



# RIGHTS OF SENIOR CITIZENS



**National Human Rights Commission  
India**

# **RIGHTS OF SENIOR CITIZENS**



**TRAINING & RESEARCH DIVISION  
NATIONAL HUMAN RIGHTS COMMISSION  
INDIA**

## **Rights of Senior Citizens**

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# Secretary General

## **NHRC, INDIA**

### **FOREWORD**

The National Human Rights Commission ever since its inception under the protection of Human Rights Act in the year 1993, has endeavoured to give a positive meaning to the objectives set out in the Act and has worked vigorously to create awareness about human rights and to sensitize public authorities, people in general in promoting and protecting the human rights.

The Commission had entrusted a project to the Multiple Action Research Group (MARG) for developing a series of booklets on various human rights themes with the objective of creating human rights awareness by disseminating across the masses.

I am confident that these booklets would serve its purpose by raising awareness through wide audience to achieve a better understanding of the basic human rights, and of the national and international machinery available to help realize those rights.

The publications in the Second phase of the series are on following topics :

- Right to Food and Right to Shelter
- Right to Water
- Rights of Senior Citizens
- Maternity Benefits, Sexual Harassment at Workplace and Equal Remuneration
- Right to Sanitation
- Constitutional and Civil Rights to Protect Scheduled Caste And Scheduled Tribes From Atrocities and The Law against Witch Hunting
- The Bonded Labour System (Abolition) Act, 1976 And The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013
- The Employee's Compensation Act, The Minimum Wages Act, The Payment Of Wages Act, The Payment Of Gratuity Act, The Pensions Act
- Kidnapping/Abduction, Trafficking (ITPA and IPC)/ Wrongful Confinement
- Responsibilities of the Police towards the Vulnerable Sections of Society

In this context, I appreciate the efforts made by MARG and Research Division of NHRC for developing and designing these booklets. I also appreciate the sincere efforts made by Shri R. K. Khandelwal, IAS, Joint Secretary (Administration & Research) and Ms. Anita Sinha, IRS, Joint Secretary (Programme & Training), NHRC in supervising and reviewing, apart from providing valuable inputs for shaping up these booklets.

(Bimbadhar Pradhan, IAS)

# RIGHTS OF SENIOR CITIZENS

## INTRODUCTION

The 2011 census shows that the elderly population (60 years and above) of India comprises of 103.8 million people. The proportion of elderly population has been on a rise and as per the SRS (Sample Registration System) Statistical Report 2017 issued by the Office of the Registrar General & Census Commissioner, India, Ministry of Home Affairs, Government of India (GOI), the percentage of elderly population (60 years and above) has increased from 5.3 percent in 1971 to 8.2 percent in 2017.<sup>1</sup>

The increasing number of older persons in India's population is mainly due to the general improvement in the health care facilities over the years. The major challenge is to ensure that the elderly persons do not merely live longer, but also lead a secure, dignified and productive life.

## UNITED NATIONS AND RIGHTS OF OLDER PERSONS

In 1991, the General Assembly adopted the United Nations (UN) Principles for Older Persons<sup>2</sup> which aims to ensure that prioritized attention is given to the needs and problems faced by the older population. It encourages countries to incorporate the following principles into their national policies whenever possible:

### 1) Independence

Older persons should have access to adequate food, water, shelter, clothing and health care through the provision of income, family/community support and self-help. Also, older

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Ministry of Home Affairs (2017), *SRS Statistical Report*, Government of India.

Office of the High Commissioner (OHCHR), *United Nations Principles for Older Persons*, UNHRC, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/OlderPersons.aspx>

persons should have the opportunity to work or to have access to other income-generating opportunities.

## **2) Participation**

Older Persons should be integrated in societal functioning and should be encouraged to participate actively in the formulation of policies that affect their well-being.

## **3) Care**

Older Persons should have access to health care to help them maintain the optimum level of physical, mental and emotional well-being.

## **4) Self-fulfillment**

Older Persons should be able to pursue opportunities for realizing their potential and have access to educational, cultural, spiritual and recreational resources of the society.

## **5) Dignity**

Older Persons should be able to live in dignity and security and should be free from exploitation and mental or physical abuse.

## **International Day of Older Persons**

On 14 December 1990, the United Nations General Assembly designated the 1st of October as the International Day of Older Persons.



*Gainful employment gives dignity and self-respect to senior citizens*



*Children touching the feet of elders out of respect*



## INDIA AND RIGHTS OF THE OLDER PEOPLE

In India, the older persons or senior citizens are protected under Article 41 in **Part IV (Directive Principles of State Policy)** and **Article 21** of the Constitution of India: -

**Article 41:- Right to work, to education and to public assistance in certain cases:**

*“The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, **old age**, sickness and disablement, and in other cases of undeserved want”*

A petition namely **Dr. Ashwani Kumar vs Union Of India And Ors.** (WRIT PETITION (C) No. 193 OF 2016) was filed before the Supreme Court raising significant issues relating to the recognition and enforcement of the fundamental rights of the elderly.

## POLICIES, PROGRAMMES AND SCHEMES FOR THE WELFARE OF THE OLDER PERSONS/SENIOR CITIZENS

The National Policy on Older Persons (NPOP) is a policy that have been implemented or undertaken by the Government of India to guarantee the older citizens a comfortable and dignified life. The **Ministry of Social Justice and Empowerment** is the nodal Ministry in implementing NPOP. There are around 19 different ministries of the government involved in implementing various components of the NPOP.

## MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT (MOSJE)

### 1. National Policy on Older Persons (NPOP)

The National Policy on Older Persons (NPOP) was adopted in the year 1999 by the Government of India to reaffirm the

commitment to ensure the well-being of the older persons.

The Policy envisaged State support to ensure financial and food security, health care, shelter and other needs of older persons; equitable share in development, protection against abuse and exploitation, and availability of services to improve the quality of their lives.

A similar scheme, called the **National Policy for Senior Citizens (NPSC)**, 2011 aims to address issues concerning senior citizens living in urban and rural areas, laying special focus on the needs of the “oldest of the old” and older women in particular. The NPSC, 2011 focuses extensively on issues of older women, increased employment opportunities, implementation of Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and living facilities for abandoned senior citizens.

## 2. The Atal Pension Yojana (APY)

The Atal Pension Yojana (APY), was launched on 9th May, 2015 to address the longevity risks among the workers in the unorganized sector who are not covered under any statutory social security scheme. The APY is focused on all citizens in the unorganized sector, who joined the National Pension Scheme (NPS) administered by the Pension Fund Regulatory and Development Authority (PFRDA). The government also co-contributes 50% of the subscriber’s contribution or Rs. 1,000 per annum, whichever is lower, to each eligible subscriber account, for a period of five years.

### The key features of APY are as follows:

- **Any Indian Citizen between 18-40 years** of age can join through their savings bank account.
- Minimum pension of Rs. 1000 or Rs. 2000 or Rs. 3000 or Rs. 4000 or Rs. 5000 is guaranteed to the subscriber at the age of 60 years
- Minimum monthly contribution (for those joining at age 18) will be Rs. 42 or Rs. 84 or Rs. 126 or Rs. 168 or Rs. 210.

### 3. Integrated Programme for Senior Citizens (IPSrC): A Central Sector Scheme to improve the quality of life of the Senior Citizens

The Central Sector Scheme of Integrated Programme for Senior Citizens (IPSrC), previously known as Integrated Programme for Older Persons (IPOP) revised in April 2018, provides up to 100% of the project cost for the running and maintenance of the following projects:-

- (i) **Senior Citizens' Homes/ Senior Citizens' Homes for 50 Elderly Women** including those under Sansad Adarsh Gram Yojana (SAGY) –to provide food, care and shelter for a minimum of 25 destitute Senior Citizens or for 50 female senior citizens, respectively.
- (ii) **Continuous Care Homes and Homes for senior citizens afflicted with Alzheimer's disease/ Dementia-** for a minimum of 20 Senior Citizens who are seriously ill requiring continuous nursing care and respite or those who are afflicted with Alzheimer's disease/ Dementia.
- (iii) **Mobile Medicare Units-** to provide medical care to the Senior Citizens living in rural, isolated and backward areas.
- (iv) **Physiotherapy Clinics for Senior Citizens-** Grant-in-aid is provided for running of physiotherapy clinics for a minimum of 50 Senior Citizens per month to agencies with a credible track record in running projects for the welfare of the Senior Citizens.
- (v) **Regional Resource and Training Centres (RRTCs)** are key collaborating partners for ensuring effective implementation of the policies and programmes of the Ministry. Broad activities include monitoring and providing technical support, advocacy and networking, training and capacity building for effective delivery of services

by the Centres for Senior Citizens, funded by the Ministry.

- (vi) Other activities considered suitable to meet the objectives of the scheme, including implementation of the provisions of policy on senior citizens.

#### **4. The Scheme of National Awards for Senior Citizens- Vayoshreshtha Samman.**



The Ministry of Social Justice and Empowerment has a Scheme of National Awards for senior citizens called the 'Vayoshreshtha Samman' which is conferred every year on the occasion of International Day of Older Persons (IDOP). The award was first presented in the year 2013.

National Award for Senior Citizens is conferred upon eminent and outstanding institutions or organizations and individuals from different categories. Some of the categories are as follows:

##### **Institutional Categories**

- Best Institution for Research in the field of Ageing (Citation, Memento and Cash award of Five Lakh Rupees)
- Best Institution for providing Services to Senior

Citizens and Awareness Generation. (Citation, Memento and Cash award of Five Lakh Rupees)

- Best District Panchayat in providing Services and Facilities to Senior Citizens. (Citation, Memento and Cash award of Ten Lakh Rupees).
- Best Private Sector Organization in promoting the well-being and welfare of Senior Citizens (Citation and Memento).

### **Individuals' Categories**

- Centenarian (Citation, Memento and Cash award of Two Lakh and Fifty Thousand Rupees).
- Iconic Mother (Citation, Memento and Cash award of Two Lakh and Fifty Thousand Rupees).
- Lifetime Achievement (Citation, Memento and Cash award of Two Lakh and Fifty Thousand Rupees).
- Creative Art (Citation, Memento and Cash award of Two Lakh and Fifty Thousand Rupees).
- Sports and Adventure (one each for male and female): (Citation, Memento and Cash award of Two Lakh and Fifty Thousand Rupees).
- Courage and Bravery (one each for male and female): (Citation, Memento and Cash award of Two Lakh and Fifty Thousand Rupees).

