

NALSA (LEGAL SERVICES TO SENIOR CITIZENS)

SCHEME, 2016

1. BACKGROUND

1.1 The Senior Citizens constitute a class in themselves¹. They are a reservoir of experience and knowledge, yet in many cases they are marginalised and almost wished away by the younger sections of the society as a burden on the society. The senior citizens do not constitute a homogenous group, the differences being based on the age gap amongst the senior citizens themselves, level of physical and mental alertness, their ability to work and such like.

1.2 Over the years, with advancement in science, there has been a substantial increase in life expectancy. As mentioned in the National Policy on Senior Citizens, 2011, “the demographic profile depicts that in the years 2000-2050, the overall population in India will grow by 55% whereas population of people in their 60 years and above will increase by 326% and those in the age group of 80+ by 700% - the fastest growing group.” 1/8th of the world's elderly population lives in India. In real terms the population of elderly persons has increased from nearly 2 crores in 1951 to 7.2 crores in 2001 to 10.38 crores in 2011. Thus about 8% of the population is above 60 years. The highest percentage of people aged above 60 years is found in Kerala with the elderly constituting 12.55% of the population of the state. The number of females is larger in the category of 60+ age group with the number of females being 5,27,77,168 to 5,10,71,872 males as per the Census of 2011.

1.3 Senior citizens face a myriad of challenges- social, physical, mental and economic which are unique to them. The economic problems could be on account of loss of employment with a consequent loss of income and economic insecurity. Physical problems include health and medical problems. Social problems could be lack of familial support and social maladjustment. Security is another major issue for the older persons. The problem is made more acute with the break-up of the joint family system and more and more

¹Note: For the purposes of this Scheme, the persons above the age of 60 years are referred to as 'senior citizens' and the terms 'older persons', 'elder persons' are used synonymously.

elderly persons being left to fend for themselves. There is migration of productive members of the family from the rural to urban areas. As such the women and the older persons in rural areas face greater problems.

1.4 There is also evidence of systematic and continuous abuse of the elderly i.e. infliction of physical, emotional or psychological harm on the older persons. Half of the elderly population reportedly experience abuse besides disrespect and neglect. According to the report of the National Crime Records Bureau (NCRB), a total of 8,973 cases were registered as crimes against senior citizens from January 2014 to October, 2014. As such every society and State recognizes certain rights of the senior citizens, distinct from the rest of the society.

1.5 The issue of ageing has been raised at the United Nations from time to time since 1948. The World Assembly on Ageing was held in Vienna in 1982 where an International Plan of Action on Ageing was adopted with the objective to strengthen the ability of individual countries to deal effectively with the ageing in their population, keeping in mind the special concerns and needs of the elderly. In 1991, the UN General Assembly adopted certain principles aimed at independence, participation, care, self-fulfilment and dignity of the older persons. 1st October has been declared as the International Day for the Elderly, now known as the International Day of the Older Persons.

2. CONSTITUTIONAL GUARANTEES

2.1 The Constitution of India guarantees the right to life and liberty of every individual under Article 21. This has been interpreted to include the right to live with dignity and would encompass the right to live with dignity of the senior citizens. Article 41 of the Constitution lays down that the State shall, within the limits of 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 46 also imposes a positive obligation on the State to promote with special care the economic interests of the weaker

sections of the people and to protect them from social injustice and all forms of exploitation. Articles 41 and 46 are included in the Directive Principles of State Policy which are not enforceable in any court of law, nevertheless, they impose positive obligations on the State and are fundamental in the governance of the country.

2.2 Entry 9 in the State List and entries 20, 23 and 24 of the Concurrent List in the Seventh Schedule to the Constitution relate to old age pension, social security and social insurance and economic and social planning. Entry 24 in the Concurrent List specifically deals with the 'Welfare of labour, including conditions of work, provident funds, liability for workmen's compensation, invalidity and old age pension and maternity benefits.' Thus, there are several constitutional entries relating to old age.

