



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.

Weightage of Geriatric Care in India

Sakshi Bohra^a

^aNMIMS, Mumbai, India

Received 28 June 2022; Accepted 21 July 2022; Published 23 July 2022

Intergenerational equality is a natural justice idea. Ageing is a normal, inevitable aspect of the human life cycle. It introduces a variety of difficulties into the lives of the aged, most of which are caused by changes in their body, mind, and mental process. The elderly are an invaluable source of human capital endowed with many types of knowledge, diverse experiences, and profound insights. Care for the Old age people is one of the most important responsibilities that society must uphold. The number of old individuals has increased over time. The senior population is predicted to reach 18 percent of India's overall population by 2025, as the country undergoes a demographic transformation. The ever-increasing older population causes social and economical difficulties and places an enormous load on the health system of the country. In 1999, the Indian government formulated the National Policy for Older Persons to enhance the health and well-being of elderly persons. The Maintenance and Welfare of Parents and Senior Citizens Act were prepared by the Ministry of Law and Justice and published on December 31, 2007, after getting presidential approval on December 29, 2007.

Keywords: *geriatric care, health policy, senior citizens act, maintenance.*

INTRODUCTION

India is experiencing a demographic shift characterised by a decline in fertility and a rise in life expectancy. This is accompanied by an increase in the working class, which decreases the dependence ratio. In the near future, we may confront a new problem posed by a significant

increase in the number of elderly, as a considerable portion of the population will be shifting from working age to old age, therefore increasing the dependence of old age on the state.

The authors of our constitution were known for the situation of our nation's old age citizens. They were aware that it is rather tough to make ends meet in one's sixties. They would confront issues such as housing, taxation, healthcare facilities, psychiatric assistance for the elderly, and social support. Therefore, they provided some provisions for our nation's legislators to enact laws for them. In addition to the Elder legislation and the Maintenance and Welfare of Parents and Senior Citizens Act, which are among the most fundamental laws, there are additional provisions under the Indian constitution that protect the rights and interests of the elderly in our society.

REASONS LEADING TO GERIATRIC PROBLEMS IN INDIA

The senior population in India is varied, with variances in morbidity across many factors such as gender, region, and socio-economic position, as well as a vast cultural and religious variety. At least 65 percent of India's elderly live in rural regions and are economically reliant and uneducated. The period of life in which one needs both mental and social assistance from others, both of which are interrelated, is old age. Some of the problems that they generally face are,

- a) The ageing process is associated with declining health. To address the problem of declining health, it is essential that the elderly have ready access to high-quality, age-appropriate health care. The absence of access to high-quality treatment exacerbates the deterioration of ageing individuals' health. A considerable proportion of the nation's elderly population needs age-appropriate medical treatment. In addition, due to insufficient accessibility, lack of knowledge and comprehension, and/or expensive sickness management expenses make decent elder care unaffordable for a large number of older persons, particularly the poor and disadvantaged.
- b) Financial insecurity: The issue of economic insecurity is something that the elderly face when they are unable to financially support themselves on their own. There are a

significant number of senior individuals who no longer have the opportunities or capabilities necessary to be as productive as they once were.

- c) Economic security is as important an element for the elderly as for anybody else. Those who are unable to generate an adequate income should be motivated, and if necessary, assisted, in their efforts to take part in activities that contribute to the nation's economic growth.
- d) Isolation is characterised by a profound sense of loneliness and is a common complaint among the elderly. Intentionally or unknowingly, isolation is most often forced on the elderly by their families and/or communities. Isolation is a negative feeling that, if left untreated, may result in a catastrophic loss of life quality.
- e) Abuse: The elderly are more susceptible to abuse, which happens when someone is purposefully or accidentally harmed, often by a family member or someone else who is close to the victim. Their assets, especially their financial assets, are also misappropriated. In addition, the elderly may be susceptible to emotional and mental abuse for a number of causes and in a variety of ways. The most prevalent forms of abuse are physical, sexual, psychological, and financial.

