

# Senior Citizens and the Constitution of India: A Critical Analysis

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## I. Introduction

Growing population of the world has become a concern for all but more to those developed countries where life expectancy is comparatively very good like United States of America, Japan, Germany and for those countries which house the largest share of the population of the world like China and India. Whereas, advanced medical facilities and development have reduced many life-threatening ailments and infants' mortality rate resulting into increased life expectancy, on the other hand it has added a significant number of oldest older. This old age segment of populations has many boons but coupled with challenges, particularly for a country like India problems and inter-lined with other challenges which naturally comes with vastness of populations.

Life expectancy in India has improved significantly. At the times of framing the Constitution of India the older population did not constitute such a forceful segment that is why the Constitution framers were not so cognizant towards them as may be seen towards women, children and other social and education backward classes of the citizens of India. Through this article, the author will discuss primarily the rights specially secured for the senior citizens in India. Though in the Constitution, the term 'senior citizen' has not been mentioned anywhere, but as, generally understood that no Constitution is written for people of the county classified on the basis of age. However, keeping in mind, the need of the population and its specific segment, emphasis may be supplied. The Article is divided into five parts. Other than the introduction in this part, Part-II deals with the incorporation of social-economic justice related to senior citizens in the Constitutional. Part-III deals with fundamental rights and position of senior citizens. Part-IV deals with Directive Principles of State Policy related to senior citizens, Part-V contains the concluding remarks of the author.

**Key words:** *Senior Citizens, Older Persons, Constitution of India, Fundamental Rights, Directive Principles of State Policy.*

## II. Incorporation of Social Justice to Senior Citizens under the Constitution of India

India has realized of late that senior citizens should be given specific attention. As estimated by UN population division, revised time and again that in the coming 40-50 years Indian elderly people rise from existing 85 million to over 300 million and highest among themselves will be 80 plus. There are two concerns, firstly, to look into reasons of increasing number of elderly people in India and secondly, whether merely because of

increasing number special attention required to be given or due to other reasons.<sup>1</sup> Demographic shifts may be denoted to several factors like declining total fertility rate, decreasing mortality rate at the time of death and improving expectancy. Do we really need to give attention now to senior citizens' care and look after? Or, so far whatever, has been done that has worked successfully and has not let us realized that senior citizens should be given special care?

Every coin has two sides. On one hand medical science has successfully tackled menacing diseases, which were life threatening and thus life expectancy was very low. which is really a matter to cheer but on the other hand increase in life expectancy has to rise in number of elderly populations. These changing dimensions of population require an insightful policy making. The First United Nations Assembly on Ageing at Vienna<sup>2</sup> highlights beautifully the transitional phase from childhood to old-age and why the senior citizens are considered to have significant impression on inter-generatioal learning. The first world assembly on ageing 1982 observes that,

“The human race is long characterized by a long childhood and by a long old age. Throughout history this has enabled older persons to educate younger and pass on value to them; this role has ensured man's survival and progress. The presence of the elderly in the family home, the neighborhood and in all forms of social life still teaches an irreplaceable lesson of humanity.”<sup>3</sup>

Thirty-ninth report of the Standing Committee on Social Justice and Empowerment (2013-14) elaborated the position of senior citizens as following:

“The elderly people are a precious asset of a nation who are deemed to be the repository of rich experience and wisdom. They give moorings to society and act as lodestar when the wisdom and accumulated knowledge of the elders is counted. With the improvement in child survival and adoption of small family norms and increased life expectancy, a significant feature of demographic change in world population including India is the progressive increase in the number of elderly persons. This ageing of world population represents an unparalleled challenge to the Governments to ensure that the needs of aged and their human resource potential are adequately addressed through appropriate programmatic and policy interventions.”<sup>4</sup>

The problem of ageing and old age people was perceived as a problem of the developed countries. Old age is commonly associated with physical inability, mental unsettlement and social disassociation. Old age, if, not maintained to take care of itself, credit must be given to their devotion and sacrifice to let their future (their children) grow and prosper in all possible ways. The same children, often leave their parents and grandparents

<sup>1</sup> Moneer Alam, *Ageing in India: Socio-Economic and Health Dimensions*, 2(Academic Foundation, New Delhi, 2006).

