CHAPTER – V

INDIAN LEGAL SYSTEM AND GOVERNMENT POLICIES FOR THE AGED PEOPLE

Outline
I. Introduction
II. Constitutional safeguards for senior citizens
III. Statutory safeguards for senior citizens
IV. Policies and schemes for older persons
V. Conclusion

I INTRODUCTION

The Government of India has shown the commitment to provide an effective environment to secure the goals of economic and emotional security for the elderly. It also recognizes that all institutions of the civil society, individuals and the community are equal and necessary partners in achieving that goal. India is a federal polity of one thousand million people. It is estimated that the number of older persons will grow to 137 million by 2021 in our country. In modern India, retirement age is fixed at 58 in most Governmental jobs, and 60 years in the Universities. There is a move to increase the retirement age by another two to five years. For all practical purposes people above 65 are considered to be ‘senior citizens’. In academic research, retirement age is often taken as an index of aged status. The chronological age of 58 or 60 is considered to be the beginning of old age.¹

However, globalization and its impact on economies are causing a silent and invisible transformation within the social

structures. Fragmentation of the traditional family network is leading to an erosion of the available support within the immediate and extended family. Migration of younger generations from rural to urban areas and from one urban center to another as well as transnational migration results in the elderly being left to fend for themselves at a time when family support becomes more crucial.\(^2\)

The elderly or aged people do not form a homogeneous group. Their needs and requirements vary from person to person. Therefore all the needs and requirements of all the elderly cannot be covered by single act. In this backdrop, this part of the present research focuses on the various provisions in different legislations and policies implemented in Indian legal framework, which in some way or the other, helps aged and assures honour and life with dignity and also provides social security. The Constitutional norms are the highest law in the legal system. Hence it is necessary to begin with apex law.

II CONSTITUTIONAL SAFEGUARDS FOR SENIOR CITIZENS/ELDER PEOPLE

The well being of the Older Persons has been mandated in the Constitution of India. Following are some of the provisions in the Constitution of India which speaks about the protection of interest of aged people.

The various Articles in Part III and Part IV of the Indian Constitution, which have direct or indirect bearing on social security measures and also on promoting welfares.

The Preamble declares to secure to all its citizens social, economic and political justice, liberty of thought, expression,

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\(^2\) Ibid, p. 6
belief, faith and worship; equality of status and opportunity and to promote among them fraternity so as to secure the dignity of the individual and the unity and integrity of the nation.

Art. 14 declare that the State shall not deny to any person equality before law or the equal protection of the laws within the territory of India.

Art. 38 (1) directed that the State shall strive to promote the welfare of people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. Art. 39 provide that the State shall in particular, direct its policy towards securing:

a) That the citizens, men and women equally, have right to adequate means to livelihood,

b) That there is equal pay for equal work for both men and women,

c) That the health and strength, of workers, men and women, and the tender age of children are not abused and that citizens a.e not forced by economic necessity to enter avocation unsuited to their age and strength;

Art. 41 makes the provision for well being of the Older Persons has been mandated in the Constitution of India. Article 41 of the Constitution provides that the State shall “make effective provisions for securing the right to work, to education and to public assistance in case of unemployment, old age, sickness and disablement and in other cases of underserved want within the limits of its economic development and capacity”. Art. 47 states that the duty of State to raise the level of nutrition and the standard of living and to improve public health.
Item No. 9 of the State List and item 20, 23 and 24 of Concurrent List relates to provisions of old age pension, social security and social insurance, and economic and social planning and reliefs to the disabled and the unemployed. The Government of India is committed to provide an enabling environment to secure the goals of economic and social security for the elderly population. The non-governmental organizations, citizens and the community have to be partners in the campaign towards securing a society for all ages.

Article 21 is the most vital provision with respect to the life and personal liberty of the person including the senior citizens. It mandates that no person shall be deprived of his life or personal liberty except according to procedure established by law. The Fundamental Rights in the Indian Constitution guaranteed to every citizen include the right to life, and as the Hon’ble Supreme Court has pointed out in *Maneka Gandhi’s case*, the word ‘Life’ in Art. 21 does not mean ‘animal existence’ but it means ‘Life with Dignity’. Right to life is fundamental to our very existence without which we cannot live as human being and includes all those aspects of life which go to make a man’s life meaningful, complete and worth living.

It is the only article in the Constitution which has received the widest possible interpretation. The bare necessities, the minimum and basic requirements which are essential and unavoidable for a person is the core concept of right to life.

