
EXPLORING HOW LAWS PROTECT OLDER PEOPLE: A STUDY ON WHAT RULES HELP SENIORS LIVE WELL?

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ABSTRACT

Aging is an inevitable occurrence that happens to everyone at some point during their lifetime. It carries with it a plethora of difficulties for the aged, most of which stem from changes in their body, intellect, and way of thinking. The term "aging" describes a decrease in an organ's ability to function, primarily as a result of physiological changes. The elderly population is a valuable source of human capital since they possess a wide range of expertise, unique experiences, and profound insights. They can therefore significantly contribute to the socioeconomic development of their country if given the right opportunity.

Like many other countries, India understands how critical it is to protect the rights and welfare of its elderly population. The Indian government has put in place several regulations and policies in response to the country's increasing aging population. These aim to guarantee that senior citizens receive the care they need to live safe, pleasant lives, as well as being treated with respect and dignity. The Indian Constitution, which embodies the guiding principles and ideals of the country, is the ultimate law of the land. Several constitutional clauses, legislations, and governmental initiatives have been implemented in recognition of older citizens' rights in India, to ensure their protection and well-being.

By the method of qualitative comparative analysis, the author intends to understand the laws made for the betterment of senior citizens while analyzing the provisions of various laws and policies. Through this research work, the author aspires to strengthen the Indian legal framework concerning senior citizens.

Keywords: Senior Citizens, Laws, Policies, Maintenance.

INTRODUCTION

The United Nations Population Fund (referred to as “UNFPA”) released a report in 2023 titled “India Aging Report 2023” stating that the current elderly population of India is 14.9 Crore, comprising around 10.5% of the country’s population. By 2050, the percentage of population of elderly people is estimated to be 20.8%. This increase in the population of elderly people is due to the improvement in the healthcare infrastructure.

It will be necessary to use certain tactics and techniques at all stages of planning, policymaking, programming, etc. to fully utilize this huge human resource for encouraging senior persons’ engagement and participation in the socioeconomic development process on a much bigger scale. Any effort to gain the senior citizen’s assistance in providing their services to the country must also provide a package of services intended to improve their quality of life and create a well-thought-out social security system for the aged. The biggest challenge is to ensure that they lead a secure, fruitful, and dignified life.¹ To enable the elderly to enjoy their rights on an equal footing with others and integrate into society, it is necessary to defend their rights effectively. As a result, India has put in place several laws, policies, and programs to guarantee the safeguarding of senior citizens’ rights and foster an age-friendly social environment.²

The Government of India has made numerous efforts to protect and promote the human rights of the elderly through various laws, policies, and schemes in light of the international recognition of these rights as well as the unique needs of the elderly in India. In India, anyone who has reached the age of 60 or older is considered elderly to receive the various old age benefits offered to the elderly.³

UN and the Rights of Elders

The UN Principles for Older Persons was adopted by the General Assembly in 1991 to guarantee that the demands and issues experienced by the elderly population are given priority.

¹ Dilip Deshmukh, ‘Laws for Senior Citizens in India’ Legal Services India <<https://www.legalservicesindia.com/article/2054/Laws-for-Senior-citizens-in-India.html>>.

² Nihit Nagpal, Akif Abidi, ‘Maintenance and Welfare of Parents and Senior Citizens Act, 2007’ (2023) <https://ssrana.in/articles/maintenance-welfare-parents-senior-citizens-act-2007/#_ftn15>.

³ Dilip Deshmukh (n 1).

It urges countries to, whenever feasible, include the following principles in their national policies:

1. Independence: Elderly individuals or pensioners should be able to afford sufficient food, water, shelter, clothes, and health care through self-help, family and community assistance, and income. Additionally, they should be able to work or have access to other sources of money.⁴
2. Participation: They must be encouraged to take part in societal functions and the process of formulation of policies that affect a senior citizen's well-being.⁵
3. Care: They must have the means to utilize health care to maintain the optimum level of physical, mental, and emotional well-being.⁶
4. Self-fulfillment: They must have access to the communal assets that society offers in the areas of education, culture, religion, and leisure in order to be able to explore prospects for reaching their greatest potential.⁷
5. Dignity: They need to be free from exploitation and physical or psychological abuse, and they should be able to live in dignity and security.⁸