<sup>2</sup> The Vienna International Plan of Action on Aging was adopted by the World Assembly on Aging held in Vienna, Austria from 26 July to 6 August 1982. This is also referred as the 'Vienna International Plan of Action on Ageing.'

<sup>3</sup> Ibid.

<sup>4</sup> The Standing Committee on Social Justice and Empowerment chaired by Mr Hemanand Biswal, them Member of Parliament, submitted its report on the implementation of schemes for the welfare of senior citizens on February 7, 2014. The document can be accessed at : [https://eparlib.nic.in/bitstream/123456789/64808/1/15\\_Social\\_Justice\\_And\\_Empowerment\\_39.pdf](https://eparlib.nic.in/bitstream/123456789/64808/1/15_Social_Justice_And_Empowerment_39.pdf), (Visited on 15 July, 2018)

in State of destitute. “Young old moves to the older old”, as there is progression in age so the complexities emerge.<sup>5</sup>

### Senior

The term ‘senior citizen’ has not been mentioned in the Constitution of India. But under Article 41 term ‘old age’ has been mentioned. Though, it appears to be a passing reference which is subject to certain conditions. There are several terms in vogue to refer senior citizens. These terms are; elderly people, older persons, aged people, aged persons, ageing persons, old age persons and senior citizens. The researcher has referred several terms like ‘old age people’, ‘senior citizens’, ‘elderly people’, ‘older persons’ ‘aged people or persons’ in the thesis. These all should be understood in the sense of senior citizens who have attained the age of sixty years or above. The author has used the senior citizen with reference to those people who are sixty years or above.

The Constitution of India is the source of all laws existing in India. Any law which does not comply with the Constitutional mandate cannot survive. Constitution of any country is not written for any specific period but foresighted to sustain for the generations to come and cope itself through required amendments, to fulfil the desiderata of existing times. Every Constitution do have certain goals to be achieved, which are reflected either in the preamble, if annexed or through the contents of it. The Preamble to the Constitution is the mirror to look into the Constitution. The Preamble to the Indian Constitution marks the goal of achieving social, economic and political justice as one of the primary objectives<sup>6</sup> It emphasizes to secure to all its citizens social, economic and political justice. To achieve this objective the Constitutional framers have framed the provisions, which if, secured and implemented successfully, would achieve the same. Part III and IV of the Constitution comprise of such provisions which, constitute the core of Social, Economic and Political justice of the Country. Guaranteed fundamental rights in Part-III of the Constitution have not been classified on the basis of age. Every person or citizen, whomsoever a particular right is guaranteed cannot be deprived from seeking enforcement of the same in case of infringement. Though some enabling provisions have been provided to empower the State to take additional efforts to protect some vulnerable groups, i.e., children and women.<sup>7</sup> No such special or separate provision is given under Part-III, to senior citizens. Though Part-IV of the Constitution is more progressive in nature. It contains Directive Principle of the States Policy. These are non-enforceable but crucial in governance.<sup>8</sup> The Constitution Framers foresighted this Part of the Constitution as the touchstone of the welfare and democratic governance.<sup>9</sup>

<sup>5</sup> T. C. Camacho et al., “Functional Ability in the Oldest Old”, 5(4) *Journal of Aging and Health* 439-459(1993). 4

<sup>6</sup> The Constitution of India, 1950. The Preamble of the Constitution reads as: “We, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure all its citizens: JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation; IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THE CONSTITUTION.”