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3 Age Care in India-National Initiative on Care for Elderly, National Institute of Social Science, Ministry of Social Justice and Empowerment, Govt. of India, pp. 2-3

4 A.I.R. 1978 SC 597
In Francis Coralie Mullin V Administrator, Union Territory of Delhi, Hon. Supreme Court stated that, the right to live is not restricted to mere animal existence. It means something more than just physical survival. The right to ‘live’ is not confined to the protection of any faculty or limb through which life is enjoyed or the soul communicates with the outside world but it also includes “the right to live with human dignity”, and all goes along with it, namely the bare necessities of life such as, adequate nutrition, clothing and shelter and facilities for reading, writing and expressing ourselves in diverse forms, freely moving about and mixing and commingling fellow human being.

While establishing the right to life with dignity and freedom from exploitation stated in Article 21, the Supreme Court, in unequivocal terms, put the concept of social justice on a higher pedestal in a case between Bandhua Mukti Morcha V Union of India and others. In this case Supreme Court lay down as: “Article 21 assures the right to live with human dignity, free from exploitation. The state is under a constitutional obligation to see that there is no violation of the fundamental right of any person, particularly when he belongs to the weaker section of the community and is unable to wage a legal battle against a strong and powerful opponent who is exploiting him.

Right to life embodies several aspects of life and it includes opportunity. Explaining this premise the Supreme Court in Chameli Singh V State of Uttar Pradesh observed, “In any organized society, right to live as a human being is not ensured by

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5 A.I.R. 1981 SC746  
6 A.I.R. 1984 SC 802  
7 (1996) 2 SCC 549
meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhabit his growth. Further court said that, the ultimate object of making a man equipped with a right to dignity of person and equality of status is to enable him to develop himself into a cultured being.”

Right to life has a much wider meaning which includes right to livelihood, right to health, right to pollution free air etc. Thus, the scope of Article 21 of the Constitution has been considerably expanded by the Indian Supreme Court, which has interpreted the right to life to mean the right to live a civilized life.

The ultimate object of social security is to ensure that everyone has the means of livelihood, food, shelter, health and care. It follows, therefore, that the right to social security is also inherent in the right to life without which a dignified life is impossible. India is constitutionally a socialist State and the principal aim of socialism is to eliminate inequality of income and status and to provide a decent standard of living to the people.8

III STATUTORY SAFEGUARDS FOR SENIOR CITIZENS

Criminal Procedure Code 1973

Article 41 of the Constitution of India is reinforced by Section 125 of the Cr. P.C., it provides, “if any person having sufficient means neglects or refuses to maintain his father or mother who are unable to maintain himself or herself”9, a magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a

8 Dr. G.B.Patil Rights of Elderly Women : A social Security Problem, Indian Bar Review Vol. XXXIII (1 to 4) 2006
monthly allowance for the maintenance of his father or mother. If any person refuses or neglects to so maintain their parents a Magistrate may order such person to make a monthly allowance for the maintenance of his or her father or mother. Such allowance shall be payable from the date of the order, or if so ordered from the date of the application for maintenance.\(^\text{10}\)

This provision is made to give effect to the natural and fundamental duty of child to maintain his or her parents. This section is applicable to all, irrespective of their religions, and includes adoptive parents. The Supreme Court has interpreted this section so as to make daughters and sons, married or unmarried, equally responsible to maintain their parents.\(^\text{11}\)

Parents can make application for maintenance against one child alone; it is not necessary that all the children are made party to such application. In 132\(^\text{nd}\) report of the Law Commission of India, it is further suggested that the right of the parent who has been awarded the monthly allowance should not be defeated by a child who transfers properties in order to deprive the awardees.

**Hindu Adoption and Maintenance Act 1956**

A similar provision exists among Hindus. The obligation to maintain aged parents is personal as well as legal. Under the Hindu Adoption and Maintenance Act, 1956, Section 20(3), every Hindu, son or daughter, is under an obligation to maintain his or her parents if they are aged and infirm and unable to maintain themselves out of their own earnings. Here parents include

\(^{10}\) *Ibid* Section 125 (2)

\(^{11}\) Vijaya Arbat v Kashirao, 1987GLJ 977 (SC)
adoptive parents and childless step-mothers. However, step-father excluded from the purview of the expression ‘parents’.\textsuperscript{12}

Under Hindu law, the amount of maintenance awarded is determined by the court. after considering the position and status of the parties, reasonable wants of the claimant, if the claimant is justifies in living separately, value of the claimant’s property and the number of persons to be maintained under this Act.