LEGAL PROVISIONS

There are provisions in the Constitution of India that guarantee the rights of those who are sixty years of age or older. The Indian Constitution, specifically Article 41¹, gives senior citizens the right to continue working, continue their education, and receive public assistance. In addition to this, it mandates that the state protect these rights for those who are disabled, elderly, or sick. Moreover, Article 46 states that “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”. Herein, Weaker Section also describes Aged People.

¹ Constitution of India, 1950, art.41

However, these provisions are incorporated in Chapter IV of the Indian Constitution, titled Directive Principles. According to Article 37², the Directive Principles are not enforceable in any courtroom. In contrast to this, Directive Principles provide obligatory requirements for the state, or what it is obligated to carry out. It has been determined by the national government that the Directive Principles are of the utmost importance, and the states have been given the responsibility to incorporate them into the process of writing new laws. However, the courts cannot enforce Directive Principle as it does not produce any legally enforceable rights for any individual. Unfortunately, the state has not created single legislation clearly related to the aged. There are various laws of different religions to safeguard the rights of the elderly. Some are:

I. Hindu Laws

Even in ancient Hindu writings, sons were obligated to provide for their elderly parents who were unable to support themselves via their own earnings and possessions. And this commitment was not in any way contingent on or conditioned by the holding of family property. It was a sovereign or state-enforceable personal legal duty. Section 20³ of the 1956 Hindu Adoption and Support Act contains the legislative provision for the maintenance of parents under Hindu personal law. This Statute is India's first personal law act, and it mandates that children provide financial assistance to their parents. The wording of this section makes it very obvious that the obligation to assist one's parents is not something that is exclusive to boys; rather, it is something that is shared by both sons and daughters. It is important to note that in order to qualify for maintenance payments under this Act, a parent must be unable to continue providing for themselves in any way.

II. Muslim Laws

Even under Islamic law, children are obligated to support their elderly parents. According to Mulla:

² Constitution of India, 1950, art.37

³ Hindu Adoption and Maintenance Act, 1956, s 20

- Children from wealthy families are often required to provide financial assistance to their parents who are living in poverty, despite the fact that their parents may be capable of providing for themselves.
- A son is bound to help his mother if she is poor, even if the mother does not have a health condition, or even if the son is in a bad financial position.
- A son who is himself poor but who manages to make some money must support his father, who has no source of income.

According to Hanafi law, parents and grandparents who are unable to fend for themselves are legally eligible to receive financial support from their children and grandchildren who are gainfully employed and financially independent. Both sons and daughters are responsible, under Islamic law, for providing financial assistance for their elderly parents. However, the commitment is conditional on their being capable of carrying it out.

III. Christian and Parsi Law

Christians and Parsis have no personal laws that provide for parental support. Parents who intend to seek child support must do so in accordance with the Criminal Procedure Code.

Prior to 1973, the legal code did not have any provisions that addressed the welfare of parents. However, the Law Commission was not even in favour of formulating any such provision. As per its report, Criminal Procedure Code is not the correct location for such a provision. In a process of this nature, it will be very challenging to divide the amount of child support given to the parents among the children. This case should be decided through civil courts.

1973 saw the first introduction of the provision in Section 125⁴ of the Code of Criminal Procedure. In addition, the parent must prove that the other party has adequate resources and has ignored or refused to support him, i.e., the parent who cannot support himself. It is crucial to highlight that the Criminal Procedure Code of 1973 is a secular law that applies to people of

⁴ Code of Criminal Procedure, 1973, s 125

all faiths and sects. Even daughters who are married, have an obligation to support their parents.⁵

THE MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS ACT,2007

The fundamental objective of the policy was to ensure the well-being and legitimacy of the ageing population. It envisions governments actively addressing the financial stability, health care, housing, welfare, and other needs of older people, such as abuse and exploitation protection. The policy was highlighted by the following:

- Focus on preventing old ladies from falling prey to age, gender, and widowhood.
- Ages 60 and above should be seen as a time of opportunity, alternatives, and originality, rather than one of dependence.
- Age-integrated society to increase the relationship between the young and elderly.
- The need of expanding social and communal services for the elderly, especially women, is emphasized.

