

**Legal Study of Aging Population In India**  
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**Abstract**

The United Nations General Assembly pronounce 2021–2030 the ‘Decade of Healthy Ageing’ thus communicated WHO to direct its implementation to the member states. India is not in a position to meet needs of an old age population and to provide a quality life through existing care facilities with more than 100 million elderly. We do not have a particular scheme and policies for providing health facilities for old people. Older people usually suffer from health conditions that are predominantly chronic in nature and are basically different from those of adult and young populations. The health status of aged population becomes particularly perplexed as they are prone to get multiple illnesses. Present paper is related to Aging population and their problems. The first part of the paper deals with International guidelines, national legislations. The second part discuss problems during pandemic and senior citizens. The third part of the paper explores judicial pronouncements related to senior citizens. The fourth part explains government policies related to elderly .On the concluding note, it suggests that geriatric health law reform is necessary for the present needs of the society especially during pandemic.

**Keywords:** Ageing, Elderly Population, Covid-19, Health, Older Person,

**Introduction:**

Aging is a natural process, it cannot be cured, but it can be protected with sensitivity and care. The present corona pandemic has boldly exposed the vulnerability of our elderly in our society. As an ageing population tends to have a higher prevalence of chronic diseases, physical disabilities, mental illnesses and other comorbidities, preventive health-care and medical needs of the elderly population becomes the joint responsibility of individuals, family, community and the government. The wellbeing of the elderly mandates a

multifaceted approach incorporating active collaboration of community, health workers, social workers, government health-care schemes / programs and welfare schemes for self-independence and sustenance<sup>i</sup>.

People are living longer lives, and both the share and the number of older persons in the world population are growing very fast. Global data in 2020 presents, there were 727 million persons aged about 65 years or over .Longevity of women’s Life is longer than men, on average, as comprise to the majority of older persons, especially at advanced ages. Projection for next three decades, in number of older persons worldwide is expected to more than double, reaching to cross in 1.5 billion in 2050. All nations will count in an increase in the size of the older population between 2020 and 2050. The world share of the population aged 65 years or above is expected in projections from 9.3 per cent in 2020 to around 16.0 per cent in 2050.<sup>ii</sup> Population ageing has been recognized as one of the four world population tally.

The global trends is named as-          

1. population growth,
2. population ageing,
3. international migration and
4. urbanization

With continued study of lasting effect on sustainable development<sup>iii</sup>

At the 1991 United Nations General Assembly, signatory countries adopted the United Nations’ Principles for Older Persons or senior citizens, which promotes their home governments to incorporate the principles of independence, dignity, respect/care, participation, and self-fulfilment of the older persons in their national policies and programs (1991).

India’s department of ministry of Social Justice and Empowerment executed an Integrated Programme for Older Persons (IPOP) in 1992 (in Government of India 2015)<sup>iv</sup>. This program main objective was to distribute the basic

amenities such as food, shelter, health care, and other welfare services to citizens aged 60 years and older. The scheme also helps with financial assistance to nongovernmental organizations (NGOs), voluntary organizations, and Panchayat Raj (local government) institutions to establish and maintain old-age homes, continuous care homes, and clinics for elderly people. The International Plan of Action on Ageing<sup>v</sup> had been declared by the First World Assembly on Ageing in Vienna August, 1982. The United Nations General Assembly accepted the eight important global motto for the year 2001 and made a plan for setting national targets in 1992 on ageing. United Nations General Assembly adopted 'Proclamation on Ageing 1992' that declared that elderly should be treated as contributors or asset to their societies and not as a burden on family and community.

United Nations activities must include ageing in the context of health, human rights, employment, education, housing and the upliftment of women. The United Nations, officially declared the year of 1999 as the 'International Year of Older Persons to promote independence, care, participation, self-fulfilments and dignity for elderly people'. There are various legal instruments in support of our elderly population

International Conference on Population and Development

(Cairo Programme of Action),

World Summit for Social Development (Copenhagen Declaration),

Copenhagen Programme of Action,

Beijing Platform for Action, Second World Assembly on Ageing 2002.

