



AN ANALYSIS OF LEGAL FRAMEWORK GOVERNING MAINTENANCE RIGHTS OF ELDERLY PERSONS

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Abstract: The increasing number of elderly people across the globe presents a challenge to every society, more so in those aspects that are involved in the welfare of the old, and India is not an exception. There are quite a number of laws that the political leaders have attempted to provide for the current situation of elderly people in India. In this work, we will examine the Indian legal system as it relates to the preservation of the rights of elderly citizens. This review focuses on laws concerning the maintenance of elderly adults, particularly those which provide for their economic protection. The review also considers measures adopted by the government for the financial support of elderly persons. It contains data on legal constraints to the enforcement of maintenance rights of senior citizens in India and also responds to questions on awareness, accessibility and efficiency of the laws.

KEYWORDS: *Senior Citizens, Constitution of India, the welfare and maintenance of parents and senior citizens act, 2007*

INTRODUCTION: The system of the joint family is a distinctive feature of Indian culture that occupies its own place in the framework of the family of different civilisations and cultures of the world. Of course, in this unique system of the family elder members also have their significance in the family. The geriatric feature of the post-modern value system of Indian society has been useful in providing the much-needed care to the elderly in the family. On the other hand, modern India is experiencing a progressive collapse in the structure of joint families, which has resulted in a sizeable share of elderly parents no longer receiving financial assistance from their children.¹ In *Ashwinder Singh and anr Vs. Bhagwant Singh and anr*², the High Court of Punjab & Haryana, observed that "This unfortunate regular second appeal is a poignant reminder of

¹ Biswas, B. S. (2020, September 13). *Why Indians continue to live in joint families*. <https://www.bbc.com/news/world-asia-india-54053091>

² 2014 (3) R.C.R. (Civil) 906.

decaying social values and traditions in our country. The case is a telltale story of how children have become detached in today's commercialised world and are making attempts to throw out their aged parents from the property which the parents have acquired during their lifetime. It is perfect example of children becoming insensate towards parents/senior citizens.....” Thus, the current generation of elders is likely to experience emotional loneliness and not get enough help concerning the vital aspects of life, mundane and financial. The Population is ageing in India, and the growth rate of the older population is tremendous, which has given proper concern to the safety and care of elders. As people grow old, it is the right time to put legal mechanisms in place to protect the interests of elderly persons. Traditional family structures in India are undergoing a process of transformation, and the socio-economic situations of the country have resulted in a growing demand for formal legal safeguards provided to senior individuals.³ The aim of the present work is to offer a thorough overview of the legislative background that governs the maintenance rights of elderly people in India.

LEGISLATIVE FRAMEWORK TO SAFEGUARD THE RIGHTS OF THE ELDERLY POPULATION IN INDIA:

THE CONSTITUTION OF INDIA

The Constitution of India comes in several dimensions, being the law that outlines the country's legal, political, and social structure. Besides, it is the supreme law in India. Here, in this document, get an understanding of the legal system and the law that governs the country. It is providing the name India as a sovereign, socialist, secular, democratic republic country to frame the government of the people, by the people, for the people. Basic rights are those rights that the Constitution affords to all citizens, these include: equal rights, freedom, protection from being exploited, right to freedom of religion, cultural and educational rights and finally, constitutional remedies. It accords citizenship duties so that proper responsibility can be instilled in the citizens to act constructively towards the country. The Directive Principles serve as guidance for the state in institutionalising social and economic democracy to reach a just society. These principles guide the government to serve in the betterment of living standards for its citizens and, accordingly, grant a guarantee for social and economic welfare. In this way, it unifies all sections of society in the mainstream of national activity, achieving unity in diversity. The Indian Constitution is, for that reason, considered to be a living document, without which the path towards justice, liberty, equality, and fraternity for its citizens would have been dearly elusive.

