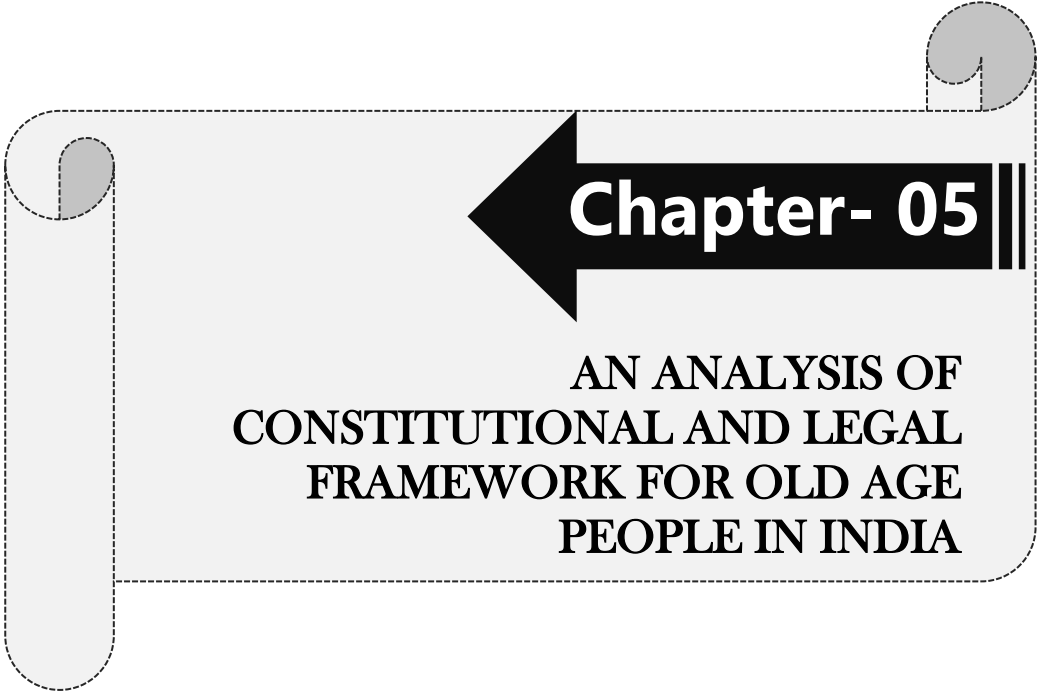




Chapter- 05

AN ANALYSIS OF CONSTITUTIONAL AND LEGAL FRAMEWORK FOR OLD AGE PEOPLE IN INDIA

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ABSTRACT

The twenty-first century is frequently referred to as the age of ageing due to one of the largest concerns facing the world today- the massive rise in the absolute numbers and proportions of elderly people around the world. Age-related issues are by no means isolated or unintentional. The development process itself has given them impetus because now the focus of development is mostly seen on the parameters of individual achievement, career advancement, entrepreneurship, investment, capital accumulation, and profit. No doubt umpteen numbers of studies have founded and concluded that the condition of the elderly is deteriorating in the Indian family structure. Every civilization has particular difficulties as a result of this ageing phenomena since, unlike other factors influencing population growth like fertility and death rates, which have been significantly influenced by government actions, the process of population ageing is actually irreversible. As a result, every government should focus on the problems that result from ageing rather than whether it can alter the fundamental process of ageing. Nevertheless, it is important to remember that these problems should not be approached in isolation. Instead, it ought to be a crucial component of any nation's overall national development planning agenda. The difficulties and pressures brought on by an ageing population must be explored in relation to other social, economic, physical, and psychological difficulties and pressures. Its effects are so many and wide-ranging that ignoring them would be extremely costly to society. One of the main worries that plague older adults most frequently is crime and the fear of crime. Crime has a significant impact on them. They cannot protect themselves since they are old and fragile. The fact that elderly persons have few resources and frequently reside in busy neighbourhoods is another factor contributing to their vulnerability to crime and violence. Theft, robbery, burglary, cheating, verbal abuse, physical abuse, physical assault, rape, and murder are the crimes that are most frequently committed against them. This Paper deals with the adequacy of social security measures and legal protection available to elderly in India and to understand the social, psychological, economic and other problems faced by the old age people in India. Also conceptually analyse the Constitutional and Legal framework for old age people in India. Further see various schemes and programmes launched by the Government for the elderly in India and to make suitable suggestions for improving the existing condition of the elderly and providing better social security measures for aged in India.

Keywords: *Elderly, Social Security, Old age People, Social Problems*

INTRODUCTION

“Our society must make it right and possible for old people not to fear the young or be deserted by them, for the test of a civilization is the way that it cares for its helpless members.” - Pearl S.¹

Ageing is the natural procedure through which a person gets older in age. There isn't just one factor that determines when someone turns elderly. Ageing and old age are related to a complex process that involves time passing as well as physiological, cultural, and social elements. Even though ageing is a biological process that is mostly out of human control, but at the same time it is also influenced by the ideas that each society has about what constitutes old age, whether they are based on chronological time or a shift in social roles.²

The chronological factor is used to define older people in most developed countries. The United Nations considers sixty years being the beginning of old age, and people aged sixty years and up are referred to as "Older Persons"³. Elderly or old age refers to ages that are close to or exceed the average human life span. The definition of old age is difficult to define because it does not have the same meaning in all societies. In January 1999, the Government

of India adopted the "National Policy on Older Persons". The policy defines a "senior citizen" or "elderly" person or an "old age" person as someone over the age of sixty⁴. As a result, in India, this age group is commonly referred to as "Senior Citizens".