<sup>7</sup> The Constitution of India, 1950, Article 15(3)

<sup>8</sup> Article 37

<sup>9</sup> Dr. Ambedkar said in the Constituent Assembly, though these Article are not enforceable in any Court of Law but will be crucial in the policy making. Those government which will ignore these guiding provisions will have to face the people in election and people will not elect them, if they think that the government had failed to comply with the Constitutional requirement. So, no government could afford to ignore these provisions.

Social and Economic Justice are twin challenging goals set to be achieved in the Preamble to the Constitution. Justice V.R. Krishna Iyer, summarizes the whole scenario of social justice in any nation and how it applies pertinently in India. He writes,

“Law is not the principal panacea because it is an engineer of those values into which the Constitution and Parliament breathe life. A national renaissance in the field of social justice must, therefore, flame forth from the Constitution and the legislatures and the basic economic relations dominant in society. The Executive branch, with vibrant vigor, transforms the legislated mandates and the founding faiths into living realities if it is not still a call girl of the Adharma Establishment. The judicial branch, with innovative genius and imaginative commitment to the founding creed of our democratic, secular, socialist Republic, must interpret, apply and enforce the law in such big leaps that the court becomes the sanctuary of hope for the broad spectrum of the handicapped and the victimized. The value revolution envisioned by the Constitution is creative forensic contribution it is striving to make so that equal justice under the law may be enjoyed by the lowliest, the lost and the last.”<sup>10</sup>

Among the three justices sought to be achieved. Political justice is comparatively easier. Like it may be declared easily that anybody who has completed eighteen years of age, shall be entitled to vote but similarly social disparity cannot be removed. Like even by having specific provision in the Constitution which provides that ‘the caste is abolished absolutely in India’, it would not be possible to immediately let people forget their castes. The President of India, in his speech on Law Day, on 26<sup>th</sup> November, 2018 highlighted the changing perspective of social justice. He spoke on social justice in following words:

“In the Preamble, justice is not seen as unidimensional. It is viewed as having implications across political, economic and social spheres. Political justice implies the equal participation of all adults in the political process and the just formulation and implementation of laws. Economic justice implies the ultimate eradication of poverty, equal opportunities to earn a livelihood, and fair wages. As such the expansion of economic, entrepreneurship and job opportunities are among examples of economic justice. Given the diverse history of our people, and given imbalances and hierarchies that have sometimes marked our past, social justice remains a touchstone of our nation building. At the simplest level, it implies the removal of societal imbalances and the harmonization of rival claims and needs of different communities and groups. Social justice is about providing equal opportunities.

Such a conceptualization of justice was valid in 1949 and broadly remains relevant today. Even so, the 21st century has brought new challenges. No doubt the concept of justice - political, economic and social – has a resilient core but it needs to be thought of in innovative ways. It requires to be applied afresh to emerging situations – situations that may not have existed or been foreseen when our Constitution framers were at work.”

<sup>10</sup> V.R. Krishna Iyer, *Social Justice: Sunset or Dawn*, 169-170 (Eastern Book Company, 1<sup>st</sup> edn., 2019)

### III. Fundamental Rights and Senior citizens

Part-III of the Constitution contains fundamental rights which are guaranteed. There are many classifications of fundamental rights i.e., citizen and non-citizen, natural persons and artificial persons, etc. but none of them is based on age. Any person or citizen to whomsoever a particular fundamental right is conferred will be equally entitled whether newly born or on the verge of demise. Article 14 of the Constitution which postulates the foundation of Rule of Law in India. Article 14 prohibits discrimination but protects the intelligible differentiated or classified reasonable.<sup>11</sup> Whereas under Article 15(3) special provision has been enshrined to consider women and children as specific classes in themselves which means riders under clause (1) of Article 15 will not affect any law which is enacted for women and children. This is considerable here that senior citizens may be considered as a class in themselves keeping in mind the growing concerns related to them.<sup>12</sup>

Article 21 of the Constitution is harbor of human dignity. “The human life without dignity is substantially devoid.”<sup>13</sup> This is the exactness; human dignity is seen as part of life. United Nations Universal Declaration of Human Right, 1948 recognizes the human dignity as one of the inalienable facets of human right. To protect the human rights, ensuring the dignified life is the primary duty of the State. Our Courts, chiefly, the Supreme Court has time and again given the widest possible amplitude. “Life without dignity would be life a sound that is not heard”.<sup>14</sup> The Supreme Court reiterated that right to life includes right to live with dignity.