## **5. National Council of Senior Citizens (NCSRC)**

National Council for Older Persons (NCOP) was constituted in 1999 under the Chairpersonship of the Minister for Social Justice and Empowerment to oversee the implementation of the NPOP. The Council was renamed as National Council of

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3 Department of Social Justice and Empowerment, *Annual Report 2018-19*, MoSJE GOVERNMENT OF INDIA.

4 Department of Social Justice and Empowerment, *Annual Report 2015-16*, MoSJE GOVERNMENT OF INDIA.

Senior Citizens (NCSrC) in the year 2012. The NCSrC advises the Central and State Governments on the issues related to the welfare of senior citizens and enhancement of their quality of life.

## **6. Rashtriya Vayoshri Yojana (RVY)**

Rashtriya Vayoshri Yojana (RVY) was announced by the Hon'ble Finance Minister in the Budget Speech of 2015-16. Under the Scheme of RVY, aid and assistive living devices are provided free of cost to senior citizens belonging to the Below Poverty Line (BPL) category, who suffer from age related disabilities such as low vision, hearing impairment, loss of teeth and loco-motor disabilities. Some of the aids and assistive devices provided to eligible beneficiaries are:-

- walking sticks
- elbow crutches
- walkers/crutches
- tripods/quadpods
- hearing aids
- wheelchairs
- artificial dentures and spectacles, etc.<sup>2</sup>

## **7. Senior Citizens Welfare Fund**

Senior Citizens' Welfare Fund was established in March 2016. The fund is administered by an Inter-Ministerial Committee, with the Ministry of Social Justice and Empowerment acting as the nodal Ministry. This fund is utilized for senior citizen welfare schemes, in line with the National Policy on Older Persons (NPOP), including schemes for promoting financial security of senior citizens, healthcare and nutrition for senior citizens, welfare of elderly widows, schemes relating to old-age homes, day-care centers, etc.<sup>3</sup>

# **BENEFITS EXTENDED BY OTHER CENTRAL MINISTRIES FOR THE WELFARE OF SENIOR CITIZENS**

## **1. MINISTRY OF RURAL DEVELOPMENT**

## **Indira Gandhi National Age Pension Scheme (IGNOAPS)**

The Indira Gandhi National Old Age Pension Scheme (IGNOAPS) is one of the schemes under **National Social Assistance Programme (NSAP)** which came into effect on 15th August, 1995 and represents a significant step towards the fulfilment of the Directive Principles in Article 41 of the Constitution.

The IGNOAPS is a non-contributory pension scheme which means that under this scheme, a person will receive monthly pension without having to contribute any amount himself or herself.

This scheme provides pension with central assistance of Rs.350 per month to persons between 60 years and 79 years of age and Rs. 650 per month to persons of 80 years of age and above from BPL households. The central assistance is supplemented by at least an equal contribution by the States.

*Mr. Anand is a 70-year-old road construction worker, with no land, money or family support. Age related health issues do not allow him to work and earn as before. His three daughters are married, and neither supports or visits him. He works intermittently, depending on his health and availability of work, to earn about Rs.50 – Rs.60 per day, which is woefully inadequate for food, medication and other basic needs for survival. He can avail the benefits of the **Indira Gandhi National Old Age Pension Scheme (IGNOAPS)***

## **2. MINISTRY OF HEALTH AND FAMILY WELFARE**

### **A. National Program for the Health Care for the Elderly (NPHCE)**

This scheme was launched by the Ministry of Health and Family welfare in 2010 to provide dedicated health care facilities to the elderly people through Government

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<sup>5</sup> Department of Social Justice and Empowerment, *Annual Report 2018-19*, MoSJE GOVERNMENT OF INDIA.

health delivery systems at Regional, District and Primary Health Centres, including outreach services.

Following facilities are being provided under the Programme:

- Geriatric OPD, 30 bedded Geriatric wards for in-patient care etc. at Regional Geriatric Centres.
- Geriatric OPD and 10 bed Geriatric Ward at District Hospitals.
- Bi-weekly Geriatric Clinic at Community Health Centres (CHCs).
- Weekly Geriatric clinic at Primary Health Centres (PHCs).
- Provision of Aids and Appliances at Sub-centres.

#### **B. Rashtriya Swasthya Bima Yojana (RSBY) – Senior Citizen Health Insurance Scheme (SCHIS)**

Rashtriya Swasthya Bima Yojana (RSBY) was launched by Ministry of Labour and Employment, Government of India in 2008 to provide health insurance coverage for BPL families. The objective of RSBY is to provide protection to BPL households from financial liabilities arising out of health shocks that involve hospitalization.

The Senior Citizen Health Insurance Scheme (SCHIS), providing insurance cover to senior citizens as a top-up over the existing RSBY Scheme, has been implemented w.e.f. 01.04.2016. The Scheme covers senior citizens aged 60 years and above. It will provide an enhanced coverage of upto Rs.30,000 per senior citizen in the eligible family.

#### **Basic features of the Scheme are as follows:**

- The beneficiary family pays Rs.30 per annum per family as registration/renewal fee.
- Coverage of all pre-existing diseases.
- Maximum premium payable is Rs.750 per family



- Provides only for secondary care hospitalization procedures
- More than 1500 standard packages are included
- Both public and private hospitals are empanelled under the scheme.
- The beneficiaries will be issued smart cards for the purpose of identification.

