



A critical analysis of the national legal framework governing senior citizens' rights

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Abstract

Population ageing has emerged as a significant demographic phenomenon across the world, including India. According to national and international demographic projections, the proportion of elderly persons in India is steadily increasing due to improvements in healthcare, declining fertility rates, and increased life expectancy. There are various socio-economic and legal issues associated with social security, healthcare, financial security and safeguarding the dignity of elderly people due to this demographic transition. In dealing with these challenges, the Indian legal system has formulated a national legal framework that seeks to safeguard and advance the welfare and rights of the seniors. It is however a question of debate whether these legal mechanisms are effective. This research paper is a critical analysis of the legal system in India on the rights and welfare of the elderly citizens. The paper analyzes the provisions of the constitution, statutory provisions, policies, and judicial interpretations that compose the legal defense to the elderly people. A special focus is given to Maintenance and Welfare of Parents and Senior Citizens Act, 2007, the primary legislation addressing the topic of maintenance, welfare and protection of the citizens in their old age. The paper also discusses how the Constitution of India, especially the Directive Principles of State Policy like Article 41, that instructs the State to assist the poor through offering them public assistance through its economic means, in the event of old age. Though there is no clear classification of senior citizens as a vulnerable group in the same manner as women and children that is contained in the constitution, the social justice, equality, and dignity principles, enshrined in the constitution, apply protection to the aged. In addition, the study compares the policies developed by the Government of India, including the National Policy on Older Persons (1999) and the National Policy on Senior Citizens (2011) that focus on guaranteeing social security, medical care, and the role of older individuals in society. Courts have also contributed greatly towards the interpretation and extension of the rights of the senior citizens. The Indian courts have accepted that the right to life with dignity in the Article 21 of the Constitution applies to the elderly and also entails their right to access appropriate basic needs like shelter, health and financial stability. In spite of these legal and policy efforts, there are still a number of structural and implementation issues. These are failure to create awareness among the old individuals on possible legal solutions, lack of social security provisions, poor pension plans, and lack of procedural provisions in the current laws. Besides, the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, despite its progressive nature, has some procedural and substantive exceptions that can limit its success. The aim of the research paper is to analyze the advantages and disadvantages of the existing legal framework of senior citizens rights in India and the way to implement changes to make it more effective. Through the critical analysis of constitutional clauses, statutory legislation, policy statements and judicial commentaries, the paper has demonstrated the necessity of a more detailed and rights-based strategy to care of the elderly.

Keywords: senior citizens, elderly rights, social justice, maintenance and welfare of parents and senior citizens act 2007, constitutional protection, social security, ageing population, elder law, India

Introduction

Population ageing is one of the most significant demographic developments of the twenty-first century. Medical research, social and economic development has led to an increase in the life expectancy in the world. Although this demographic transition is an indicator of human development, it is also a complicated social, economic, and legal phenomenon. Problems that elderly people are usually faced with include financial insecurity, poor health, social isolation, elder abuse as well as the absence of institutional support. This has made the protection and welfare of the elderly citizens a significant policy and legal concern among governments in various countries around the world [1].

The population of India has been growing significantly in the last few decades of age. The government estimates that the ratio of the aged population in India has grown significantly to over 8 percent in 2011, as compared to 5.6 percent in 1961 and is still on the rising trend. This demographic change has led to the necessity of having a strong legal framework that can sufficiently resolve the socio-economic susceptibility of elderly individuals [2].

The Indian society had traditionally used the joint family system to offer social and economic security to the elderly. Elderly people were revered as an upholder of the family customs and authority. The traditional family support system has been eroded, however, by rapid urbanization, industrialization, migration and socio-cultural changes. This

growing popularity of nuclear families has left a major dent in the social and economic assistance of the elderly citizens. This means that most seniors are now neglected, abandoned, or have to be sustained by other people^[3].

