

# Legal Protections and Advocacy for the Elderly in India

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## ABSTRACT

The legal protection and advocacy for the elderly in India have gained significant attention in recent years due to the rapid growth of the aging population. Despite constitutional safeguards and legislative measures, older adults often face challenges such as neglect, abuse, financial insecurity, and inadequate healthcare. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, is a legal framework, mandating financial and social support for elderly individuals. Additionally, various government schemes, judicial interventions, and non-governmental advocacy efforts aim to protect and empower senior citizens. However, challenges persist due to gaps in enforcement, societal attitudes, and limited awareness of legal rights. This review paper examines the legal landscape and policy initiatives to strengthen elderly rights in India. It emphasizes the need for enhanced legal awareness, better implementation of laws, and a rights-based approach to aging that ensures dignity, security, and social inclusion for India's elderly population. This review paper will also compare International policies with Indian Government policies to identify gaps, challenges, and opportunities in Elderly Care implementation. It highlights successful initiatives and best practices that have made progress in advancing legal protections and advocacy for elderly in India, contributing to ongoing discourse on translating policy into meaningful progress for elderly worldwide.

**Keywords:** Legal Protections of elderly, Laws, Legal Rights

## INTRODUCTION

The ancient Indian Vedic era is where the Upanishads of Taittiriya Sanskrit contrast of “Matru Devo Bhav” and “Pitru Devo Bhav” first appeared. It maintains that the parents were given a very high rank by being transformed into living gods and goddesses. Prior to the preceding century, the elderly population was small and had a limited lifespan. As a result, they have minimal needs and demands, which are satisfied by their respective family members and relatives, and the rights of elderly people are rarely brought up. Because of their growing numbers and longer lifespans, elderly people's needs have not only increased dramatically but have also started to take center stage. In India, elder abuse affects older individuals in both the community and inside families. Even though older people rarely come out to report mistreatment, harassment, and even violence against them,

and to speak out against wrongdoers, who are typically family members, elder abuse and crimes against the elderly have increased over time. Therefore, it is important that steps be taken to promote the elderly's awareness of their human rights and to increase their awareness of the various healthcare options available to them. In traditional Indian society, elders have long been integral to the institution of the family as guardians of culture, knowledge, and moral values. In the past, their leadership in settling conflicts and influencing future generations has strengthened the family unit. In addition to ensuring elder care, the joint family arrangement maintained ties between generations. Elders represented the continuation of customs and were essential in decision-making, which promoted societal cohesiveness in nations like India where familial ties are strongly embedded.

But the scene has shifted as economic mobility, urbanization, and the nuclear family model have

increased. As younger members move away for employment or school, elderly members are often left alone and dependent, leading to feelings of loneliness and instability. Addressing these difficulties is essential not only from a welfare perspective but also to maintain the deeply ingrained values of respect and care that define Indian family traditions. Emphasizing their importance ensures that the critical role elders play in fostering societal stability is recognized, even in the face of shifting social norms.

The government has created social programs, issued a number of laws, and established legal precedents over time to address these root causes and protect older folks' rights to healthcare, financial stability, and a respectable existence.

### Objectives:

- To critically analyse the legal protections for the elderly population in India.
- Suggestions to improve the legal protections for the elderly population in India.

## METHODOLOGY

The published literature on the idea of laws and policies pertaining to senior citizens in India has been combined in this study. Search with Google, Shodhganga, Academia, ResearchGate and Google-Scholar using combinations of the following keywords: “legal protection services for elderly in India”, “laws for elderly in India”, “schemes for elderly in India”, “policies and programs for elderly in India”.

The literature relevant to the concerned study were reviewed according to the following:

- Inclusion criteria: Published literature and written in the English language
- Peer-reviewed journals
- Research papers

## RESULTS AND DISCUSSION

### Legal Protections for Elderly in India:

#### *Constitutional Protection:*

- **Article 21:** Safeguards an individual's life and personal freedom. However, the judicial extension of Article 21's scope cleared the path for the inclusion of the following rights: the right to a healthy and pollution-free environment; the

right to health and medical care; emergency medical assistance; the right to livelihood and social security; and the right to live with human dignity, as a person's reputation is his most valuable asset [3], [4]. The Directive Principles of State Policy are the source of the rights incorporated into Article 21. For example, the state is required by the rights to housing and shelter[5] to offer housing locations to the impoverished who are homeless.

