

PROTECTION OF THE RIGHTS OF ELDERLY PERSON IN INDIA: A CRITICAL ANALYSIS

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Abstract

Old age is an indispensable stage of life of a human being which a man cannot refute except untimely death. The notion of conjugal family impacted this regular cycle, resulting in imbalance of the normal lives of senior people by overcoming a thousand-year-old custom in India where parents are revered as a devout form of God. As society ages, ensuring the rights of older people becomes increasingly important. This shift underscores the pressing need for robust legal safeguards and protections for older people. This comprehensive analysis delves into the existing legislative and policy mechanisms designed to address the multifaceted challenges faced by older individuals in the country. The article reviews the key legal instruments, including “The Maintenance and Welfare of Parents and Senior Citizens Act, 2007”, and the “National Policy for Older Persons”, and other government schemes critically evaluating their efficacy in ensuring the rights and well-being of older people. It looks upon the implementation of these legal provisions, shedding light on the gaps and challenges in their enforcement. The primary objective of this article is to discuss the positives and weaknesses of the legal framework governing eldercare in India. In the end part, it offers recommendations to bolster the human rights of the elderly, ensuring their dignity, well-being, and meaningful inclusion in the socioeconomic fabric of the nation.

Keywords: Old- Age Person, Elderly People, Human Rights, Dignity, Protection, Social Security.

Introduction

Many traditional societies of the past considered family harmony to be an important factor governing family relationships. This reverence for the family was reinforced by philosophical traditions and public policy. In some traditional societies, older widows are abandoned. In some places, accusations of witchcraft, often connected with unexplained events in the local community, such as a death or crop failure, are directed at isolated, older women.¹ Growing old is an irreversible process which every human being has to encounter. Nobody can escape it. With a growing population of older persons, safeguarding the human rights of such individuals has become an emerging concern. As societies age, it becomes increasingly essential to address the unique legal and social challenges faced by senior citizens. Every elderly person being also a human being is entitled to certain rights. These rights encompass a spectrum of fundamental principles, including dignity, equality, healthcare, financial security, and protection against abuse and neglect. India has various platform and rules, regulation to protect the rights of old age person and provide them a dignified life. In India mainly two legislation deals with the protection of old age persons right as “National Policy for Older Persons, 1999 and the “Maintenance and Welfare of Parents and Senior Citizens Act, 2007.” These two key legal instruments play an indispensable role in safeguarding the well-being and dignity of India’s older population. However, even with these initiatives, there is a difference between what is and what ought to be. News reports are filled with incidences of age-based discrimination or neglect.

In spite of aforesaid special arrangements for the old age persons the position of old age person is not happier and it is because of our social approach toward elderly people in the present scenario. The article ends with thorough suggestions for improving the effectiveness of elder rights, including a focus on increasing public awareness, streamlining the legal

¹ Gorman M, Petersen T. Violence Against Older People and its Health Consequences: Experience from Africa and Asia. London, Help Age International, 1999.

system, conducting frequent reviews and modifications, improving financial security, bolstering geriatric healthcare, promoting inclusive, and creating age-friendly infrastructure. India can guarantee that its elderly population has their rights and retains their dignity as they age by tackling these important issues. In addition to creating a society where older people's rights are not only respected on paper but are a reality for all senior residents, the need is to close the gap between legal requirements and their successful execution.

The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, was enacted to address these issues by legally mandating maintenance and welfare. This study analyzes the Acts provisions, implementation gaps, and recent developments, using statistical data, case laws, and international comparisons. The methodology includes a qualitative analysis of legal texts, quantitative data from government reports, and case studies to assess real-world impact.

Objective of the Research -

This paper aims to find the following objectives -

1. To discuss the Indian Laws available for the welfare and protection of Senior citizens. ·
2. To make suggestion for the effective implementation of the Act, 2007. To discuss what changes were aimed by the implementation of “The Maintenance And Welfare of Parents And Senior Citizens (Amendment) Bill, 2019.·
3. To identify the lacunae in the existing legislation.

Abuse of Elderly Person: Problem and Consequences

The connection between elder abuse and domestic violence is becoming more widely recognized. A couple of research shows that such incidents classified as “elder abuse” fall within the particular category of domestic violence. Long-term domestic violence that persists into old age is

the abuse in many of these cases. Behavior that has been well hidden for a long time is revealed and classified as “older abuse” when disability strikes and community services step in. Once more, though, the relationship is not simple. In some cases, the situation is reversed—the long-term perpetrator becomes dependent upon their victim and the domestic violence victim now becomes the abuser under changed power relations.