RIGHTS AND POLICIES FOR THE BETTERMENT OF OLDER PEOPLE IN INDIA

The following laws and policies can be explored to examine the legal protections afforded to the various rights of the aged in the Indian legal system:

The Constitution of India

Article 41 of the Constitution⁹ guarantees senior citizens' protection. It stipulates that the state, within the limits of its economic development and capacity, must provide effective measures to secure the right to work, education, and public assistance in cases of unemployment, old age,

⁴ National Human Rights Commission India, *Rights of Senior Citizens* (2020).

⁵ *ibid.*

⁶ *ibid.*

⁷ *ibid.*

⁸ *ibid.*

⁹ The Constitution of India, 1950.

illness, and disability, as well as other unjustifiable needs. The following are a few other constitutional provisions that also apply to senior citizens:

- Fundamental Rights under Part III (apart from Articles 21A and 24 which expressly address the rights of minors)
- Articles 39A, 42 to 44, 46, and 47 under Part IV
- Entry 9 in List II of Schedule VII which deals with the “*Relief of the disabled and unemployable*”.
- Entries 20 and 23 in List III of Schedule VII which deals with “*Economic and Social Planning*” and “*Social Security and Social Insurance; employment and unemployment*” respectively.

National Policy on Older Persons

The Indian government adopted the National Policy on Older Persons (hereafter referred to as “NPOP”) to ensure that senior citizens live comfortable and respectable lives. The nodal ministry for carrying out NPOP is the Ministry of Social Justice and Empowerment (hereafter referred to as “MOSJE”). The government’s approximately nineteen ministries are tasked with carrying out the various NPOP components.¹⁰ Adopted in 1999, the NPOP serves as a reminder of the commitment to ensuring the welfare of senior citizens. The Policy recommended that government support guarantee the requirements of seniors for housing, health care, and food security as well as their equitable share of development, protection from exploitation and abuse, and access to resources to enhance their quality of life. The proposed new policy is devised to overcome the flaws of the existing policy and tries to include a comprehensive set of rights for the elderly. The policy values an age-integrated society and aims at strengthening inter-generational integrity, understanding, and support. The policy seeks to reach out to the elderly living in rural areas, in particular, who are dependent on family bonds. The policy along with focusing on nine areas of intervention, the policy also provides the mechanism for effectively implementing the policy.¹¹

¹⁰ National Human Rights Commission India, *Rights of Senior Citizens* (2020).

¹¹ Surya, *Rights of Minorities and Other Marginalised Groups* <<https://ebooks.inflibnet.ac.in/hrdp06/>>.

A similar program, the National Policy for Senior Citizens (hereafter referred to as “NPSC”) 2011, focuses on the needs of the elderly while addressing the challenges of senior citizens residing in both urban and rural locations. The NPSC focuses extensively on issues of older women, increased employment opportunities, implementation of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, and living facilities for abandoned senior citizens.

Atal Pension Yojana

To mitigate the life expectancy risks associated with unorganized sector workers who are not covered by any statutory social security schemes, the Atal Pension Yojana was introduced in 2015. Any individuals who joined the National Pension Scheme, which is run by the Pension Fund Regulatory and Development Authority, are the target audience for the scheme. Additionally, for five years, the government co-contributes 50% of the subscriber’s payment, or Rs. 1,000 annually, whichever is less, to each eligible subscriber account. Any person who is between the ages of 18 and 40 can sign up for the program using their bank savings account. There is a minimum pension guarantee of Rs 1000.¹²

National Council for Older People

A National Council for Older Persons (hereafter referred to as “NCOP”) was established in 1999 by the Ministry of Social Justice and Empowerment, Government of India, following the NPOP to operationalize and supervise the policy’s implementation. The Council will be chaired by the Minister of Social Justice and Empowerment. In addition to being the organization responsible for carrying out NPOP, the NCOP is the highest authority advising the government on the development and execution of programs and policies for senior citizens. In 2005, the Council was reorganized to include members from the Central and State Governments, non-governmental organizations, senior citizen associations, citizens’ groups, and legal, social welfare, and medical specialists.¹³

Integrated Programme for Senior Citizens

The Ministry of Social Justice and Empowerment launched the Scheme of Integrated Programme for Older Persons in 1992 intending to enhance elderly citizens’ quality of life by

¹² National Human Rights Commission India, *Rights of Senior Citizens* (2020).