Everyone has the right to an adequate standard of living, the health in accordance with the Article 21 of the Indian Constitution and well-being of himself and his family which includes food, clothing, housing, medical care, and the necessary social security that is required in the old age due to circumstances that are out of his control. Traditionally, the elderlies have always been crucial and fundamental part of the family in Indian society. However, the constitutional provisions such as Articles 14, 21, 39(a), 41 are there along with the other laws including the Code on Social Security, 2020 but they are not sufficient enough to help elderly parents in providing social security to them. Mostly, senior citizens are reluctant from getting involved in the legal process due to the reason that the procedure mentioned under the laws is time consuming. The severity of this issue is made worse due to the absence of social security protections and of any single statute specifically designed to aid senior citizens.

To provide an inclusive society for all, the government, people, infrastructure, and facilities must be suited to accommodate demographic change and the resulting needs of the elderly. The legal system must also adapt to this change, or older people will be marginalized. In addition, older people must be protected from discrimination, elder abuse, and abandonment and for the same the legal system may impose obligations and responsibilities on the family, society, and government

CONSTITUTION AND LEGAL FRAMEWORK

I. CONSTITUTIONAL PROVISIONS

The Indian Constitution aims to establish an equitable society that is based on justice in all spheres of life, regardless of caste, sex, ethnicity, religion, creed, or age. Certain rights standards are guaranteed to all citizens by the Preamble to the Constitution. They are examined in light of the rights of older people as follows

1. Social, Economic, and Political Justice: - Only in the presence of an inclusive society is social justice feasible. Economic justice requires giving older people the chance to find a sufficient means of support or financial independence. Political justice is demonstrated by the elderly being treated equally in the nation's political system.
2. Liberty of thought, expression, belief, faith and worship: - The dignity and independence of elderly people must go hand in hand with freedom. The younger generation should not stifle an older person's opinion or expression, and regardless of how their beliefs have changed, they should respect and allow older people to practise their religion.
3. Equality of status and of opportunity and to promote among them all: -For older people, having the chance to pursue happiness and live a life of contentment is crucial. A person's reliance level tends to rise as they age, especially if they are having trouble with their health or finances. In such a context, equality only has significance when the elderly are appropriately supported with governmental assistance, income-generating possibilities, accessible transportation facilities, and other amenities, allowing them to live a life of status and opportunity equal to that of the younger generation.
4. Fraternity assuring the dignity of the individual: - In the context of elderly rights, the concept of fraternity refers to the inclusion of the old in all spheres of national and social life, ensuring that their dignity is not violated due to failing organs like the bones and muscles, greying hair, failing eyesight, or wrinkled skin. Thus, the Preamble contains the fundamental tenets required to create a society for all ages, including that the state should guarantee older people an adequate standard of living, equitable, prompt, affordable, and accessible health services, appropriate and affordable housing options, a variety of culturally appropriate services that allow older people to make choices, and expanding opportunities for personal development and community involvement.

A. Fundamental Rights

Everyone, regardless of age or gender, is entitled to the fundamental rights outlined in Part III of the Constitution. The rights to equality and the right to life, which are examined here, are the most important rights in terms of older people's rights.

(a) Right To Equality

Article 14⁵ ensures everyone's equality before the law and prohibits the discrimination before the law in general. It is a widely accepted idea that because different classes or parts of the population have distinct requirements, they should be treated differently and separately⁶. As a result, fair classification is acceptable within the larger context of equality⁷.

Therefore, it can be deduced from Article 14 that elderly people have the right to equality and should not be treated differently from the general community. Due to the disadvantages that ageing has on a person's health and physical abilities, they should be given special and preferential treatment in order to ensure that their participation and development are meaningful. They should also have the same opportunities for growth, employment, and participation as everyone else. The elderly should also be provided with employment possibilities that are tailored to their capacities rather than just being excluded from income-generating activities.

Treating everyone equally is one side of the coin. The opposite side of the coin is not discriminating against anyone based on certain grounds that are prohibited, as stated in Articles 15 (1), 15 (2), and 16(2) Article 16(2) prohibits the State from discriminating citizens only on the grounds of religion, race, caste, sex, descent, place of birth, residence or any of them for the purpose of public employment. of the Constitution. Regarding access to public spaces or usage of amenities maintained for the use of the general public, age is not listed as a basis for non-discrimination by the state or by anyone else.

Additionally, in order to ensure that older people have equal access to public spaces, transportation options, buildings, and other amenities and services, it is crucial to make these spaces user-friendly for seniors while taking into account their physical limitations. India, a welfare state, must build its public utility services and infrastructure in such a way as to be accessible to people of all ages.