**The Hindu Succession Act 1956**
Parents are entitled to inherit the property of sons and daughters irrespective of their claims for maintenance from their children. The law on inheritance and succession does not create any right for the elderly parents but every parent is entitled to the benefit of their deceased child.

**The Indian Succession Act 1925**
Under the Indian Succession Act, 1925 the father succeeds to the property of an intestate who dies without leaving any lineal descendents. The property would devolve on the mother in the absence of the father and lineal descendants of the intestate.

**Muslim Law**
Maintenance of Infirm and Aged is provided for in Muslim Personal Law also. Children have a duty to maintain their aged parents even under the Muslim Law. According to Mulla : a) Children in easy circumstances are bound to maintain their poor parents, although the latter may be able to earn something for

themselves, b) A son though in strained circumstances is bound to maintain his mother, if the mother is poor, though she may not be infirm. c) A son, who though poor, is earning something, bound to support his father who earns nothing.

Maintenance of grandparents – A person is bound to maintain his paternal and maternal grandfathers and grandmothers if they are poor, but not otherwise, to the same extent as he is bound to maintain his poor father.13

Maintenance of other relations—Persons who are not themselves poor are bound to maintain their poor relations within the prohibited degrees in proportion to the share, which they would inherit from them on their death. A father is not bound to maintain his son’s widow.14

Christian and Parsi Law

Christian and Parsis have no personal law providing for maintenance for parents. Parents who wish to seek maintenance have to apply under provisions of the Criminal Procedure Code.

The Himachal Pradesh Assembly passed a Parents Maintenance and Dependent Children Act, 2001, wherein a simple procedure is introduced for parents being ignored by their children to be given maintenance. In addition to making it obligatory for errant wards not taking care of their aged parents, the Act aims at simplifying the procedure by authorizing the sub-divisional officer (civil) for fixing maintenance and Addl. Commissioner as the appellate authority so that the decision can be

13 Ibid p.629
14 Ibid p 629
taken and cases disposed of promptly bringing justice and relief to older persons without loss of time.\textsuperscript{15}

The Government of Maharashtra has prepared a Bill on similar lines. Correspondence received from the Government of Goa also indicates that it proposed to initiate action towards introduction of Parents Maintenance Bill.\textsuperscript{16}

India has been among the enlightened nations which recognized the need for social security during old age quite early. Following are some of the legislations in that behalf for aged persons in India.

\textbf{The Pensions Act 1871}

The Pensions Act applies both to Union Pensions and State Pensions. The term ‘Pension’ implies periodical payments of money, made by the government to a pensioner, on account of past service considerations or merit. The pension is generally granted, subject to future good conduct. The pension sanctioning authority may withhold or withdraw pension or a part thereof, permanently or for a specified period if the pensioner is convicted of a serious crime or is found guilty of a grave misconduct.

The age of retirement no longer leaves a person physically or mentally incapacitated and it is inevitable that many retired persons look forward to some form of re-employment. If any pensioner proposes to take up commercial employment after his retirement he or she must apply for permission to do so from the government. In order to qualify for any government retirement benefits, a

\textsuperscript{15} Himachal Pradesh Parents Maintenance Bill, 1996 and vide letter No. 50-293-97-98HC/2319 dated 2-7-97

\textsuperscript{16} Government of Goa, Directorate of Social Welfare, Panaji, Goa
minimum of ten years service is essential, except in the case of compensation gratuity. If there is an interruption in service, a governmental servant forfeits his or her past service, except in a number of special cases, including authorized leave of absence and abolition of office.

The payment of pension is determined on the basis of average emoluments of the government servant, received as pay for the last 12 months immediately before retirement or death. The superannuation pension is granted to a government servant who is retired on attaining the age of compulsory retirement.

The rules lay down the amount of gratuity entitled to a person if he or she leaves service before the qualifying service period of ten years as well as the amount of pension entitled to him or her after the completion of qualifying service. A government servant who has completed five years of qualifying service gratuity or pension shall, on retirement or death, be granted death-cum-retirement gratuity.

The residuary gratuity is paid to the nominees or the heirs of the government servant if he or she dies within five years of his retirement. The rules also provide for contributory family pension after the death of the government servant who was entitled to the pension after retirement.

A government servant can opt for a non-contributory family pension scheme. This is payable to the family members for a period not more than ten years from the death of the government servant or for a period of five years from the date on which the government servant would have retired in the normal course of superannuation.
These rules attempted to ensure that a person retiring from the services is not left high and dry but is provided with a regular inflow of money along with a lump sum.