In Covid times of no specific drug therapy and vaccine prevention was available across the globe, there is a dire need of to develop a preventive strategies for vulnerable population like elderly people. Clinical and basic research is of utmost importance in this pandemic era, as some of these problem and their impact may vary geographically. By adding advances of research force, we might be able to gather for new evidence to devise COVID-19 risk, prevention and treatment plan not only for lower risk population but also for high-risk elderly population as well.<sup>vi</sup>

In terms of social welfare schemes, central and state governments have announced various measures delivering free food grains and direct transfer of pension for the elderly people<sup>vii</sup>. However, there is considerable variations in old age pension across states of India. At all India level, only 29.6% of the elderly receive an old-age pension of the total older population<sup>viii</sup>. Evidently, current COVID-19 situation makes the elderly more vulnerable financially.

Physical/social distancing has considerably increased social isolation and more so for the elderly population<sup>ix</sup>. Studies have established that social isolation increases depression, suicidality, and a higher chance of increased inflammatory response in the elderly<sup>x, xi</sup>.

Mental health problems are often under identified or overlooked by themselves, health-care professionals and even by family members of older people, and the stigma related to mental illness makes people reluctant to seek help.<sup>xii</sup> Many factors like social, psychological, and biological factors determine and affect person's level of mental health at any point of time.<sup>xiii</sup>

### **Pandemic and senior citizens**

The coronavirus whose epicenter was China, spread drastically all over the world, leading way to various crises. A huge amount of the population suffered and went through various challenges and hardships. The outbreak of covid-19 resulted in huge life loss, social physiological, ethical, economic, medical and various other problems. Its greatest impact on every living being, kid to an adult or from young to an elder. But during this pandemic, the ones who underwent a lot is the generation of senior citizens.

Covid – 19 had triggered the onset of psychiatric disorders which resulted in many suicidal cases. The anxiety in senior citizens regarding the flu and the lack of proper information resulted in psychological problems. Few medications cited on the Internet were not proven or authenticated and were not suggested by the Doctors. This created even more tension among the senior citizen. The disturbance in their daily routines and the treatment which includes isolation left the adverse effects on the minds of the elder generation. During a pandemic, there was a

concern related to the mental health of older adults. Various Caveats have been filed regarding the data on the psychological study of senior citizens. WHO estimates 20% of age 60 suffer from mental or neurological disorder<sup>xiv</sup> Due to low immunity, this age group suffered in terms of medication as well, their recovery rate as compared to the young generation was less, and the treatment offered to them took longer to show its positive effect. According to one of the survey there were more complications and deaths in the age group of 80 years. Efforts were made in protecting the life of an older person, though, Right to health crises, right to life and right to dignified old and until the end of one's day.

In economic terms the older adults suffered tremendously. Increase in the prices of medicines, oxygen cylinders, some can offered the high cost of medication, but some elders were incompetent or due to reasons unable to pay for the medication. As per the study of Help Age India 2020 ,38%had fear of getting infected of covid-19, and loss of income, 34%feared economic loss, Starvation, no work , 12% feared of community spread and community spread<sup>xv</sup>. As per the brief study of WHO (2020) various challenges is being faced by the citizens and out of pocket expenditure , due to which many people can not accesses to the basic treatment.

The lack of proper infrastructures, increase in the number of patients and also lack of manpower created trouble for the senior citizens. The loss of morality and self-confidence could be seen in people of this age group. Heaving physical weakness along with the exposure to the infections has weakened the senior citizen mentally and ethically. The social conditions around them tends to force them to live in the mournful atmosphere struggling to live.

Counselling of senior citizen was arranged by the hospitals and governments to bring them back to the normal track of life. The NITI Ayog launched Surakshit dada-dadi, nana-nani Abhiyan ensuring well-being of senior citizen during Covid-19.

#### **Legislation related to Elderly people-**

Various laws being developed in India for the senior citizens to ensure their rights. Some of the most basic laws include elder law and the maintenance and welfare of parent and senior citizens act, there are other sections of the Indian constitution that safeguards the right and interest of the elderly.