The Open-Ended Group on Ageing in its first Session raised the concern that there is general tendency by other class of citizens towards older person’s dignity is very inferior in nature. It observed that

“Another central challenge for older persons is living with dignity. The very process of ageing could threaten older people’s dignity as they were perceived by others to be inherently less valuable to society. Independence, participation and autonomy were critical components of dignity. In particular, older persons should be perceived as active members of their societies and not only as recipients and social protection.”<sup>15</sup>

Central and State governments in India boast of that by providing financial help (small amount as pension) under National Security Assistance Programme (NSAP), is protecting their right to live with dignity. The Moot question in light of the pension given to the senior citizens is whether these senior citizens are given this pension as gift by the State or something to enjoy with or as subsistence. As welfare State, governments should realize their solemn duty to take care of senior citizens, who sacrifice their everything for the life of the well-

<sup>11</sup> Article 14 reads as: “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.” Article 14-18 form the code of equality. Article 15 and 16 provides for the protected discrimination.”

<sup>12</sup> Article 15 reads as:

“(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.  
(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to— (a) access to shops, public restaurants, hotels and places of public entertainment; or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.  
(3) Nothing in this article shall prevent the State from making any special provision for women and children.”

<sup>13</sup> *O’ Regan J. S. v. Mukwanyane*, (2002) ECHR 588.

<sup>14</sup> *K.S. Puttaswamy v. Union of India* (2017)10 SCC 1.

<sup>15</sup> These observations were noted by the Chair, while submitting the report of the First Open Ended Working Group on Ageing.

being of the State, old age pension is recognition of efforts put by them in the past to make the State successfully achieving its' goal. Moreover, how this amount of few hundred of rupees, may be substitute of the dignity ingrained under Article 21, to those senior citizens who are deprived of all the basic amenities and nobody is there to take care. The Apex Court observed in *Coralie case*:

“But the question which arises is whether the right to life is limited only to protection of limb or faculty or does it go further and embrace something more. We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings. Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self.”<sup>16</sup>

What is human dignity? It cannot be replied in abstraction. It is not within any definable contours. Saying like life under Article 21 is dignified one not an animal existence. This notion has itself transformed. Illustration in light of animal is no more a good one because animals do have rights.<sup>17</sup> In this light of dignity of animals, which must be appreciated, but there must be some difference of degrees between human dignity and animal dignity. It does not mean any how giving atrocious or abhorring treatment to animals but human being, no doubt, deserves higher pedestal of dignity today. When it comes to senior citizens, it attracts serious concerns of dignity. What they are entitled for, not only be given but they must be appreciated for the efforts put by them in past. The Supreme Court pointed out in *M. Nagaraj case*;

“It is the duty of the State not only to protect the human dignity but to facilitate it by taking positive steps in that direction. No exact definition of human dignity exists. It refers to the intrinsic value of every human being, which is to be respected. It cannot be taken away. It cannot be given. It simply is. Every human being has dignity by virtue of his existence.”<sup>18</sup>

There is plethora of cases in which Supreme Court time and again has emphasized and reiterated that life with dignity is part and parcel of Article 21. The Court observed that the petitioner in the case has sought the question of pension should not be seen in isolation but must be envisaged as unalienable part of Article 21 of the Constitution because pension is not any altruistic act on part of the State but being *parens patriae*, this is primary duty and a symbol of recognition the contribution made by senior citizens by sacrificing their youth. The Court further observed that:

“In view of the various decisions of this Court, there cannot be any doubt now that the right to live with dignity is, in effect, a part of the right to life as postulated in Article 21 of the

<sup>16</sup> *Francis Coralie Mullin v. Administrator, Union Territory of Delhi* (1981)1 SCC 608.