Article 14 must be interpreted in light of the privileges granted by other articles, such as Article 21, which ensures the "right to life", which includes a variety of

dimensions of existence. The primary provisions in the section on fundamental rights in the Indian Constitution, which also includes opportunity, are Articles 21 and 14.

(b) Right To Life And Personal Liberty

The Supreme Court has expanded the definition of “life” in Article 21 to encompass the right to live with human dignity^{xii}. This means that all of the abilities through which life is enjoyed would be covered by the restriction against deprivation of “life”. The Francis Coralie philosophy holds that an essential element of older people's human rights is their quality of life. They frequently live in isolation from society and are forced to live like animals because of the many disabilities that come with ageing. It is argued that the state has a responsibility to guarantee the elderly a meaningful right to life.

The Supreme Court has come to impose a positive obligation upon the State to take actions for assuring to the individual a better enjoyment of his life and dignity through its creative reading of article 21 in numerous judgments.

Following are some aspects of the right to a quality life that have been maintained by the Supreme Court and are particularly important to the elderly:

- (a) Just and humane working conditions: - The workplace should be age-friendly and designed so that seniors may contribute effectively without being forced out of the workforce
- (b) Tradition and cultural heritage of the individual: - For elderly people, tradition and cultural heritage are extremely essential, thus urbanisation and the unavoidable cultural exchange should not erode them
- (c) Right to means of livelihood⁸: - In order for older people to enjoy the basic human right to live with dignity, state aid is required to ensure that they have a decent means of subsistence through income-generating activities.
- (d) Right to medical care⁹ and Maintenance and improvement of public health¹⁰: - The provision of current general medical care facilities to elderly individuals as well as the necessity to create and promote effective geriatric care at all health centres is all part of the right to medical care and the maintenance and enhancement of public health.
- (e) Right to shelter¹¹: - It is argued that buildings providing housing and the lands adjacent to them must be suitable to meet the unique needs of the elderly. This is

because the Supreme Court noted that a human being's shelter must be suitable accommodation that enables him to grow in all aspects, that is, physical, mental, and intellectual.

- (f) Right to humane conditions in protective homes¹²: - According to Article 21 of the Constitution, if creating old age homes for elderly people in need is a statutory requirement, upholding humane circumstances in such protective homes is a constitutional requirement.
- (g) Access to road to residents of hilly areas¹³: - Residents of hilly areas should have access to highways because roads are crucial for elderly people living in rural areas.
- (h) Right to protection against cruel inhuman and degrading treatment¹⁴: - Due to their dependency, which makes them even more susceptible to abuse and neglect, older people have a crucial human right to protection against cruel, inhumane, and humiliating treatment.
- (i) Right to protection from noise pollution¹⁵: - Noise pollution has an impact on sleep, hearing, mental health, and physical health. The young, the old, and those who are unwell are those who are most impacted. The Supreme Court had stated that in this regard, it is important to defend the rights of such vulnerable groups, especially the elderly.
- (j) Right to privacy¹⁶: An older person should have the freedom to make decisions about their own lives, including their occupation, property, and other personal matters.

From the aforementioned cases, one can deduce that the elderly have full access to all fundamental rights. It is important to keep in mind that fundamental rights are not guaranteed until a certain age.

B. Directive Principles Of State Policy

The Directive Principles, which are written in Part IV of the Constitution, aspire to introduce the idea of a welfare state and bind the government to act favourably in specific ways to further the welfare of the people. The State is required under Article 39(a) to direct its policies toward ensuring that individuals have the right to an adequate means of subsistence and that they are not compelled by financial exigency to engage in occupations that are inappropriate for their age or physical capabilities. In

Olga Tellis Case, the Supreme Court upheld the right to livelihood as an essential component of the right to life as guaranteed by Article 21. Article 41 of the Constitution particularly mentions public support in case of old age.

The State has a responsibility to create adequate plans for securing public support in event of old age. However, this mandate is constrained by its economic ability and level of development, thus it hasn't produced much. When it comes to defending the fundamental rights of the elderly, without which they would either perish or live as animals, India, a welfare state dedicated to the cause of human rights and social justice, cannot conceal itself behind the excuse that such rights must be protected within the confines of available resources, economic capacity, or development.

The numerous directive principles are intended to be implemented by the competent legislator through laws. This is clear from the inclusion of topics in Schedule VII, including Entries 20, 23, and 24 of List III, all of which are focused on the welfare of senior citizens.

II. LEGAL PROVISIONS

A. Code Of Criminal Procedure, 1973

According to Section 125 of the Criminal Procedure Code, a court magistrate of the first class may order any individual with sufficient means to pay maintenance to his wife, children, or parents who are unable to care for themselves at the rate he deems appropriate¹⁷. Additionally, a provision is created for the award of an interim monthly payment for the child's parent's maintenance and legal costs. The Magistrate has the option to issue such an order and choose the sum that he deems appropriate to be paid while the case is still pending.

In the Cr.P.C. such a petition must be submitted in criminal court, which makes the mitigation process considerably quicker than civil proceedings. These rules are intended to stop famine and squalor that could lead to criminal activity. The purpose of section 125

Cr.P.C. is to give a brief remedy to prevent dependents from going hungry and being homeless while also achieving a social goal. Under this provision, both daughters and sons married or not are equally accountable for providing maintenance for their parents.