- **Article 41:** In accordance with the Directive Principles of State Policy, this article instructs the State to establish practical measures to guarantee the rights to employment, education, and public support in situations including unemployment, old age, illness, and disability.
- **Article 46:** The state must safeguard the weaker segments of society from social injustice and all sorts of exploitation, and it must give special attention to their educational and economic interests [1], especially those of the Scheduled Castes and Scheduled Tribes [2].
- Though it is not enforceable in the court of law and the state cannot be compelled by the courts to carry out any directive[3] but as per the mandate of Article 38 the state while making any policy shall take into consideration the directives enshrined in Part IV. Therefore, even if the State must implement Directives, they can only do so within the constraints placed on them by the various constitutional provisions pertaining to legislative and executive authority[4].
- **Article 25,** which addresses the fundamental right to life and personal liberty, includes the right to live one's life with dignity. Food, clothing, housing, and a decent standard of living are all essential rights of every Indian. Since aged people are a part of the human population, it is undeniable that they have a right to a respectable existence and dignity.

### Statutory Protection:

#### **The Maintenance and Welfare of Parents and Senior Citizens Act, 2007:**

The Constitution's guarantee and recognition of the Maintenance and Welfare of Parents and Senior Citizens is protected by the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, which went into effect on

September 29, 2008. In order to speed the processing of petitions filed under this Act[5] and collect support payments from children or legal heirs on behalf of parents and senior citizens, a Tribunal has been formed in each subdivision, chaired by the Revenue Divisional Officer. The district social welfare officers perform the duties of conciliation officers in addition to maintenance officers. An Appellate Tribunal, chaired by the District Collector, has been set up in each district to consider appeals against the Tribunal's decisions.

#### ***Section 4 – Right to Maintenance[6]:***

This clause requires children or legal heirs to provide for their parents or elderly parents, guaranteeing them access to basic needs such as clothing, food, and housing. If children fail to fulfil this duty, the aggrieved parent or senior citizen can file an application for maintenance.

#### ***Section 5 – Application for Maintenance[7]:***

This clause gives parents and elderly people the ability to apply for maintenance from the Maintenance Tribunal. The tribunal has ninety days from the date of filing to settle the case.

#### ***Section 19 – Old Age Homes[8]:***

The Act directs state governments to establish at least one old age home in each district, providing free or subsidized care for senior citizens who are unable to support themselves.

#### ***Section 23 – Property Transfer and Reclaim[9]:***

Under this provision, if a senior citizen has transferred property (movable or immovable) to a child or legal heir based on the condition that they will be maintained, and if that obligation is not fulfilled, the senior citizen can reclaim the property. This provision acts as a safeguard against fraudulent transfers made under coercion or deceit.

#### ***The Criminal Procedure Code of 1973:***

No matter one's age, caste, or religion, maintenance claims can be made under Section 125 of the Code of Criminal Procedure. The first-class magistrate has the authority to issue an order mandating the payment of a monthly maintenance allowance if an individual neglects or refuses to provide for their parents. A one-month jail sentence or until the maintenance amount is paid, whichever comes first, may be imposed by the magistrate

if the offender disobeys or violates the order[3].

In the case of *Dhanwanti Joshi v. Madhav Unde*[4], the Hon'ble Supreme Court held that parents, including senior citizens, are entitled to claim maintenance under both Section 125 of CrPC and the 2007 Act. The court asserted that children have a moral and legal duty to maintain their parents and that neglect of such a duty could lead to legal consequences.

#### ***The Pensions Act, 1871:***

Both State and Union pensions are covered by the Pensions Act of 1871. The term "pension" refers to a regular payment made by the government to a retiree in recognition of their merit or service. A pensioner is entitled to their pension in full[5]. He or she has the authority to direct the relevant authorities to convert all or a portion of his pension into a lump sum payment.

In *Ashwani Kumar v. Union of India*[7] (2020), the Supreme Court of India ordered the Government to ensure that all elderly individuals who qualify for pensions receive regular payments and that those individuals who are identified as elderly receive the necessary medications, masks, sanitizers, and other necessities, particularly in light of the COVID-19 pandemic's effects on the elderly [6]. Additionally, the Administration will respond promptly to any individual request as and when it is made.

#### ***Hindu Adoption and Maintenance Act, 1956:***

Children are required by law to provide for their old parents under Hindu personal law. This obligation is enshrined in the Hindu Adoption and Maintenance Act, 1956, which makes it a legal duty for both sons and daughters.

**Section 20:** This section mandates that children, including sons and daughters, are legally bound to provide maintenance to their elderly parents if the parents are unable to maintain themselves. It reflects the traditional value of filial duty in Indian society, codified into law to ensure that parents are cared for[1].

