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PROTECTING THE ELDERLY POPULATION: A DEEP DIVE INTO INDIA'S LAWS AND POLICIES FOR SOCIAL SECURITY AND RIGHTS

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ABSTRACT

India is undergoing a significant demographic shift, with its elderly population projected to reach 319 million by 2050. Despite this, the legal and social framework for senior citizens is inadequate. While the Indian Constitution provides a foundation for their rights through principles of equality and the right to life with dignity, the primary statutory support comes from the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, along with various schemes and policies that were made specifically to deal with elderly people's rights. This Act & all other enacted policies, however, suffer from implementation issues such as a lack of awareness and weak infrastructure. Thus, this paper delved deep into those laws and enacted policies that are made to support the rights of elderly people.

INTRODUCTION:

India is undergoing a significant demographic shift due to its rapidly growing population. As the home to one-fifth of the world's population, India accounts for one-eighth of the global elderly population (those aged 60 and above)¹. According to the SRS (Sample Registration System) statistical report, the elderly population increased substantially from 6% to 9% between 1971 and 2021, while the SRS statistical report of 2022 (conducted by the Office of Registration General & Census Commission) shows that the percentage of the elderly population has now stabilized at 5.9% for those aged 65+ and 9.0% for those aged 60+

¹ Sumati Kulkarni, Siva Raju, Smita Bammidi, *Building Knowledge Base on Ageing in India: Increased Awareness, Access and Quality of Elderly Services*, UNFPA India, Social Security for the elderly in India, https://india.unfpa.org/sites/default/files/pub-pdf/ThematicPaper1_2.pdf

respectively. This rapid growth shifts the issue of elderly welfare from merely a social concern to a critical global problem.²

The primary motive behind establishing social security and protecting the rights of elderly people is to provide them with safety and support when their ability to work and earn an income decline.

THE JOURNEY FROM HISTORY TO MODERNIZATION:

If we turn around the pages of history, we will be able to understand that “the rights of the elderly people” is not a modern concept, but rather it existed way before that. Ancient texts like the Manu Smriti clearly stated the duty of the children to maintain and protect their aged family members. It shows the social value emphasizing the unavoidable responsibility and safeguarding the rights of elderly people.

But in the modern era, when the law came into action, the personal laws such as The Hindu Adoption and Maintenance Act, 1956, Muslim law, Christian law along with Parsi law came up with a few provisions that implicitly protect the aged population. Even in secular laws like earlier, it was stated in Section 125³ of the Criminal Procedure Code, 1973 (CrPC) [section 125 (1)], and now section 144 (1)⁴ of BNSS provides that a person having sufficient means who neglects or refuses to maintain certain category of person can be ordered to provide maintenance to them.

But in 2007, the Ministry of Social Justice and Empowerment came out with a landmark legislation called The Maintenance and Welfare of Parents and Senior Citizens Act 2007. This specific statute was enacted because the existing provisions in the Indian Penal Code and Personal Laws were deemed insufficient to address the specific needs and vulnerabilities of senior citizens and their parents. This statute aims to recognize and provide for more effective provisions for maintenance and welfare of parents and senior citizens guaranteed and recognized under the Constitution. Presumably this act is India’s sole welfare legislation, protecting the rights of elderly people. This act is also having a special feature as it extends

² Ministry of Home Affairs, Government of India, Office of the Registrar General & Census Commissioner, SAMPLE REGISTRATION SYSTEM (SRS)-STATISTICAL REPORT 2020, (Oct 21, 2022), <https://censusindia.gov.in/nada/index.php/catalog/44376>

³ Criminal Procedure Code, 1973 (CrPC) [section 125 (1)],

⁴ Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, Section 144

beyond the territory of India. Section 1(2) applies to Indian citizens living abroad, protecting their rights and responsibilities under this act.⁵

Santosh Surendra Patil v. Surendra Narasgopnda Patil (2017)⁶ and Dattatrey Shivaji Mane v. Lilabai Shivaji Mane (2018)⁷ are two landmark judgements in which the court held that under Section 23 of the Act, 2007, the Maintenance Tribunal can issue an eviction order to ensure that senior citizens live peacefully in their homes without being subjected to ill-treatment or harassment by their children or other legal heirs.