¹³ Surya, Rights of Minorities and Other Marginalised Groups <<https://ebooks.inflibnet.ac.in/hrdp06/>>.

offering necessities including food, water, shelter, healthcare, and other necessities. The program offers capacity training for government and non-government organizations, Panchayat Raj establishments, other local entities, and the general public to achieve this goal. Additionally, NGOs will get financial support for the construction and maintenance of senior living facilities, childcare facilities, and mobile Medicare units equal to up to 90% of the project cost. In 2008, the Scheme underwent revision to provide more financial support and incorporate additional innovative programs aimed at senior citizens. 2015 saw more revisions to the Scheme to make it more adaptable to the varied needs of the elderly.¹⁴ The following initiatives are funded in full or in part by the Central Sector Scheme of Integrated Programme for Senior Citizens (hereafter referred to as “**IPSrC**”), formerly known as the Integrated Programme for Older Persons (hereafter referred to as “**IPOP**”):

- i. Senior Citizens’ Homes/ Senior Citizens’ Homes for 50 Elderly Women (including those under Sansad Adarsh Gram Yojana): The Scheme aims to provide food, care, and shelter for a minimum of 25 destitute Senior Citizens or 50 female senior citizens, respectively.
- ii. Continuous Care Homes and Homes for Senior Citizens afflicted with Alzheimer’s disease / Dementia: This scheme is intended for a minimum of twenty senior citizens who are very sick and need ongoing nursing care as well as occasional respite, or who have dementia or Alzheimer’s disease.
- iii. Mobile Medicare Units: The objective is to offer senior citizens who reside in remote, underdeveloped, and rural locations medical care and attention.
- iv. Physiotherapy Clinics for Senior Citizens: Grant-in-aid is given to organizations that have a proven track record of managing programs for senior citizens’ welfare to operate physiotherapy clinics for a minimum of 50 senior citizens each month.
- v. Regional Resource and Training Centres (RRTCs): The Ministry funds the Centres for Senior Citizens, and among their broad activities are monitoring and technical support, advocacy and networking, training and capacity building for the Centres for Senior Citizens to deliver services effectively, and so on. These Centres are essential

¹⁴ *ibid.*

collaborating partners for ensuring effective implementation of the policies and programs of the Ministry.

National Council of Senior Citizens

To supervise the NPOP's implementation, the Minister for Social Justice and Empowerment chaired the National Council for Older Persons when it was established in 1999. In 2012, the Council changed its name to the National Council of Senior Citizens (hereafter referred to as "NCSrC"). The NCSrC provides advice to the Central and State Governments on matters of senior citizen welfare and improving their standard of living.

Rashtriya Vayoshri Yojana

Senior citizens who fall below the poverty line and have age-related problems like low vision, hearing impairment, etc. are eligible to receive free aid and assistive living devices under this program.

Maintenance and Welfare of Parents and Senior Citizens Act, 2007

The Maintenance Act was enacted in 2007, based on the vision of Article 41 of the Constitution¹⁵. It was the brainchild of the Ministry of Social Justice and Empowerment. On December 29, 2007, the President of India gave his assent to the Act. State-by-state notification of the Act's implementation was published in each state's official gazette. While the Act has already been put into effect in certain states, it has not yet been done so in others. This Act allows parents and grandparents to get maintenance from their children if they are unable to support themselves. If an elderly person is childless, their designated family members are required to provide for them. To put it another way, the children or designated relatives, as the case may be, are responsible for meeting the elderly persons' fundamental requirements, tending to them as they age, and allowing them to live a normal life free from neglect or deprivation.¹⁶ The Act outlines not only the obligations of the children or designated family members but also the roles and responsibilities of the government in providing for the needs of the elderly. This includes the establishment of senior citizen homes, medical care, and property

¹⁵ The Constitution of India, 1950.