The Hon'ble Supreme Court broadened the definition of maintenance under Section 125 of the CrPC to include daughters in the case of *Dr. Vijaya Manohar Arbat v. Kashirao Rajaram Sawai*[2], declaring that daughters bear the same responsibility as sons for providing for their parents under the CrPC and the Hindu Adoption and Maintenance Act.

Employee's Provident Fund and Miscellaneous

Provisions Act, 1952

Without distributing the pension and gratuity systems, the government has created an extra type of social security for workers who have devoted the majority of their life to the business through the Employee's Provident Fund Scheme. An industrial worker's post-retirement future or, in the event of an early death, the benefit of his or her dependents will be covered by the welfare provisions provided by this Act. An efficient old age and survivorship benefit is the provident fund. A family pension scheme has been designed to encourage long-term financial stability because the Provident Fund's accumulation is insufficient to give the employee's family adequate and long-term security in the case of an early death.

### **The Income Tax Act, 1961:**

Senior citizens (60 years and older) and very senior persons (80 years and older) are the two groups into which this act divides senior citizens.

Senior citizens or super senior citizens are entitled to higher tax exemption limits against normal citizens. The basic income tax exemption limit for Senior Citizen is Rs. 300000/- and for Very Senior Citizen is Rs. 500000/-.

A senior citizen receiving pension income from a previous employer may deduct up to Rs. 50,000 from that income in accordance with Section 16[3].

In contrast to the Rs. 25,000 deduction permitted for other individuals, the maximum deduction under Section 80D for payments made for health insurance premiums for senior citizens is Rs. 50,000.

Under Section 80DDB, a senior citizen may deduct up to Rs. 1 lakh for medical treatment of certain diseases or disorders (compared to Rs. 40,000 for an ordinary taxpayer).

Under Section 80 TTB, interest income earned on savings bank accounts, bank deposits, post office deposits, and cooperative bank deposits can be deducted by up to Rs. 50,000 for senior citizens.

### **Policies, Programmes and Schemes for the Welfare of the Senior Citizens:**

1. **National Program for the Healthcare of the Elderly**, The Ministry of Health and Family Welfare started this program in 2010 with the goal of providing senior citizens with specialized healthcare services through government health delivery systems at Regional, District, and

Primary Health Centers, including outreach deliveries.

2. **Rashtriya Swasthya Bima Yojana (RSBY):** The Ministry of Labour and Employment, Government of India, introduced the Senior Citizen Health Insurance Scheme (SCHIS)-Rashtriya Swasthya Bima Yojana (RSBY) to offer health insurance to families living below the poverty line. As an addition to their current coverage under the current RSBY plan, the program offers insurance coverage to older residents. Senior citizens 60 years of age and older are covered by this program. It offers each older citizen in the qualified family extra coverage of up to Rs. 30,000. This program includes both public and private hospitals.
3. **National Policy on Older Persons (NPOP), 1999** – was a significant step in acknowledging the needs of senior citizens and proposing measures to improve their standard of living. This Policy values an age integrated society. It will endeavour to strengthen integration between generations, facilitate two way flows and interactions, and strengthen bonds between the young and the old. The Policy recognizes that older persons, too, are a resource. Both inside and outside the family, they provide beneficial services. They are producers as well as consumers of goods and services[4]. As equal partners in the development process, the Policy fully believes in empowering older people to take charge of their life and participate in decision-making on topics that impact them and other issues.
4. **The Indira Gandhi National Old Age Pension Scheme (IGNOAPS)** One of the programs within the National Social Assistance Programme (NSAP), which was started in 1995 by the Ministry of Rural Development, is the Indira Gandhi National Old Age Pension Scheme (IGNOAPS). It offers financial support to elderly people 60 years of age and older who are below the poverty level. Periodically, the pension amount is adjusted in accordance with economic conditions and inflation. It is a social welfare program designed to help low-income Indian households, particularly those with elderly members, widows, and those with disabilities. The

scheme was introduced to ensure social protection for its beneficiaries and help alleviate poverty. Through NSAP, eligible individuals receive financial assistance in the form of pensions, helping to provide them with a basic level of social security. The scheme has played an important role in improving the living standards of disadvantaged groups in India. Senior citizens under this programme can avail pension up to Rs. 1500 per month.

5. **Pradhan Mantri Shram Yogi Maan-dhan (PM-SYM)** – In the 2019 Budget, the government unveiled the Pradhan Mantri Shram Yogi Maan-dhan Yojana, a massive pension plan. The program is designed to provide social security and old age protection to unorganized workers, the majority of whom work as rickshaw pullers, street vendors, midday meal workers, head loaders, brick kiln workers, cobblers, rack pickers, domestic workers, washer men, home-based workers, own account workers, agricultural workers, beedi workers, handloom workers, or in related occupations.