Fundamental Rights: The Indian Constitution ensures that all individuals within the borders of India are entitled to equal treatment under the law and the same level of legal protection.⁴ It guarantees that senior citizens, just like any other demographic, have the right to receive fair and equal treatment and legal protection. The supreme law of the land explicitly forbids any form of discrimination based on religion, ethnicity, caste,

³ Chakravorty, S., Goli, S., & James, K. S. (2021). Family Demography in India: Emerging Patterns and Its Challenges. Sage Open, 11(2). <https://doi.org/10.1177/21582440211008178>

⁴ Article 14, Constitution of India, 1950

sex, or place of birth.⁵ While age is not directly mentioned, the prohibition of discrimination is sufficiently comprehensive to include the rights of elderly individuals. Article 21 ensures the safeguarding of the lives and personal freedoms of every individual. The Supreme Court of India has interpreted Article 21 to encompass the right to life, which encompasses the right to live with dignity.⁶ This right extends to the aged population, ensuring that they are able to have a life that is dignified.

Directive Principles of State Policy: Although the Directive Principles of State Policy are not law in a strict sense, they do impose a responsibility on the State to make appropriate policies for the welfare of Indian populations. In fact, these principles have been guiding the State in formulating different kinds of legal frameworks. It compels the state to foster and safeguard the improved status of the population through the assurance and maintenance of social structure, social, economic and political rights.⁷ Article 41 obligates the state to make provisions which have to be adequate for employment, education, and public assistance in case of unemployment, old age, sickness, and disablement. The text specifically mentions old age and puts upon the state the duty to provide aid to the aged. The provision of Article 46 also puts duties to protect educational and economic interests of the Scheduled Castes, the Scheduled Tribes and the other backward and weaker sections of the society. They should, therefore, be treated as a vulnerable group whose interests must be protected and enhanced.

Fundamental Duties: As per Article 51A, it is the duty of every citizen of India to help and respect fellow citizens. Such includes the duty to promote unity among, and an idea of fraternity amongst all the citizens of India, irrespective of any linguistic, religious or regional diversities. This includes showing respect for their rights and dignity of elderly persons.

THE MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS ACT, 2007

One component of Indian legislation is called The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, which guarantees financial support as well as welfare for parents and other senior citizens. According to this, children and heirs are compulsorily required to provide financial support to senior citizens and their elderly parents. It is the direct, efficient and inexpensive mode of protection for elderly people's lives and property. According to the Act, a "senior citizen" is defined as someone who is 60 years of age or older and holds Indian citizenship.⁸ Additionally, a "parent" is defined as either a biological, adoptive, or stepfather or mother.⁹ Under this law, courts can allow children or other family members to provide for the monthly contribution for their parents or the elderly individuals' care as they advance in age. By default, monetary sanctions and imprisonment are given. The Act also requires the development of old-age institutions to provide support to impoverished older individuals.¹⁰

⁵ Article 15, Constitution of India, 1950

⁶ Maneka Gandhi v. Union of India 1978 AIR 597, 1978 SCR (2) 621

⁷ Article 38, Constitution of India, 1950

⁸ Section 2(h), the maintenance and welfare of parents and senior citizens act, 2007

⁹ Section 2(d), the maintenance and welfare of parents and senior citizens act, 2007

¹⁰ Harbishettar V, Gowda M, Tenagi S, Chandra M. Regulation of Long-Term Care Homes for Older Adults in India. Indian Journal of Psychological Medicine. 2021;43(5 suppl):S88-S96. doi:10.1177/02537176211021785