The primary healthcare system should provide inexpensive medical services that are subsidized by the government for the poor, and the policy suggests developing healthcare coverage to meet the needs of different income segments of society with provisions for varying contributions and benefits. Other recommended strategies include an old-age pension, affordable health services that are heavily subsidised for the poor through the system, and the development of health services. It recognises that a roof over one's head is one of life's most basic requirements and places a strong focus on providing housing aid to older people who are unable to rely on their families, are disabled, infirm, or suffer from a persistent illness.

In addition, given that the government is unable to provide all of the essential services, it promotes the participation of non-profit organisations in elder care. Following the guidelines laid forth in the policy, an all-encompassing program catering to senior citizens and designed with the objective of improving their quality of life was launched. It resulted in the

⁵ Dilip Deshmukh, 'Laws for Senior Citizens in India' (*Legal Services India*) <<http://www.legalservicesindia.com/article/2054/Laws-for-Senior-citizens-in-India.html>> accessed 12 June 2022

development of ideas such as transitional care homes, multi-purpose institutions, and mobile medical care. Bill neatly sidesteps the directive in the Constitution (Article 41), which directs the state to provide public assistance in cases of old age.

The Bill does state, *“The state government may establish and maintain such number of old age homes at accessible places, as it may deem necessary, in a phased manner, beginning with at least one in each district to accommodate in such homes a minimum of one hundred fifty senior citizens who are indigent.”* It is important to note that the word "may" is used rather than "must" since the state governments are under no obligation to create these. Even without this condition, there was never any kind of restriction on their being able to provide retirement communities. One may also ask why a bill would need to include things such as the smallest possible size for a senior living facility.

In its place, the bill lays the responsibility of taking care of an elderly person on the shoulders of that person's children, grandchildren, or any other legal successors. Both the procedure and the amount are different from the provision that is already in place in the Code of Criminal Procedure (Section 125), which states that a first-class magistrate has the authority to order a person to provide a monthly maintenance payment of up to Rs. 500 to either his parents or his wife, including a former spouse, or his kids.

According to the provisions of the bill, the children of an elderly person have the responsibility to care for their parent to the degree necessary so that their parent "may lead a normal life." In the event that a senior person has no living children, the responsibility for meeting the duty falls on a close relative who either now owns or stands to inherit the senior citizen's property. The maximum monthly stipend, which will be determined by state governments but will not exceed Rs 10,000, is subject to this restriction. Unfortuitously, the majority of the ideas that were offered remained on paper. In subsequent years, in 2019, a measure was introduced into Lok Sabha, however, it has not yet been enacted by the Parliament.

THE MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS (AMENDMENT) BILL, 2019⁶

Despite the fact that the amendment bill was presented for the very first time in the Lok Sabha in the month of December 2019, the Parliament has not yet consented to pass it. The objective of the legislation was to protect the mental as well as the physical health of people in their latter years and younger parents. The bill amends the Maintenance and Welfare of Parents and Senior Citizens Act of 2007 in significant ways.

Below is the list of all proposed significant revisions to the bill:

- The new measure expands the term "children" to include biological and adoptive sons, daughters, stepchildren, son-in-law, daughter-in-law, grandchild, and grandchild, as well as the legal guardian of minor children.
- In addition to biological and adoptive, father and mother, grandparents, and father-in-law and mother-in-law are now included in the concept of a parent.
- The phrase "maintenance" is defined as the provision of food, clothes, shelter, safety and security, medical attention, healthcare, and treatment essential for the parents to live a dignified life. According to the statute enacted in 2007, maintenance solely comprised the supply of food, clothes, housing, and medical care.
- The monthly maintenance limit of 10,000 is proposed to be removed, which represents a substantial change brought about by the legislation. The previous record for the highest monthly limit was established in 2007 when it was 10,000. Older people would probably get more than the amount of the updated measure is passed and signed into law. This would be a good thing.
- However, the tribunal in charge of these matters would evaluate the parent's or senior's way of living, their income, as well as the income of the children or the responsible party.