In the contemporary times, the Indian legal system has identified these emerging issues; hence, a series of constitutional, legislative and policy responses have been established to address the interests of the elderly in India. Social justice and welfare in the country are anchored on the Constitution of India that is the supreme law of the land. The Preamble highlights the need to achieve social, economic and political justice to every citizen. Such ideals of the constitution find their expression in many provisions of Fundamental Rights and Directive Principles of State Policy as well. Though, there are no specific clauses in the Constitution which are directly devoted to the senior citizens, a number of constitutional principles indirectly protect their rights. Fundamental Rights ensure equality before the law, safeguarding of life and liberty and access to justice without discrimination on age basis. Specifically, Article 21 of the Constitution rights to life and personal liberty that the Supreme Court has construed to mean the right to live with dignity and to have access to basic necessities. Courts have placed emphasis on the dignified life which consists of proper nutrition, shelter, medical care, and social involvement. Attached to the constitutional commitment to social welfare is Directive Principles of State Policy. Article 41 instructs the State to offer economic assistance to the population, which is related to unemployment, illness, incapacity and old age, when it is economically feasible. This is a provision of the constitution that the elderly people need special help because they are vulnerable and facing fewer economic opportunities. Although these Directive Principles cannot be implemented legally, they can be utilized as a guideline to legislative and policy actions that would encourage social justice. Along with the constitution, various statutory laws are being used to deter the safety of elderly people. Of the listed ones, the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 is the most important piece of legislation that had been formulated specifically in order to cater to the needs of elderly people. The Act works to have children and relatives participating in maintenance of the elderly parents and tribunals are set up to help dispute on a maintenance case to be resolved faster. The protection against negligence or abandonment as well as property rights is discussed in the Act. It allows elderly Americans to recover assets that have been passed on to offspring or family members in case of default of such transferee to maintain or sustain the basic facilities. Moreover, the act authorizes the state governments to open old-age homes and welfare initiatives to the senior citizens. In addition to legislations, the Government of India has tabled various policy programs to ensure that the interests of the aged persons are enhanced. The initial and the first in-depth policy framework was the National Policy on Older Persons (1999) to provide financial stability, health care facilities and social integration to elderly citizens. Subsequently the National Policy on Senior Citizens (2011) was launched to revise and broaden the coverage of the elder welfare programs to meet the emerging demographic trends^[4].

Although such efforts have been made, the legal and policy action has not been accurately applied in various parts of India. According to the legal rights, many old people do not know their rights or simply do not have access to the law. They are usually not able to find legal protection due to social stigma, financial dependency and family pressures. Also, institutional and administrative constraints might create a barrier to the successful implementation of welfare schemes^[5].

The judiciary has been instrumental in filling such gaps by interpreting provisions in the constitution to the benefit of the senior citizens. Courts have realized the need to uphold the dignity and welfare of the elderly persons and have made guidelines to enhance application of welfare schemes. An example is that the Supreme Court has highlighted the role the State has to make sure that there are proper pension plans, medical services, and accommodation to old age people. However, the current legal system has a number of challenges. There are some procedural constraints with The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, which might not be effective to meet intricate problems connected with property disagreements and bequest. Moreover, the amount of social security given to the aged individuals is comparatively low when compared to the developed nations. In this regard, there is need to critically analyze the national legal framework that governs the rights of the elderly citizens in order to analyze its effectiveness and areas where it can be improved. This research paper is an attempt to evaluate the clauses of the constitution, the legislative acts, the policy programs and judicial interpretations that will together form the legal protection accorded to elderly individuals in India. The research aims to make contributions to the current discussion of the existing field of knowledge on elder law and social justice by assessing the weaknesses and strengths of the current framework of the subject.

Literature review

The academic interest in ageing and elderly rights has increased dramatically over the past decades in response to the growing global interest in demographic ageing. Some of the scholars studied the socio-economic, legal, and policy aspects of ageing in India and other nations.