CONSTITUTIONAL FRAMEWORK:

Now, if we look at the overall legal framework for elderly people's rights, the understanding would be that the legal landscape for the elderly population in India is rooted in the constitutional provisions, which include the Preamble, Fundamental rights and Directive principles of the state policy.

Preamble: Preamble is a brief introduction of the Indian Constitution in which the justice, social, economic and political forms a core principle of the Indian Constitution, signifying the commitment to a just and equitable society.⁸

1. Political justice implies the equal participation of all adults in the political process and the just formulation and implementation of laws.
2. Economic justice implies the ultimate eradication of poverty, equal opportunities to earn a livelihood, and fair wages. As such the expansion of economic, entrepreneurship and job opportunities are among examples of economic justice.
3. Social justice implies the removal of societal imbalances and the harmonization of rival claims and needs of different communities and groups. It is about providing equal opportunities.

⁵ Rajat Banerjee, *A CRITICAL ANALYSIS OF THE MWPSA ACT IN LIGHT OF THE 2019 BILL AND OTHER DECIDED CASES*, Vol. VI, NUJS JOURNAL OF REGULATORY STUDIES, ISSUE 11, 3 (2020-2021), <https://www.nujs.edu/wp-content/uploads/2022/12/File-102.pdf>

⁶ Surendra Patil Petitioner v. Shri Surendra Narasgonda Patil & Ors., W.P. No. 1791/ 2016, India.

⁷ Dattatrey Shivaji Mane v. Lilabai Shivaji Mane & Ors., W.P. NO.10611/2018. (India).

⁸ The Indian Constitution, Preamble

Fundamental Rights:⁹ Fundamental rights by its name, ensures that there are a asset of basic rights guaranteed to all the citizens of a country.

- Article 14¹⁰, Equality before law, it ensures the equal protection of law, whereas, the unequal treatment of elderly persons and the various discrimination against them, violate the equality provisions of the Constitution of India.
- Article 21¹¹, of the Indian Constitution guarantees the fundamental right to protection of life and personal liberty. It ensures certain safeguards against arbitrary deprivation of life and liberty.

In the landmark case of Maneka Gandhi V. Union of India¹² (AIR 1978 SC 597) Justice P.N. Bhagwati has broadened the scope of the right to life.

Rights include right to live with human dignity, right to livelihood and employment, right to shelter, right to health and medical assistance, and right to a dignified death. All these rights are recognised as fundamental rights under Article 21¹¹, and they directly impact elderly population of India.

Article 14 along with article 21¹¹ directly addresses the fundamental needs of its elderly citizens, ensuring their right to live with dignity. This means the State is constitutionally bound to secure a reasonable means of living through financial stability for older persons, allowing them to enjoy their fundamental human right to a dignified existence.

There are a few other rights as well that impact the elderly population in India:

- Article 42¹³ (Just and humane conditions of work): This fundamental right provides that the conditions of work should be age-friendly and of such a nature as to secure valuable contributions from elderly persons without discriminating against them in the occupational sector.
- Article 21¹¹ (Right to livelihood): The elderly persons have a fundamental right against the state to ensure a reasonable livelihood means of living through financial stability, through which they can enjoy the fundamental human right to live with human dignity.

⁹ The Indian Constitution, Articles 12-35, Fundamental Rights

¹⁰ The Indian Constitution, Article 14, Fundamental Rights

¹¹ The Indian Constitution, Article 21, Fundamental Rights

¹² Maneka Gandhi v. Union of India, (1978) 1 SCC 248

¹³ The Indian Constitution, Article 42, DPSP

- Article 21¹¹ (Right to medical care & maintenance, and improvement of public health): This Fundamental right includes making available medical facilities to elderly persons and the need to extend the facilities.
- Article 21¹¹ (Right to shelter): Given the observation of the Supreme Court in *Chameli Singh v. State of UP (1995)*¹⁴ “... for a human being, it (shelter) has to be suitable accommodation which allows him to grow in all aspects - physical, mental and intellectual” It is submitted that the buildings providing accommodation and lands appurtenant thereto are required to be suitable to meet the special needs of the elderly.

