



Role of Indian Constitution in Safeguarding the Rights of Elderly Persons: A Synoptic View

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“Listen to your elder’s advice. Not because they are always right but because they have more experiences of being wrong.”

- Melchor Lim

Abstract

Age is a necessary stage of life that a man cannot escape unless he passes away prematurely. When a person is a child or aged, they naturally depend on their parents and the other way around. The idea of the nuclear family disrupted this regular cycle, defying a thousand-year-old Indian tradition in which parents are revered as a devout manifestation of God. This resulted in an unbalanced way of life for elderly people. When parents nowadays lose the ability to work and earn, they become a burden to their children. We have in India a Written Constitution, assigning legislative powers on issues relating to the union and the states as described in Article 246 of the Constitution at present there are no clear-cut Constitutional provisions to tackle the problem of aging directly, which not only includes the question of amelioration and promotion but also of keeping comprehensively as watch over the current and emerging aging issues and situation. Even elder jurisprudence is problem oriented without explaining the practical approach toward the target audience. This article represents the clause in the Indian Constitution that safeguards the dignity of senior citizens there.

Keywords: Constitution, Fundamental Rights, Dignity, Shelter, Health, Principles of Direction.

Introduction

Every person goes through a natural process of growing older and maturing. As we mature, we go through a variety of good and bad experiences that alter how we view the world. Elderly people in India have always been shown respect by the younger generation by having their feet touched. Our family has always valued senior citizens as a precious resource. They are often a type of blessing for us all. They are the family's, society's, and country's greatest treasure. They

are a wealth of information, wisdom, and experience that the next generation can use as a reference. But in modern times, people have begun to see the elderly as a burden. They mistakenly think that older people can no longer learn new things, which is far from the case. But as the old population has grown in the modern culture of the twenty-first century, so too have the instances of elder abuse, harassment, and abandonment in India. Nowadays, more kids are sending their parents to nursing homes or leaving them alone. The majority of individuals are incapable of comprehending the value of elderly persons in society. They are responsible for preserving the customs and cultural norms that exist within every ethnic group or society.

The Indian Constitution under the chapter of fundamental rights has conferred some rights which are fundamental for leading dignified life as a fundamental right. It has a provision of writs to enforce these rights through court. It has conferred the power of judicial review to constitutional courts to declare any law passed by legislature unconstitutional to the extent it is in contravention of rights. Some of the Directive principles has now become fundamental right through judicial pronouncements or legislative act.

Parts III and IV of the Indian Constitution's many Articles have an impact on social security policies and the promotion of the welfare of all its residents, either directly or indirectly. To provide social, political, and economic fairness for all citizens is stated in the Preamble of the Constitution. In addition to that, the Constitution guarantees freedom of speech, religion, and belief, equality of opportunity and status, and the development of brotherhood among people to protect both the respect for one another, as well as the integrity and togetherness of the nation. Although everyone has the right to fundamental freedoms, protecting and upholding such rights is especially important for elderly people, owing to the peculiar situation of old age persons. Fundamental rights which hold great significance for old age persons are as under:

Right to a Dignified Life

The "Right to life and liberty" is guaranteed to everyone under The Indian Constitution's Article 21 and additionally adds that no one's right may be taken away from him or her without following a legal process. On many occasions, the right to life and liberty has gained fresh significance and depth thanks to the Honourable Supreme Court of India. It was upheld that it postulates all rights necessary for living a life with human dignity and that it is not just confined to the basic needs of human beings.

Article 21: “No person shall be deprived of his life or personal liberty except according to procedure established by law”.

The assertion made by J. Bhagwati that Article 21, “embodies a constitutional value of supreme importance in a democratic society.” This protects two rights:

- a) The privilege of life.
- b) Right to personal freedom. The Constitution's "heart" is said to be Article 21 because it is the foundation of other laws.

Iyer, J. has stated it as “the procedural **Magna Carta** protective of life and liberty.” Additionally, this can only be asserted if a person is denied in this situation as described in

Article 12. The Fifth Amendment to the U.S. Constitution's Article 21 pertains to the Magna Carta of 1215. The Indian Constitution's Article 21 defines "life" as more than just breathing. It does not imply continual toil or a life of simple animal existence. It covers a far wider variety of rights, like the right to a living, the right to health, the right to clean air, etc. The right to life encompasses all those aspects of life that help give a person's life purpose, fulfillment, and value. This right is crucial to our basic existence and is necessary for us to survive as humans.¹ The Constitution's sole article that has been interpreted as broadly as possible is this one. A variety of rights are safeguarded, encouraged to develop, and fed by Article 21 of the Indian Constitution. The fundamental idea of the right to life is therefore the minimum criteria that are necessary for an individual and cannot be avoided.²

