

MEDIATION IN PROTECTING CONSTITUTIONAL RIGHTS OF SENIOR CITIZENS

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Abstract:

Senior citizens and protecting their fundamental rights granted by the Indian Constitution has been a sensitive issue and a great challenge for last many decades. Senior Citizens face variety of problems on day-to-day basis and may become victim of Physical, Mental, Social and Economic abuse. Loneliness, isolation has adverse impact on the overall health, making them vulnerable to undesired circumstances. Rapid Change in socio-economic conditions has led to intolerance, increasing the evils of family disagreements, domestic violence, financial insecurity and problems of residence and maintenance of old age persons / senior citizens.

To get access to justice and speedy justice is not easy. Indian Constitution promises certain rights to the senior citizens so they can live a dignified life. However, to secure the enforcement of these rights, senior citizens are required to go through the rigorous of costly and painfully slow process of law. To bypass these hardships there is need to provide more facilitative solution than customary recourse to law. Mediation as Alternate Dispute Resolution mechanism is emerging as a facilitative platform, a tool to resolve issues of senior citizens.

This research paper deals with Mediation as a best alternative to resolve the family matters, domestic disputes, property and financial issues of the senior citizens and thereby to protect and uphold their constitutional rights. This research paper aims to underline the importance of Mediation in achieving speedy and effective social justice by using 'Uniform Trained Mediation Platform' at the courts and tribunals. To maintain social harmony, it is essential to secure safety and dignity of elderly group who is the foundation of healthy society.

Keywords: Senior citizen, Constitutional Rights, Abuse, Domestic violence, Social Justice, Mediation

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Predicaments of Senior Citizens:

Senior citizens are vulnerable and more prone to face physical, social, psychological and financial abuse. With increase in life expectancy elderly population in the society is increasing. According to the 2011 census, growth rate of elderly population is high¹.

According to population census 2011-nearly 103.8 million (104 approx.) elderly persons are (aged 60 years and above) in India. Out of it 53 million are females and 51 millions are male, 70% is in rural area and 30% in urban area².

Following information is taken from population census 2011:

Table1.1. Elderly population (aged 60 years & above) in India
(in millions)

Source	Total			Rural	Urban
	Person	Female	Male		
Census 1961	24.7	12.4	12.4	21.0	3.7
Census 1971	32.7	15.8	16.9	27.3	5.4
Census 1981*	43.2	21.1	22.0	34.7	8.5
Census 1991**	56.7	27.3	29.4	44.3	12.4
Census 2001***	76.6	38.9	37.8	57.4	19.2
Census 2011***	103.8	52.8	51.1	73.3	30.6

Source: Population Census Data

Children, Women, Girls, Persons with mental and physical disabilities, Displaced persons, Refugees, Persons suffering from HIV AIDS and Leprosy, Migrants, Senior Citizens are Vulnerable Groups. Persons belonging to such groups are most targeted and are subjected to all types of abuses in the society. Senior citizens- Elderly traditional definition, is people aged above 65 years age, whose health conditions are not normal, faces difficulties in day today activities³.

Senior citizen, older persons are vulnerable in emergency situation and their needs and capabilities are often overlooked in humanitarian responses⁴.

Changed social, cultural structure, rapid transformation in the scientific and educational background has caused undermining of the importance of old persons in the society. Speedy development and globalisation though have brought the world together, people have no time for each other resulting more isolation and loneliness in the family in particular, and in the society in general. Lack of communication amongst the members of the families has escalated loneliness and leading to frustration and depression in the elder people. Resultantly overall psychological problems, Alzheimer's disease, Dementia and distrust has increased amongst the elder folks. Large majority of senior citizens are facing severe effects of aging, declining physical mental capabilities, financial dependencies, feeling of being powerless, lack of family bonding and support. They are hurt and abused in the society instead of helping them to live dignified life at this unavoidable stage of life. This power imbalance has increased the family disputes, violence and has reduced social security and social justice.

Constitutional Rights, Acts & Policies:

Constitutional Rights of the Senior Citizens and Government Policies:

Indian Constitution promises fundamental rights to the senior citizens and provides protection and safeguard for it. Indian constitution is based on principle of equality, fraternity and justice to all. It not only provides fundamental rights to senior citizen but ensures the justice is done to them by providing directions to the state. Senior citizens are protected by right, guided and shielded by DPSP – Directive Principles of State Policies. Social justice safety and security is well protected.

Constitutional Provisions:

Fundamental Rights:

Fundamental rights like Right to life, Right to liberty and speech, Right to property, Right of equality, Protection against discrimination of all types, Equal opportunities of education and work, Protection against all types of

abuses and exploitations are some of the constitutional rights assured to senior citizens by Indian Constitution.