#### **Comparison with other countries:**

1. **Comprehensive Healthcare Rights**

In the United States, senior citizens are entitled to Medicare and Medicaid, which provide comprehensive healthcare services. These federal programs cover a wide range of medical needs, including hospitalization, outpatient services, prescription drugs, and long-term care. Medicare is available to all individuals over 65.

India's Ayushman Bharat Scheme provides healthcare coverage, but it is limited to economically weaker sections and does not provide universal coverage for all senior citizens. India lacks a nationwide, dedicated healthcare program specifically for its elderly population[5].

2. **Elder Abuse Legislation with Preventive Measures**

Countries like the United States and Canada have specific, well-defined laws against elder abuse that go beyond financial and physical abuse to include emotional and psychological abuse. In these countries, elder abuse is treated as a criminal offense, and preventive measures like hotlines, mandatory reporting by healthcare

professionals, and elder protective services are in place to protect vulnerable seniors from abuse.

While India's Maintenance and Welfare of Parents and Senior Citizens Act, 2007 addresses some aspects of elder abuse, it does not provide comprehensive protection against emotional or psychological abuse, nor does it mandate professional reporting. India lacks a robust, nationwide reporting and intervention mechanism.

3. **Guardianship and Decision-Making Support for Elderly**

Germany and Australia offer legal frameworks that allow for legal guardianship and decision-making support for elderly individuals who are no longer capable of making informed decisions about their healthcare, finances, or legal matters. In these countries, guardians or fiduciaries are appointed to make decisions in the best interest of the elderly person, ensuring their rights and well-being are safeguarded even if they are incapacitated.

India does not have a robust guardianship framework for elderly individuals. While guardianship laws exist for minors and disabled persons, there is no dedicated law that addresses decision-making incapacity in senior citizens due to age-related issues like dementia or Alzheimer's disease.

4. **Social Inclusion and Active Aging Programs**

Japan and Sweden have introduced comprehensive Active Aging Programs, which promote the social inclusion of elderly citizens. These programs are designed to keep senior citizens engaged in society through continued work opportunities, volunteer programs, and community participation. In Japan, elderly citizens can participate in various community activities and are encouraged to stay active through government-sponsored initiatives.

India has very few programs aimed at keeping senior citizens actively engaged in society. While there are old-age homes, there is no structured social inclusion policy that encourages active participation in social, economic, or cultural activities. Most elderly individuals in India face social isolation, especially

in urban areas[6].

### Conclusion and Suggestions:

The protection of senior citizens is a growing concern globally, and India has taken important steps to safeguard its elderly population through various legal, constitutional, and welfare mechanisms. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 remains a cornerstone in ensuring financial and emotional security for elderly citizens, while other provisions under the Criminal Procedure Code (CrPC), and personal laws supplement this with legal recourse against abuse, neglect, and exploitation.

Despite these efforts, the reality remains stark: many elderly individuals continue to face abandonment, abuse, and financial insecurity. Issues like a lack of awareness, delayed justice, underfunded old-age homes, and inefficient enforcement mechanisms weaken the protective framework intended for senior citizens.

Thus the Indian legal system must evolve to address these emerging challenges more effectively. While India has created a solid foundation for the protection of the elderly, there is still a significant gap between the laws on paper and their implementation in practice. Courts have played a crucial role in interpreting the laws to safeguard senior citizens' rights, but access to legal remedies is often slow and costly, leaving many elderly individuals without real-time protection.

To improve the status of senior citizens, India can look at best practices from other countries. Many nations offer more comprehensive legal frameworks and social services that could serve as a model for further reform in India.

There shall be comprehensive legislation to provide social security to all the persons including persons from the unorganized sector. Affordable and economic medical treatment without any hurdles should be available to all senior citizens. It is also suggested that to bring uniformity in the rules pertaining to concessions, etc. all these shall be brought under the same umbrella by establishing one separate department. The Act and the Policy need to be implemented forthwith throughout the territory of India. The government shall take every possible step to create awareness among the society as well as aged people, regarding rights of aged people, provisions of the Act, various schemes and policies, concessions and benefits conferred upon and facilities available for aged people, etc. The government measures should be a comprehensive

opted holistic approach toward the welfare and maintenance of older persons. Media can play a crucial role in restoring the condition of elderly people in family and society by giving everyday articles, news, and stories. Lastly, today's youth should be aware and sensitized about the issues of aged people by creating awareness programs by government and social workers.

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