3. LEGISLATIVE FRAMEWORK

3.1 Most of the legislation as exists relates to making provision for maintenance for the parents and does not refer to senior citizens specifically. **Hindu Law** has recognized the obligation of the sons to maintain the parents, who were not able to maintain themselves since ancient times. Under the **Hindu Adoption and Maintenance Act, 1956** aged or infirm parents are entitled to maintenance from son and daughter provided the parents are unable to maintain himself/herself out of his/her own earnings or other property. The **Muslim Personal Law** places an obligation on children in easy circumstances to maintain their parents, even if the latter are able to earn something for themselves. A person is also bound to maintain his paternal and maternal grandfathers and grandmothers, if they are poor and not otherwise, to the extent as he is bound to maintain his poor father.

3.2 **Sections 125 to 128, Code of Criminal Procedure, 1973** enable the father or mother, who is unable to maintain himself or herself to claim maintenance from his/her major son/daughter, if they neglect or refuse to maintain the parents. This is a secular law and applies across all religions. If the person against whom the order has been passed fails to pay the amount of maintenance without any sufficient reason, execution proceedings can be filed

and the court may even issue a warrant imposing fines for the breach of the order and the person may be imprisoned. Similarly, the mother may file a petition against her son under the **Protection of Women from Domestic Violence Act, 2005** if she is subjected to domestic violence and claim various reliefs provided under the Act.

3.3 Considering the need to protect the rights of senior citizens and to further the constitutional objectives, the **Maintenance and Welfare of Parents and Senior Citizens Act, 2007** was enacted. Under this Act, an application for maintenance can be made by (a) 'Parent', i.e., father or mother whether biological, adoptive or step father or step mother; and (b) 'Senior Citizen', i.e. a person who has attained the age of 60 years or above. The application for maintenance can be made by (a) parent or grand-parent, against one or more of his/her children, i.e., son, daughter, grandson and granddaughter, not being a minor; and (b) childless senior citizen, against his/her relative, i.e. legal heir, not being a minor, who is in possession of or would inherit his property after his death. The Act provides for the setting up of one or more Tribunals for each sub-division for the purpose of adjudicating and deciding upon the order of maintenance and for the constitution of Appellate Tribunal for each district to hear the appeal against the order of the Tribunal. Importantly, under the Act, the right to receive maintenance is enforceable against transferee of property of the parent/senior citizen, if the transferee has notice of the right, or if the transfer is gratuitous though the same is not enforceable against the transferee for consideration and without notice of right. The Tribunal may even declare transfer of property by a senior citizen as void at the option of the transferor where a senior citizen has transferred the property by way of gift or otherwise, subject to the condition that the transferee shall provide the transferor with basic amenities and basic physical needs, and such transferee refuses or fails to provide such amenities and physical needs.

3.4 Another important feature of the Act is that abandoning of senior citizen by anyone having care or protection of such senior citizen is an offence punishable for a maximum period of 3 months or fine upto Rs.5000/- or with

both. This is a very important provision for protecting the life and property of senior citizens and to prevent their being abandoned at places from where they could not be found. The Act also provides:

- for the establishment of Old Age Homes for Indigent Senior Citizens i.e. senior citizens who do not have sufficient means.

- that the State Government has to ensure that the Government hospitals or hospitals funded fully or partially by the Government shall provide beds for all senior citizens; separate queues are arranged for senior citizens and that facility for treatment of chronic, terminal and degenerative diseases is expanded for senior citizens.

4. GOVERNMENTAL SCHEMES FOR SENIOR CITIZENS

4.1 Different Ministries under the Central Government have come up with different Schemes for senior citizens. The National Policy on Senior Citizens focusses on mainstreaming senior citizens, especially older women, promoting the concept of 'ageing in place' or ageing in own home, housing, income security and homecare services, old age pension and access to healthcare insurance schemes and other programmes and services to facilitate and sustain dignity in old age. The Schemes for Senior Citizens include:

- i) Integrated Programme for Older Persons under which financial assistance upto 90% of the project cost is provided to NGOs for establishing and maintaining Old Age Homes, Day Care Centres, Mobile Medicare Units and to provide non-institutional services to older persons.
- ii) Rebate in income tax, deduction in respect of medical insurance premium upto Rs.30,000/- under section 80D of Income Tax Act, 1961, deduction under section 80D for treatment of specified ailment is Rs.60,000/- for senior citizens, separate counters for senior citizens at the time of filing the income tax returns and on the spot assessment facility.