The Indian government provides various laws to safeguard and protect the rights of senior citizens and the governance is being handled by the Ministry of Justice an empowerment. Some of the provisions are as follows

#### **Constitutional Provisions**

The constitution of India provides with the provision to preserve the rights of those aged above 60, it is provided in chapter IV of the constitution which correspond to directive principles of state policy. Directive Principles cannot be enforced by the court of law. (Article 37)

Article 41 of the constitution secures the right of senior citizens in employment education and public assistance. It ensures the right in case of disabilities or sickness

Article 46 asserts that educational and economic rights of the elderly must be protected by the state.

#### **Under Personal Laws- Hindu's Law:**

Apart from obligations enshrined in customary law for children, the statutory provision for maintenance of parents under Hindu personal law is contained in Sec 20 of the Hindu Adoption and Maintenance Act, 1956. This Act is the first personal law statute in India, which imposes an obligation on the children to maintain their parents.

#### **Muslim Law:**

Children have a duty to maintain their aged parents even under the Muslim law. According to Mulla :

- (a) Children in easy circumstances are bound to maintain their poor parents, although the latter may be able to earn something for themselves.
- (b) A son though in strained circumstances is bound to maintain his mother, if the mother is poor, though she may not be infirm.

(c) A son, who though poor, is earning something, is bound to support his father who earns nothing.

According to Tyabji, parents and grandparents in indigent circumstances are entitled, under Hanafi law, to maintenance from their children and grandchildren who have the means, even if they are able to earn their livelihood.

#### **Christian & Parsi Law:**

There are no personal laws providing for maintenance for the parents. Parents who wish to seek maintenance have to apply under provisions of the Criminal Procedure Code.

#### **Code of Criminal Procedure, 1973**

Section 125(1) (d) makes a person having sufficient means to maintain his parents if they are unable to maintain themselves. It is applicable to all, irrespective of their religious faith and religious persuasions, and includes adoptive parents. This section has been interpreted by the Supreme Court in its ruling so as to make daughters and sons, married or unmarried, equally responsible to maintain their parents.

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

The Maintenance and Welfare of Parents and Senior Citizens Act 2007 had made mandatory legal obligation for children and heirs to provide maintenance to their parents/ senior citizens. It also made provision for state governments to develop old age homes in every district. And also ensure adequate medical care for senior citizens.

This Act provides an inexpensive and speedy procedure to claim monthly maintenance for parents and senior citizens. Parents/ senior citizens who are unable to maintain themselves have their right for a monthly allowance through a maintenance tribunal instituted by State governments in every sub-division of the district to decide the level of maintenance. For appeals. Provision for Appellate tribunals exists at the district level.

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

Provision for expansion of definition of **maintenance** to include healthcare, safety, and security for parents/ senior citizens to enjoy the life with dignity. Also “welfare” word will be expanded in proposal to include, other amenities necessary for the physical and mental well-being of a senior citizen / parent. The Bill removes the upper limit on the maintenance fee, but it will be according to standard of living and earnings of parents as well as children. It also reduces the number of days from 30 days to 15 days. Provision for appeal in the tribunal, for both the parties with the supervision of maintenance officer. Penalties will be increased in case of offences against abandonment and abuse. In 2007 Act, there is no provision for punishment. Now abandoning a senior citizen in any place is a criminal offence.

Requirements for institutions providing homecare include: (i) staff must be trained and certified, and (ii) institutions must register with a registration authority set up by the state government, which was not available in the 2007 Act. Now bill has provision for old age home established by private or state authorities. In 2007 Act establishment power was with state government only.

#### **Under Companies Law**

Section 135 of the Companies Act, 2013 mandates companies with a particular turnover, net worth, and net profit to spend 2% of their average net profit on corporate social responsibility, while Schedule VII of the act prescribes activities which shall be called as CSR activities.