Directive Principle of State Policies:

Though not directly enforceable, these principles give social security and safety to senior citizens.

Article 41 - Directs the state to make effective provisions for right to work, education, public assistance in reducing unemployment, adequate means of livelihood, to old age, sickness and disabled.

Article 46 - Directs state to promote with special care, educational and economic interests of the weaker section of the people, scheduled caste and scheduled tribes and protect them from social injustice and discrimination⁵.

Right to Life (Article 21)

Right of Protection against abuse and discrimination

Right to livelihood, Access to justice

Right of Equality (Article 14)

Article 39A- Free legal aid services

Provisions in other enactments:

Sec. 144 of BHARTIYA NAGRIK SURAKSHA SANHITA 2023 (S. 125 of Criminal Procedure Code 1973)

S. 20 OF HINDU ADOPTION AND MAINTENANCE ACT 1956 – It is the responsibility of a person to maintain their old parents if they are not able to maintain themselves.

Other Provisions:

NALSA-National Legal Services Authority:

NALSA (Legal Services to Senior Citizens) Scheme 2016 provides free legal aid/ assistance to senior citizens who are eligible under the Legal Services Authority Act, 1987. This scheme includes free legal aid at Tribunals and Old Age Homes. These clinics not only assist them in legal requirements but also helps in securing pension benefits, follow ups, approaching to other govt sectors if required and other allied activities.

NGOs like ‘Dard Se Hamdard Tak’ also offer such services like “Legal Aid on Wheels”⁶

Maintenance and Welfare of Parents and Senior Citizens Act, 2007

This is one more step to protect safety and security of Senior citizens. It provides legal framework to assure social justice and access to the rights of the senior citizens granted by constitution. It makes statutory obligation on the children and relatives to maintain the senior citizens with due dignity.

Senior citizen is a person who is above age of 60 years or 60 years age. (MSJE: Ministry of Social Justice and Empowerment)

This Act is enacted as per Article 41, concurrent list entry 23 (schedule VI) of Indian Constitution. S. 31 of this MWSC Act gives monitoring power to the Ministry.

Maintenance and Welfare of Parents and Senior Citizens (Amendment) Bill, 2019 has made various provisions for the welfare of the senior citizens.

As per new demography chart female population of senior citizen is more compared to male. Life expectancy is above 80 years and more than 30% population is below poverty line. Near to 13% population is above 60 years of age.

Right to Maintenance: Senior citizen can claim maintenance from children or legal heirs if they are unable to maintain themselves. Maintenance is based on the basis of needs of the seniors. This process is made time bound. Tribunals handling these claims can grant monthly allowance of Rs. 10,000/-. Provision of granting Interim maintenance is included in the Act.

Tribunals: State to establish Tribunals within 6 months from the commencement of the Act Tribunals to handle the claims with a potential for a maximum monthly allowance of Rs. 10,000/-. Provision of Interim maintenance is included in the Act.

Property Protection: Senior citizens can approach Tribunals to safeguard their property rights and prevent illegal possession. Act also gives protection of life and property and better medical aid. Criminal Procedure is also followed in the same manner as per the provision of Criminal Procedure Code.

Proceedings of Tribunal to be completed within the period of 90 days which period can be extended for 30 days if required. Appeals against the order of Tribunal is made to the Appellate Authority.

Old Age Homes: The Act mandates the establishment of Old Age Homes in every District.

Property Protection - Senior citizens can approach Tribunals to safeguard their property rights and prevent illegal possession.

Abandonment and Neglect- Act prescribes penalties for abandonment and neglect to any senior citizen.

Landmark Judgement: Transfer of property may be declared void by a Maintenance Tribunal u/s 23(1) of the Act if certain conditions are satisfied⁷.

Key take aways of Amendment Bill to the Act:

The Maintenance and Welfare of Parents and Senior Citizens (Amendment) Bill 2022⁸

Proposed: Fixed pension upto Rs. 20,000/- for a senior citizen with annual income below Rs. 8,00,000/- which is from Senior Citizen Welfare Fund.

Welfare of the senior is considered as paramount consideration.

Various provisions are made like Provision of beds in Govt hospitals, separate queues, medical treatment for chronic and terminal regeneration diseases, various research facilities, facilities for geriatric patients.

Government policies:

Government have started various policies for better quality living of senior citizens like old age Homes, Hospitals and Day care centres, Housing schemes free legal aid, subsidised lunch, concessions in travelling etc.⁹

Different social groups and NGO's help in empowering the seniors by giving support system, fostering a sense of belongingness, support networks there by ensuring that rights of senior citizen are respected.

