

# Legal Framework for the Aged: Progress and Pitfalls in India's Elderly Welfare Policies

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## ABSTRACT

Old age is the most vulnerable phase of human life cycle. It is at this phase that the elderly requires maximum care and protection. But the sociocultural changes associated with the globalization and development has weakened the traditional values and family support systems for senior citizens. There is an increase in the prevalence of elder abuse and difficulties in getting appropriate care and support. The Maintenance and Welfare of Parents and Senior Citizens (MWP) Act came into existence in the year 2007 is an important legislation in India which provides maintenance support to elderly parents and senior citizens and also safeguarded the elderly from exploitation and abuse. Considering the challenges it posed an immediate need to incorporate the necessary amendments was felt and the Maintenance and Welfare of Parents and Senior Citizens Act, 2019 was passed. The new Act was passed so that the act gets more pragmatic value and becomes an important tool for elderly care and protection and reduce vulnerabilities and ensure holistic care with support in various bio-psycho-social domains.

**Keywords:** Right to Maintenance, Elderly, Elder Abuse, Elder Exploitation, Elderly Care, Protection

## INTRODUCTION

*“MATRU DEVO BHAVA; PITRU DEVO BHAVA”*

This quote from the Taittiriya Upanishad derives its roots from the ancient Indian Vedic era, according to which the parents were placed at a very high position equivalent to that of the Gods and the Goddesses. This is the underlying principle of Indian traditions and culture. All religions in India expects the adult children to take care of the elderly in their family.

In the evolving landscape of Indian society, characterized by rapid urbanization, demographic shifts, and changing family structures, the need for robust legal frameworks to protect the interests of the aging population has become increasingly paramount. The "Maintenance and Welfare of Parents and Senior Citizens Act, 2007," stands as a landmark legislation in India, signifying a pivotal step towards addressing the challenges faced by the elderly. This Act, a testament to the country's commitment to its elderly, underscores a fundamental shift in legal and social recognition of the elderly's rights and needs.

Historically, Indian society has been steeped in a tradition where elder care was predominantly a family responsibility, deeply rooted in cultural and ethical norms. The concept of joint families, where multiple generations cohabited and supported each other, was the bedrock of elder care. However, the onset of globalization, urbanization, and the movement towards nuclear family units have gradually eroded these traditional support systems. The migration of the younger population for employment opportunities,

coupled with the increasing life expectancy, has led to a significant rise in the number of senior citizens, many of whom find themselves in vulnerable situations, lacking adequate financial support and facing neglect and isolation.

The “Maintenance and Welfare of Parents and Senior Citizens Act, 2007” emerged against a backdrop of growing concern for the well-being of older adults, who were often found to be marginalized, neglected, or facing abuse. Traditionally, the Indian society revered its elders, with a cultural fabric that intrinsically valued the care of the elderly within the family system. However, the rapid socio-economic transformations, including the movement towards nuclear family structures and increased migration for employment, have strained these traditional support systems. Consequently, the absence of adequate legal measures for the protection and maintenance of the elderly became a pressing concern.

The "Maintenance and Welfare of Parents and Senior Citizens Act, 2007" was thus enacted with the primary objectives of ensuring need-based maintenance for parents and senior citizens, providing measures for their welfare, and institutionalizing a mechanism to enforce these provisions effectively. The Act encompasses a broad range of provisions, from financial maintenance to protection against abandonment and abuse, reflecting a holistic approach to elder care.

In exploring this Act, we not only scrutinize a piece of legislation but also engage with broader questions about the evolving nature of familial responsibilities, societal duties towards the aging population, and the role of law in safeguarding the dignity and welfare of the parents and senior citizens. This dissertation, therefore, is not just an academic inquiry but a reflection on the changing ethos of a society striving to balance traditional values with contemporary challenges in the care of its elderly.

## LITERATURE REVIEW

### **Pooja Rani. "Maintenance of Senior Citizens and Parents." Socio-Legal and Contemporary Research (2021).**

The work emphasizes the importance of dignified lives for elderly parents, aligning their needs with the aspirations of the current generation. The paper highlights aging as a natural process, emphasizing the role of elders in connecting past and present while shedding valuable insights. It addresses the shifting care burden to contemporary generations and explores legal interventions to uphold moral obligations to parents and nurturing relatives. The study compares the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, with Section 125 of the Criminal Procedure Code, 1973, to illuminate its advantages in addressing the parents’ and senior citizens' responsibilities. Through examining familial duties, legal frameworks, and societal changes, the paper contributes to the discourse on providing supportive environments for the elderly.

### **Kamal Jeet Singh, Raghuvinder Singh, and Mamta Kumari, “The Maintenance and Welfare of Parents and Senior Citizens Act 2007: A Study” (2020).**

The study underscores India's deep-rooted cultural reverence for elders, evident in practices like touching their feet. It highlights the historical veneration of parents and elderly individuals within families, further reinforced by Article 41 of the constitution. However, modern challenges, including a lack of support, contrast this tradition. The enactment of the Maintenance and Welfare of Parents and Senior Citizens Act,

2007, aligns with Article 41, aiming to address contemporary issues. The research focuses on two objectives: evaluating the national legal framework for elderly's rights and assessing its efficacy in promoting their welfare. The article provides an insightful analysis of cultural norms, legal measures, and challenges impacting elderly's well-being, offering valuable perspectives on India's ongoing efforts to safeguard their protection and welfare.