Therefore, under two circumstances –

- i. The parents are unable to support themselves and
- ii. The child has enough money but still neglects or refuses to support the parents

The Criminal Procedure Code gives parents the right to demand maintenance from their children.

In *Dr. (Mrs.) Vijaya Manohar Arbat v. Kashi Rao Rajaram sawai and Another*¹⁸, it was held in this case that Section 125(1) (d) of the Criminal Procedure Code, 1973 imposes the obligation both on the son as well as the daughter to maintain their parents, father or mother, who are unable to maintain themselves as the purpose of such enactment is to enforce social obligation.

B. Personal Laws

(a) Hindu Law

Hindu men were believed to owe their dependent relatives maintenance, which was a legal obligation that applied to both their person and their property¹⁹. Whether or not he owned property, a Hindu man had a duty to care for others, including his elderly parents. According to a command passed down from Manu, the Hindu was under such a great obligation to support these family members that the ageing mother and father, the chaste wife, and the infant child must be preserved even by executing a hundred sins²⁰. Under the Smritis, conventions, and usages, what was a moral obligation of the Hindu man was now a legal requirement for both the son and the daughter. The Hindu Adoptions and Maintenance Act of 1956 now govern Hindu law on parent maintenance.

A Hindu is obligated, over his or her lifetime, to maintain, among other things, if his or her elderly or infirm parents are unable to sustain and support themselves out of their own earnings or other property, according to Section 20 of the HAMA²¹.

After the death of the son or daughter, the parent's right to maintenance continues. The Act also imposes a duty on the legal heirs of a Hindu decedent to support the decedent's dependents out of the wealth they received as inheritance from the decedent. The deceased Hindu's mother and father are considered dependents for this purpose. As a result, the parents of a deceased Hindu are required to be supported by the deceased's legal heirs. The first personal law statute in India to stipulate that children must financially support their parents is this Act.

(b) Muslim Law

Even in Muslim law, children have a responsibility to care for their elderly parents.

Mulla claims:

- (a) Children in comfortable circumstances are obligated to support their destitute parents, even though they may be able to support themselves.
- (b) If a mother is destitute, even in difficult circumstances, even if she may not be ill, the son must support his mother.
- (c) A son who, while being impoverished, is earning some money must support his father, who is unemployed. Under Hanafi law, parents and grandparents in need are entitled to maintenance from their offspring and grandchildren who have the means, even if they are able to support themselves, claims Tyabji. According to Islamic law, both sons and daughters are obligated to support their parents. They must have the resources to fulfil the responsibility, though.

Grandparents maintenance - If a person's grandparents are in need, whether they come from their parents or their mother, they must be supported. However, this obligation does not apply if the person is already caring for their poor father²².

(c) Christian and Parsi Law

The parents support is not covered by any personal legislation among Christians or Parsi's. A request for maintenance must be made in accordance with the provisions of Code of Criminal Procedure, 1973²³

C. Maintenance and Welfare of Parents and Senior Citizens Act, 2007

This Act was approved by the Indian Parliament with the goal of providing legal form to the rights of parents and senior citizens recognised by the Constitution. The Act's primary goal was to safeguard senior citizens lives and property while also providing for their maintenance. The Act also creates Maintenance Tribunals to expeditiously resolve problems involving senior persons. The Act also requires the establishment of old age facilities in each district. The prerequisites for a senior citizen to be eligible for benefits under this Act are that they must be above 60 years old and be unable to support themselves out of their income or property. The right to "maintenance" and the right to "welfare" are the two rights that are guaranteed for "parents" and "senior people" under this Act. Children and relatives are obligated in the same way. The supply of food, clothing, housing, and medical attention and

treatment is included in the definition of “maintenance”. It should be highlighted that the children and relatives have a responsibility to “maintain” the parent or elderly person, as appropriate. Therefore, the MWPSC Act requires that children and relatives provide for the needs of their parents and senior people, including food, clothes, housing, and medical attention. The obligation of children and family members to care for an elderly person, a parent, or both parents extends to meeting the senior persons or parents requirements as necessary so that the individual can live a normal life. Therefore, the standard of food, clothing, and housing would not apply to all parents; rather, it would vary according on what each parent considers being necessary. Medical care must be tailored to the demands of such a parent²⁵

The provision of food, medical care, recreation facilities, and other amenities essential to senior folks is referred to as “welfare”. Despite the fact that the term is specified in the Act, no explicit provisions are made for it. The care of parents and senior persons is the sole topic of Chapter II of the Act; the word “welfare” is never used. Although the wide nature of the criteria for “maintenance” may include “welfare”, the obligation on children and relatives is simply to support the elderly and parents.

The State Government may offer a plan for managing old age homes, outlining the standards and various services that must be offered by them in order to give the residents of such facilities with the necessary medical treatment and entertainment. Chapter III provides for the establishment of old age homes.

Additionally, the MWPSC Act calls for regular reviews of the senior citizen welfare system as well as effective coordination between the services offered by the relevant Ministries or Departments of the Government.