In a recent judgment passed by the Allahabad High Court in September 2005, it was observed that non-payment of Retirement benefits affect the Fundamental right to life of an employee, as enshrined in the Constitution.\textsuperscript{17}

Recently Udipi District (Karnataka) Consumer Dispute Redressal Forum, in Case Nos. CC 134/2009 and CC 138/2009, judgment delivered on 23/03/2010, held that pensioner is a 'Consumer'. It further held that pension cannot be delayed, if it is delayed, pay compensation for it, pay for the mental agony and stress.\textsuperscript{18}

**The Employees’ Provident Fund and Miscellaneous Provisions Act 1952**

Without disturbing this arrangement of pension and gratuity, under the Employees’ Provident Fund Scheme the government has introduced another mode of social security for workers who have given the best part of their life to industry. This act has been a step towards making welfare provisions for the future of an industrial worker after his or her retirement or for the benefit of his or her dependents in case of early death.

This Act provides for the institution of compulsory Provident Fund, Pension Fund and Deposit-Linked Insurance Fund, for the benefit of the employees in factories and other

\textsuperscript{17} Referred in LAWS, November 2005. Page 13
\textsuperscript{18} RREWA, cgstaffnews.com/?=1635 accessed on 25/01/2011
establishments. The Act is presently applicable to 173 industries and classes of establishments employing twenty or more persons.\(^1\)

In spite of financial and administrative difficulties, the Act is the most appropriate scheme. The worker and the employer both contribute to this institution. Apart from other advantages, the intention in establishing it was that it would cultivate among workers a spirit of regular saving and encourage the formation of steady labour force in industrial centers. This Act was originally made applicable in the cement, cigarettes, electrical and mechanical, general engineering, iron and steel and paper and textile industries, though a large number of other industries were later incorporated into the list.

The Provident Fund is an effective old age and survivorship benefit. However, when an employee dies prematurely, the accumulations in the PF are too meager to render adequate and long term protection to his or her family. With a view to providing long term financial security to the families of industrial employees in the event of premature death, a Employees’ Pension Scheme has been introduced.

Delay in payment of Provident fund--invocation of the Consumer Protection Act. 1986, held permissible against Provident Fund Commissioner by member-employee for delay in payment of Provident Fund under EPF Scheme.\(^2\)

The Family Pension Fund is created by diverting 25 % of the portion of the employer’s and employees’ contribution from the

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\(^1\) P.L. Malik’s, Handbook of Labour and Industrial Law, Eastern Book Company, Twelfth Ed., 2009, p186

\(^2\) Regional Provident Fund Commissioner V Shiv Kumar Joshi,(2001) 1 SCC 98.
Employees' Provident Fund, with an additional contribution from Central government to meet, administration expenses. Out of this fund, a portion is paid as family pension to the survivors of employees who die while in service before reaching the age of superannuation.

**The Payment of Gratuity Act 1972**

The payment of gratuity is a retirement benefit, in addition to PF and Employees' Pension benefits, for employees engaged in factories, mines, oil fields, ports, plantations, railway companies, shops and other establishments.

It is payable to an employee on the termination of his or her employment after he or she has rendered continuous service of not less than five years. However, the payment is made on his or her superannuation, retirement, resignation, disablement due to accident or disease or death. In case of disablement and death the requirement of continuous service of five years is relaxed.

It is very clear that, the gratuitous payment received from the employer is available to the employee both when he or she retires by choice or due to advanced age. This amount definitely helps the retiring person to plan for old age.

Gratuity under the Payment of Gratuity Act, 1972 is no longer in realm of charity but a statutory right given to the employee. Also gratuity cannot be withheld in any circumstance.

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22 Bhibir Kaur V Steel Authority of India Ltd., (2000) 6 SCC 493; 2000 SCC (L&S) 767
The rightful claim of gratuity cannot be defeated on the ground of technicality such as limitation.23

**IV POLICIES AND SCHEMES FOR OLDER PERSONS**

The Ministry of Social Justice and empowerment acts as the nodal agency with regard to ageing issues. It provides basic policy guidance, the roadmap for implementation of the same and also coordinates with stake holders such as the other Ministries of the Central Government and the State Governments, NGOs, Civil Society Institutions etc.