**Prof. Kamlesh M. Pandya "The Right to Maintenance of Parents and Senior Citizens in India," (2014).**

The research paper offers a comprehensive review of India's maintenance laws, including Section 125 of the Criminal Procedure Code, 1973. The Hindu Marriage Act, 1955, and The Hindu Adoption and Maintenance Act, 1956. It emphasizes the legal complexity surrounding maintenance, explores the importance of international guidelines safeguarding vulnerable groups, and scrutinizes The Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The paper underscores the act's necessity, probes its maintenance provisions, and proposes enhancements. Through this comprehensive legal analysis, the paper contributes valuable insights into India's maintenance laws, addressing the needs of diverse vulnerable groups and suggesting potential improvements.

**Ashok Kumar Behera, "Maintenance and Welfare of Parents and Senior Citizens - A Legal Analysis" (2021).**

This article sheds light on the challenging circumstances faced by elderly individuals, including poverty, isolation, neglect, abuse, and vulnerability due to limited resources. It particularly focuses on widows, widowers, and childless seniors, highlighting their precarious situations. The article examines the National Policy on Older Persons introduced in 1999, emphasizing the need for in-depth investigation of the challenges encountered by parents and senior citizens. It advocates for stricter regulations and procedural improvements to enhance the implementation of related laws, emphasizing the importance of comprehensive research to propose effective solutions.

**Ritu Siwach, "Legislative Framework regarding Maintenance of Parents and Senior Citizens in India: A Critical Study" (2022)**

This article delves into the mandates of the Act that the government is to provide sufficient physical facilities and social mechanisms for elderly welfare, complementing family care. It particularly focuses on the State Government's duty to develop plans for safeguarding elderly citizens' lives and property. It suggests amendments to grant Tribunals the authority to order eviction when senior citizens' property ownership is clear. This research paper further concludes that the law needs revision for effective implementation and to ensure that the elderly's fundamental rights are protected, upholding the Indian value of revering parents.

## RESEARCH QUESTION

1. What challenges and gaps exist in the practical implementation of parental maintenance laws?
2. How have judicial decisions and precedents contributed to the interpretation and application of maintenance provisions for parents?

## EVOLUTION OF LEGAL MEASURES FOR SOCIAL PROTECTION OF SENIOR CITIZENS

Global initiatives on aging from the United Nations (UN) such as the Vienna International Plan of Action on Ageing, 1982, United Nations Principles for Older Persons, 1991, and The Madrid International Plan of Action on Ageing, 2002, have advocated the need for legal and policy measures to protect the senior citizens and promote their well-being. India is a signatory to these global initiatives. The Constitution of India has enabled the mandate to enable senior citizens' well-being through Article 41, a directive principle of state policy. The Government of India introduced the national policy on older persons in the year 1999 with the focus on the well-being of older persons to ensure a life with purpose, dignity, and peace. The important areas addressed by this policy, such as financial protection, shelter, health care and nutrition, and welfare, require legal provisions to ensure effective implementation of these measures

### Legislative Approach

#### A. Personal Laws

Maintenance of parents and protect them from harm, loss or destruction is a virtuous responsibility by all people in the country. The attitude and degree of such obligation vary from region to region as the law implicates.

##### 1. Hindu Laws:

Part IX Personal Law (Hindu), (Chapter III Hindu Adoption and Maintenance Act, 1956) "A Hindu is bound during his or her lifetime, to maintain his or her legitimate/illegitimate children and his or her aged or infirm parents".

"The obligation of a person to maintain his or her aged infirm parent or a daughter who is unmarried extends in so far as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or others property".

A similar provision exists among Hindus. The duty to maintain aged parents is personal as well as legal. Under the Hindu Adoption and Maintenance Act, 1956, Section 20(3), every Hindu, son or daughter, is under an obligation to maintain his or her parents if they are aged and infirm and unable to maintain themselves out of their own earnings. Here parents include adoptive parents and childless step-mothers. However, step-father excluded from the purview of the expression 'parents'.

##### 2. Muslim Law:

Children have a duty to maintain their elder parents even under Muslim law. According to Mulla: "(a) Children in easy circumstances are bound to maintain their poor parents, although the latter may be able to earn something for themselves. (b) A son though in strained circumstances is bound to maintain his mother, if the mother is poor, though she may not be infirm. (c) A son, who though poor, is earning something, is bound to support his father who earns nothing."

According to Tyabji, "parents and grandparents in indigent circumstances are entitled, under Hanafi law, to maintenance from their children and grandchildren who have the means, even if they are able to earn their livelihood. Both sons and daughters have a duty to maintain their parents under Muslim law. The obligation, however, is dependent on their having the means to do so".

Sustaining grandparents- A person has to maintain his grandparents whether it is from parental or maternal if they are poor, but not in the case, if he/she already on looking his/her poor father.