Section 88 B 88-D, 88-DDB of Income Tax Act of India allow senior citizens to claim a discount in tax. The elderly are entitled to claim higher interest on tax saving plans apart from having a wide variety of LIC policies and post office schemes

#### **Important case laws related to senior citizens in India**

**Sheetal Devang Shah v.Presiding Officer**<sup>xvi</sup>  
Senior citizen couple aged 77 and 79 approached the tribunal which asked the son

and daughter in law to vacate the house and pay the mother the maintenance of Rs 25,000 a month . The daughter in law contended that the house was an ancestral property , and her husband was paying rent for the premises. In Section 2(a) of maintenance act, the word children does not include daughter-in-law .Tribunal in clause 3 of the operative has observed within 15 days from the date of receipt, Sheetal Shah and Devgan shah. To handover the entire possession of residential premises to the aged couple Nalini Shah and Mahendra Shah (deceased)

**Jharkhand Senior Citizen Advocates Service Sansthan v.State of Jharkhand<sup>xvii</sup>** - The court has directed the state Old Age Homes in each district of the states with the immediate effect along with directing state government to arrange different queues in hospitals and other steps for elderly people while taking medical treatment.

**Sunny Paul and another versus state of NCT of Delhi and others<sup>xviii</sup>**-The Delhi High Court has ruled that children who abused their parents while staying with them in their house can be evicted from the property. Justice Manmohan in his ruling specified that the house need not to be self acquired by the parents. “As long as the parents have the legal position of the property they can evict their abusive adult children.The court asked Delhi government to amend the rules and formulate an action plan to protect the lives and property of senior citizens because Delhi government rules allowed senior citizens to complain to district authorities to evict abusive children only from self acquired property despite the fact that the act makes no such distinction and gives protection to parents even rented house now rented,

**Dr.(Mrs )Vijaya Manohar Arbat versus Kashi Rao Rajaram Sawai and another.<sup>xix</sup>** –

The Supreme Court decided that a married daughter who is self sufficient and single issue has to provide maintenance to her father or mother who don't have any other son. The stepmother is equally entitled for the maintenance as the father according to the

opinion given in Baban Madhav Dagadu Dange v Parvatibai Dagadu Dange the expression “mother” include adoptive mother as well.

**B.L Sood vs DTC<sup>xx</sup>**

Taking into account of the facts of the case that senior citizen was thrown out of a DTC bus travelling without tickets, even after several pleas that he had just entered the bus and yet to reach conductor fell of deaf ears. The highest consumer court warned that such rude and uncivilised behaviour towards the consumer was unacceptable and would be treated as deficiency in service and consumer at receiving end would get the compensation .

**Rajender Singh v.Prem Mal<sup>xxi</sup>**

The AP High court says early disposal of cases concerning senior citizens should be given Priority . Real respect and honour is to render speedy justice to senior citizen . People in India are disgusted by the State of affairs and are past losing faith in the judiciary because of the inordinate delay in the disposal of the cases. Supreme Court asks the authorities concerned to do the needful in matters urgently to dispose speedy disposal of the cases and give emphasis more on the senior citizens issue.

**S. Vanitha v. Deputy Commissioner<sup>xxii</sup>** - The apex court took the view that the Tribunal under the 2007 Act may have the authority to order an eviction if it is necessary and useful to provide maintenance safty and protection of the senior citizen or parent.

**Dattatrey Shivaji Mane v. Lilabai Shivaji Mane<sup>xxiii</sup>**, Bombay high court took the view that the Tribunal can order eviction under the 2007 Act, such order was in the context of the tenement being the only( Completely ) property of the parent/senior citizen which was not applicable in the present case.

**Namdeo v. Geeta<sup>xxiv</sup>**

Bombay High Court held that the eviction order was absolutely necessary in order to ensure the physical and emotional health and safety of the parents.

**Supreme Court issued many direction to Centre in Dr Ashwini Kumar v. Union of India<sup>xxv</sup>**, - to make the provisions of the Act more effective, more beneficial as per aim of the constitutional provisions.