As well as domestic violence, a history of other forms of family violence such as child abuse plays an important role. An abusive care may also be the victim of domestic violence or the adult survivor of child abuse who is now in a position of power over their past perpetrator. A full understanding of older abuse must also move beyond individual risk factors, and concentrate upon the problem as a function of broader social structural issues such as poverty, isolation, ethnicity and gender.²

Problems of the Old Age Person -

For old-age people, the consequences of abuse can be especially serious. Old-age people are physically weaker and more vulnerable than younger adults, their bones are more brittle and convalescence takes longer. Even a relatively minor injury can cause serious and permanent damage. Many Old-age people survive on limited incomes, so that the loss of even a small sum of money can have a significant impact. They may be isolated, lonely or troubled by illness; in that case they are more vulnerable as targets for fraudulent schemes.³

In a living society the major problems of the aged for which they have been suffering deeply and required thorough implication not only through legal measures instead requires socio-legal mechanism to curb out this long waited problem:

(i) Economic problems include problems like loss of employment, income

2 Carp RM. Elder Abuse in the Family: An Interdisciplinary Model for Research. New York, NY, Springer, 2000.

3 Schiamberg LB, Gans D. An Ecological Framework for Contextual Risk Factors in Elder Abuse by Adult Children. Journal of Elder Abuse and Neglect, 1999.

deficiency and economic insecurity.

- (ii) Physical and physiological problems including health and medical problems, nutritional deficiency, and the problem of adequate housing etc.
- (iii) Psycho-social problem which cover problems related with their psychological and social maladjustment as well as the problem of elder abuse etc.

Legislative Concept: The Indian Legal Framework

In the past, Hindu sons had a legal obligation to provide for their elderly parents, who were unable to care for themselves, with their earnings and property. They were also obligated to settle any outstanding debts as a sign of piety; today, this obligation is purely private and cannot be enforced by the government. Muslim law holds children accountable for caring for their elderly parents as well. The willingness to maintain is conditioned on having the resources to do so. The legal protections for parents under social laws were added due to the gradual loss in adherence to this moral obligation. For instance, the Indian Constitution states, “The State shall, within the limits of its economic ability and growth, make effective provision for securing the right to work, to education, and to public assistance in cases of unemployment, old age, illness, and disability, and other cases of undeserved want.” According to the Hindu Adoption and Maintenance Act, “A person’s duty to sustain his or her aged or infirm parent extends in so far as the parent is unable to maintain himself or herself out of his or her own wages or other property.” The secular clause, which holds persons of all faiths, including married daughters, accountable for their parents’ maintenance, was inserted to the Code of Criminal Procedure. It’s astonishing to find that the problem hasn’t been resolved despite numerous provisions.

Before 2007, legal provisions for elderly maintenance were limited. Section 125 of the Code of Criminal Procedure, 1973, mandated maintenance for parents but lacked specificity for senior citizens. The Hindu Adoption and Maintenance Act, 1956, applied only to Hindus and focused on

familial obligations. The National Policy on Older Persons (1999) outlined welfare measures but lacked enforceability. The 2007 Act was introduced to fill these gaps, inspired by global frameworks like Singapore's Maintenance of Parents Act, 1995. It marked a shift toward recognizing elderly rights as a state responsibility. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, was passed by lawmakers in a solemn effort to make the process easier and less expensive in light of the aforementioned hard realities. It aims to lessen the pain of this weaker section of society while also making sure that kids don't run away from their moral obligations, which may have been instilled in every soul by God himself.

Provision under Indian Constitution:

The provisions are mentioned in the Constitution of India for the senior citizens of India. The article 41 and article 46 which are described under part 4 of the Constitutional law. Article 41 states that *"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."*⁴

It also imposes the liability upon the state that *"The State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation."*⁵

Provision Under Personal Laws

Under the Hindu personal laws, every Hindu has the obligation to take care of their aged parents who are not able to maintain and take care of themselves. Earlier it was the legal obligation of the son to maintain his aged parents but now, it is the right of a daughter to maintain her parents who are

4 The Constitution of India, 1950, Article 41.

5 The Constitution of India, 1950, Article 46.

not able to maintain out of their own earnings or property. The Hindu Adoption and Maintenance Act, 1956, makes it an obligatory provision to maintain an aged parent.⁶

Muslim law makes it obligatory for a man to provide maintenance for his father, mother, grandfather and grandmother. Tyabji said that under Hanafi law, poor parents and grandparents are entitled to maintenance from their children and grandchildren who possess financial means, even if they can make enough to survive. Under Muslim law, both sons and daughters must support their parents. The responsibility, however, is contingent on their ability to do so. In Muslim Law the children are bound to maintain their parents if they earn money.