<sup>17</sup> *Animal Welfare Board of India v. Nagaraja*, CIVIL APPEAL NO. 5387 OF 2014.

<sup>18</sup> *M. Nagaraj v. Union of India* (2006) 8 SCC 212.

Constitution. Such a right would be rendered meaningless if an aged person does not have the financial means to take care of his basic necessities and has to depend for it on others. It is in this context that the petitioner submitted that all elderly persons must be granted adequate pension so that they are able to sustain themselves with dignity.”<sup>19</sup>

The inequalities in our social and economic life is basically due to our social structure. These will persist till this social structure persist. To bring the preambular notion of socio-economic justice to the ground, first of all, it is necessary, the existing structure must be restructured. This structure must be based on reality, continuously changing and sometimes overlapping realities. These overlapping must be analyzed rationally. Whether it be the social justice by way of reservation or protection of conferring special status by devising a group of people as class that must be treated separately because including other in this class will desuetude the objective of equality itself. Senior citizens or elderly people must be seen from the mentioned point of view. There are not many senior citizens specific provisions in the Constitution of India. One such specific provision is Article 41. It reads as:

“Right to work, to education and 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.”

Article is framed in a very wide phraseology. It must be the endeavor of the State to give public assistance in cases of education, unemployment, old age, sickness and disablement. This endeavor of assistance from the State obviously is subjective to its economic capacity. How the State will identify its economic capacity?

It is noteworthy that aged people have not been paid special reference like education, which is not only mentioned under this Article but emphasized further under Article 45, which is taking up the issue of education with much vigor. What may be the reason that old age has not been taken with like seriousness? Whether our Constitution framers were oblivious of the fact that in the time to come aged people would not be better than the position of women and children, which have got the space in the Constitution as vulnerable groups<sup>20</sup>, though such inclusion has achieved its objective not, may be a matter of discourse. Non-mentioning of older persons specially may be seen in light of few facts. Firstly, the population as per the census 1941 was not such a big alarm, so that it could be foresighted that the coming decades in India going to be the ‘baby boom’. Secondly, the health services were poor in India, consequently the expected average age was also very dismal senior citizens population in India has been normal.<sup>21</sup>, it has not reached to the alarming scale, it may also be cited as the reason behind Indian efforts to frame senior citizen centric policy so late because of the belief that Indian is the home to the largest young populace of the world. Thirdly and most important from the

<sup>19</sup> *Dr. Ashwani Kumar v. Union of India*, (2019)2 SCC 636

<sup>20</sup> The Constitution of India, 1950, Article 15(3). This is an enabling provision, and reads as, “*Nothing in this Article shall prevent the State from making any special provision for women and children.*”

<sup>21</sup> Elderly population in 1961 was 5.6 percent of the population while for the year 2001 and 2011 it has been 7.4 and 8.3 respectively of the total population. See, *Situation Analysis of the Elderly in India* (June, 2011), Central Statistics Office Ministry of Statistics & Programme Implementation Government of India available at [http://mospi.nic.in/sites/default/files/publication\\_reports/elderly\\_in\\_india.pdf](http://mospi.nic.in/sites/default/files/publication_reports/elderly_in_india.pdf) (visited at Jan 10, 2019)

Constitutional Law point of view that Part-III of the Constitution is very wide, it has not been made enforceable on the basis of age but on the basis of equality. Equal Protection of Laws and Equality before the law are foundational principles of guarantee conferred to the Fundamental Rights. All the elderly people are not any how lesser protected under the provisions of the Fundamental Rights than any other.