The Supreme Court issued a ruling as a result of the case “The right to live includes the right to live with human dignity and all that goes along with it, viz., the bare necessities of life such as adequate nutrition, clothing, and shelter over the head and facilities for reading writing, and expressing oneself in diverse forms, freely moving about and mixing and mingling with fellow human beings and must include the right to necessities, the necessities of life and also the right to carry on functions and activities as constituting the bare minimum expression of the human self.” As is the case³ According to the Supreme Court “It is the fundamental right of everyone in this country... to live with human dignity free from exploitation. In **K.S Puttaswamy v. Union of India**⁴ Supreme Court of India after having quoted several decisions of Apex Court⁵ This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women and of the tender age of children against abuse, opportunities, and facilities for children to develop in an and human conditions of work and maternity relief. These are the minimum requirements that must exist to enable a person to live with human dignity and no State neither the Central Government nor any State Government has the right to take any action which will deprive a person of the enjoyment of these essentials.”

Right to Shelter

A person of old age is often subjected to humiliation and desertion by family. Such a person cannot be left unattended. Such a person must be given shelter by the State. All citizens are guaranteed the fundamental freedom to dwell and settle wherever in India under Article 19(1)(e). Hon’ble Apex Court in so many cases interpreted and gave new meaning and dimension to this right to include the right to shelter in it.

In the dispute between Narayan Khimalal Totame and Shantistar Builders,⁶ The Supreme Court has ruled that the right to food, clothes, and shelter is a guarantee of any civilized society. Its sweeping would deny the right to a respectable environment and a reasonable place to dwell.

Supreme Court's ruling in Chameli Singh v. State of Uttar Pradesh enlarged the definition of "sufficient living space" to encompass this, however, this goes beyond simply having a right to a roof over one's head, it also means a right to all the infrastructure required to support one's ability to live and grow as a human being court determined.

The right to life as a human being is not guaranteed in any organized community by merely providing for his animal needs. Thus, having enough space to live in, a safe and good building, clean and decent surroundings, enough light, pure air and water, electricity, sanitary facilities, and other public services like roads, etc. to be able to readily access his daily needs are all part of the right to shelter. As a result, the right to shelter includes not just the need for a roof over one's head but also the need for all the amenities needed for both bare minimum survival and healthy human development. When viewed as a fundamental requirement for the right to live, the right to shelter falls under this category. It should be assumed that the State has to provide it for its citizens following the Directive Principles, subject to its economic budgeting of course.

Article 19(1) (e) declares that the freedom to reside and establish oneself in any part of India is a basic right. Undoubtedly, the right to shelter is a fundamental one, but millions of Indians who lack shelter are nonetheless accorded this right. A segment of the public particularly, it cannot be stated that retired government workers who had accrued pensions and received retirement benefits are in a situation where the government should offer housing for an indefinite amount of time.

Right to Health

With the age, issues related to health emerge with prominence and become the focal point of a life of an old age person. They require more attention and more medical care in comparison to younger people. The Supreme Court of India has frequently acknowledged that Article 21 of the Indian Constitution, which guarantees the rights to life and liberty, also extends to the right to health.

Senior citizens have access to their constitutional right to health care under Section 20 of the Act of 2007 Concerning the Maintenance and Welfare of Parents and Senior Citizens. The State Government is required to provide elderly citizens with medical care at Government hospitals or facilities that are fully or partially funded by the Government. The state is required to make sure:

- i. Senior persons have their lines, according to item.
- ii. Senior residents now have access to a bigger institution for the treatment of chronic, life-threatening, and degenerative diseases.
- iii. The expansion of studies into aging and chronic illnesses in the elderly.
- iv. Every district hospital that is entirely under the supervision of a medical officer with knowledge of geriatric care has spaces set aside for geriatric patients.

Directive Principles of State Policy

The Directive Principles must be exempt from legal enforcement, according to Article 37 of the Constitution. However, Directive Principles impose a positive obligation, or what the state should do, on it. There are now recognized Directive Principles as the cornerstone of national governance, and the state is now obligated to use them when enacting laws although Directive Principles do not grant any individuals any reasonable rights, the courts are unable to enforce them.⁷ The following are a few of the Constitution's sections under the heading of "Directive Principles" that deal with social security for the elderly:

Article 38: the establishment of social justice to advance peoples' welfare

According to this article, to maintain a social structure that will advance peoples' welfare: The State should make plans to advance the well-being of the populace, according to this essay. Additionally, To do this, it must sustain a social order that includes justice and is transmitted to all of the national institutions.⁸ As stated in the article, the State should make an effort to remove any discrepancies in status, money, amenities, and opportunities between individuals as well as between groups of people who live in various parts of the nation and hold various occupations.⁹

Article 39: specific rules and regulations that the government follows:

It states that the State must adhere to specific policy principles, including the following:

1. Every citizen of the nation, whether a man or a woman, is entitled to a sufficient means of subsistence.¹⁰
2. It is necessary to divide up ownership and management of the community's tangible assets in a way that optimizes everyone's benefit.¹¹
3. The way the economy operates shouldn't lead to a concentration of wealth and production resources that harms everyone else.¹²
4. Both men and women should receive equal compensation for doing equally as much labor.¹³
5. No citizen should be forced, out of financial necessity, to perform any activity that is not appropriate for their age or strength. Children's and workers' health and strength shouldn't be taken advantage of.¹⁴
6. Childhood and adolescence must be safeguarded from all forms of exploitation and provided with the resources and opportunities necessary for healthy growth.¹⁵

Article 41: the right to employment, education, and, in some situations, state support

This article discusses the rights to work, education, and public aid under certain circumstances as they are outlined in the Indian Constitution, which also requires that provisions be made for the needs of the elderly. Following this article, the State must put in place strong safeguards to ensure the right to employment, education, and public assistance in cases where it is necessary, such as when a person is unemployed, elderly, ill, or disabled. This is provided that the State remains within its limits and capacity.¹⁶

Article 42: the right to employment, education, and, in some situations, state support.

According to this text, the government must establish arrangements for maternity leave and fair and decent working conditions.¹⁷

Article 46: advancing the economic and educational interests of scheduled castes and scheduled tribes

According to this article, the state is required to safeguard Scheduled Tribes and Scheduled Castes are also the weaker segments of society, from all forms of social injustice and

exploitation. It further adds that the state must support the educational and economic interests of these groups.¹⁸

Article 47: It is the responsibility of the state to improve nutrition and living conditions

According to this article, one of the State's top priorities should be improving the nutritional status and lifestyle of its citizens. Additionally, the State must work to make it illegal to use hazardous substances and alcoholic beverages unless they are being used for medical reasons.¹⁹

Critical Analysis of Legal Approach to Protect the Elderly

Population

We all understand that, in today's world, the government is finding it difficult to address the concerns and problems caused by the aging population, not just in India. Elderly persons must have a convergence of policies, laws, and programs to address their difficulties and problems in light of their existing status. To secure their ability to live in peace and harmony, the government would be under increased pressure when the joint family system is replaced by the nuclear family system. The Indian Constitution does not officially and specifically grant rights to elderly persons living in our nation, but all Indian residents are generally entitled to all of the essential rights. Now it is important to add a direct provision in chapter III of the constitution which protects the life and dignity of elders in India.

Conclusion

The protections afforded to senior citizens by their legal rights are general in scope. These rights only offer protection since they are fundamental human rights that all people have as of the moment of their birth. Consequently, the efficiency of the Maintenance Tribunal formed under the aforementioned Act was investigated to critically assess the performance of the only piece of legislation purporting to defend elderly citizens' rights. Although there are numerous laws and government regulations in place to protect the rights of senior individuals and elderly parents, little has been accomplished to date. Since our Indian society, as we all know, is a melting pot of culture and emotion, it can be quite difficult for parents to drag their kids to a court or a tribunal, and in most situations, they end up forgiving and giving up their rights. As a result, the subsequent generation is spared from learning the right lesson. This leads one to the logical conclusion that senior folks may indirectly employ all of those rights as safety nets. A judicial review is available for any violation of those rights. Senior citizens can forcefully assert their rights by relying on a few basic freedoms and several overarching laws.

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⁶AIR 1990 SC 630.

⁷R.P. Kataria, *The Maintenance and Welfare of Parents And Senior Citizens Act*, 2007, Orient Publishing Company, New Delhi 2012, p.9.

⁸Article 38 (1) of the Constitution of India, “The State shall strive to promote the welfare of the people of securing and protecting as effectively as it may a social order in which justice, social, economic and political shall inform all the institutions of the national life.”

⁹Article 38(2) of the Constitution of India says, “The State shall, in particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individual but also amongst groups of people residing in different areas or engaged in different vocations.”

¹⁰Article 39(a), “that the citizen, men and women equally, have the right to an adequate means of livelihood.”

¹¹Article 39(b), “that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good.”

¹²Article 39(c), “that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment”

¹³Article 39(d), “that there is equal pay for equal work for both men and women”.

¹⁴Article 39(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.”

¹⁵Article 42 says: “The State Shall make provision for securing just and humane conditions of work and for maternity relief.”

¹⁶Article 41 says: “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”.

¹⁷Article 42 says: “The State Shall make provision for securing just and humane conditions of work and for maternity relief.”

¹⁸Article 46 says: “The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation”.

¹⁹Article 47 says: “The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the state shall endeavor to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.”