¹⁶ National Human Rights Commission India, *Rights of Senior Citizens* (2020).

protection. Additionally, the Act establishes tribunals under the Act to hear cases pertaining to the rights granted under the Act.

A Senior Citizen can claim maintenance from the following people:

1. From Children/ Grandchildren: Parents and Grandparents can claim maintenance, provided their children/ grandchildren are not minors.
2. From a relative or legal guardian: The Maintenance Act also makes provisions for maintaining senior citizens with no children. Such citizens may be maintained by their legal heir or person to whom the property might/ is to be transferred after the death of such citizen. This includes relatives and legal heir, where the legal heir must be a major and have sufficient means to maintain the senior citizen.

The Maintenance Act's creation of Tribunals improves the accountability of organizations and people in charge of defending older citizens' rights. It offers a forum for swiftly settling conflicts and complaints, guaranteeing justice and senior citizen protection. The Maintenance Act makes a strong message about the ideals of society and our obligations to the aged. It fosters a culture of respect and admiration for senior citizens' position in society by acknowledging their wisdom, experience, and contributions. The Apex Court gave the following guidelines in *Ashwini Kumar v Union of India*¹⁷ concerning the Maintenance Act:

- They directed the Government to collect and collate data regarding old age homes and information on medical facilities and elderly care from all the States and Union Territories and file a Status Report accordingly.
- They directed the publication of the Maintenance Act to spread awareness of the same.¹⁸

According to section 23(1) of the Maintenance Act, if the Tribunal determines that a senior citizen's gift or transfer of property was undertaken through fraud, coercion, or undue influence, the senior citizen may choose to declare the transfer as void. This would apply in the following situations: (i) the gift or transfer is contingent on the transferee meeting the

¹⁷ 2019 (2) SCC 636.

¹⁸ Nihit Nagpal, Akif Abidi, 'Maintenance and Welfare of Parents and Senior Citizens Act, 2007' (2023) <https://ssrana.in/articles/maintenance-welfare-parents-senior-citizens-act-2007/#_ftn15>.

transferor's (a senior citizen) basic wants or comforts, and (ii) the transferee has neglected or refused to do so. However, this clause has been construed very differently during the last ten years. Courts have differed in their interpretations of whether a gift or transfer deed must explicitly state that the transferee will provide basic amenities to the transferor or attend to their physical needs for section 23(1) to apply, or if such a condition is implied in the deed. The Apex Court has now settled the position by their judgment in *Sudesh Chhikara v Ramti Devi and Anr*¹⁹. According to the Apex Court, for a transfer to be ruled null and void at the request of the transferor (a senior citizen) due to the transfer being believed to have been conducted through fraud, coercion, or undue influence, both of the following requirements must be met: The transfer was conducted with the understanding that the transferee would meet the transferor's basic physical demands and comforts, and the transferee either refused to meet the transferor's needs or did not fulfill them. Thus, the Apex Court noted that the transfer deed should be subject to the first condition, which is the provision of basic amenities and basic physical needs to the transferor, as this is a *sine qua non* for the applicability of section 23(1) of the Maintenance Act. The Apex Court further pointed out that a senior citizen's deed of transfer in favor of a family member does not always come with a requirement to care for them. Instead, these kinds of gifts are usually given out of love and care with no expectation of anything in return. In light of this, the Maintenance Tribunal will need to show the existence of any conditions included in the transfer deed if it is claimed that the aforementioned terms are linked to a transfer.²⁰

According to Delhi High Court's ruling in *Sunny Paul & Anr v State of NCT of Delhi & Ors*²¹, under Section 23, Maintenance Act²², the Tribunal has the authority to enforce an eviction order so that elderly residents can live in peace in their homes and are not compelled to live with a son who physically and emotionally abuses them, harasses them, or threatens to take them away.

According to Section 24 of the Maintenance Act²³, individuals who look after elderly people and intend to completely abandon them in a location where no one can discover them, face

¹⁹ 2022 SCC OnLine SC 1684.

²⁰ Shaishavi Kadakia, Radhika Parthasarathy, 'Senior Citizens: Supreme Court clarifies position on reclaiming conditional gift' (2023) <<https://privateclient.cyrilamarchandblogs.com/2023/01/senior-citizens-supreme-court-clarifies-position-on-reclaiming-conditional-gift/#page=1>>.