#### IV. Directive Principles of State Policy and Senior Citizens

The Constitution of India is a modern Constitution. It contains all the seeds of welfare<sup>22</sup> and progressive society based on justice that is social, economic and political. The importance of the Directive Principles of State Policy has been elaborated by Prof. P. K. Tripathi, in following words-

“Directive Principles of State Policy do not constitute a set of inferior and subsidiary principles; that they are in fact, by their very origin and history, principles which define and delimit the fundamental rights of the individual on the one hand and a directive principle of State policy on the other, it should be presumed that the conflict is apparent and resolvable when the two conflicting rules are properly interpreted and in the process of interpretation, it would be proper and appropriate to remember that the directive principles of State policy embody a set of social principles that came into existence to check the wild extravagance of the fundamental rights of the individual and to eliminate the clogs in the functioning of the modern welfare State which were the by-products of the orthodox view regarding the scope of the fundamental rights.”<sup>23</sup>

Whole Constitution is knitted around the mentioned objectives in the preamble. Whenever any doubt arises, preamble is the source of interpretation to the Constitution. Part-III and IV of the Constitution have been differentiated on the basis of justiciable and justifiable with their specific reasons underlying.<sup>24</sup> Part-III is mostly dominated by those guarantees which are utmost necessary for the individual. Mostly these are in individualist in nature while Part-IV is based on socio-economic rights or community rights. Preamble is ‘seeking to promote the goal of common good.’<sup>25</sup>

The Preamble to the Constitution secures to all its citizens social, economic and political justice. This is one of the four objectives<sup>26</sup> envisioned by constitution framers to be achieved through the government run by this Constitution. The only one of the four objectives which is directly incorporated in any article is “Justice, social

<sup>22</sup> Item No. 24. Family welfare; Item No. 26. Social welfare, including welfare of the handicapped and mentally retarded.”

<sup>23</sup> P.K. Tripathi, *Spotlights on Constitutional Interpretation* 293 (N.M. Tripathi Pty. Limited, 1972).

<sup>24</sup> This approach towards the fundamental rights vis-à-vis directive principles of State policy became exuberant after the Apex Court’s pronouncements in *Minerva Mills Ltd v. Union of India* (1981) 1 SCR 206, and *Waman Rao v. Union of India* (1981) 2 SCR 1.

<sup>25</sup> Sir B. N. Rau, *India’s Constitution in the Making*, v-vi (Orient Longmans, Bombay, 2<sup>nd</sup> edn. 1960). Sir B. N. Rau moved an amendment to give primacy to the Directive Principles over the Fundamental Rights in case of conflict. During the vote on the issue of making the Directive Principles justiciable the voting on that day gone against it and consequently included as non-enforceable as given by Article 37 that “the provisions contained in Part-IV shall not be enforceable by any court but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.”

<sup>26</sup> The Preamble of the Constitution postulates four objectives: (i). Justice, social, economic and political; (ii). Liberty of thought, expression, belief, faith and worship; (iii). Equality of status and of opportunity; and (iv). Fraternity assuring the dignity of the individual and the unity and integrity of the Nation.

economic and political” is article 38<sup>27</sup> which is amplified in just next article 39.<sup>28</sup>. These two articles in the Constitution emphasising on part of State to ensure for its people adequate means of livelihood, fair distribution of wealth, equal pay for equal work and protection of children and labour. Article 39 (b) and (c) together with other provisions of the Constitution contain the main objective of building a welfare and an egalitarian social order. The preamble to the Constitution lays down the goals of politico-socio-economic democracy for the citizens of India. The Preamble emphasizes that India should be a socialist secular democratic republic.