- iii) 'Senior Citizens Saving Scheme' under which the citizens of 60 years and above can deposit Rs.1000/- or its multiples in post offices doing savings bank work which carries an interest of 9% per annum and the maturity period of the deposit is five years, extendable by another three years. For senior citizens i.e. those having the age of 65 years and above, higher rates of interest on saving schemes are available.
- iv) Under the Indira Gandhi National Old Age Pension Scheme, central assistance is given towards pension at the rate of Rs.200/- per month to persons above 60 years and at the rate of Rs.500/- per month to senior citizens of 80 years and above belonging to a household below the poverty line and the same is expected to be supplemented by at least an equal contribution by the States.
- v) Discount on basic fare for domestic flights in economy class and priority in boarding the flights.
- vi) Concession for senior citizens in all classes and trains, priority for lower berths, separate counters for senior citizens for purchase/ booking or cancellation of tickets, wheel chairs for use of senior citizens are available at all junctions, District Headquarters and other important stations.
- vii) Reservation of two seats in the front rows of buses of State Road Transport Undertakings for senior citizens and even fare concession.
- viii) Separate queues for older persons in hospitals for registration and clinical examination and concessions to senior citizens in treatment of diseases like kidney problem, cardiac problem, diabetes and eye problem.
- ix) Under the Antyodaya Scheme, the Below Poverty Line families which include older persons are provided food grains i.e. 35 kgs

per family per month at concessional rates. The persons above 60 years from the BPL category were given priority for identification.

- x) Under the Annapoorna Scheme being implemented by the States/ UT Administration, 10 kgs of food grains per beneficiary per month are provided free of cost to those senior citizens who remain uncovered under the old age pension scheme.
- xi) Priority in issuance of ration to ration card holders who are over 60 years of age in Fair Price Shops.
- xii) Priority in giving telephone connections by the Ministry of Telecommunications and priority to faults/ complaints of senior citizens by registering them under senior citizens category with a VIP Flag which is a priority category.

4.2 Priority is also given to cases of senior citizens in the courts with a view to expeditious disposal. Under the **Right to Information Act, 2005** second appeals filed by senior citizens are taken on a high priority basis.

4.3 Several States have come out with their own Schemes and Programmes for the benefit of the senior citizens especially to provide security to senior citizens.

4.4 Despite the existence of various legal provisions and Schemes for senior citizens, their benefits have reached very few senior citizens. Often the senior citizens are unaware of their entitlements and/ or they are in too destitute a condition to be able to access the said benefits. They are not only deprived of their properties but also subjected to all forms of abuse ripping them off their dignity as well. For the widows who are senior citizens or for the retired senior citizens, it often becomes a herculean task to get their pension and other benefits. The laws and the Schemes lay down the entitlements of the senior citizens and if the senior citizens have any difficulty in availing their entitlements under the laws and the Schemes, it is felt by NALSA that Legal

Services Institutions have a significant role to play and they can play a pivotal role in ensuring access to the benefits of the Schemes and the legal provisions to the senior citizens.

4.5 The Preamble of the Legal Services Authorities Act, 1987 emphasises that the Legal Services Authorities are concerned with the weaker sections of the society and imposes a duty on them to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. Under Section 4(b) of the Legal Services Authorities Act, 1987, the “Central Authority” i.e. the National Legal Services Authority has been obligated to “frame the most effective and economical schemes for the purpose of making legal services available under the provisions” of the Act. Further Section 4(l) enjoins the “Central Authority” to take appropriate measures for spreading legal literacy and legal awareness amongst the people and, in particular, to educate weaker sections of the society about the rights, benefits and privileges guaranteed by social welfare legislations and other enactments as well as administrative programmes and measures. Likewise, under Section 7(c) it is the function of the State Authority i.e. the State Legal Services Authority to undertake preventive and strategic legal aid programmes. Thus the Act itself casts a duty upon the Legal Services Authorities to spread legal awareness about the laws and various administrative measures and programmes and to undertake preventive and strategic programmes.