A petition was filed before the Hon’ble Supreme Court named *Dr. Ashwani Kumar V. Union of India and Ors*¹⁵. In this writ petition, the Supreme Court raised significant issues relating to the recognition and enforcement of the fundamental rights of elderly people.

DIRECTIVE PRINCIPLES OF STATE POLICY (DPSP):

Although DPSPs are not enforceable as fundamental rights, but work as a set of guidelines for the state to follow while making laws and policies.

- Article 38(1) of the Indian Constitution deals with the provision that the State shall strive to promote the welfare of the people by securing and protecting as effectively by justice, social, economic and political.¹⁶
- Article 39 - The State shall, in particular, direct its policy towards securing- (a) that the citizens, men and women equally, have the right to an adequate means of livelihood; (d) that there is equal pay for equal work for both men and women (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength

¹⁴ *Chameli Singh and Ors. Etc. v. State of U.P. and Anr.*, (1996) 2 SCC 549

¹⁵ *Dr. Ashwani Kumar V. Union of India and Ors.*, W.P. No. 193/ 2016

¹⁶ The Indian Constitution, Article 38(1)

clauses such as (a), (d) and (e) of Article 39 elaborate on the right to adequate means of livelihood, right of work and the health of the workers.¹⁷

- Article 39A- provides for provision of legal aid which is an essential precondition to the access of justice of everyone including the senior citizens.¹⁸
- Article 41- Right to work, to education and public assistance in certain cases: “The state shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want.”¹⁹
- Article 42 – Ensures that the State shall make provision for securing just and humane conditions of work and for maternity relief.²⁰
- Article 43- Mandates that the State shall endeavor to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavor to promote cottage industries on an individual or co-operative basis in rural areas.²¹
- Article 43A- Inserted by the 42nd Amendment Act, 1976, directs the State to take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry.²²
- Article 46- It states that the state must support the educational and economic interests of the weaker sectors of the population with special attention, as well as safeguard them against social injustice and exploitation in all forms.²³
- Article 47 provides that it is the primary duty of the State to improve the standard of living of its people, increase the level of nutrition and improve public health.²⁴

¹⁷ The Indian Constitution, Article 39

¹⁸ The Indian Constitution, Article 39A

¹⁹ The Indian Constitution, Article 41

²⁰ The Indian Constitution, Article 42

²¹ The Indian Constitution, Article 43

²² The Indian Constitution, Article 43A

²³ The Indian Constitution, Article 46

²⁴ The Indian Constitution, Article 47

These Articles have a direct relationship with the well-being of elderly people in India.

POLICIES AND SCHEMES FOR THE SENIOR CITIZENS OF INDIA:

The Indian government has implemented a policy named the National Policy on Older Persons (NPOP) to ensure the dignity of elderly people. The Ministry of Social Justice and Empowerment is the nodal ministry in implementing NPOP, with approximately 19 other government ministries contributing to its various components.²⁵

MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT(MOSJE)

- **NATIONAL POLICY FOR SENIOR CITIZENS (NPSC)²⁵**
 - Senior citizens living in urban and rural areas, laying special focus on the needs of the oldest of the old and older women in particular.
 - It focuses extensively on issues of older women, increased employment opportunities, implementation of Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and living facilities for abandoned senior citizens.

- **THE ATAL PENSION YOJANA (APY)**
 - The government co-contributes 50% of the subscriber's contribution or Rs. 1,000 per annum, whichever is lower, to each eligible subscriber account, for a period of 5 years.
 - Any citizen between 18-40 years of age can join through their savings bank account. Minimum pension of Rs. 1000 or Rs.2000 or Rs.3000 or Rs.4000 or Rs. 5000 is guaranteed to the subscriber at the age of 60 years. Minimum monthly contribution (for those joining at age 18) will be Rs.42 or Rs.84 or Rs.126 or Rs.168 or Rs.210.²⁵

²⁵ National Human Rights Commission, India, Rights of Senior Citizens, nhrc.nic.in, 2020, <https://nhrc.nic.in/sites/default/files/>

- **INTEGRATED PROGRAMME FOR SENIOR CITIZENS (IPSRC):** A Central Sector Scheme

A Central Sector Scheme Provides 100% project cost for the running and maintenance of the following projects: -