### **3. MINISTRY OF FINANCE**

#### **A. Health Insurance**

On 25<sup>th</sup> May 2019, Insurance Regulatory Development Authority (IRDA) issued instructions on health insurance for senior citizens to CEOs of all General Health Insurance Companies which, include:

- Allowing senior citizens entry into health insurance scheme till 65 years of age,
- Transparency in the premium charged
- Reasons to be recorded for denial of any proposals etc. on all health insurance products catering to the needs of senior citizens.
- Likewise, the insurance companies cannot deny renewability without specific reasons.

#### **B. Tax Benefits**

A number of incentives have been provided under the Income Tax Act, 1961, to a senior citizen (i.e., an individual, resident in India, who is of the age of 60 years or more). Some such incentives are as follows:

- A Senior Citizen is not liable to pay Income Tax if his total income is less than Rs.3 lakh per annum and for a person who is 80 years or above, this limit is further extended to Rs.5 lakh.
- Any sum, upto Rs. 1.5 lakh, deposited in an account under the Senior Citizens Savings Scheme Rules, 2004 is eligible for deduction under section 80C of the Income-Tax Act.

- A deduction of Rs.20,000/- is allowed under Section 80D of the Income Tax Act for health insurance of a Senior Citizen.
- A deduction of Rs.60,000/- is allowed under Section 80DDB of the Income-Tax Act on amount of expenditure actually incurred for the treatment of specified diseases in case of a Senior Citizen.
- No deduction of tax at source (TDS) is required to be made under Section 193, 194, 194A, 194EE or 194K of the Income Tax Act in case of Senior Citizen if he furnishes to the deductor a declaration to the effect that the tax on his/her estimated total income of the relevant previous will be nil.
- Service Tax is exempted on activities relating to advancement of education programmes or skill development relating to persons over the age of 65 years residing in a rural area by an entity registered under Section 12AA of the Income Tax Act, 1961.

#### **4. MINISTRY OF LABOUR & EMPLOYMENT**

##### **Pradhan Mantri Shram Yogi Maan-dhan (PM-SYM)**

Government has announced a mega [pension](#) scheme called Pradhan Mantri Shram-Yogi Maandhan Yojana in [Budget 2019](#). The scheme is meant for old age protection and social security of Unorganized Workers (UW) who are mostly engaged as rickshaw pullers, street vendors, mid-day meal workers, head loaders, brick kiln workers, cobblers, rag pickers, domestic workers, washer men, home-based workers, own account workers, agricultural workers, construction workers, beedi workers, handloom workers, leather workers, audio-visual workers or in similar other occupations.

It is a voluntary and contributory pension scheme, under which the subscriber would receive a minimum assured

pension of Rs. 3000/- per month after attaining the age of 60 years and if the subscriber dies, the spouse of the beneficiary shall be entitled to receive 50% of the pension as family pension. Family pension is applicable only to spouse.

### **Eligibility Criteria**

- Should be an unorganised worker (UW)
- Entry age between 18 and 40 years
- Monthly Income Rs.15000 or below

### **He/ She should possess**

- Aadhar card
- Savings Bank Account / Jan Dhan account number with IFSC



## **4. MINISTRY OF HOME AFFAIRS**

### **Protection of Life and Property**

The Ministry of Home Affairs, Government Of India has issued detailed advisories in 2008 and 2013 to all the State Government/UTs to take immediate measures to ensure safety and security and for elimination of all forms of neglect, abuse and violence against old persons through initiatives

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6 Press Information Bureau (2015), *Social Security of Old Age People*, MoSJE GOVERNMENT OF INDIA.

such as identification of senior citizens; sensitization of police personnel regarding safety, security of older persons; regular visit of the beat staff; setting up of toll free senior citizens helplines; setting up of senior citizen security cell; verification of domestic helps, drivers, etc.<sup>4</sup>

## 5. MINISTRY OF RAILWAYS

The Ministry of Railways provides the following facilities to senior citizens:

- Separate ticket counters for senior citizens of age 60 years and above
- Provision of lower berth to male passengers of 60 years and above and female passengers of 45 years and above.
- 40% and 50% concession in basic rail fare for male (60 years) and female (58 years) senior citizen respectively.
- Wheel chairs at stations for old age passengers.



*Preference of lower berth given to elderly passengers*



*Wheelchairs are available for the elderly at railway stations*

## 6. MINISTRY OF CIVIL AVIATION

Air India under the Ministry of Civil Aviation provides air fare concession in up to 50% of basic fare of normal economy class for senior citizen, who are 63 years old or above, on production of proof of age (Photo-ID) and nationality.

In order to assist the passengers, particularly **senior citizens**, all the stakeholders have been instructed to ensure the following:

- Airline /airport operator will provide **automated buggies**, free of charge for all senior citizens, in the terminal building to make it easier for them to commute to boarding gates located beyond reasonable walking distance at all airports.
- Airport operators shall provide **small trolleys after security check for carriage of hand baggage** (permitted as per regulation) up to the boarding gate.
- Senior citizens can also avail **multi-level fares offered by Air India on each sector for travel**

**on domestic sectors**, starting from a low level advance purchase fares which facilitate early selling to the highest one.<sup>5</sup>

Further, Air India offers 50% discount to senior citizens on the highest economy class Basic Fare. The discount is offered to people who are 63 years old or above.