There is no personal law for Christian and Parsi for providing maintenance to the aged parents. If the parents want to seek maintenance from their children, they can apply through the Criminal Procedure Code to seek maintenance. The Criminal Procedure Code is a secular law which is applicable to the entire region. This is not for a particular sect and is applicable to every citizen of the country. To claim maintenance under this law, it is necessary to prove that the parents are neglected and do not have the sufficient means of income to maintain themselves. The Criminal Procedure Code makes it obligatory for sons and daughters, including a married daughter, to maintain their parents.⁷

National Policy on Older persons:

The National Policy on Older Persons (NPOP) of 1999 proposes government assistance to guarantee the financial and food security, medical care, housing, and other needs of older people, a proportionate share in development, safeguards to prevent abuse and exploitation, and the accessibility of services that can enhance their quality of life. The overall plan also addresses topics such as social security, intergenerational bonding, family as main caregivers, the role of non-governmental organizations,

⁶ Section-20 of the Hindu Adoption and Maintenance Act, 1956.

⁷ Section 144 of the Bhartiya Nagrik Suraksha Sahinta, 2023.

workforce development, and research and training.

The Maintenance and Welfare of Parents and Senior Citizens Act :

On 3rd March 2006 first attempt was made by Smt. Sushma Swaraj to introduce Senior Citizens (Maintenance, Protection and Welfare) Bill 2006, but it couldn't proceed further. Later, the Ministry of Social Justice and Empowerment⁸ of the Government of India finally introduced The Maintenance and Welfare of Parents and Senior Citizens Bill, 2007. This bill received the final assent from the President on 31st December, 2007 and became an Act.⁸

The object of the Act is to provide effective legal remedies for the Maintenance and Welfare of Parents and Senior Citizens who are unable to maintain themselves or are above the age of sixty years. From the above-mentioned provisions and schemes, it seems that the Rights of the Senior Citizens are well protected; however, in reality the problem still remains unsolved. The dilemma lies in the lack of effectiveness of the available laws. There is not even a single piece of stringent legislation which provides complete protection to the Senior Citizens.⁹

The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, is a landmark legislation aimed at protecting senior citizens and parents. Key provisions include:

- **Maintenance:** Children and specified relatives must provide maintenance, up to INR 10,000/month (proposed to increase in 2019 amendments).

⁸ Available at <https://sansad.in/getFile/loksabhaquestions/annex/16/AU42.pdf?source=pqals>, retrieved at 20.05.2025 at 10.30A.M.

⁹ Sujana Bej, "Understanding the 'Maintenance Welfare of Parents and Senior Citizen Act'", available at: <https://factly.in/understanding-themaintenance-and-welfare-of-parents-and-seniorcitizens-act/>. Last visited 21.05.2025.

- **Tribunals:** District-level Maintenance Tribunals resolve disputes, with appeals to Ap- pellate Tribunals within 60 days. The below mentioned data in tubular form elaborate the disposal of cases in the tribunal of various states.

Table 1: State-wise Tribunal Implementation (2015–2023)

State	Tribunals Estab-lished	Cases Filed	Cases Re-solved
Maharashtra	35	12,500	9,800
Tamil Nadu	32	10,200	8,500
Uttar Pradesh	75	15,000	10,200
Others	150	25,000	18,000

Source: Ministry of Social Justice and Empowerment, 2023

- **Penalties:** Abandonment is punishable with up to three months imprisonment or a fine of INR 5,000.
- **Property Protection:** Seniors can revoke property transfers if maintenance is not provided. In 2018 the Delhi High Court upheld the Acts provisions, ordering the son to pay maintenance and vacate the parents property.¹⁰
- **Healthcare:** State governments must ensure geriatric care in public hospitals.

The act defines maintenance as Maintenance is defined in the Act as including “provision for food, clothing, residence and medical attendance and treatment”. Acts describe a senior citizen is a person who is above the age of 60 years.

10 Sunny Paul v. State of NCT of Delhi (2018).

Who Can Claim Maintenance - The only condition for claiming maintenance under this Act is that the persons must be unable to maintain themselves from their own earnings and property.