*The Union of India will obtain necessary information from all the State Governments and the Union Territories:*

1. About the number of old age homes in each district of the country and file a Status Report in this regard<sup>xxvi</sup>.
2. The medical facilities and geriatric care facilities that are available to senior citizens in each district and file a Status Report in this regard.
3. On the basis of the information gathered by the Union of India as detailed in the Status Reports, a plan of action should be prepared for giving publicity to the provisions of the Married Women's Property Act and making senior citizens aware of the provisions of the said Act including the constitutional and statutory rights of elderly people.

In particular, the Government of India and the State Governments must revisit the grant of pension to the elderly so that it is more realistic.

**Schemes on programmes being run by various ministries /department of Government of India for the welfare of senior citizens**

**(1) Atal Vayo Abhyudaya Yojna (AVYAY)**

The scheme by the department of Social justice and empowerment focuses on the top four needs of the senior citizens that is financial security, food, health and a life of dignity.

**(2) Promoting Silver Economy**

New scheme launched to encourage the entrepreneurs to deal with the problems of the elderly and come out with solutions. The government aims to achieve the objective by providing up to rupees 1,00,00,000 as financial assistance through equity participation and an open invitation on the portal namely Seniorcare Ageing Growth Engine (SAGE)

**(3) Channelizing CSR funds for elderly care**

Under schedule eight of section 135 of Companies Act, setting up old age homes, day care centres and such facilities for senior citizens in an approved item for CSR funding

**(4) Rashtriya Vayoshri Yojna. (RVY)**

This aims to provide aid and assisted living devices that is walking sticks, elbow crutches, walkers hearing aids wheelchairs artificial dentures etc, free of cost to senior citizens belonging to the BPL category who suffered age-age related disabilities. The scheme has been revised on criteria for selection has been extended

- (a) to include not only those senior citizens belonging to BPL category but also those citizens whose monthly income is not more than 15,000 per annum
- (b) Generic items -Walking sticks elbow crutches, walkers, tripods, hearing aids, artificial dentures and spectacles
- (c) Special items – Wheelchairs, wheelchairs with commode, silicon foam cushion, knee brace, spinal support, cervical collar walker, walking stick with seat
- (d) Foot care kit -Flexi gel socks socks cushion sandal, silicone insole with pressure point relief

**(5) Indira Gandhi national old age pension scheme (IGNOAPS)**

This scheme is being formulated by ministry of rural development which provides a monthly pension of rupees 200/- to elderly age 60 to 70 years belonging to the bpl category. The pension increases to rupees 500 per month attaining the age of 80 years.

**(6) Primary and secondary geriatric care services**

The programme commenced with hundred district in the 12<sup>th</sup> plan. For 114 districts were additionally sanctioned to provide dedicated geriatric OPD, IPD, physiotherapy and lab services. Primary and secondary geriatric care services

was formulated by Ministry of Health and family welfare is known as National programme for health care of elderly in the year 2010 - 11 which is state-oriented programme

with the basic objective to provide complete responsible and allocated healthcare facilities to the aged person above 60 years of age.

#### **(7) Atal pension yojana (APY)**

Atal pension yojana formulated by ministry of finance, aims at creating universal social security systems for Indians. There are five pension plans available under the scheme guaranteed by the government of India to the subscriber at the age of 60 years. On the death of a subscriber the same pension to the spouse is guaranteed.

#### **(8) Vayoshreshtha Sammans**

Scheme of National Award for senior citizens. This scheme appreciates the recognised and eminent senior citizens for rendering distinguished services, for the cause of elderly persons. This scheme can be utilized through Ministry of social justice and empowerment.

#### **(9) National policy for older person year 1999**

Goal of National policy is well being of older person. The policy provides with financial aid, health care, shelter, protection against abuse and exploitation and develop opportunities for the recognition of the potential of older person and seek their participation. The policy emphasises the need for expansion of social and community service for older person particularly women.

#### **(10) Senior citizens saving scheme (SCSS)**

This scheme is for the citizens above 60 years of age. The deposit matures in five years and can be extended for more time period. The interest is compounded and credited quarterly. The deposit starts from Rs One thousand and goes till the maximum range of Rs 15 lakh.