- This program includes Senior Citizens' Homes, with specialised facilities like Homes for 50 Elderly Women. Given the increasing prevalence, Continuous Care Homes and dedicated centres for those with Alzheimer's disease/dementia are crucial. Proactive healthcare involves Mobile Medicare Units and Physiotherapy Clinics for Senior Citizens. Finally, Regional Resource and Training Centres are vital for sustained improvement and effective elder care.²⁵

- **VAYOSHRESHTHA SAMMAN** – the scheme of National Awards for Senior Citizens

- The Ministry of Social Justice and Empowerment has a scheme of National Award, given to eminent senior citizens & institutions under various categories for their contributions on the International Day of Older Persons on 1st October.²⁵

- **NATIONAL COUNCIL OF SENIOR CITIZENS (NCSRC)**

- NCSRC was constituted in 1999 by the Minister for Social Justice and Empowerment to inspect and advise the implementation of NPOP. They also assist the Central and State Governments on the issues related to the welfare of senior citizens and enhancement of their quality of life.²⁵

- **RASHTRIYA VAYOSHRI YOJANA (RVY)**

- Under the Scheme of RVY, aid and assistive living devices (such as walking sticks, wheelchairs, hearing aids etc.) are provided free of cost to senior citizens belonging to the Below Poverty Line (BPL) category, who suffer from age related disabilities such as low vision, hearing impairment, loss of teeth and loco-motor disabilities.²⁵

▪ **SENIOR CITIZENS WELFARE FUND**

- This fund was established in March 2016 by an Inter-ministerial committee, with the help of the Minister for Social Justice and Empowerment. The fund is utilized for senior citizen welfare schemes, in line with the National Policy on Older Persons, including schemes for promoting financial security of senior citizens, healthcare and nutrition for senior citizens, welfare of elderly widows, schemes relating to old-age homes, day-care centres, etc.²⁵

MINISTRY OF RURAL DEVELOPMENT

▪ **INDIRA GANDHI NATIONAL OLD AGE PENSION SCHEME (IGNOAPS)**

- The IGNOAPS is one of the schemes under the National Social Assistance Programme (NSAP). It is a non-contributory pension scheme, i.e. a person will receive a monthly pension without having to contribute any amount himself or herself. This scheme provides a pension with central assistance of Rs. 350 per month to persons between 60 and 79 years of age and Rs. 650 per month to persons of 80 years of age and above from BPL households.²⁵

MINISTRY OF HEALTH AND FAMILY WELFARE

▪ **NATIONAL PROGRAM FOR THE HEALTH CARE FOR THE ELDERLY (NPHCE)**

- This scheme was launched by the Ministry of Health and Family Welfare in 2010, to provide dedicated health care facilities to elderly people through the Government health delivery systems at Regional, District and Primary Health Centres.²⁵

MINISTRY OF LABOUR & EMPLOYMENT

- **RASHTRIYA SWASTHYA BIMA YOJANA (RSBY)-Senior Citizen Health Insurance Scheme. (SCHIS)**
 - This scheme was launched by the Ministry of Labour and Employment on 2008. The main intention of the scheme was to provide health insurance coverage for BPL families, to protect BPL households from financial liabilities arising out of health shocks that involve hospitalisation. SCHIS also covers senior citizens aged 60 years and above. It will provide enhanced coverage of up to Rs. 30,000 per senior citizen in the eligible family. ²⁵

Along with these programs and schemes, many other governmental ministries have their schemes for elderly people, such as the Ministry of Home Affairs, Ministry of Finance, Ministry of Railways & few more.

CHALLENGES IN TERMS OF IMPLEMENTATION:

The government has enacted several laws, also there are many policies addressing the same issue but, Lack of awareness, Rapid demographic shifts, Rural access issues, elder abuse & under reporting, Ageism, Social isolation, Insufficient funding from the governmental bodies, Poor infrastructure & corruption are those serious issues which bars the implementation of those laws and policies.

CONCLUSION:

Ensuring the well-being and dignity of India's senior citizens requires a concerted and multi-sided approach. By strengthening the legal frameworks, enhancing support infrastructure, inter-generational bonds, and recognising our collective responsibility, this journey demands sustained commitment from individuals, families, communities, and the government, working hand-in-hand to build a truly inclusive, caring and elder-friendly nation.