Parents - Parents means biological, adoptive and step parents. The age of parents is immaterial for claiming maintenance.

Grandparents - Grandparents referring to both paternal and maternal grandparents.

Senior Citizen - A senior citizen is an Indian citizen aged 60 or older.

Who is Lawfully Obligated to Pay Maintenance - Adult Children and adult grandchildren, both male and female, are accountable for providing maintenance to their parents and grandparents. An application may be made against one or more of them. Senior citizens who do not have children or grandchildren may seek maintenance from a relative who owns their property or will inherit it after the senior citizen's death. It is mandatory that the relative should not be a minor and must be able to pay for themselves. If more than relative is eligible to succeed the property, relatives must pay maintenance in proportion to their share of the property.

How much Maintenance Must be Paid - The Act make it clear that the maximum maintenance amount will be Rs 10,000 per month and the maintenance amount is determined by the needs of the claimant. the aim of maintenance provision is ensure that lead a normal life by senior citizen.

Filing Maintenance Proceedings – The maintenance application must be filed before the Maintenance Tribunal in any district wherethe person against

1. whom maintenance is claimed resides.
2. the parent, grandparent or senior citizen resides; or
3. the parent, grandparent or senior citizen has last resided; or

If the person himself cannot file the maintenance application, then any other person or organization authorised by him can file the application on his behalf. Additionally, the Maintenance Tribunal has the suo moto power to take action on its own without any request by the parties.

The Act make it clear that no party to a proceeding will be represented by lawyer before the Maintenance Tribunal. However, parents or older people might use the services of the State Government-appointed Maintenance Officer to advocate their interests during hearings before the Maintenance Tribunal.

Enforcing the Maintenance Order - Once the Maintenance Tribunal has issued an order, a copy of the order must be delivered to the individual receiving support at no cost. If the other party is ordered to pay a payment, it must be paid within 30 days after the Tribunal's decision.

Failure to pay maintenance without a valid cause will result in a warrant to collect the amount owed. If the individual fails to pay maintenance even after the warrant is executed, they face incarceration for up to one month or until the sum is paid, whichever comes first. Maintenance enforcement applications must be submitted within three months after the due date. Otherwise, the application will be rejected.

The order may also be altered to modify or cancel the maintenance amount if

there is a major change in the claimant's circumstances, a misrepresentation (an innocent, unintended, false statement), or an error of fact.

Protection of Senior Citizens - Any individual who is responsible for the safety and care of a senior citizen who knowingly abandons the senior citizen is subject to a Rs 5,000 fine, a three-month jail sentence, or both. Senior persons may also submit an application with the Maintenance Tribunal to have the property transfer declared invalid. The following requirements apply:

1. All property transfers, irrespective of whether it is a gift or not, must be occur after the commencement of this Act.
2. The property transfer must include stipulations requiring the recipient to provide basic facilities and meet the older citizen's physical needs.
3. The other person must have failed to meet the amenities and physical needs to the senior citizen.

If senior citizen has the right to receive maintenance from an estate and the estate is transferred, either partially or whole, then the right to maintenance may be sought from the person to whom the property has been transferred when:

1. The transferee gets notice of their claim to the property, or
2. The transfer is gratuitous.

Responsibility of the State Government: The State Government is responsible for ensuring that all government hospitals, whether partially or completely financed, have separate lines and beds for older residents. Furthermore, every district hospital must provide particular amenities for older persons. Every region must have at least one old age home for elderly people who are destitute and needy. These old-age homes must be able to house at least 150 impoverished and needy elderly residents. In 2019, the Supreme Court urged states to create old-age homes to care for and safeguard the elderly.

Other Government Schemes:

The Government has setup the ministry of Justice and Empowerment which has launched various programs like

1. **National Assistance Social Programme:** The National Social Assistance Programme (NSAP) is a centrally sponsored scheme of the Indian government that distributes social pensions to the elderly, widows, and those with disabilities. The National Social Assistance Programme (NSAP), which went into force on August 15, 1995, is a substantial step in implementing the Directive Principles in Article 41 of the Constitution. The program developed a National Policy for Social Assistance for the Poor, which attempts to provide a minimum national standard for social assistance in addition to the benefits that states are presently giving or may give in the future.¹¹

2. **Annapurna Scheme:** The Annapurna Scheme has been launched with effect from 1st April, 2000. It aims at providing food security to meet the requirement of those senior citizens who, though eligible, have remained uncovered under the National Old Age Pension Scheme (NOAPS). The Scheme is targeted to cover, 20% (13.762 Lakh) of persons eligible to