These principles in the preamble have been characterized as ‘basic to our social order’ as they seek to build a social justice society. These principles have been drafted in flexible and general language and leave enough leeway to the various governments in the country to form their policies from time to time in accordance with the contemporary needs and circumstances of the society to achieve the goals set out therein. These principles do not impose any particular socio-economic philosophy on the country. However, the preamble uses the term ‘securing to all its citizens’ is to be seen in wider perspective because Part-III of the Constitutions itself guaranteeing fundamental rights some of them are specifically provided only to the citizen of India while the rest of them are to all irrespective citizenship.

The term ‘Socio-Economic Justice’ is highly contested issue in the progressive development of the country. This is undisputable fact that social, economic and political justice is so interrelated to one another that none of them can be separated from each other in absolute term. However, each of them having its core substance. Therefore, pertinent question to resolve is what is the ‘minimum core of economic justice’ in the present time? How this substance of minimum core has changed in the post advent of Liberalization, Globalization and Privation (LPG)? This Constitutional mandate to prevent the concentration of material resources but to sub serve them to the maximum benefit of the people in the just and fair manner. These directives in the Constitution of India are actually the rights of the second generation which at that time could not be made enforceable because of the insufficient resources and incapability of the State. That was the earlier stage when even State was to be seen in terms of successful enforcement of fundamental rights guaranteed in Part-III of the Constitution which are basically rights of first generation comprised of political rights with some emphasis on social justice. In most of the countries this is the time of third Generation’s right and moving to the next stage. The core of third generation’s right is right to development, right to common heritage and inter-generational equity. So, in this changing scenario what is the relationship of ‘Right to development and Economic justice’?

<sup>27</sup> The Constitution of India, 1950, Article 38 reads as “*State to secure a social order for the promotion of welfare of the people-*  
(1) *The State shall strive to promote the welfare of the 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.*  
(2) *The State shall in particular, strive to minimize the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engages in different vocations.*

<sup>28</sup> The Constitution of India, 1950, Article 39(a) reads as “*Certain principles of policy to be followed by the State- The State shall in particular, direct its policy towards securing-(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;*

It is true that preamble to the Constitution has used the term 'social justice' and so is the Article 38 of the Constitution but the modalities and measure are left wide open to the political parties because in a democratic process these are the political parties which ultimately have to come to the power and frame the policies. Expression generally referred to the deprived and weaker sections of society by bringing about an egalitarian order under which equal opportunities are afforded to the weaker sections of society.

The Constitution is so flexible to extend the leverage in favour of down-trodden and weaker sections that it conveys very clearly that 'if there is lack of social justice it would necessarily tend to social dis-order.' Anything what State observes that a particular phenomenon or existence is detrimental or will pose threat to a sustainable future State must invoke such provisions and make the fitting law to guard the apprehensions. For such situation Justice Iyer writes "beyond this neither the Constitution nor any subsequent legislation provides a key to the precise connotation of the expression 'social justice.' This connotation is pregnant with flexible idea of different policies at different times. If, the Constitution does not have special mentioning of elderly people, except the passing reference under Article 41, it does not mean that State has been blocked further to consider them like children and women if really the position of elderly has come down like them.<sup>29</sup> The Supreme Court observed *Muir Mills case*<sup>30</sup> that meaning of social justice and its connotations are varied with 'time and space.'

What are the various phases of changes in this concept of Economic justice in the passage of time since its commencement as constitutional objective? However, on many occasions the Supreme Court of India has explained economic justice with the help of social justice. Whether this objective of economic justice in the preamble, has lived up to its expectation for the welfare of the people of India or it has hitherto not been utilized or under-utilized? When the Constitution of India was enforced that was the time when State was not economically sound to implement the economic justice with similar vigour as that of social justice that is why rather than placing this in Part-III of the Constitution placed in Part-IV and left at the mercy of States.