It is an act providing financial assistance for parents and older persons who cannot sustain themselves just with their earning capacity. For the setup of tribunals, which will make efforts to settle the legal issue, and speedy relief shall be given to the older people and parents. The purpose would be to enable the state governments to construct old age homes, provide health facilities, and protect their lives and property of the older persons. Section 4 mandates children and the next of kin to make a financial contribution towards an elderly person. Under this section, it has been held that children and heirs are obliged under law to make financial provision to their parents and elders to satisfy the various requirements. Section 5 conferred the right on the elderly person or parent to claim monthly financial support from the tribunal. Section 6 provided that the applicant for maintenance may present their application before the Tribunal exercising jurisdiction over the local area in which the applicant resides. State Governments shall constitute a Maintenance Tribunal for every sub-division of a district for passing orders on maintenance matters. Section 8 described the Summary procedure to be followed in case of an inquiry. The tribunal is empowered to dispose of the maintenance petitions expeditiously. The tribunal has been empowered, under Section 9, to direct children or relatives to pay a monthly monetary support to the aged or parent. The tribunal, empowered under Section 10, can modify its order in case there are any variations in circumstances. Under Section 11, the order has been given to the tribunal that it can be enforced as a decree passed by a civil court. As under Section 12, the tribunal can direct the deposit of a certain sum of money in a particular method and then paid to the applicant. Under section 19, state governments were ordered to establish at least one old age home in every district to look after those poor and destitute aged persons who are living in that district. Article 20 further made it a state obligation to furnish proper medical facilities and attention to elderly persons. Article 21 describes steps for safeguarding elderly persons against negligence and exploitation. Section 23 of the Act declares any attempted property transfer by an elderly person void if the recipient does not establish for the donor basic amenities as well as physical necessities. In fact, section 24 of the act in question had already provided for criminal penalties like imprisonment or a penalty for abandonment by offspring or relatives to older adults. The Central Government shall be vested with the power of formulating regulations regarding the implementation of this Act, and it is for the State governments to implement the Act effectively by spreading awareness of the people and establishing tribunals and old-age-care institutions.

HINDU ADOPTION AND MAINTENANCE ACT, 1956:

The Hindu Adoption and Maintenance Act, 1956 (HAMA) is one of the most important enactments that wholly deal with adoption and alimony under Indian law, specifically with regard to the Hindu community. The Act makes specific provisions regarding maintenance and ensures that adult children provide financial support towards their old age. The said provisions are explained in detail below: Under Section 20 of HAMA, there is an express statement that Hindu parents, biological or otherwise, have a right to be maintained by their children. The child in question would either be male or female. Maintenance extends beyond the monetary aspect; it also involves living necessities, which include food, clothing, roof over their heads, medication, as

well as other luxuries in life. Parents also have rights over monetary support if they are unable to support themselves through their income or money. Even according to this Act, children are declared by law to support their parents' whatever assets their parents may have given them or themselves have in the world. Maintenance calculation has its base in the person who pays their capability, both financially and on the need of the one who is in a position to ask for support. The court decides how much the amount of maintenance should be according to guidelines, among which factors and modes of living and health and needs of the parent are also included. If the parents cannot receive financial support from their children, they are entitled to legal relief by filing a petition for maintenance before the court under Section 20. The petition is liable to be presented before a court which has territorial jurisdiction over the geographical location where either of the parents or the kid resides.

NATIONAL POLICY FOR OLDER PERSONS, 1999

The National Policy for Older Persons was developed by the Government of India in the year 1999 with the objective of guaranteeing the welfare and well-being of the elderly population through a holistic strategy.¹¹ The strategy advocates for the promotion of an engaged and productive ageing population, ensuring economic stability, access to quality healthcare, proper nutrition, suitable housing, comprehensive support services, and legal safeguards.¹² It provides retirement plans, encourages saving alternatives suitable for various age brackets, and offers tax benefits to reduce stress on one's pocket. Under the health branch, it provides easily accessible and inexpensive services as well as preventive care and nutrition counselling. The housing provisions incorporate designs that accommodate elderly people and provide inexpensive schemes for retirement homes. Support services include day care centres, respite care, carer training, and mental health counselling. Legal provisions safeguard elderly individuals from abuse and offer legal assistance and programmes to enhance awareness. The policy encourages research in ageing and professional training, with national, state, and local centralised monitoring and guidance to ensure effective implementation and involve older persons in the planning and assessment of programs affecting them.