#### **(11) Pradhan Mantri Vaya Vandana Yojana (PMVVY)**

Beneficiary is assured for 8 percent return per annum. The pension or return payable for the period of 10 years and theirs a choice for payment tenure. This scheme is formulated and executed by life insurance cooperation of India. It does not possess any tax benefits.

#### **(12) Varishta Pension Bima. Yojna**

This scheme is being formulated by LIC. Unlike to others that does not undergo any medical checkup to avail the benefits. The

scheme has lock in period for 15 years. Beneficiary gets tax exemptions under the scheme. One can withdraw from the scheme within the period of 15 days if not satisfied

#### **(13) Varishta Medclaim Policy**

The health insurance policy can be renewed till the age of 90 years with the tenure of 1 year. This policy covers medicine, ambulance, blood and various other diagnostic services. Provides income tax benefits under section 80D. This policy deals with the age group of 60 to 80 years of age

#### **Senior citizens welfare fund**

This fund is being utilised for the promotion of financial security of senior citizens healthcare and nutrition welfare. Another scheme relating to old age homes short stay homes and day care all senior citizens as a drug this scheme is formulated by and is under the control of ministry of social justice and empowerment. The fund comprises of unclaimed amount transferred by every institution holding such funds in the scheme including small savings and other schemes of the central government such as post office savings accounts post of his recurring deposit account etc.

#### **(14) Annapurna scheme**

The department of food and public distribution allocates food grains as per the requirement projected by the ministry of rural development under the UN bonus scheme wherein indigent senior citizens with no assured means of maintenance or societal support

#### **(15) Antyodaya Anna Yojana (AAY)**

This scheme is being implemented by the department of food and public distribution under which rice and wheat at a highly subsidised cost is extended to households headed by widows, disabled persons, senior citizens with no fixed means of maintenance or community support.

#### **(16) Service tax**

The Ministry of Finance relates to the advancement of educational programmes or skill development relating to the person over the age of 65 years residing in their rural area by the entity registered under Section 12A of

the Income Tax Act 1961 and are exempted from the service tax with respect of senior citizen having saving account in bank and post office higher interest rate is given to the senior citizens.

**(17) Home for Widows**

Home for Widows are being built at Sunrakh Bangar Vrindavan district Mathura Uttar Pradesh with a capacity of nearly thousand widows to provide safe and secure place to the home is fully funded by central government and the design Of the home is age friendly and with all the facilities

**(18) Concession in telephone Connection Bharat Sanchar Nigam Limited( bsnl)**

The senior citizens above the age of 65 years are exempted from the payment of registration charges for landline telephone Connections further MTNL under ministry of communication provides 25% concession and installation charges a monthly services.

However, most of these schemes have not yet been implemented by some states of India; many state-level governments have failed due to lack of resources and competing priorities. Moreover, such as Himachal Pradesh, Punjab, West Bengal, Odisha, and Tamil Nadu implemented in their programmes , the utilization and emancipation rate remains very low due to lack of public awareness<sup>xxvii</sup>.

**Conclusion**

Apart from all routine and typical life problems aged people lose their independent living performance in old age, they are more vulnerable to experience a low life in socio-economic status with retirement.

Elder abuse and mental health is important and complex as well and this need to be observed carefully. Systematic approach to prevent these should be planned by the government with proper implementation. Whether pandemic or normal period, evidence reflects that victims of elder abuse has high prevalence rate of depression, anxiety which paves path to social isolation. Social distancing during Covid have also increased the risk of suicide, stress and the emotional dis-balance in their daily life.

Elder abuse is very common phenomenon in absence of joint family system. Victims may suffer number of complaints, including, chronic

pain, organ related disease, arthritis, eye problem, neurological complaints, and gynaecological problems. Early deaths are common where elder's abuse victims who have other exhausting, mental health problems are not able to protect themselves. The present pandemic challenges has made it emphatically obvious that issues related to health and health infrastructure about elder population should be improved without any delay. And also Geriatric health law reform is necessary for the present needs of the society especially during pandemic.

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