**National Policy on Older Persons (1999)**

The Ministry of Social Justice and Empowerment, Government of India announced a National Policy on Older Persons in January, 1999.24 This policy provides a broad framework for inter-sectoral collaboration and cooperation both within the government as well as between government and non-governmental agencies. In particular, the policy has identified a number of areas of intervention—

**Financial Security:**

Financial security through coverage under old Age Pension Scheme for poor and destitute older persons, better returns on earnings/savings of Government/Quasi-government employees' savings in Provident Fund, etc, creating opportunities for continued education/skill up-gradation ensuring thereby continued employment/self-employment and income generation and

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provision for Pension Scheme for self-employed, employees of the non-formal, and non-governmental sector.

**Healthcare and Nutrition:**
The NPOP recognizes special health needs of the older persons to be met through strengthening and reorienting the public health services at Primary Health Care level, creation of health facilities through non-profit organizations like trust/charity, etc. and implementing health insurance.

**Shelter:**
Recognizing shelter as basic human need, the NPOP provides for earmarking 10% of the houses/housing sites in urban as well as rural areas for older persons belonging to the lower income groups, special consideration to the older persons falling in the category of Below Poverty Line (BPL) and destitute in housing schemes like Indira Awas Yojna, loans at reasonable interest rates and easy repayment installments with tax relief for purchase of houses etc.

**Education / Information needs:**
Education/information needs of the older persons too have got adequately reflected in the NPOP. Education/information material relevant to the lives of older persons should be developed and made available through mass media. Education, training and information being the important human requirement, the NPOP provides for proactive role in ensuring the same by disseminating knowledge about preparation of Old Age. It is also emphasized for schools to have programme on intergenerational bonding.
Welfare and Institutional Care:
Institutional Care has been provided for in the NPOP as the last resort. The care in non-institutional setup i.e. within family and the community needs to be strengthened and encouraged. This apart, the State should also create infrastructure in partnership with voluntary organizations to provide for poor, destitute and neglected older persons whose care cannot be ensured within the family. This is to be ensured through Old Age Homes and other such institutional facilities that would be needed. Voluntary efforts need to be encouraged for creating facilities for day care, outreach services, multi-service citizen centers, etc.

Protection of life and Property:
The State has to gear up security network to save older persons from criminal offence and police is required to keep friendly vigil. Early settlement of property/inheritance disputes is to be done, safeguards to protect them from fraudulent dealings in transfer of property through sale, Will are to be put in place and free legal aid and toll free helpline services are to be placed across the country. Maintenance of elderly within family resorting to the provisions of law viz. Criminal Procedure Code, 1973, Hindu Adoption and Maintenance Act, 1956 etc, whenever needed is required to be ensured.

Training of Human Resource to Care for Older Persons:
The Policy lays emphasis on need for trained personnel/care givers. This envisages the training of human resources in the areas like specialization in Geriatrics in medical courses, special courses on
Geriatric Care in nursing training, training of social workers especially for geriatric care and professional caregivers.

**Media:**
The policy enjoins upon media to take up a special responsibility for the care of older persons. Media is to play a role in identifying emerging issues and areas of action, dispelling stereo-types and negative images about the old age, maintaining restraint from creating fear psychosis by responsible reporting, promoting intergenerational bonds and informing individual/families/groups with appropriate information on ageing process.

Amongst others the policy also recognizes the role of the NGO sector in providing user friendly affordable services to complement the endeavors of the State in this direction. While recognizing the need for promoting productive ageing, the policy also emphasizes the importance of family in providing vital non formal social security for older persons. To facilitate implementation of the policy, the participation of Panchayati Raj Institutions, State Governments and different Departments of the Government of India is envisaged with coordinating responsibility resting with the Ministry of Social Justice & Empowerment.

Many State Governments have adopted their State Policies on Older Persons to suit local ethos and conditions. These States are Andhra Pradesh, Delhi, Goa, Karnataka, Kerala, Maharashtra and Mizoram.