NATIONAL PROGRAMME FOR HEALTH CARE OF THE ELDERLY (NPHCE):

The National Programme for Health Care of the Aged (NPHCE) was initiated in India in 2010 with the purpose of catering to the distinct healthcare requirements of the aged population. Its primary objectives are to enhance their quality of life and guarantee their access to comprehensive healthcare services.¹³ The programme emphasises the preventive, curative, and rehabilitative components of healthcare for elderly individuals. The initiative encompasses the creation of dedicated geriatric units in local hospitals and regional medical centres, the delivery of health care and support services in patients' homes, and the education of healthcare personnel

¹¹ *National Policy for Senior Citizens' Welfare*. (n.d.). <https://pib.gov.in/Pressreleaseshare.aspx?>

¹² *ibid*

¹³ Vaishnav LM, Joshi SH, Joshi AU, Mehendale AM. The National Programme for Health Care of the Elderly: A Review of its Achievements and Challenges in India. *Ann Geriatr Med Res*. 2022 Sep;26(3):183-195. Doi: 10.4235/agmr.22.0062. E-pub 2022 Aug 30. PMID: 36039665; PMCID: PMC9535372.

in geriatric care.¹⁴ The main aim of NPHCE is to promote early detection and management of common age-related conditions, which include hypertension, diabetes, cardiovascular diseases, as well as to sustain that palliative care, mental health support, and chronic disease management are important. Community mobilisation as well as health camps are conducted with an objective of building awareness and for the enhancement of accessibility. It involves the development of health infrastructure, policy formulation on elderly care, and ensuring cheap drugs and equipment as well. The NPHCE believes in a multi-lateral approach that may help create an amiable environment for the elderly so that they may lead healthy lives with dignity.

INDIRA GANDHI NATIONAL OLD AGE PENSION SCHEME (IGNOAPS):

The Indira Gandhi National Old Age Pension Scheme (IGNOAPS) is a prominent social welfare endeavour within the National Social Assistance Programme (NSAP) that seeks to offer monetary assistance to impoverished older individuals in India.¹⁵ Introduced in 2007, this programme is designed for adults who are 60 years old or older and come from families classified as Below Poverty Line (BPL).¹⁶ It provides a monthly pension to assist them in meeting their essential requirements. The system provides a monthly pension of Rs. 200 to people of 60-79 years and Rs. 500 to all above the age of 80 years. This must highly encourage State Governments to pay an additional amount of money towards the pension. Monetary support is regarded among the elderly who do not have a steady source of income besides financial support or any support system from their relatives towards making them poverty-free and raising their standard of living. IGNOAPS depicts the broad commitment of the government to social security and old-age people, wherein the respective old people are ensured to sustain an honourable standard of living and economic independence.

CHALLENGES IN EXECUTION

The State has made a significant effort to protect its elderly population, but there is still much progress to be made. Several challenges stand in the way of effectively implementing these protections:

- Many older adults, especially those in rural areas, are not aware of their legal rights or how to seek help when needed.
- Cultural and social barriers often prevent seniors from taking action against their caregivers.
- The implementation of law is hindered by poor infrastructure, administrative inefficiencies, and the lack of specialised courts.

CONCLUSION

¹⁴ *ibid*

¹⁵ *Indira Gandhi National Old Age Pension Scheme (IGNOAPS): Objective, Features & Application Process.* (n.d). Digit General Insurance. <https://www.godigit.com/guides/government-schemes/indira-gandhi-national-old-age-pension-scheme-ignoaps>

¹⁶ *ibid*

Although there is a complete legal framework in place, the successful enforcement of these rules continues to be a considerable obstacle. A thorough examination of the current legislation indicates that it does not effectively tackle key concerns, such as the absence of economic stability for older individuals without offspring or relatives, as well as insufficient measures to meet their healthcare and housing requirements. Ultimately, although India has made notable progress in establishing legislation to safeguard the entitlements of older individuals, there is a requirement for more effective enforcement methods and a complete legal structure that tackles the various complex difficulties encountered by the nation's ageing populace. The legal framework pertaining to the maintenance rights of aged individuals in India is a notable advancement in ensuring the well-being of senior residents. However, the efficacy of these measures depends on successfully addressing implementation obstacles and ensuring that elderly individuals can obtain and execute their lawful entitlements. The collaboration of the government, judiciary, and civil society is crucial in order to establish a more comprehensive and encouraging atmosphere for the senior population in India.