National Policy for Older Persons:

Under these various financial concessions, shelter, nutrition, information needs, discounts are granted.

Protection and strength to legal rights, life and property.

The Atal Pension Yojana (APY) for the citizens in unorganised sector

Integrated Program for Senior Citizens (IPSrC) to improve quality of life.

The Scheme for National Awards for Senior Citizens- Vayoshreshtha Sanman

National Council for Senior Citizen (NCSRC)

Rashtriya Vayoshree Yojana (RVY)

Senior Citizens Welfare Fund

Other Central Schemes:

Indira Gandhi National Pension Scheme (IGNOAPS)

National Social Assistance Programme (NSAP)

Ministry of Health and Family Welfare:

National Programme for the Healthcare for the Elderly (NPHCE)

Rashtriya Swastha Bima Yojana (RSBY)

Senior Citizens Health Insurance Scheme (SCHIS)

Ministry of Finance:

Health Insurance and Tax Benefits

Ministry of Labour and Employment:

Pradhan Mantri Shram Yogi Maan-Dhan (PM-SYM)

Ministry of Home Affairs:

Protection of Life and Property

Police Protection and Elimination of forms of neglect

Guideline to all Director General of Police of all states to take suitable actions to protect life and property of older persons

Ministry of Railways:

Separate ticket counters, lower berth place, 40% to 50% concessions in railway tickets, wheelchair facility.

Ministry of Civil Aviation :

Airfare concessions, automated buggies, small trolleys for Handbags, multi-level fares for domestic travels.

Ministry of Road Transport and Highways:

Two seats reserved in SRTU- State Road Transport Undertaking

Convenient Bus Model, Low Fare

Ministry of Consumer Affairs, Food and Public Distribution :

Antyodaya Anna Yojana (For below poverty line)

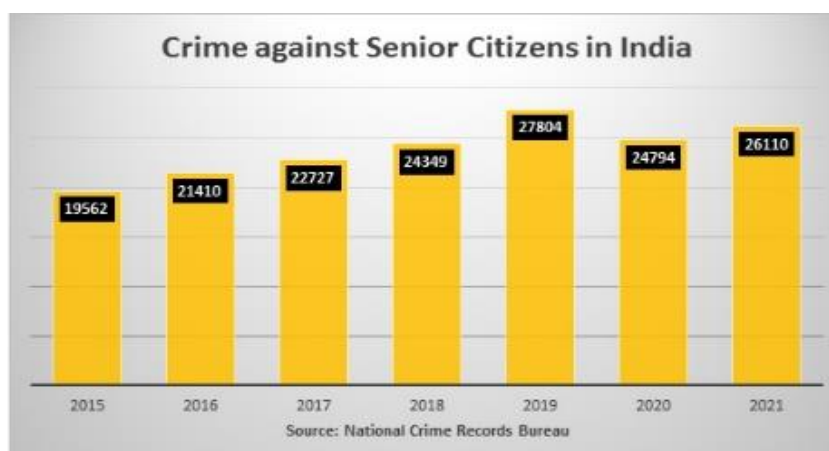
Annapoorna Scheme

In spite of the above constructive efforts on the part of the Government there is a wide gap between provisions on paper and its actual effective implementation. Though different policies and provisions are made it is a big challenge to achieve assured fundamental rights in reality.

Need of Mediation:

Mediation is flexible non-adversarial Alternate Dispute Resolution technique to resolve disputes amicably. Though the rights have been granted by Constitution, in reality it becomes difficult rather impossible for the senior citizens to achieve them. Various factors like dependability, limited financial access, physical mental and

other age-related incapacities, stringent government procedures, delays in judicial system creates hurdles in achieving their rights. Dignified life and respect become a faded dream for them. Right to legal representation and grievance resolution becomes inaccessible due to various above-mentioned hurdles. There is substantial rise in family disputes, domestic violence, financial cases, property matters and so on making life of senior citizens more vulnerable and worse.



Mediation can help in maintaining relations between family members. It helps creating bond and trust again between the disputing parties.

Mediation is cost effective, time and energy saving solution where significant benefits can be achieved within short span. As it provides platform to facilitate, mediation acts as a facilitator. Party autonomy is maintained so that parties can freely open up their mind and discuss the issues. Confidentiality, neutrality, impartiality are the pillars of mediation which give confidence to the parties about process and creates trust and bond between the mediator and parties. Nobody is winner or loser in the process which helps in achieving win-win situation. Emotions, specific needs are taken care of.