Even though the terms “welfare” and “maintenance” are similar, the implication put forth by the statute differs for each. The term “maintenance” emphasises on the financial need to cover the costs of clothing, food, medical care, and attendance. Parents and senior citizens have the authority to impose this privilege on their children or other family members. Welfare, on the other hand, is a broader concept that encompasses health care, which is more extensive than medical attendance and treatment; leisure centres that cater to the amusement and mental wellbeing; and other amenities that would improve the quality of life for the elderly. The State appears to be responsible for implementing senior citizen welfare programmes.

The MWPSA Act implicitly addresses senior citizen welfare through

- i. The construction of senior citizen old age residences
- ii. The implementation of senior citizen medical care provisions, and
- iii. The protection of senior citizen life and property.

Parents and senior citizens are the only people who are eligible for maintenance under the Act. Any Indian citizen who has reached the age of sixty or older is referred to as a senior citizen under this Act.

The Maintenance of Parents and Senior Citizens Act, Chapter II, outlines the responsibilities of children and relatives on the one hand and specifies the senior citizens' and parents' rights to apply to the Maintenance Tribunal for maintenance from children or relatives, if appropriate. Senior citizens and parents have the right to submit an application to the Maintenance Tribunal if they are unable to support themselves from their own earnings or from the assets they own. Parents may file a claim against their children, while older adults without children may file a claim against relatives.

The 1973 Criminal Procedure Code also mentions the ability to request maintenance. A senior citizen or parent is nonetheless entitled to support under the Maintenance of Parents and Senior Citizens Act despite this legal status. This is evident from Section 12 of the MWPSA Act, which gives applicants the opportunity to file claims for maintenance under one of the laws but not both. A Tribunal cannot consider a complaint if an application for maintenance has already been approved by the First Class Magistrate under Section 125 of the Cr.P.C or is pending before such a Court, as is evident from Section 12 read with proviso to Section 141.

The requirements for maintenance support not only the obligation of children to support their parents, but also the obligation on the part of the relatives to support the elderly members of the family who are childless.

However, it is important to remember that under Section 23(2), every senior citizen has a claim to maintenance from an estate, and if an estate is gratuitously transferred, the transferee is responsible for maintaining the senior citizen. It must be determined if the spouses of the deceased sons or daughters would get the property as a gratuitous transfer.

A childless senior citizen is the person who is unable to support himself/herself from his/her own earnings or property owned by him/her may file a maintenance claim against that relative, according to Section 4(1)(ii) of the MWPSA

Act. Any legal heir of the childless senior citizen, who is not a minor and is in possession of or would inherit his property after his death, only if such legal heir owns the senior citizen's property or would inherit it, would have a duty to support the elderly person who is childless. Furthermore, only in cases where the childless senior citizen is unable of providing for himself and the relative has the resources to do so is the relative obligated to support the senior, Relatives are only responsible for what they would owe if they were to inherit the senior's assets. Therefore, under the MWPSA Act of 2007, no one in the family has a legal obligation to care for a senior who is childless and does not own property that would be inherited by any relatives.

According to a statutory requirement, the State Governments must establish a Maintenance Tribunal to decide on maintenance applications. The application may be for expenses associated with the proceeding as well as for maintenance, such as a monthly allowance while the case is pending.

(a) Establishment Of Old Age Homes

The Act calls for the construction of old age homes in each district for elderly people who are in need. S.19, which asks the State Government to build and maintain a certain number of old age homes in accessible regions in a staggered manner, starting with at least one in each district, uses the word “may” to imply that this requirement is not obligatory^{xli}.

The rules established by the State Governments outline the strategy for operating old age homes, as well as the standards and various services that must be provided by them in order to provide the residents of such facilities with the necessary medical care and entertainment.

(b) Provisions For The Elderly's Medical Care

The Act includes provisions for medical assistance for senior citizens. The State Government is required to make specific provisions in the hospitals for elderly patients. These are:

- i. As much as feasible, all senior persons must have access to beds at government hospitals or hospitals that are funded entirely or in part by the government.
- ii. Senior citizens will have their own lines set up.
- iii. Senior residents now have access to a larger facility for the treatment of chronic, terminal, and degenerative disorders.

- iv. Research initiatives on age-related chronic illnesses and ageing will be increased.
- v. Every district hospital will provide geriatric patient-specific facilities that are duly overseen by a medical officer with experience in geriatric care.

Senior citizens have the same legal rights to physical and mental health as everyone else. Only when their unique requirements are satisfied can accessibility and availability of health care become real to older people. This involves effective geriatric care, healthcare that is both preventive and curative, and health promotion. The required infrastructure and staff training must be included in the health care and services in order to satisfy the unique needs of the elderly population.

(c) Protection Of Life And Property Of Senior Citizen

For the rights of older citizens to be effectively protected, public awareness and sensitization as well as government apparatus it are essential. The State Government is required by the Act to take all necessary steps to ensure that the Act's provisions receive wide-spread notice. Additionally, the State Government is mandated to periodically conduct sensitization and awareness training for Central and State Government Officers, including the police and judicial staff. It is also necessary to maintain efficient coordination between the services offered by the relevant government departments. District Magistrates have the authority to ensure that the requirements of the Act are correctly implemented and that elderly citizen's lives and property are protected so they can live in safety and dignity.