**National Council for Older Persons**
In pursuance of the announcement of the National Policy, the Government has set up a National Council for Older Persons
(NCOP)\textsuperscript{25} headed by the Ministry of Social Justice and Empowerment. Its primary function is to advise and aid the government on policies and programs for older persons and also to provide the feedback to the government on implementation of the National Policy. The NCOP is the highest body to advise and coordinate with the government in the formulation and implementation of policy and programs for the welfare of the aged. The Council also works as a nodal point at the national level for redressing the grievances of the older persons and to represent their collective opinion to the government of India. The NCOP members are experienced and well-known individuals representing NGOs, citizen’s groups, retired person’s associations and from the field of law, social welfare and security, research and medicine\textsuperscript{26}. The basic objectives of the NCOP are to:

- Advice the Government on policies and programs for older persons
- Provide feedback to the Government on the implementation of the National Policy on Older Persons as well as on specific program initiatives for older persons
- Advocate the best interests of older persons
- Provide a nodal point at the national level for redressing the grievances of older persons which are of an individual nature
- Provide lobby for concessions, rebates and discounts for older persons both with the Government as well as with the corporate sector
- Represent the collective opinion of older persons to the Government
- Suggest steps to make old age productive and interesting

\textsuperscript{25} \url{www.unescap.org/esid/psis/meetings} accessed on 8/12/2010.

\textsuperscript{26} Age Care in India-National Initiative on Care for Elderly, National Institute of Social Science, Ministry of Social Justice and Empowerment, Govt. of India, p5
• Suggest measures to enhance the quality of inter-generational relationships.
• Undertake any other work or activity in the best interest of older persons.

There are 39 members in the council. A seven-member working group has also been constituted from amongst the members of NCOP.27

**Grant-in-Aid Schemes**

The Ministry of Social Justice and Empowerment supports programmes for the welfare of elderly through financial assistance to Non-Governmental Organisations under the two schemes viz. “Integrated programme for Older Persons and Scheme of Assistance to Panchayati Raj Institutions Organisations/Self Help Groups under which funds are provided for construction of Old Age Homes.”28

**National Initiative on Care for Elderly**

In consonance with the NPOP the Ministry has launched a Project called National Initiative on Care for Elderly (NICE) to enhance the delivery of care to the elderly in de-institutionalized settings through National Institute of Social Defense (NISD), an autonomous body under the Ministry of Social Justice and Empowerment in 2000 which has been engaged in formulation and development of projects and programs in the field of old age care. The focus of the Project is on creating awareness, identification of

28 Age Care in India-National Initiative on Care for Elderly, National Institute of Social Science, Ministry of Social Justice and Empowerment, Govt. of India, p.6

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the needs, targeted interventions and optimizing capabilities to improve the quality of life of the elderly\textsuperscript{29}.

Aims and Objectives:

- To develop a cadre of professionals for the care and welfare of the older persons.
- To provide a comprehensive and scientific knowledge base on various aspects relating to geriatric care.
- To generate skilled manpower focused on intervention in the family and community settings for the welfare of the older persons.
- To orient the students on techniques/interventions for managing the care of the elderly with focus on programme development and management.
- To identify and promote support systems and networking for care of the older persons.
- To facilitate convergence of services of Government/Non-Government Sectors both locally and at the national level.

**Old Age Social and Income Security**

The Ministry has also launched a project called "Old Age Social and Income Security (OASIS)"\textsuperscript{30}. An Expert Committee is constituted under the project. The first report of the Committee and the existing income security instruments available to older persons has been comprehensively examined. The report also contains detailed recommendations for enhancing the coverage, improving the rate of returns and for bringing about a qualitative improvement in the customer service of Public Provident Fund, the Employees Provident Fund, the Annuity Plans of LIC, and UTI etc.

\textsuperscript{29} Ibid
\textsuperscript{30} www.socialjustice.nic.in accessed on 4/22/2009

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The recommendations of the Committee are being examined by the Ministry of Finance for further action. Meanwhile, Phase II of the project is looking at the pension and gratuity schemes of the central government and old age pension provided under National Social Assistance Programme (NSAP) 1995. At the core of the second phase of project OASIS, however, lies the designing of a new, fully funded, contributory pension programme for the balance (uncovered) workers including casual/contract workers, self-employed, farmers etc.

**Employees Pension Scheme 1995**

Scenario in private sector organizations has undergone a change in recent years. With the enactment of the Employees Pension Scheme, 1995, employees of factories and other work place, who were eligible for the benefits of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, have become eligible for the benefits of the new scheme.\(^{31}\)

**Public Provident Fund Scheme**

In order to provide old age income security to the people engaged in the informal sectors, the Government of India started the Public Provident Fund Scheme in 1968-69. It is an individual accounting system that defined benefits against the defined contributions made by subscriber. The government administers the applicable rate of interest. The amount of subscription is eligible for tax rebate under Section 88 of the Income Tax Act, 1961, while interest earnings and withdrawals do not attract any penalty.