5. NAME OF THE SCHEME

5.1 The Scheme shall be called “**NALSA (Legal Services to Senior Citizens) Scheme, 2016**”. In this Scheme, the persons above the age of 60 years would be regarded as senior citizens.

5.2 The terms PLVs, Legal Services Clinics, Front Office, Panel Lawyers and Retainer Lawyers will mean the same as defined under the National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010 and National Legal Services Authority (Legal Services Clinics) Regulations, 2011 and the NALSA Scheme for Para Legal Volunteers (Revised).

6. OBJECTIVES OF THE SCHEME

The main objectives of the Scheme are as follows:

- 1) To outline the basic rights and benefits that should be accorded to senior citizens;
- 2) To strengthen legal aid and representation at the national, state, district and taluka levels for senior citizens who are entitled under Section 12 of the Legal Services Authorities Act, 1987² in availing the benefits of the various legal provisions which exist;
- 3) To ensure access to various Governmental Schemes and programmes to the senior citizens;
- 4) To ensure that the authorities and institutions such as the Tribunals and the Appellate Tribunals under the **Maintenance and Welfare of Parents and Senior Citizens Act, 2007**, old age homes for senior citizens have been established;
- 5) To create and spread awareness about the rights and entitlements of the senior citizens under the various laws and Governmental Schemes and programmes through the District Legal Services Authorities, Taluka Legal Services Committees, panel lawyers, para-legal volunteers, students and legal services clinics;
- 6) To enhance capacities at all levels of panel lawyers, para-legal volunteers, volunteers in legal services clinics, government officers tasked with the implementation of the various schemes, service providers, police personnel, non-governmental organizations by organizing training, orientation and sensitization programmes; and
- 7) To undertake research and documentation to study the various schemes, laws etc. to find out the gaps, the needs and to make suggestions to the appropriate authorities.

²Note: For the purposes of grant of legal aid, the eligibility criteria is laid down in Section 12 of the Legal Services Authorities Act, 1987. All women including those who are senior citizens would be entitled to legal aid under Section 12 of the Act and all those who fall in any of the categories enumerated in Section 12 including senior citizens would be entitled to legal aid. However, other services such as assistance in availing benefits under Governmental schemes, legal awareness may be provided across the spectrum to all senior citizens.

The ultimate objective of the Scheme is to ensure that the senior citizens live a life of dignity and enjoy all the benefits and facilities which are due to them.

7. PLAN OF ACTION

7.1 Establishment of Tribunals, Appellate Tribunals etc.

As a precursor to the senior citizens being able to enforce their rights, it is essential that the institutions contemplated under the law for providing relief to them are set up.

- a) Section 7 of the **Maintenance and Welfare of Parents and Senior Citizens Act, 2007** provides for the setting up of one or more Tribunals for each sub-division for the purpose of adjudicating and deciding upon the order of maintenance. Section 15 of the Act also provides for the constitution of an Appellate Tribunal for each district to hear appeals against the orders of the Tribunal. The SLSAs and the DLSAs shall take up the issue of constitution of Tribunals and Appellate Tribunals as per the mandate of the Act on an urgent basis with the State Government.
- b) Section 19 of the **Maintenance and Welfare of Parents and Senior Citizens Act, 2007** provides for the establishment of Old Age Homes for Indigent Senior Citizens i.e. senior citizens who do not have sufficient means, as determined by the State Government, from time to time to maintain themselves. The SLSAs and DLSAs will take up with the State Government, the matter of establishment of sufficient number of Old Age Homes for Indigent Senior Citizens. The SLSAs and DLSAs may also explore the possibility of setting up of Old Age Homes for Senior Citizens under Corporate Social Responsibility.
- c) SLSAs should carry out regular visits to the old age homes to ensure that the senior citizens have adequate facilities and that they are treated with dignity.