²¹ 2017 SCC OnLine Del 7451.

²² The Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

²³ *ibid*.

consequences. Anyone who is responsible for the care or protection of an elderly person and abandons them anywhere violates the law. The offender faces up to three months in prison, a fine of up to Rs. 50,000, or both.

Under section 9 of the Act, the Tribunal ordered the Petitioners (i.e. sons) in *HS Subramanya v HS Lakshmi*²⁴ to provide maintenance to their mother. The mother was a widow, whose husband had left his property to his children in a will. The mother was to get maintenance from each of her sons, according to a condition in the father's will. According to the allegations, the third son neglected to provide their mother with the required monthly maintenance, although the other two sons did. They argued that they stopped paying maintenance because her third son took the money meant for her maintenance. The Court ordered the sons to pay the maintenance amount and ruled that their allegations were unfounded because the sum was not enough to support the mother herself.

Drawbacks of the Maintenance Act:

- i. Sons-in-law and daughters-in-law are not considered children under the Act, therefore even if they may be the only working members of the family, they are not obligated to support their in-laws.
- ii. The act sets a maximum maintenance amount of Rs 10,000. This is not sufficient to provide care for senior citizens, especially considering their advanced age and the possibility that they need geriatric care that involves 24-hour supervision.
- iii. The anti-aging attitude of society, the lack of interest in care for the elderly, and low digital literacy are only a few of the societal disadvantages that older people have to deal with; the law is insufficient to address these issues.
- iv. Any legal representation for any party in any proceeding before the Tribunal or Appellate Tribunal is prohibited by Section 17 of the Maintenance Act. This is contrary to other laws, such as the Advocates Act of 1961²⁵, and might even work against the parties' rights to be protected. The Act's purpose is more likely to be hindered by the

²⁴ 2015 (1) AKR 270.

²⁵ The Advocates Act, 1961, Sec 30.

restriction of attorneys in proceedings, particularly given the Tribunals' authority to hold inquiries and collect evidence.

- v. Regarding the establishment of old age homes and the development of operational plans for them, the State Government is not bound by the Act.
- vi. When it comes to specifically addressing crime against older people, the Act says nothing about raising the awareness of law enforcement agencies like local police

The Punjab and Haryana High Court, in *Anil Kumar Dhiman v State of Haryana*²⁶, held that the aged parents have a right to evict their major son and daughter-in-law from their self-acquired property and observed that. “*when the children, who the parents have reared with untold sorrows and miseries, throw them at the mercy of their destiny and use their muscle power to torture and harass them, the parents' world gets totally shattered which marks as the beginning for the unfortunate tale of their moving from one Forum to another for redressal*”. A similar position was taken by Delhi HC in *Smt. Darshna v Government of NCT of Delhi and Ors*²⁷.

Code of Criminal Procedure

The maintenance of elderly parents is covered under Section 125²⁸. All elderly parents, regardless of faith, may apply for maintenance under this provision. Upon proof of such neglect or refusal, a magistrate of the first class may order any person with sufficient means to pay a monthly allowance for the maintenance of his parents, at an amount the magistrate deems appropriate if the person neglects or refuses to support his parents and is unable to support themselves

This provision states that children must support their parents when they are in need. According to the Code, sons and daughters—including married daughters—are accountable for their parents' maintenance. To get maintenance under this clause, the parent must, however, prove that the other party has adequate resources and has ignored or refused to support the parent,

²⁶ Case No. 2019 CRWP 1357.

²⁷ 2018 SCC OnLine Del 10535.

²⁸ The Code of Criminal Procedure, 1973.

who is incapable of supporting themselves. It is crucial to remember that the CrPC is a secular law that applies to all groups and faiths.

Hindu Adoptions and Maintenance Act, 1956

The Act empowers elderly parents to seek maintenance from their children under section 20. The Court is empowered to decide the amount in case the court feels that the original amount is insufficient for them to sustain. Under this Act, both sons and daughters are under the obligation to maintain their parents.