A.B. Bose (2006) discussed the social security of old age individuals in India and had suggested that the traditional family-based support system is slowly fading. Bose noted that there should be institutional and legal structures that guarantee monetary stability among the elder citizens^[6].

The article by A.B. Dey (2010) discussed the healthcare problems experienced by older individuals in India and the shortage of geriatric healthcare facilities. The article has highlighted that the increasing elderly population needs to have specialized healthcare infrastructure and policies^[7].

Chris Phillipson (2013) addressed the sociological view of ageing and claimed that ageing needs to be perceived not just in terms of a biological process, but also in the form of a social event that is affected by economic and institutional aspects^[8].

G. Girdhar *et al.* (2014) investigated the trend of population ageing in India and reported that demographic ageing is taking

place at a very rapid rate because of reduced fertility rates as well as prolonged life expectancy. The authors highlighted that legal and policy frameworks needed to develop according to the changing needs of older persons [9].

Kuruvill (2015) has critically examined the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and maintained that despite the Act offering a relatively easy and quick means of bringing claims over maintenance, the application of the Act has not been uniform across the states [10].

Issac (2021) examined the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and posited that the Act is a major legislative effort to provide maintenance and safety of the aged persons against neglect and abuse. Nevertheless, the research also noted that the success of the Act is mainly reliant on the knowledge of the elderly citizens and the appropriate operation of maintenance tribunals [11].

Thomas (2023) reviewed the bigger legal context of ageing in India and suggested that rights of the elderly have been approached through the prism of charity and not rights. The paper noted that the Indian family law and welfare legislation are still dependent on familial responsibility, and the social security systems in the State are still minimal. It suggested that there should be more rights-oriented model whereby the State and family members have a responsibility to provide dignity and well-being to the elderly [12].

Studies that deal with comparative legal approaches to ageing have also become the focus within recent years. A comparative study of the elderly care legislation in India, Japan, and the United States (Ahmad and Chaudhary 2023) indicates that the former is predominantly based on the family-based model of maintenance, the advanced countries focus on the institutional care and social security frameworks. The research the research had recommended that India needs to slowly enhance institutional support systems including old-age homes, health facilities, and pension plans [13].

Research that is policy oriented has also shown that there are major challenges of implementing the elderly welfare programs. A policy report regarding the senior care reforms as pointed out that the level of awareness of the elderly persons in terms of legal rights and welfare schemes is very low with very little percentage of seniors citizens being aware of what the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. [14]

Scholarly interest has also been given to judicial responses. Some studies observe that Indian courts have come to realise the rights of elderly persons in an ever-progressive manner by interpreting the constitutional provisions. Dignity and social justice have been principles that have been applied by the judiciary to secure the interest of senior citizens.

Nevertheless, gaps in the current legal framework have been pointed out by the scholars despite the increasing body of literature. Most research highlights that policies and laws are usually maintenance oriented as opposed to holistic welfare and social inclusion of the old persons.

Aims of the study

The main objectives of this study are:

- To examine the provisions of the Constitution that apply in relation to senior citizens protection in India.
- To analyze the legal context of the legal and welfare of senior citizens, especially that of Maintenance and Welfare of Parents and Senior Citizens Act, 2007.
- To determine the success of the national policies concerning senior citizens.
- To determine the need of judicial interpretation to broaden the rights of the aged individuals.
- To determine the gaps and difficulties of the current legal system.

Methodology

The research approach used in the study is the doctrinal research methodology; the methodology entails the analytical study of legal texts, statutes, judicial rulings, and policy documents. The research mainly uses secondary sources, such as scholarly books, journals, and governmental reports and legislation. The discussion will cover the will of the Constitution including articles 14, 21, and 41, as well as the acts of the parliament, and the court ruling that exemplifies the interpretation of the same. Deliberate policy reports and documents have also been reviewed to develop the larger socio-legal background to the welfare of the elderly. The study also includes comparative lessons of the international systems to reflect on whether the Indian legal system is sufficient to safeguard the elderly citizens.