⁶ The Maintenance and Welfare of Parents and Senior Citizens (Amendment) Bill, 2019

- In contrast to the legislation that was in place in 2007, which states that such children are required to pay the maintenance amount within thirty days after the court's order, the current amendment bill wants to reduce this time to fifteen days as the new limit for payment of the sum.
- The amendment bill specifies that children who leave their parents, as defined by the law, shall be punished with between three and six months in jail or a fine of up to 10,000, or both.⁷

SOME OTHER PROVISIONS

The Ministry of Social Justice and Empowerment organises programs to be carried out by other ministries in their respective areas of elderly assistance.

The National Policy on Senior Citizens, 2011 encourages the prompt payment of pensions, provident funds, gratuities, and other benefits to prevent financial difficulty among the elderly. In addition, it encourages the development of tax policies that are sensitive to the needs of the elderly. The Income Tax Act's Sections 88-B, 88-D, and 88-DDB⁸ provide tax benefits for the elderly.⁹ Jeevan Dhara Yojana, Jeevan Akshay Yojana, Senior Citizen Unit Yojana, and Medical Insurance Yojana are among the senior citizen programs offered by the Life Insurance Corporation of India. It was recommended that ten percent of the homes constructed under government programs for urban and rural low-income sectors be made accessible to the elderly on a low-interest loan. During the administration of former prime minister Atal Bihari Vajpayee, the Annapurna Yojana was established to assist the elderly, and unattended older adults are entitled to receive 10 kg of food each month as part of this program.¹⁰

⁷ Srivatsan KC, 'Amendment Bill to Increase Maintenance Amount to Senior Citizens to Be Taken up in Parliament's Monsoon Session' (*Hindustan Times*, 21 July 2021) <<https://www.hindustantimes.com/india-news/amendment-bill-to-increase-maintenance-amount-to-senior-citizens-to-be-taken-up-in-parliament-s-monsoon-session-101626889281292.html>> accessed 8 June 2022

⁸ Income Tax Act, 1961, ss 88-B, 88-D, and 88-DDB

⁹ 'Laws Protecting Rights and Interests of Senior Citizens in India; All You Need to Know' (*Times Now News*, 15 June 2018) <<https://www.timesnownews.com/mirror-now/society/article/laws-protecting-rights-interests-senior-citizens-elderly-aged-india/241097>> accessed 11 June 2022

¹⁰ 'India's New Bill on Welfare of Parents, Senior Citizens Will Motivate Youths to Care for Elderly, Here's Why' (*India News*, 22 July 2021) <<https://www.firstpost.com/india/how-indias-new-bill-on-welfare-of-parents-senior->

WAY FORWARD

Some important steps need to be taken to improve the status of the elderly in our society.

Some are:

1. *Planning*

Planning a programme for the elderly is a challenging endeavour, particularly in a nation like India, owing to the intricate fabric of our culture, the complicated and different regional distinctions, and the individual disparities. Regarding topics such as a rise in the pension age, for instance, fit and robust seniors would like to continue to engage in occupational and social activities, whilst those who are feeble would prefer to retire at a younger age. While providing care and assistance for the elderly population in India, policymakers confront tremendous issues such as ensuring income stability and achieving economic sustainability while leaving sufficient space for excellent health and well-being.

2. *Public – Private Partnership*

The government and public sector institutions cannot handle geriatric care on their own, principally due to the enormous numbers involved, which will only increase over time. To effectively solve the problem, a combination of ideas and services from the public, private, and non-governmental organisations (NGOs) is required. A special institution, analogous to the Ministry of Women and Child Development, should be established to investigate the social and healthcare-related concerns of the elderly with equal weight.