Mandatory mediation will help in early resolution of conflict and aim of speedy social justice can be achieved. Appropriate use of Mediation will help to identify the abuse at earlier stage before it aggravates more and lower the rate of abuse, misuse, neglect and violence against senior citizen. Catching and resolving the problem at early stage thereby aggravation can be avoided before it becomes full blown.

Mediation will provide safe secured atmosphere and thereby to strengthen the bond and trust among the parties to arrive at positive resolution. It creates a sense of belongingness, making conducive atmosphere to participate freely in the process and to share most challenging personal issues.

Mediation helps in identifying different factors – social individual financial age based, health based, which are the main reasons of vulnerability among senior citizens.

Mediation plays great role in reducing the family disagreements, frustrations, angers, despair among the family members and to achieve mutually acceptable solution. It also can effectively deal with specific rights relating to maintenance and property which can be handled more effectively in mediation in less time and without affecting relations.

Last but not the least: Mediation avoids long contesting court process where senior citizens may face high risk of escalation and exposure to unwarranted uncomfortable situations. Also saves cost, valuable time reduces court formalities and prevents further abuse and exploitation. Proper and due care and respect can be given which boosts the confidence of the senior citizens.

Unlike litigation where a judge makes the final decision, mediation allows parties to maintain control over the process and the outcome¹⁰.

As stated by S3WaaS by former CJI Hon'ble DR. D.Y. Chandrachud agreements reached through mediation are legally binding and enforceable similar to court orders¹¹

In cases involving vulnerable senior citizens, mediation can provide supportive environment and ensure their rights are well protected¹².

Mediation directly deals with the parties and their problems, and peacefully resolution can be achieved without affecting both the parties. It also takes care of the convenient timings, area of the parties which gives little mental settlement to the disturbed minds. Careful listening, due respect creates a bond and trust which gives right direction towards resolution. Deep rooted termite problem is understood and needs and interest of individuals are taken care of helps in arriving at mutually acceptable solution.

More particularly it saves the most valuable, precious golden time in the life of senior citizens.

Thus, Mediation is more effective and efficient timesaving simple alternative for resolving conflicts of senior citizens and protecting their constitutional rights in terms of resolution rate, better outcome and emotional wellbeing of the senior citizens.

Global Trend:

Elder Mediation is the most widely used and accepted practice in Canada, U.S.A and other European Countries. Elder Mediation is a growing subspecialty to address conflicts involving older adults, primarily involving caregiving or finances¹³.

Conclusions, Suggestions and Findings:

Mandatory Mediation and trained Advocate Mediators are necessary to handle sensitive issues of senior citizens. Problems faced by Senior Citizens are more sensitive and, requiring different skillsets, mediation training must provide specialist approach to tackle these issues. Legal practitioners are usually are not allowed to appear before the concerned Tribunal/ Authority and plead in the cases involving claims by senior citizens. However, appointment of specially trained Advocate Mediators at the Tribunals, Healthcare units, old age homes etc. will go a long way to benefit the cause for Senior Citizens. Medical practitioners having legal background and training in Mediation can be a boon. Urgent attention is needed to eradicate the dearth of trained Advocate mediators and therapist mediators with legal knowledge. Need of the time is to provide more comprehensive research to support mediation which will help finally to support senior citizens effectively. Mediation training and awareness in health care units, in hospitals, in old age care homes and in community centres will help not only to the senior citizens but also to the society at large.

For effective use of mediation, proper network facilities in mediation centre, old age homes, Day care units, community centres will help to handle problems on-line. This will save travelling time and energy of seniors and at right time situations can be handled effectively when actually seniors need help.

Comprehensive survey of different mediation centres, courts, legal departments and government departments, visits to old age homes, healthcare units, Day care centres should be carried out to know the factual position of the seniors staying there. Comprehensive and comparative analysis of different mediation centres, training institutions including global trends will expand the horizons.

Government policies should be developed as per the changed circumstances for effective use of mediation practices for senior's benefit.

Building regulations / laws shall be amended to make it mandatory for providing for old age homes like facility in new townships. Such innovative ideas will foster the trust in the mind of the senior citizens and may also help in providing manpower supply of volunteers in such facilities. Mediation to be included as a facility in big complexes, standard hospitals and Community centres to eradicate the disputes before reaching it to the tribunals and courts.

Joint efforts of and result oriented coordination between Legislature, Executive and Judiciary for making process of Mediation mandatory and for appointment of Trained Mediators considering the unique nature of problems faced by the Senior Citizens shall go a long way in securing for this Vulnerable group what has been promised by Indian Constitution.

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