7.2 **Legal Services Clinics**

- a) SLSAs shall set up Legal Services Clinics at every Tribunal and Appellate Tribunal established under the **Maintenance and Welfare of Parents and Senior Citizens Act, 2007** and also in old age homes.
- b) While at present there is a bar to lawyers appearing before the said Tribunals, it shall be ensured that trained para-legal volunteers are available in the Legal Services Clinics to assist the senior citizens in making applications and carrying out other procedural requirements.
- c) Opening of the Legal Services Clinics shall be communicated to all the Government bodies and departments including the police, NGOs.
- d) The Legal Services Clinics so established shall be governed by the National Legal Services Authority (Legal Services Clinics) Regulations, 2011 in respect of their functioning, infrastructural facilities, maintenance of records and registers, deputing of PLVs and control over such clinics.
- e) The SLSAs and DLSAs shall encourage the students in Legal Services Clinics set up in colleges and universities to visit old age homes and provide legal services to senior citizens in the community.
- f) The Legal Services Clinics shall also facilitate the widows and senior citizens in getting pensionary benefits and other entitlements.

7.3 **Legal Representation**

- a) All senior citizens who are entitled to legal aid under Section 12 of the Legal Services Authorities Act, 1987 shall be provided legal aid on a priority basis.
- b) It is essential that the Legal Services Institutions are accessible in terms of physical infrastructure for the senior citizens, otherwise access to justice would become meaningless for them. Accordingly, steps should be taken by Legal Services Institutions to ensure accessibility such as having the front office on the ground floor.

- c) SLSAs shall ensure that the senior citizens do not have to face any kind of discomfort in procedural wrangles.
- d) Every District Legal Services Authority and Taluka Legal Services Committee shall designate at least three panel lawyers as Legal Services Officers for the purpose of this Scheme.
- e) The District Legal Services Authorities shall also depute sufficient number of PLVs for the implementation of this Scheme and for this purpose they shall draw upon PLVs who are trained to attend to the problems of senior citizens. Efforts should also be made to identify and train PLVs from amongst the senior citizens, both men and women.
- f) The PLVs shall act as the interface between the senior citizens in the community who are unable to access the Legal Services Institutions and the Legal Services Institutions. Where it is not possible for the senior citizens to reach the Legal Services Institutions on account of their conditions, the Legal Services Institutions shall reach out to them through panel lawyers and PLVs.
- g) SLSAs shall provide training to panel lawyers to enable them to sensitively deal with cases of senior citizens. The SLSAs shall ensure that the legal services provided to senior citizens are of the highest quality so that meaningful and effective legal services can be provided to them.

7.4 Identification of issues affecting senior citizens

- a) SLSAs and DLSAs shall make an endeavour to identify the core issues which affect the senior citizens in a particular area and deal with them accordingly. While some issues may be common across geographical barriers, there may be some issues which are unique to some areas such as in some areas, the senior citizens being on their own may be a major issue as their families may have migrated to cities or other countries. Certain health problems may be more acute in a particular area.

- b) SLSAs and DLSAs shall then seek solutions to the issues that arise on regional basis and use their resources to implement the solutions, including through coordination with the concerned governmental agencies.
- c) SLSAs, DLSAs should facilitate the setting up of self-help groups of senior citizens to encourage community support and to reduce a sense of dependency on the part of the senior citizens.

7.5 Database

- a) All SLSAs shall have database of all the existing Central or State Schemes, policies, regulations, policy directives concerning senior citizens and the same may also be published in the form of pamphlets or booklets to be used in dissemination of information and creating awareness about the rights of senior citizens.
- b) SLSAs and DLSAs shall publish information booklets in regional languages explaining in simple terms:
 - 1) provisions of law such as on maintenance, Wills, social welfare schemes;
 - 2) details about access to remedies; and
 - 3) contact details of helpline numbers available across the state.

Such information booklets may be distributed to senior citizens and used during awareness programmes.