Making a senior citizen's transfer of property void in certain situations provides protection for older citizens' property. First off, if a senior citizen transfers his property to the transferee as a gift or in another manner with the requirement that the recipient meet the transferor's basic physical and hygienic needs, the transferee runs the risk of losing the property in question if he refuses to comply with the condition. Section 23 makes it feasible for this to happen. Only transfers of property made after the Act's start date shall be covered by this clause.

Second, if a senior person is entitled to maintenance from an estate and that estate is transferred in whole or in part, the right to maintenance of senior citizen may be pursued against the transferee if in such situation the transferee is aware of the entitlement or if the transfer is uncompensated. Nevertheless, it cannot be used against the transferee without payment of compensation and without notice of the right. If a senior citizen is unable to enforce the rights guaranteed by S. 23, a voluntary group registered under a currently in effect statute may intervene on his behalf.

Making senior citizen exposure and abandonment an offence that is cognizable and subject to bail furthers the promotion of their life and safety. Any person who is responsible for the care or protection of an elderly person and leaves them in any location with the aim to completely abandon them faces a fine or imprisonment. Children, family members, day-care facilities, old age homes, or anybody else who provides elderly citizens with care and protection are therefore responsible for guaranteeing their safety. This includes the administration of the hospital, the asylum, and other places where elderly people may be entrusted with or cared for^{xlv}.

(d) Judicial Discourse

The Bombay High Court endorsed the view expressed by the Delhi High Court in the case of *Sunny Paul v. State of NCT of Delhi*²⁶ wherein the Delhi High Court held that the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 provides for the eviction of adult children in cases of parental abuse apart from the other remedies.

In another case of *Ashish Vinod Dalal and others v. Vinod Ramanlal Dalal and others*²⁷ the Bombay High Court directed the resident and his wife to vacate his elderly parents flat so that the needs of senior citizens are catered and they can live a normal life.

In the recent case of *S. Krishnamurthy v. Dr. Manivasan*²⁸ the Madras High Court issued the directions for the registration and inspection of all old age homes in the State and directed for setting up of grievance cell which are as follows

1. The State Government must take action to inspect all old folk's homes in the State and make sure the spirit of the contested government order is being followed.
2. In order for the old age homes/retirement homes to comply with the letter of the Government Order as well as the orders passed here, the State Government may issue directions to be followed and shortcomings, if any, to be corrected after inspection. The State Government must take action to keep an eye on how the batch homes are operating on a daily basis, paying particular attention to the inmates' needs for food, clean water to drink, round-the-clock security, medical care, amusement and entertainment, and religious activities, among other things.
3. Retirement homes and old age homes must face civil repercussions, including cancellation of registration, if the orders are not followed if flaws are not corrected as stated.

4. Every retirement home or old age home in the state must be registered with the government, and the government must keep records on both the residents and the people in charge of the management.
5. The State Government is responsible for making sure that unregistered dwellings are no longer operating inside the State and must respond to any complaints made in this regard following any appropriate inspection.
6. While ensuring that the Government Order is followed, the State Government is required to establish a grievance cell for older persons.
7. In order to avoid wasting any more time debating the legitimacy and applicability of the welfare measures to senior citizens and residents of old age homes, retirement homes, etc. on a global scale, it is only appropriate that the substance of the contested executive order may be well made part of a legislation, either independently or as an addition to the existing legislation on the subject with more clarity.

In *Senior Citizen Welfare Organisation and Another v. State of Uttarakhand and Another*³⁰ while acknowledging the failure of the State to maintain adequate old age facilities for the senior citizens in the State, some necessary instructions have been issued. Following is a list of some of them:

- a. Within a six-month period, the State Government of Uttarakhand is mandated to create an old age home in each district. It is made clear that the State Government may, as a temporary solution, rent private housing.
- b. The State Government is also required to supply old age homes with a sufficient number of sweepers, two sets of clothes for the summer and winter, linen, and balanced, nutrient-rich meals. The State Government must also provide separate housing for men and women that includes enough potable water, electric fans, coolers/AC, a separate kitchen, dining area, and restroom, as well as a wheelchair, television, newspaper, and literature in nursing facilities for the elderly who are disabled.
- c. Seniors in need of medical attention should be brought to the closest hospital for care. The State Government is responsible for covering all transportation costs, including ambulance and medical costs. The State Government is additionally instructed to see to it that all senior citizens in the State of Uttarakhand receive free medical care at government hospitals, including blood work, CT scans, MRIs, and other testing.

In case of *Rajiv Behl v. State*³¹ it was ruled by the Delhi High Court that the children may be removed from any form of property on the grounds of mistreatment of parents and their non- maintenance. The same was reiterated by the Gujarat High Court in the case of *Shantilal Prajapati v. State of Gujarat*³².