## 7. MINISTRY OF ROAD TRANSPORT AND HIGHWAYS

- Two seats are reserved for the senior citizens in front row of the buses of the State Road Transport Undertakings.
- Some State Governments also offer fare concession to senior citizens in the State Road Transport Undertaking buses and are introducing Bus Models, which are convenient for the elderly.

## 8. MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC

### DISTRIBUTION

#### A. Antyodaya Anna Yojana

Under the ***Antyodaya Anna Yojana*** scheme, the Below Poverty Line (BPL) families which also include older persons are provided food grains at the rate of 35 kgs per family per month. The food grains are issued at Rs.3/- per kg. for rice and Rs.2/- per kg for wheat. The persons aged 60 years above from the BPL category are given priority for identification.

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<sup>7</sup> Press Information Bureau (2015), *Social Security of Old Age People*, MoSJE GOVERNMENT OF INDIA



*Senior citizens buying food grains from a government shop*

## **B. Annapoorna Scheme**

The **Annapoorna Scheme**, announced in the year 1999-2000, provides for food security to those poor senior citizens who are not covered under the targeted Public Distribution System (PDS) and who have no income of their own by providing 10 kgs of food grains per beneficiary per month free of cost to those senior citizens who remain uncovered under the National Old Age Pension Scheme. The scheme forms part of the National Social Assistance Programme (NSAP) and is implemented by the States/UT Administration.

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



The Ministry of Social Justice and Empowerment (MOSJE) came out with a landmark legislation called the Maintenance and Welfare of Parents and Senior Citizens 2007 (“Maintenance Act”).

### **Aim of Maintenance Act-**

Recognize and provide for more effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognized under the Constitution.

### **Under this Act-**

Parents and grandparents who are unable to maintain themselves from their own income can demand maintenance from their children, grandchildren or relatives, inclusive of food, clothing, residence, medical attendance and treatment, to a maximum of Rs. 10,000 per month.



*Kaushalya and Kishanlal are senior citizens. Kishanlal is 67 years old and is suffering from high blood pressure and diabetes. He needs constant medical care. His wife Kaushalya is 65 years old and works as a domestic help in a house. She earns Rs.1500/- monthly but it does not meet their medical and other needs sufficiently. Their son Kishan has left them and is living with his family separately. Kishan has a grocery shop in the village. Kaushalya and Kishanlal have the right to claim maintenance from Kishan.*

*Manvi is a widow. Her husband died five years ago. She is 63 years old and lives alone in her village. Her son lives in the city with his wife and 5 year old daughter. Manvi and her husband worked very hard in the fields to educate their son. Now, her son works as a clerk in a government office. Her daughter-in-law is a teacher in a govt. school. Manvi is not strong enough to work in the fields anymore. She is living in poverty. For more than 2 years Manvi's son has neither come to see her nor sends her any money. Manvi is helpless and very unhappy. Manvi has been sick for many days. Her friend Rupa and family is taking care of her now. Manvi can make a claim for monthly maintenance from her son under **the Maintenance and Welfare of Parents and Senior Citizens Act, 2007**. Under this Act, a parent as well as senior citizen can make a claim for maintenance against his/her children and relatives.*



## Claim for maintenance from grandchildren

Parents/senior citizens can also claim maintenance from their grandchildren, provided that they are not minor (not below the age of 18 years).

## Claim for maintenance against a relative or legal heir

The Maintenance Act also makes provisions for maintenance of senior citizens with no children. Such citizens may be maintained by their legal heir or the person to whom the property might/ is to be transferred after the death of such citizen.

*As per Section 2(f) of the Maintenance Act, “**property**” means property of any kind, whether movable or immovable, ancestral or self-acquired, tangible or intangible and includes rights or interests in such property*

This may include their relative or legal heir. The legal heir of the senior citizen must not be a minor and he/she should have sufficient means to maintain the senior citizen.

## Procedure/steps to claim maintenance

- An Application under Section 4 of the Maintenance Act by the senior citizen or parent should be filed before appropriate Maintenance Tribunal/Court.
- The Maintenance Tribunal/Court can also act on its own (“Suo motu”), if it comes to know of a case where the parent or senior citizen needs maintenance.
- Notice will be issued to the respondent-children/relatives once the application has been filed.
- The respondent will have the opportunity of being heard.
- Such application should be disposed off within 90 days from the date of service of notice of application to the respondent

However, the Tribunal can extend time once, for a maximum of thirty (30) days in exceptional circumstances after recording reason. The Tribunal has the power to allow interim maintenance while the case is pending.

- The maximum amount of maintenance that can be allowed by the Tribunal is Rs.10,000 per month.
- The Tribunal has the power to alter, modify or cancel the order in appropriate circumstances.
- The Tribunal also has the power to levy interest on the maintenance amount, which shall not be less than 5% and greater than 18%.
- If aggrieved by the order of Tribunal, senior citizen/parent can file appeal before Appellate tribunal within a period of 60 days
- When an order for payment of maintenance is

made, the children or relative shall, within 30 days of the date of announcing the order by the Tribunal, deposit the entire amount ordered in such manner as the Tribunal may direct.

### **What if the parent or senior citizen is unable to file the maintenance application?**

If the senior citizen or parent cannot file the maintenance application by themselves, then any authorized person or organization can make the application on their behalf. This provision is very helpful as several senior citizens or parents are not in a position to file the maintenance applications themselves.