\(^{31}\) LAWZ, November 2005, p13
New Pension Scheme

The New Pension Scheme (NPS) seeks to provide old age security for all individuals, including the unorganized sector by creating a mechanism to enable them to save through their working lives. Under NPS every subscriber is to have an individual pension account, portable across job changes. The amount (including income on the investments) will be available at the age of 60 years, with at least 40 per cent to be converted into monthly payments for the rest of their lives.32

Reliefs under Taxation Laws

Rebate of Income Tax in case of individuals of sixty-five years or above, Section 88B.33

Consequent to insertion of new section 80C relating to deduction in respect of Life insurance premium, deferred annuity contributions to provident fund, subscription to certain equity shares or debentures, etc. new sub-section (9) has been inserted in section 88 to provide that no deduction from the amount of income tax under the said section shall be allowed to any assessee for the assessment year beginning on 1st April, 2006 and subsequent years.

Income Tax Rebate:

- Income Tax Exemption for Senior Citizens up to ` 2.25 lakh from 1/4/2008 (now ` 2.5 lakh and for Senior Citizens above age 60 years and above the age of 80 years upto ` 5 lakh as per Finance Budget 2011 w.e.f.1/4/211)
- Deduction in respect of medical insurance prememiun under section 80 D to be a maximum of ` 20,000

33 Omitted by the Finance Act, 2005, w.e.f. 1-04-2006
- Medical expenditure on some specific disease like heart, cancer is exempted to `60,000.
- If form '15-H' is filled in, exemption is given from deduction of TDS. The present limit of TDS is increased to `10000 from `5000 from 1/4/2007.
- Finance Bill 2006 – The investment in the Pension Plan can be made up to `1 lakh against the existing limit of `10,000.
- The investment in five year fixed deposit with a scheduled bank would qualify for a tax deduction within the overall limit of `1 lakh. However, the combined limit for exemption under section 80C as well as 80CCC (Pension) continues to be `1 lakh only.

Eligibility for this rebate is that, he or she Senior Citizens shall be 65 (now 60 years as per Finance Budget presented on 28/02/2011)\(^{34}\) years and above during the relevant previous year.

**Deduction in respect of Medical Insurance Premium (Sec. 80D)**
An assessee is entitled to a deduction up to Rs. 20,000 with effect from 1/04/2008 where the assessee or his/her spouse, or dependent parents or any member of the family is a senior citizen, (i.e. one who is at least 65 years of age at any time during the previous year), and the medical insurance premium is paid to effect or keep in force an insurance in relation to him or her.\(^{35}\)

**Deduction in respect of medical treatment (Sec. 80DDB)**
Section 80DDB has been inserted to provide for a separate deduction to a resident assessee being an individual or a Hindu undivided family member for expenditure incurred for medical treatment for the individual himself or his dependent relative in

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\(^{34}\) Ministry of Finance, Finance Bill 2011

\(^{35}\) Ministry of Finance, Finance Bill, 1999
respect of disease or ailments which may be specified in the rules. The deduction shall be limited to Rs 40,000.

However, where the expenditure incurred is in respect of the assessee or his dependent relative or any member of a Hindu undivided family of the assessee and who is a senior citizen (one who is at least 65 years of age at any time during the previous year), a fixed deduction of Rs 60,000 will be available.  

V CONCLUSION

The analysis of the provisions of the Indian Constitution, which is the law of the land, guarantees and confers the honour and life with dignity. Perusal of the cases referred above dealt by Hon. Supreme Court of India, demonstrate the concern of the Indian judiciary in assuring the dignity of life. This also helped in extending the social security for all. As a extension of the said view of Supreme Court also reflects in the policies and schemes brought in to existence by the government of India. All these policies and schemes are nothing but to provide social security and dignity of life of the aged people. Same is the case with different legislations. It appears that, the said legislation provides economic and social security also, which are in consonance with the Constitutional mandate.

Although several steps by enacting different legislation and implementing different policies have been taken to provide social security to the aged people, the position is far from satisfactory. The main reason for this unhappy situation is that most of the legislations cover only small segment of the aged population. Various enactments such as The Employees Provident Fund and

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36 Ibid
Miscellaneous Provisions Act, Payment of Gratuity Act, Pension Act, do provide security, but to a small section of the population. Vast section of the old people are just like beggars and destitute and even those who fall in the purview of such Acts, find themselves at the receiving end as their children snatch whatever benefits accrue to them and kick them out.