The Calcutta High Court in the case of *Piyali Tewari Dey v. Baidyanath and others*³³ remarked that the Maintenance and welfare of Parents and Senior Citizens Act, which went into effect in 2007, was created to protect the interests of parents who are senior citizens, who are guaranteed and recognised by the constitution, and to provide them with maintenance so they do not have to lead a life of vagrancy at the end of their lives. It's possible that day by day, we are moving away from our traditional family values.

The Bombay High Court in the case of *Namdeo and Another v. State of Maharashtra and Others*³⁴, the Court evicted the son from the self-acquired property of his elderly parents. The Court further said that there is no illegality in evicting son from the residential house for the purpose of ensuring the peace for the elderly parents.

According to the Calcutta High Court, the senior citizen has the right to exclusively reside in his own house, and if necessary, then this right must be viewed from the prism of Article 21 of the Constitution of India in the case of *Ramapada Basak and Another v. State of West Bengal and Others*³⁵. In the case of *Gurmeet Singh v. Vipin Kumar*³⁶ the Punjab and Haryana High Court observed, "No doubt senior citizens are entitled to get their cases decided on a preferential basis. As a matter of fact, expeditious trial is right of every litigant". In another case of *Vijay Kumar Sood and Another v. Amrik Ahuja and others*³⁷, the Himachal Pradesh High Court observed that the cases of senior citizens are to be taken up on a priority basis and dealt with promptitude. The Allahabad High Court in the case of *Jeetu @ Amit Kumar Rawat and another v. Sub Divisional Magistrate Sadar Lucknow and Another*³⁸ observed that in accordance with the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 along with the guidelines established by the State Government there under, the District Magistrate is required to make sure that the senior citizen's life and property are protected and they are able to live in safety and dignity.

The Karnataka High Court has held that one of the essential elements to initiate the proceedings under the Maintenance and Welfare of Parents and senior Citizens Act, 2007 is that the senior citizen designated for the Act must be an Indian citizen, in the

case of Mrs. Dephny Gladys Lobo v. Asst. Commissioner and President senior Citizen Maintenance Tribunal³⁹.

According to the Delhi High Court in the case of Mr. Neeraj Bhasin v. Divisional Commissioner, Delhi and Others⁴⁰, a senior citizen may assert a right of exclusive residence under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, even if they are only able to prove a right or interest in the property, even if that right or interest is less than an exclusive ownership right. In another case of Court on its motion v. GNCTD⁴¹, the Delhi High Court directed the Delhi Government to ensure the strict compliance of Maintenance and welfare of Senior Citizens Act, 2007. In the instant case the Court took the suo moto proceedings over the poor implementation of the Act.

The Rajasthan High Court observed, in the case of Suresh Sharma and another v. Dhanwanti Sharma⁴² that the ill- treatment meted out to parents by their own children is both alarming and disturbing and the Court further added that The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 was formulated to redress the said grievance in a simple, inexpensive and speedy manner qua maintenance of the parents and senior citizens.

The Chhattisgarh High Court in the case of Pramod Ranjankar and Another v. Arunashankar and others⁴³ recognized the right of senior citizens over immovable property and directed the eviction of abusive children.

In the case of Ramesh @ Pappi v. Ishwar Devi and others⁴⁴, Punjab and Haryana High Court's observation, states that children have a bounden duty to properly care for their aged parents and the same is also enshrined under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

Maintenance and Welfare of Parents and Senior Citizens (Amendment) Bill, 2019

The 2007 Act had a number of fundamental flaws. The judiciary encouraged the government to create more comprehensive and robust laws that would effectively protect the rights of senior citizens. This led to the creation of the Maintenance and Welfare of Parents and Senior Citizens (Amendment) Bill, 2019. The voids left by the 2007 Act are intended to be filled by this bill. Among the major components of the Act are:

The Bill has also broadened the definition of parents, so that they now also include grandparents and parents-in-law in addition to biological, adoptive, and stepparents.

Additionally, the definition of maintenance is improved. Today, maintenance means giving parents access to healthcare, security, and safety so they can live peacefully and securely with respect. The earlier Act was only intended to cover the costs of basic necessities like food, clothes, and shelter for parents and senior residents.

The abolition of the maintenance charge cap of Rs. 10,000 is one of the bill's most notable amendments. Thus, if the measure is passed, maintenance payments of more than Rs. 10,000 are permitted. The standard of living and income of the parent or senior citizen, as well as the children's, must be considered by the maintenance tribunals before determining the appropriate amount. Additionally, the period of time that children and family members must pay the maintenance amount will be shortened from 30 to 15 days. According to the bill, the state government will now be required to build senior citizens care homes instead of old age homes, and the federal government must set minimum requirements for these houses. The Bill also mandates that each police station staff one officer specifically to handle incidents involving elderly people and parenting. The state government must also establish a specialised police force in each district.

E. Code on Social Security, 2020

The form and mode of storing the records electronically or in another way relevant to the scheme, as well as the authority by which such records shall be preserved, shall be provided therein by the Central or State Government, as the case may be, for developing and notifying the scheme and as much as is reasonably practical, these records must have continuous numbers in order to run the scheme properly and prevent record overlap and duplication.

