in the court. For the proper implementation of law, awareness among senior citizens is required. Initiative should also be taken by the government with the help of voluntary sector and society to protect the rights of senior citizens. Apart from this some more suggestions are as below:

²⁹ available at www.incometaxindiapr.gov.in/incometaxindiacr/.../dte3_4357.htm (no dessecca26-12-13)

³⁰ available at www.indiankanoon.org/docfragment/49674579/?formInput=senior%20citizen (Accessed on 12-12-13)

1. Effective implementation of the laws should be ensured.
2. Community policing can reduce the fear of crime. The police patrolling should be intensified in areas prone to crime.
3. Senior citizens cells should be established by police in every police head quarter.
4. There should be a elderly helpline in which elderly may register their problems for effective redressed. There should also be a follow up monitoring.
5. Police personnel should be given training sensitizing them to needs of the.
6. Awareness programs should be run by the Government with the help of NGOs.