The statutory provisions related to maintenance require the aged people to initiate the proceedings in the appropriate courts of law, which in turn require them to spend their time, leisure and money and make them to run from pillar to post at an advanced age. Civil courts take a long time to dispose of cases. Even if a competent civil court passes a judgment and decree, execution takes months and even years due to cumbersome legal procedures. Even before the maintenance is realized the decree holder may die of starvation. The slow and dilatory court machinery is a great deterrent factor in addition to the social and economic compulsion of risking of loss of family prestige, which shares at the face of old parents to approach the courts practically with begging bowl against their own wards. The legal delays are again agonizing and distressing for them. A critical analysis of these provisions shows that they have been merely a drop in the ocean in view of the vast aged population of India.

Very small number of the salaried (non-government) workers in the formal sector is covered by Provident Funds. The mandatory, employer centric, defined contribution plans cover only 177 industries and classes of establishments notified by the Government. In addition, within these specified industries, only establishments employing 20 or more persons need to provide
provident fund benefits to employees. Further employees drawing a monthly salary of ₹5000 or more have the option to opt out from contributions to PF.

Other salaried employees and majority of the workers from unorganized sector (including self-employed and farmers) are not covered by any pension scheme that enables them to save for economic security during old age. Though the Public Provident Fund (PPF) was introduced in 1968-69 to provide a facility to self-employed persons to save for old age, it today serves only as a medium term savings instrument with liberal withdrawal facilities and tax benefits. But most of the account holders of PPF, mainly engaged in the organized sectors, use this scheme as a lucrative instrument for planning investment and tax instead of reaping retirement benefits.

The Indian pension fund industry is presently at a nascent stage. The government has yet to formulate suitable policy measures to open it up to private players for the growth and development of the industry, which in turn will serve the diversified needs of consumers. Presently, the Indian pension market is fragmented in nature, backed by poor level of penetration to few selected groups of people. Difficulties in getting pension and provident funds from government-run institutions have contributed to the indignities the aged suffer. However, although solutions have been offered, by and large the issue of pension is yet to be addressed as a concrete issue.

The Employees Family Pension Scheme, 1971, and the new Employees' Pension Scheme 1995, provided for family pension to the widow/children in case of death of a member while he was in
service. The perusal of these schemes reveals that, it only covers widow or widower along with two children. However, this has not anticipated the situation where young employee-member die while in service left widow and aged parents who are not having any means. Unfortunately, such aged parents are not entitled to get pension as widow and children of their son.

It is high time that the Indian policy makers assess the impact of the forthcoming age wave. The process of pension sector reforms should be accelerated, suitable steps should be undertaken to build the required schemes and provisions and a suitable social system should also be designed. If change is not effected, the family support system as well as the state-sponsored facilities may crash in the near future, thereby jeopardizing the well-being of elderly Indians. It may cause gigantic number of destitute poor and elderly people in the streets and public places.

The Government of India has established teethless body called National Council for Older Persons (NPOP). This organization is formulated to receive complaints, grievances and suggestions of older persons. However, it has no means and power to provide any assistance or care, if required. Thus the NPOP remains unimplemented.

In the light of foregoing observations the researcher put forth the following suggestions for proper and adequate social security benefits to the aged people:

There shall be comprehensive legislation to provide the social security to all the persons including persons from unorganized sector.
The aged parents shall be given benefit of pension out of Employees Pension Scheme, at par with widow and children, if they are not having any other living son or daughter and means for their survival.

There shall be provision for some incentives or more rebate than the present one, in case of payment of Income Taxes for those who are taking care and providing all amenities to their aged parents. This will encourage protecting joint family system and providing same respect and honor to aged parents/people as earlier.

If the aged people are destitute with no one to look after them, the responsibility must be shared by government/state. The state must take all necessary steps to provide them the succor and peaceful life.

The National Policy of the Older Persons though declared in 1999, it has not been implemented after elapsing more than decade. Hence it is sincere suggestion that, government shall initiate the mechanism for implementation of the NPOP forthwith in its letter and spirit, to provide social and economic security to aged people in real sense so that, aged people will enjoy life with dignity as enshrined in Constitution of India.

In spite of the fact that, the number of aged people is increasing day by day, issue of aged is dealt with by Ministry of Social Justice and Empowerment which is already over burdened. There is ministry for Women, Children Youth, and Environment; there is National Commission for Minority, Women and Population but about 7.5 per cent elderly as stated above are represented by congested and overloaded Ministry of Social Justice and Empowerment. There is no separate Ministry for Senior Citizens or
Aged or elderly People, which in fact, is great need. The Constitutional norms and legal provisions of general laws support protection and promotion of the dignity of aged people.