The Madras High Court ruled in *K.M. Adam v Gopalakrishnan*²⁹, among other things, that a Hindu child is entitled to maintenance regardless of whether its mother or father practices Hinduism. The Supreme Court held in *Kirtikant D. Vadodaria v State of Gujarat*³⁰ that elderly parents have the same legal right to maintenance under this Act from their daughter as they do from their son.

RECENT DEVELOPMENTS AND IMPACT

Legislation in India about the rights of the elderly has garnered significant momentum in recent times, which has proved advantageous for the country's aging populace. A noticeable outcome is a better comprehension and acknowledgment of senior citizens' legal rights. Senior Citizens are, therefore, able to assert their rights and seek justice when they are the victims of abuse or neglect. Many older person's financial issues have been resolved owing to the Maintenance Act³¹. Legal actions taken against heirs or careless children serve as a deterrent, motivating families to fulfill their responsibilities towards their elderly parents.

For those without family support, the Maintenance Act's requirement for the construction of senior citizen care facilities and old age homes has created a safety net. In addition to housing, these facilities offer healthcare, social interaction, and a sense of community—all of which improve the overall health of senior citizens. Additionally, the revocation of the property transfer clause has prevented potential elder abuse by acting as a safeguard. It protects senior

²⁹ AIR 1974 MAD 232.

³⁰ (1996) 4 SCC 479.

³¹ The Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

citizen's financial stability by outlawing situations where property is wrongfully transferred to disinherit them.³²

In *Dr. (Mrs.) Vijaya Manohar Arbat v Kashi Rao Rajaram Sawai*³³, the Supreme Court observed that a self-sufficient married daughter must support her mother or father if they are the only child that they have. In addition, the stepmother and father have equal rights to support. The finding stated in *Baban Madhav Dagadu Dange v. Parvatibai Dagadu Dange*³⁴ holds that the term "mother" encompasses the term "adoptive mother". Section 125(1)(d), CrPC attempts to provide equal protection under the law to all individuals, irrespective of their religious beliefs. Before 2007, those without children were not covered by support provisions and were not covered by any applicable laws.

In the *Ashwani Kumar v. Union of India*³⁵, the Supreme Court issued a directive to the Government addressing the impact of the COVID-19 pandemic on the elderly population. Specifically, the court stated that all eligible elderly citizens should receive their pensions regularly, and those who are classified as elderly should be given access to essential supplies such as masks, sanitizers, and medicines. Additionally, the Administration will respond as soon as possible to any particular requests that are submitted. Personal protection for the caretakers in those assisted living facilities should be offered, and the facilities themselves should undergo the necessary sanitization. The Court noted that because of their increased susceptibility to COVID-19, older patients should be admitted to government hospitals first. Should an older patient file a complaint, the concerned hospital management will act quickly to address their concerns.

CONCLUSION

Supporting the elderly entails meeting their fundamental needs for food, clothes, housing, travel, health, education, culture, knowledge, and interpersonal interaction as well as giving them financial support and attending to their physical, emotional, and spiritual needs. To lessen its negative impacts, appropriate social and economic policies must be implemented. In order for society to adjust to the aging of its population and for the older population to adjust to a

³² Vis Legis Law, 'Legislation on Elderly Rights in India', LinkedIn Pulse (2023) <<https://www.linkedin.com/pulse/legislation-elderly-rights-india-vllp2017-gm1vf>>.

³³ 1987 SCR (2) 331.

³⁴ 1978 CrLJ 1436.

³⁵ 2019 (2) SCC 636.

changing society, social policy development for the elderly must be rigorously studied. Appropriate redistributive measures are necessary. The issues facing the younger generation must be addressed while allocating the limited funds for social programs for the elderly to new priorities.

Recognizing and protecting the rights of the aging people in India has been made possible by laws pertaining to the rights of the old, most notably the Maintenance and Welfare of Parents and Senior Citizens Act. It has helped build critical support systems like retirement homes and assisted living facilities in addition to providing a legal framework for handling maintenance issues.

Recent trends point to a positive trend toward greater awareness of and observance of these rights, which will enhance senior citizens' lives in real and useful ways. But to ensure the welfare and dignity of India's elderly population in the years to come, it will be imperative to address enduring issues and keep adapting the legal system to new needs.