### **Jurisdiction on/place of filing the Maintenance application**

The application for maintenance must be filed before the Maintenance Tribunal in any district where the senior citizen resides or last resided, or in the district where the children or relative resides.

### **Does a parent or senior citizen need a lawyer/advocate to file such maintenance application and to represent in the Tribunal/court?**

No. There is no need for a lawyer to file the maintenance application or represent the party before the Tribunal/court.

However, senior citizens can take the services of the State Government appointed Maintenance Officer to represent their interests during the proceedings before the Maintenance Tribunal/court.

### **Failure to pay maintenance**

If such children/relative who is/are directed to pay maintenance fails to comply with the order of Tribunal without sufficient cause, the Tribunal may issue a warrant for levying the due amount from them, and may also sentence such person to imprisonment for a term which may extend to one (1) month or until payment made whichever is earlier.

However, the Tribunal will not issue Warrant for the recovery

of any amount due, unless application be made to the Tribunal to levy such amount within a period of three (3) months from the date on which it became due.

### **Protection of life and property of Senior citizen- Section 23**

If a senior citizen after the commencement of this Act, has transferred his property either moveable or immovable, by way of gift or otherwise, subject to the condition that the transferee shall provide him basic amenities and physical needs and thereafter such transferee refuses or fails to provide such promise, such transfer of property shall be deemed to have been made by fraud, coercion or undue influence and the Tribunal can declare such transfer as void at the option of the senior citizen.

*Ram Lal (64 years) has no child. He has transferred his grocery shop and agricultural land to his relative Govind (28 years) on September 2016 on the condition that Govind shall provide him monthly ration and medical attention. Govind agreed to the condition and Ram Lal transferred his property in the name of Govind. An agreement was signed by Ram Lal for the transfer of his property. But after 6 months from the date of transfer of the property, Govind failed to provide him the monthly ration. Ram Lal is a diabetes patient and he needs daily medication but Govind has failed to provide said medicines. Is there any hope for Ram Lal to reclaim his property from Govind? Yes, he can file an application before the Maintenance Tribunal to declare the transfer of his property to Govind as void.*

### **Can parents evict their child from the self-acquired property/house?**

Yes, if the children fail to take care of their parents, the parents can seek for the eviction/removal of the children from the parent's house by invoking Section 4 and Section 23 of the Maintenance Act.

### **Case Law:**

#### **Santosh Surendra Patil v. Surendra Narasgopnda Patil, 2017 SCC Online Bom 3053**

*In this case, the parties to the case were parents and their sons. The respondents were the son of the Petitioners and were appealing against an order of vacation of the residential premises owned and constructed by the Petitioners. The court went on to discuss the need for the enactment of Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The moral duty to take care of one's parents was crystallized as a legal responsibility under this Act. The State also takes upon itself the guardianship of Senior Citizens and old infirm parents. The eviction order was upheld by the court.*

*The High Court of Delhi in **Sunny Paul & Anr. vs State NCT Of Delhi & Ors. (W.P.(C) 10463/2015 & CM APPL. 43227/2016)**, held that under Section 23 of the Act, 2007, the Maintenance Tribunal can issue an eviction order to ensure that senior citizens live peacefully in their house without being forced to accommodate a son who physically assaults and mentally harasses them or threatens to dispossess them*

### **Abandonment of senior citizen: an offence - Section 24**

Section 24 of the Maintenance Act provides a punishment for those who take care of any senior citizen, leave them with an intention of wholly abandoning them to a place where no one can find them. Abandoning a senior citizen in any place by a person who is having the care or protection of such senior citizen is a criminal offence and such person shall be punished with imprisonment for a term which may extend to 3 months or fine which may extend to Rs.5000 or both.

*Kishan (35 years) took his father (75 years) for a holiday in a hill station. They stayed in a hotel and at night when his father was sleeping, Kishan left his father in the hotel and went away. Kishan did not want his father to live with his family. Kishan's father had become a burden for him and his wife. Kishan abandoned his father. But Kishan's action is not right. It is a punishable offence.*

## Case Law

### **H.S. Subramanya v. H.S. Lakshmi, ILR 2014 KARNATAKA 4978**

*In this case the Maintenance Tribunal has directed the petitioners (i.e. the sons) to pay maintenance to their mother under Section 9 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The mother was a widow whose husband had executed a Will bequeathing his properties in favour of his children. A provision was made in the Will for payment of maintenance to the mother and she was to be paid an amount by each of her sons. It was alleged that the two sons were paying monthly maintenance to their mother regularly while the third son did not do so. It was stated that the third son pockets the maintenance amount paid to their mother which lead the other two sons to stop the payment of maintenance. The Maintenance Tribunal directed all the sons to pay a sum of Rs. 3,000/- every month for the sustenance of their mother, who is unable to maintain herself. The allegation made by the two sons that that the third son will take away the maintenance amount that is paid to their mother does not hold as the amount was insufficient for the maintenance of the mother itself.*

### **Establishment of old age homes- section 19**

Section 19 of the Maintenance Act requires the State Government to establish and maintain old age homes at accessible places in each district to accommodate at least **one hundred fifty (150) senior citizens** who do not have sufficient means to maintain them. The old age homes are to be managed under a scheme prescribed by the State Government providing various types of services which are necessary for medical care and means of entertainment to the senior citizens.