Though the Code on Social Security, 2020 has been enacted but it only provides for the old age protection to the unorganized workers, gig workers and platform workers by the Central Government and the various schemes for them. This Code does not deal with the old age protection in general and also with regard to the protection of old age persons of the organized sector. The Code does mentions whether the same will supplement or will supplant the other laws but it says that in case of conflict between the Code and any other law in force for the time being then generally the Code will have an overriding effect upon the other laws. The exception to this rule is that if a person is entitled to benefits in relation to a matter that are better for him than those to

which he would be entitled under this Code, he or she shall continue to be entitled to the better benefits in relation to that matter, despite being entitled to benefits in relation to other matters under this Code.

Hence, the other laws such as Code of Criminal Procedure, 1973, Personal laws etc. will continue to govern the rights of the old age people and will carry on with providing protection to them along with the Code on Social Security, 2020.

The Standing Committee on Labour in its 9th Report in regard to Code of Social Security, 2019 stated that in order to prevent overlap and duplication, the Committee is of the considered opinion that there must be a clear demarcation of areas for notification of schemes by the Central Government and the State Governments. To achieve greater uniformity among States, it is essential to create a framework for a model composite scheme that addresses issues related to ageing and other benefits required for living a life of dignity as envisioned by the Indian Constitution.

The Committee acknowledges that as a social security measure for the unorganised sector, the Pradhan Mantri Shram Yogi Mandhan seeks to provide a minimum pension of Rs. 3,000 per month upon reaching the age of 60 and anticipates a contribution from an employee in the age range of 18 to 40 years of between Rs. 55 and Rs. 200 per month. If a subscriber doesn't pay his monthly contribution in a given month, the Ministry claims that the subscriber has three months to make up the missed payment. According to the Committee, this solution does not make the responsibility on the employee any lighter who may have missed work due to circumstances beyond his control, such as a national lockdown. The Committee hopes that the Central Government will intervene in this dire situation and make contributions on behalf of the defaulting employee for the brief duration of unforeseen circumstances.

CONCLUSION

The elderly are currently dealing with a lot of issues. These issues are of the social, psychological, economic, and medical variety. The community's traditional traditions and beliefs have been impacted by how modernization has impacted the younger members. Younger generations' attitudes and behaviours have also been evolving. As a result, older people nowadays no longer receive love, affection, and respect from other family members. Their presence, wisdom, and blessing are regarded as essential for the family's overall growth. The elderly feel that their lives are worthy in a society where they are treated with respect, and they want to build a strong family.

The care of the aged is acknowledged in the Directive Principles of the Indian Constitution. It discusses the government's responsibility to provide seniors with social security. Section 125 of the Criminal Procedure Code recognises the right of parents without any means to be maintained by their children who have enough means. The laws of Islam and Hinduism both protect parents' rights. The study discovered that even though these statutes contain charitable provisions, it has been observed that the legal response's application is constrained. The inefficient judicial system makes it very difficult to uphold the elderly's legal right to demand adequate maintenance from their children. Even if a competent civil court issues a ruling and decree, lengthy procedural processes make execution take months or even years.

The Maintenance and Welfare of Parents and Senior Citizens Act of 2007 offers a number of benefits to the elderly, including free medical care, free public transportation, free pilgrimages, and interest-free loans. Children are required by the Act to look after their grandparents and parents. It also includes a monthly financial aid provision. A provision for central aid to States in carrying out the Act's objectives is also included. The Code on Social Security, 2020 only mentions about providing social security to old age persons but does not in mentions about providing social security to old age persons but does not in detail mentions how and what procedure would be followed for the same or what steps can be taken under the provisions of the Act to secure betterment of the lives of the senior citizens.

SUGGESTIONS

- In the case of claiming maintenance from their children such matters shall be taken up by separate fast track courts, for instance family courts, with utmost care and on priority basis. The procedure in courts shall be relaxed in old aged maintenance matters so as to provide speedy disposal of cases.
- The Government should issue a card like that of ration card etc. for elderly as part of the social security system so that it becomes easy and convenient both for the elderly or a comprehensive website/portal containing various schemes and programmes of Government so one shall not to roam around for the same and on the other hand, Government can also identify the elderly to whom such benefits are given for record
- To dispel the stigma that now surrounds day care facilities, the idea of day care centres for older people needs to be made more widely known, along with the benefits that result from them.

- The State may make an amendment in the Constitution of India in chapter of Fundamental Duties and add a Fundamental duty on every citizen of India to take proper care of their old age parents.
- Senior citizen e-literacy programmes should be developed by municipal and state governments together. This would make it simple for senior citizens to use online transactions to access services and amenities. E-learning would also help senior citizens become more independent and improve their relationships with their children, other family members, and friends. Additionally, it will provide older people a platform to share their wealth of public knowledge, which could strengthen ties between generations.
- The State can also amend Article 15(3) of the Constitution so as to include aged parents in it so that State can make special provisions for the elderly or senior citizens of India.
- Awareness need to be made to the senior citizens regarding their rights under the Constitution and the other legal provisions so that they can be made aware of their rights and which may help them in claiming their rights.
- The elderly should also be made aware about the various schemes and programmes which are being launched by the Government for their benefits so that they can avail the benefits of various Social Security Schemes and make their life easy and peaceful.

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