To understand the social concern, that is desideratum but since it is not clearly falling into the regime of guarantee under Part-III of the Constitution does not mean that it may be left at the whim and caprice of the State, like in case of senior citizen, first of all the subjective test by the State itself of its economic capacity, whether it is economically capable or not to extend assistance to those who have sacrificed their youth, vigor, health, intellect etc. to make the State of present status. In the passage of the Constitution those reasons for which these principles which are termed as the Directive Principles appear to be decisive for the welfare and socio-economic concerns. This is evident that many of the D.P.S.P. have been elevated to the status of fundamental right by way of interpretation, right to know, right to education are few of the glaring example.

This list is mentioning the areas of legislation for the Parliament and the States Legislatures, subject to the rest of the two list I & II. This entry is primarily related to the employees and their issues along with maternity benefits and pensions for old age pensions. States in India have taken up the issues of old age pension, though

<sup>29</sup> Article 41 of the Constitution.

<sup>30</sup> *Muir Mills Co., Ltd v. Suti Mills Mazdoor Union, Kanpur*, AIR 1995 SC 170.

half-heartedly.<sup>31</sup> Social security, however, is covered separately but with employment and unemployment for the field of legislation.<sup>32</sup> It does not appear that the purpose of the legislation, necessarily would have been related to the issues of senior citizens but generally.<sup>33</sup> As, constitution is not made on temporary basis but for generations to come, that is why, it is expected to be interpreted in such a manner, so that it should include all the changes taking place in the society to make it relevant and purposive. Words like employment and unemployment annexed with the entry by semi-colon denotes that the subject of social security of social insurance does not require to be taken independently but in consonance with employment or unemployment. Before Madrid International Plan of Action on Ageing, it was not a subject of discussion in India and Asian continent except countries like Japan and Korea, which are suffering from old-age problem due to shrunk fertility rate etc., that senior citizens should be considered to engage in re-employment or employment at old age.

#### 4.7 Conclusion

This is not pleasant to see that no specific mentioning in the constitution for senior citizens or old age persons except Article 41. But the time has changed now. Number of senior citizens has rapidly grown. Social fabric is also changing accordingly due to various economic and other pressing issues. Due to all these factors needs of the senior citizens growing. Right of the people enshrined in Part-III and IV are fundamental in the governance but due to difference of enforceability and non-enforceability, huge gap has emerged in both group of rights. Article 41 of the Constitution appears to remain a ceremonial one when it comes with respect to senior citizens. Despite being the member of Vienna international Plan of Action on Ageing 1983, India framed National Policy for senior citizens after 16 years in 1999. Pension for senior citizens as social assistance started in 1997. These late efforts show casual approach of the governments towards senior citizens. However, not a significant percentage of senior citizens to the total population, not so strong economic position, may be one reason to respond so late by having National Policy on Older persons so late. First National Policy could not bring much changes in terms of positive intervention by the State. Section 125 of the Code of Criminal Procedure, 1973 remained the only reservoir to parents for maintenance. Senior citizens were not mentioned separately. The 2007 Act paved the way for senior citizens to claim welfare. This welfare claims cannot be made against State but only against children or relatives. This is not in compliance with the expectation from a welfare State. There are issues of senior citizens faced in their routine life other than maintenance and welfare. Provisions in the Indian Penal Code, 1860, the Code of Civil Procedure, 1908, the Code of Criminal Procedure, 1973 and the Evidence Act, 1872 are those laws which impact the life of all including senior citizens. All such provisions must be updated keeping in mind the convenience and challenges of senior citizens. To have purposeful legal framework for senior citizens it is necessary that all laws which have any concern with senior citizens must be taken in holistic way.

<sup>31</sup> The Government of India under the Scheme of Indira Gandhi National Old Age Pension scheme started Rs. 200 for the senior citizens aged between 60-79 and 500 for the senior citizens above 80 years. It has been revised in 2007. Though some of the States have started their similar schemes or enhanced the amount given under the schemes.

<sup>32</sup> The Constitution of India, 1950, Seventh Schedule, List-III, Entry 23 provides, social security and social insurance; employment and unemployment.

<sup>33</sup> Id., Entry 24 contains 'welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits.'