*A 62-year-old rural daily wage earner lived with his wife, two married sons and a daughter until about a year ago when the sons migrated with jobs to the city about 250 km away. Around the same time, the daughter got married and moved to a village about 100 km away. The sons had not visited the parents even once since they left, due to compulsion of work lives, and the parents were lonely and distraught. They received no financial assistance from the sons. In such situation, the couple eventually found fresh perspective under the guidance of an NGO working in the area of active ageing. They were encouraged to look for productive engagements suited to their physical health so that they could earn some money, find a purpose in life and grow beyond the constant feeling of having been abandoned by their children. Both of them came to acknowledge the value to active ageing and recognize the need to stay active, productive and healthy as long as possible.*

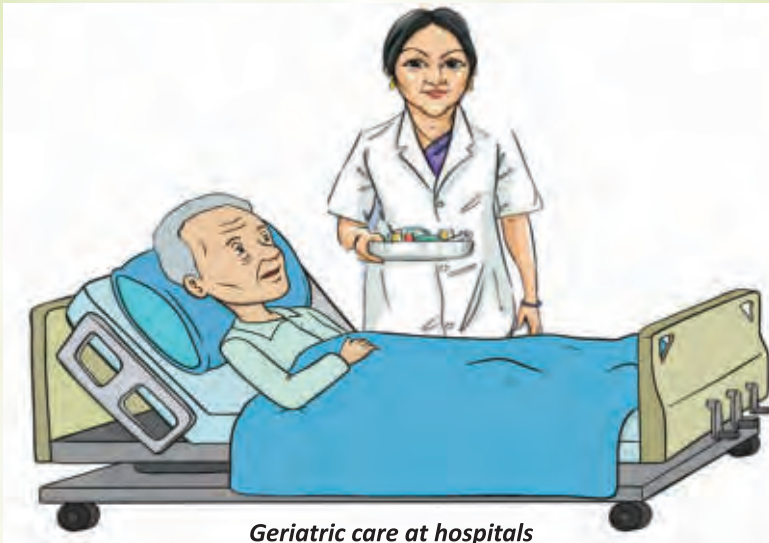
### **Provisions for Medical Care of Senior Citizen- Section 20**

Section 20 of the Maintenance Act, provides for hospital beds for senior citizens in Government hospitals. Further, separate queues are to be arranged for senior citizens during OPD consultations. There are earmarked facilities for geriatric (healthcare for old people) patients in every district hospital duly headed by a medical officer with experience in geriatric care.



***Nurse taking care of a senior citizen in a hospital***





*Geriatric care at hospitals*

## **OTHER LEGAL PROVISIONS FOR CLAIMING MAINTENANCE**

**Other legal provisions under which a senior citizen or elderly parents can claim maintenance apart from the Maintenance and Welfare of Parents and Senior Citizens Act, 2007: -**

Parents can also claim maintenance under Section 125 of the Criminal Procedure Code, (Cr.P.C) 1973. However, the elderly parents cannot make claim under all the laws, i.e. Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and Cr.P.C. If an application under Section 125 Cr.P.C. is pending before the court, a request can be made to the court to withdraw the application. After the withdrawal, the person can file an application before the Maintenance Tribunal under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

### **The code of criminal procedure (Cr.P.C.)**

Section 125 of the CrPC 1973 deals with the maintenance of old parents. Under this section, old parents, irrespective of their religion can seek maintenance.

If any person having sufficient means neglects or refuses to maintain his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such

neglect or refusal, order such person to make a monthly allowance for the maintenance of his father or mother, at such monthly rate as the Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct.

## **PERSONAL LAWS PROTECTING THE RIGHTS OF SENIOR CITIZENS:**

The rights of the elders are safeguarded under the personal laws as well.

### **A. Hindu Personal Laws**

#### **Hindu Adoptions and Maintenance Act, 1956**

The Hindu Adoption and Maintenance Act (HAMA), 1956 empowers elderly people with legal rights to claim maintenance from their children.

#### ***Who can avail the rights under the HAMA, 1956?***

The rights under this Act can be accessed only by the Hindus. A non-Hindu cannot avail the rights under the HAMA, 1956. The Hindus include: -

- Hindus of any sect or caste,
- Buddhists
- Jains
- Sikhs
- If somebody has converted or reconverted to Hinduism

This law i.e., HAMA, 1956 is not applicable to Scheduled Tribe unless the government notifies so.

#### **Maintenance of old parents under HAMA, 1956**

Section 20 of the HAMA, 1956, clearly mentions that it is the responsibility of a person to maintain their old and aged parent if they are not able to maintain themselves.

#### **Quantum of amount to be claimed**

As per Section 23 of the HAMA 1956, the court can decide the maintenance amount or even change the amount already agreed upon to be paid to the aged parents, if the court feels that the original amount offered might not be sufficient for their survival.

## **Both son and daughter liable for maintenance of their aged parents**

It is not only the son who has the responsibility to maintain aged parents; such obligation also lies upon the daughter.

### **Can step-parent claim maintenance from a step-child?**

If the step-parent has his/her own children then such step-parent, having his/her own children cannot claim maintenance under this Act.

## **B. Muslim Personal Laws**

Muslims are also legally entitled to maintain their parents, provided, they have the means to do so.

According to Mulla's Principles of Mohammedan Law:

- a) Children are bound to maintain their poor parents, although the parents may be able to earn something for themselves.
- b) A son is entitled to maintain his mother even under "difficult" circumstances, if she is poor, though she may not be "infirm" (sick).
- c) A son, who though poor, is earning something, is bound to maintain his father if he is earning nothing.