3. *Care for Caregivers*

In India, the family or caretaker is still the old's major source of support, hence any program involving the elderly should incorporate and include them. In addition to the pension plan for the elderly, additional programs and policies should be developed for caregivers. Measures such as offering rewards, forming support groups, and offering training sessions will provide primary carers with the necessary boost and synchronicity. Education of the family and

[citizens-will-motivate-younger-generation-to-care-for-elderlies-9827571.html#:~:text=The%20well%2Dbeing%20of%20senior,in%20cases%20of%20old%20age.%E2%80%9D>](#)
accessed 09 June 2022

community is essential for avoiding the social isolation of the elderly, which will aid in their dignified inclusion into society.

4. Re-Definition of center-state Roles

In India, coverage, and consumption of health care differ by state, making the vertical approach to geriatric care less acceptable in terms of efficacy. Each state and district should develop a strategy for senior care that is adequate and relevant in their individual regions, with the centre serving as a facilitator and coordinator. There is significant knowledge and practice gap between rural and urban India regarding geriatric care, posing a formidable task to administrators and policymakers. Urban India is increasingly cognizant of the requirements of the elderly, as seen by the proliferation of old-age homes and geriatric clinics. Needs, attitudes, and economic security in rural India vary greatly from those in metropolitan India. To meet the requirements of the rural population, we should implement programmes that include both men and women, such as clubs for the elderly, established by the village or the panchayat, and daycare facilities where the elderly may spend the morning while their family members are at work. This will be comparable to the balwadi or anganwadi, and the government could simply administer it. As India is a patriarchal country, women's concerns would be neglected if the program does not prioritise them. The bottom-up strategy will assist us in developing programs and strategies that are appropriate and applicable to both urban and rural India. There is an urgent demand for geriatric hospitals and clinics in order to concentrate more on illnesses that are more prevalent among the elderly.

CONCLUSION

All Indian citizens are entitled to fundamental rights guaranteed to them by the Indian Constitution. Senior citizens are no exception. They are also entitled to fundamental rights to life and personal liberty, freedom of speech, and equality before the law but these rights are often difficult for them to achieve for a variety of reasons. In India, the aged have a double burden of communicable and non-communicable illnesses, in addition to impairment of particular sensory abilities such as vision and hearing and other degenerative disorders. Poor geographical accessibility and high treatment costs also contribute to the low usage of health

care, particularly among the elderly. 14 percent of 400 community-dwelling seniors aged 65 and older were mistreated, according to research conducted in Chennai. The most prevalent kind of abuse was chronic verbal abuse, followed by financial abuse, physical abuse, and neglect.

Geriatric care is glaringly absent from the curriculum of medical school. Similarly, the nursing staff and other paramedical personnel lack proper training in caring for elderly patients. Most medical colleges in India do not provide specialist training in geriatrics. Geriatrics is a low-visibility specialty that is unpopular among medical students and lacks prominence in academics. Only a few institutions offer a designated geriatric unit, which is pricey and concentrated in metropolitan regions. Very few hospitals provide geriatric inpatient care. Although there are hundreds of old-age homes, day-care centres, and mobile Medicare units that offer care for the elderly, these facilities are operated by NGOs or partly supported by the government, are located in metropolitan areas, are costly, and emphasise tertiary care as opposed to primary care. With a robust network of public health infrastructure in place, emphasis should be placed on developing human resource capacity through specialised education and training opportunities. There are several key areas of study on ageing that need urgent attention in India.

We should also study creative types of economic assistance and insurance in addition to medical care models. Although India's health insurance industry is on the increase, insurance plans tend to exclude people who are most in need, particularly the elderly. Knowledge and awareness of prevalent geriatric disorders and their prevention, good eating, physical activity, yoga and meditation, and promotion of mental health should be provided as part of a complete preventative package. We cannot learn family values and respect for elders via laws and rules. Thus, parents have a crucial role in teaching respect for elders to young children. Through specialised courses and training, the government should increase the competence of health professionals in geriatric care and build socioeconomic support systems for the aged in the community.