- c) DLSAs shall also maintain a database of hospitals, medical centres and other facilities which may be available for senior citizens in their area.
- d) The information maintained by DLSAs shall be circulated to the Taluka Legal Services Committees, village panchayats, legal services clinics and PLVs.

- e) SLSAs/ DLSAs shall also upload the data collected on their website.
- f) DLSAs shall prepare a database of senior citizens in their area so that PLVs may be deputed for their assistance as and when necessary. Such database may also be shared with law enforcement agencies to address the security concerns of senior citizens. This would also enable the DLSAs to provide immediate assistance to persons in distress by coordinating with the concerned departments such as health or police departments.

7.6 Implementation of various Schemes

- a) SLSAs shall take all steps to disseminate information regarding the policies, schemes, programmes to the senior citizens and government functionaries.
- b) SLSAs shall ensure that such information is prominently displayed in old age homes, hospitals and other places which are frequented by senior citizens.
- c) Various States have special schemes for security of senior citizens such as registration of senior citizens with the concerned police stations. SLSAs may liaise with the law enforcement authorities to address the security concerns of senior citizens and to enhance the interface between the police and the senior citizens such as through increased patrolling, maintaining regular contact with senior citizens once every week or every fortnight. SLSAs, DLSAs may depute PLVs to assist in the registration of senior citizens with the police stations, in getting servant and tenant verifications done and such other matters which concern the security of the senior citizens.
- d) Legal services to be provided would include informing the beneficiaries about the different government schemes to which they are entitled and the benefits thereunder; assisting the beneficiaries to procure the documents required for availing the benefits under the schemes; informing the beneficiaries of the name and address of the

designated authority or the officer who may be approached for availing the benefits under the schemes; offering to send para-legal volunteers with the beneficiaries to the office of the designated authority or to the officer concerned under any of the schemes.

- e) SLSAs shall develop effective coordination and interface with all the governmental bodies or functionaries, non-governmental organizations and other organizations concerning the welfare of senior citizens to ensure that the benefits of the various schemes that exist for senior citizens reach the senior citizens.

7.7 Awareness

- a) SLSAs shall draw up yearly programme for creating awareness on the rights of senior citizens and should endeavour to create a culture which is sensitive to the rights and needs of senior citizens.
- b) The Legal Services Institutions shall organize awareness programmes to sensitize people to the needs of the senior citizens and that it is the moral duty of children to take care of senior citizens and not to leave them in a destitute condition in their old age.
- c) The Legal Services Institutions should explain the need to treat the senior citizens with dignity.
- d) SLSAs along with DLSAs shall conduct awareness programmes to generate awareness about the entitlements of the senior citizens under various laws and government schemes.
- e) SLSAs, DLSAs and Taluka Legal Services Committees shall also create awareness regarding the availability of legal services for senior citizens to facilitate access to their entitlements.
- f) Special awareness drives may be undertaken in old age homes or other places frequented by senior citizens and PLVs and students may be encouraged to actively participate in such programmes.

- g) While organising awareness programmes, the DLSAs and Taluka Legal Services Committees may also coordinate with the relevant health department to organise special health or check-up camps for senior citizens such as general health camps, eye check-up camps etc. or with the police to have a special registration drive of senior citizens.
- h) All possible methods of spreading awareness should be used such as Doordarshan, All India Radio, private TV channels, hoardings, organising cultural programmes and setting up stalls at religious fairs, festivals.
- i) SLSAs should engage with senior citizens and actively avail of their services in carrying out awareness programmes on various issues as the senior citizens may have greater credibility and appeal in an area.

7.8 Training and Orientation Programmes

SLSAs shall conduct training and orientation programmes for panel lawyers and PLVs to sensitize them on how to deal with cases of senior citizens and to build their capacity, knowledge and skill. Sensitization programmes should also be organized for other stakeholders such as the government functionaries, police personnel and NGOs.

7.9 Observance of the International Day for the Older Persons

All Legal Services Institutions shall observe 1st October of every year as the International Day for the Older Persons and organize awareness programmes on that day for creating awareness of the rights and entitlements of senior citizens.