According to Tyabji's Principles of Muhammadan Law, parents and grandparents in poor 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.

### **Children's liability to maintain the parents under the Muslim Law**

Both sons and daughters have a duty to maintain their parents under the Muslim law. However, the obligation to maintain the elderly parents falls on them only if they have sufficient means.

## **C. Christian and Parsi Laws**

The Christians and Parsis have no personal laws providing for maintenance for the parents. Parents who wish to seek

maintenance have to apply for the same under provisions of the Criminal Procedure Code.

## CASES AND NHRC'S CONTRIBUTION

Human rights are for all ages, including older persons/senior citizens. The National Human Rights Commission (NHRC) oversees the protection of human rights and dignity of the senior citizens. The NHRC takes suo motu cognizance of cases reported in media reports as well as on the basis of complaints received on human rights violation of older persons. Some of the cases handled by the NHRC are enumerated below:



*Rights of Senior Citizens dealt with by National Human Rights Commission (NHRC)*

### **1. Fifty Senior Citizens and Widows Denied Minimum Sustenance of Life (Case No. 2479/18/7/2013)**

*The NHRC took cognizance of the case where about 50 senior citizens and widows, including those who belonged to BPL category, in Dudugaon Village, Samana Panchayat of Hatadihi, Keonjhar District, Odisha, were being denied minimum facilities for the sustenance of life, such as old age pension and widow pension. They approached the various Government officials but no action was taken to ensure old age pension to these victims. The NHRC obtained a report from the District Collector, Keonjhar, which revealed that as per the enquiry report of Block Development Officer, Hatadihi, out of 371 voters in the Voter list of Village Dudugaon, 57 persons were eligible to get pension as per Pension Rules considering*

*the age criteria. Thirty-six of them were getting pension under different schemes and the applications of 26 applicants had already been sent to the Sub-Collector, Anandapur for sanction of the pension. Subsequently, another report was received from the Addl. District Magistrate, Keonjhar, Odisha which revealed that six senior citizens died facing financial hardship, waiting for grant of old age pension or widow pension. It was further reported that Old Age Pension was sanctioned in favour of two senior citizens, widow pension was also sanctioned to one widow. The Old Age Pension of two senior citizens (80 years old) Gwas enhanced to Rs.500. Further efforts were reportedly being made to identify all eligible beneficiaries for sanction of Old Age Pension.*

## **2. Misappropriation of Social Security Pension Amount of 109 Beneficiaries of Ward No. 16 from Hindol Notified Area Council, Dhenkanal (Case No. 2041/18/4/2014).**

*On a complaint received by the NHRC that an amount equal to that of social security pension of 109 beneficiaries belonging to Ward No. 16 from Hindol Notified Area Council (NAC), Dhenkanal, Odisha had allegedly been misappropriated, the NHRC called for a report in the matter from the District Magistrate, Dhenkanal Odisha. Accordingly, the District Magistrate, Dhenkanal Odisha informed that an inquiry in the matter brought out that old age pension to these 109 persons was sanctioned at the rate of Rs. 1,400/-, but only Rs. 900/- was paid to them. As such an amount of Rs. 500/- was misappropriated out of the pension of each of the 109 beneficiaries, for the period between October 2013 to January 2014 by the Executive Officer and Chairman of the NAC of Hindol. On perusal of the report, the Commission observed that the facts of the case clearly made it a criminal offence. The Commission thus directed the District Magistrate, Dhenkanal to lodge an FIR in this regard with the local police so that a criminal case may be registered in the matter and taken-up for investigation and then taken to its logical conclusion.*

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<sup>8</sup> National Human Rights Commission, *Annual Report 2015-16*, INDIA.

WALDEN IS BEHIND SOCIAL EDUCATION & A WEEKLY ACT AND FREEDOM OF RELIGION

National Human Rights Commission  
India

RIGHT TO FOOD AND RIGHT TO SHELTER

National Human Rights Commission  
India

RIGHT TO SAKTATION

National Human Rights Commission  
India

KIDNAPPING/ABDUCTION, TRAFFICKING (ITPA AND IPC), WRONGFUL CONFINEMENT

National Human Rights Commission  
India

RESPONSIBILITIES OF THE PEOPLE TOWARDS THE VULNERABLE SECTIONS OF SOCIETY

National Human Rights Commission  
India

PROHIBITION OF COMMERCIAL SEX, THE MINIMUM WAGES ACT, THE PAYMENT OF GRATUITY ACT, THE PENSION ACT

National Human Rights Commission  
India

WOMEN'S PROTECTION FROM SEXUAL HARASSMENT ACT, 1986 AND THE PROHIBITION OF EMPLOYMENT IN HAZARDOUS AND TOXIC AREAS ACT 1986

National Human Rights Commission  
India

Constitutional and Civil Rights to Prisoners, Scheduled Caste and Scheduled Tribes, Prisoners, Jails, 5th 11th LAW, MENTAL HEALTH ACT

National Human Rights Commission  
India

RIGHTS OF SENIOR CITIZENS

National Human Rights Commission  
India

RIGHT TO WATER

National Human Rights Commission  
India



**NATIONAL HUMAN RIGHTS COMMISSION, INDIA**

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