¹¹ See:- <http://nsap.nic.in/>. Retrieved at 22.05.2025 at 8.00 P.M.

receive pension under NOAPS.¹² To provide food security to those indigent senior citizens who are not covered under the targeted Public Distribution System (PDS) and who have no income of their own. The new “Annapurna” scheme aims to deliver 10 kg. of food grains per month free of charge to all such people who, although entitled for an old age pension under NOAPS, are currently not getting it. The number of people who benefit from the Scheme is limited to 20% of the state’s old age pensioners at the moment. Following widespread exposure of the Scheme, the Gram Panchayat would be compelled to identify, create, and display a list of such individuals.

Critical Analysis

The Act empowers seniors by providing accessible legal recourse, but implementation challenges persist. Only 20% of rural seniors are aware of the Act, compared to 60% in urban areas. Bureaucratic delays in tribunals, with cases taking 6–12 months, and inadequate funding for welfare schemes limit effectiveness. Comparatively, Singapore’s Maintenance of Parents Act, 1995, mandates mediation before litigation, resolving disputes faster. Gender disparities are notable, with elderly women facing higher neglect due to economic dependency (65% of elderly women lack independent income, compared to 40% of men).

The 2007 Act undoubtedly, is the only legislation so far enforced in India, solely for Senior Citizens; but the problem with it is that it addresses only economic and financial abuse and fails to provide protection against mental and physical abuses.

The Maintenance and Welfare of Parents and Senior Citizens (Amendment) Bill, 2019, proposes expanding the definition of maintenance to include healthcare and safety, recognizing step-parents, and increasing penalties. A new senior citizens policy (2024–2025) emphasizes digital literacy and geriatric care. However, implementation remains a challenge due to limited funding and coordination between states.

¹² Nugget, Annapurna Scheme, available at: <http://pib.nic.in/infonug/infyr2000/info-aug2000/i010 820001.html>. Retrieved at 22.05.2025.

CONCLUSION:

From the above contention it can be held that there is an urgent need to protect the rights of old aged persons in India. The rights of old aged persons are protected under various national laws like Hindu Law, Muslim Law etc. As discussed above in the research paper. The rights are also protected under Section 144 of the BNSS. The government has also passed an amendment bill in 2019 on Maintenance and welfare of parents and senior citizens Act, 2007. The Government has launched various schemes to protect the rights of old aged persons in India like NASP(National Assistance Social Programme), Annapurna scheme etc. To enhance the Acts effectiveness, the governments should launch nationwide awareness campaigns, streamline tribunal processes, and increase funding for geriatric care. NGOs can play a role in community outreach. Balancing legal frameworks with cultural values is essential to ensure elderly welfare in India's evolving society.

While the analyses of the MWPSA Act and the amendment bill of 2019 point to some glaring legislative drafting flaws, including flaws in the interpretation section of the Act, the rulings of the High Courts in G.S. Manju's case¹³ and Simrat Randhawa's case¹⁴ indicate the inherent infirmity of the Maintenance Tribunals to decide on eviction matters expeditiously. Further, the ruling in Dr. Ashwani Kumar's case,¹⁵ proves beyond any reasonable doubt that neither have the provisions of the Act helped the poor elderly to get the requisite number of old-age homes nor have they helped them receive the desired medical support as contemplated under Section 20 of the Act. In fact, in Ashwani Kumar's case¹⁶ the Apex Court had instructed the central government to issue directives to the respective state governments to effectively implement the provisions of the MWPSA Act. In view of the above findings, it is recommended that the elderly care and support jurisprudence as contemplated mainly under Sections 19 and 20 of

13 G.S. Manju v. K.N. Gopi, 2019 SCC OnLine Ker 5363 (India).

14 Simrat Randhawa v. State of Punjab & others, CWPNo. 4744 of 2018 (India)

15 Dr. Ashwani Kumar v. Union of India & Ors, CWPNo. 193 of 2016.

16 Ibid.

the MWPSA Act is separated from the maintenance jurisprudence that runs across the breadth and width of the Act. It is possibly ripe time that the Indian Parliament frames an Elderly Care and Support Law for the benefit of the aged population. The MWPSA Act may be left to address maintenance issues (and in a limited way to elder abuse) since both the spirit and the letter of the Act attempt to create an overwhelming maintenance jurisprudence in favour of the elderly population in India.