Discussion

The Indian legal system that regulates the rights of the senior citizens is composed of the constitutional provisions, statutory acts, policy programs, and legal interpretations. Although all these mechanisms are geared towards safeguarding the interests of the elderly persons, they are effective only when well implemented and coordinated. Social justice and welfare in India have the normative base in the Constitution of India. The parallel of equality, dignity and social security, which are included in the Constitution, is indirect protection of the rights of elderly citizens. Under Article 21, the Supreme Court has also understood the right to life to have the right to life with dignity and basic needs like food, shelter and healthcare. The directive Principles of State Policy also provide the additional force of the obligation of the State to the vulnerable groups. Article 41 is categorical in the way it instructs the State to offer help in any cases of old age within its financial ability. These principles are not infrangible in a court of law but they are key guiding principles in legislative and policy actions. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 is the greatest statutory safeguard of the elderly. The Act provides tribunals through which senior citizens are able to make claims of maintenance with their children or relatives. It also seeks to offer a fast and affordable solution to the normal civil or criminal process.

There are however, a number of weaknesses in the Act. As an instance, the maximum amount of maintenance recommended

under the Act might be less than the real demand of old age persons. Also, the legal issues that arise as a result of the transfer of property and passing on of inheritance are more likely to bring intricate legal problems that cannot be readily solved by conducting tribunal hearings.

The judicial role has been very instrumental in overcoming these drawbacks. In *Dr. Ashwani Kumar v. The Supreme Court, Union of India*, highlighted that welfare programs should be effectively put in place to take care of senior citizens and ordered the government to enhance the facilities provided to them in the form of old-age homes and healthcare.

Maintenance and property rights related to the senior citizens have also been dealt with by the High Courts. As an example, in *Justice Shanti Sarup Dewan V. The Punjab and Haryana High Court at UT Chandigarh* choose to safeguard the elderly against the harassment or eviction by family members.

Although these legal developments were made, there are still a number of challenges. Poor awareness, bureaucracy and poor social security programs still hamper the performance of the legal system.

Conclusion

The protection and welfare of senior citizens have become increasingly important in the context of demographic ageing and changing socio-economic conditions. In India, the national legal framework governing senior citizens' rights consists of constitutional provisions, statutory enactments, policy initiatives, and judicial interpretations. All these mechanisms are meant to make sure that the elderly persons are able to live dignified lives, secure, and independent lives. The commitment to social justice, equality, and human dignity is the normative basis of the elder welfare in the Constitution of India. The principles incorporated in the Fundamental Rights and Directive Principles of State Policy apply to elderly individuals, even though the Constitution does not explicitly deal with the senior citizens as a distinct vulnerable group. These protections have been reinforced through judicial interpretation which has identified that the right to life encompasses the right to life with dignity and the right to have access to basic necessities.

Maintenance and Welfare of Parents and Senior Citizens Act, 2007 is one of the milestones in the legislative process of dealing with the crisis of senior citizens. The Act aims at securing the finances and safeguarding the elderly citizens by instituting maintenance tribunals and offering means of reclaiming property that was handed over under duressful circumstances. Nevertheless, the success of the legal system largely relies on enforcement. There are also a few challenges such as ignorance amongst elderly citizens, poor pension systems, poor healthcare and systems, and process constraints under the current laws. Furthermore, the existing legal system is mostly concerned with maintenance, and not a comprehensive approach with regard to the welfare of the elderly.

Thus, it is necessary to implement extensive changes that would support social security systems, better healthcare services, and raise the social awareness of legal rights in older

adults. The policies makers should also see that there is improved coordination among the legal institutions, the welfare agencies as well as the civil society organizations. Finally, the fact that the rights of senior citizens are not only a legal but also a social responsibility question. The responsibility of the elderly in the society and their protection ensures that there is adherence to human dignity, social justice, and inclusive development.

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