Sustaining other relations- If a person is enough well-off then in those circumstances the person has to look after their poor relatives within the prohibited degree in proportion to the share which they would receive from them on their death.

## **B. Criminal Law- Code of Criminal Procedure**

Section 125 of the Code made it necessary for the person to maintain their parents under the circumstances wherein parents were unable to maintain himself. The law is secular in nature and is mandatory for all kind of religion and communities in India. Even daughters who are married are obliged to perform their duty to sustain their parents.

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

### **1. PURPOSE OF THE ACT**

The Preamble states that this Act has been passed ‘to provide for more effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognised under the Constitution and for matters connected therewith or incidental thereto.’ The objectives of the Act are appreciable and are summarised by the researcher as follows:

- a. To provide for appropriate mechanism to be set-up to provide need-based maintenance to the parents and senior citizens from their children, grandchildren or relatives as the case may be,
- b. To provide for adequate medical facilities to senior citizens,
- c. To provide for a suitable mechanism for protection of life and property of senior citizens,
- d. To provide for penal provision for abandonment of senior citizens,
- e. To provide facilities for poor and destitute senior citizens,
- f. To provide for setting up of old age homes in every district.

### **2. UNIQUENESS OF THE ACT**

Till 2007, there was no special or separate legislation exclusively for maintenance of senior citizens of India. The Government of India, through its Ministry of Social Justice and Empowerment, introduced the Bill titled as “The Maintenance and Welfare of Parents and Senior Citizens Bill 2007” (L.No.40) in Lok Sabha which was passed in the Parliament with a swiping majority. This Act passed by the Central Government of India has to be implemented by individual State Governments and Union Territories in their own jurisdiction by due notification.

Earlier laws of maintenance such as the Hindu Adoption and Maintenance Act 1956, other Family Laws governing Hindus, Muslims, Christians and Parsis, Section 125 of Cr.P.C.1973, the Himachal Pradesh Maintenance of Parents and Dependents Act 2001, provided for maintenance to PARENTS only. As a result, senior citizens who were not parents were not covered by the scope of earlier maintenance laws. But the said Act has overcome this problem; thereby recognizing the right to maintenance of all SENIOR CITIZENS and PARENTS OF ALL AGES.

The Act has made several appreciable provisions like providing for separate Maintenance Tribunals, Maintenance Officers, Old Age Homes, medical care of senior citizens, protection of life and property of senior citizens, orientation of police and judiciary, penalty for abandonment of parents and senior citizens, penalty for any non-compliance of orders and many more which are discussed at length herein below.

## **ISSUES AND CHALLENGES**

### **1. Financial Limit for Maintenance**

The important constraint of this provision is the specification of Rs. 10000 as the maximum amount of maintenance that can be claimed per month. The fixation of a ceiling amount is arbitrary and hinders securing an appropriate maintenance amount for those with higher economic capacity. This will discourage individuals from seeking relief under this provision.



## 2. Lack of Awareness and Stigma

Many senior citizens do not have awareness about this provision and the MWP Act, 2007, in general. LASI reports that 12% of the elderly are aware of the Act even after a decade of its implementation. The elderly are also likely to hesitate to seek relief even if they have awareness about the Act due to the perceived stigma in complaining formally about their children. Senior citizens with physical or mental incapacity may not get adequate assistance to seek relief through this provision. There are also limitations in access to justice for those living in institutions such as senior citizens homes.

## 3. Administrative Issues

The responsibility of providing relief of maintenance under this provision lies with the senior executives in the administration with many other competing priorities and responsibilities. There is a lack of dedicated tribunals with the primary mandate of implementing this Act, unlike the provisions for Mental Health Review Boards under the Mental Health Care Act, 2017. Contrarily, enabling a reliable system for implementation of this Act will have significant economic implications that could become a barrier by itself for effective implementation if adequate budgetary provisions are not allocated by the Government. Another important challenge is the ability of the system to ensure timely implementation of the order by the tribunal and the administrative support available for senior citizens if there is a default or refusal to comply with the order for maintenance.

## 4. Delay in Completion of Appeals in Higher Courts

The timely completion of trials in these cases could be affected by the delay due to the pendency of appeals lodged in the High Courts and Supreme Court of India. This delay could be due to the necessity of mandatory safeguards for all the parties concerned involved in implementing the MWP Act, 2007.

## 5. Related to Old-Age Homes

The mandate from the MWP Act, 2007, for the state governments to start at least one old-age home in each District to accommodate 150 indigent senior citizens appears to be a target not realized in majority of the states as reported in the proceedings of the Public Interest Litigation (PIL) **Dr. Ashwani Kumar versus Union of India and others**.

Further there is no stream-lined mechanism to facilitate easy access to senior citizens requiring admission in an old-age home. There is no standard process for ensuring the quality of care in old-age homes and protecting senior citizens' rights. There is a strong potential for elder abuse in institutions without a proper mechanism for quality assurance and safety even in settings with much higher resources and oversight processes.

## JUDICIAL TRENDS

The judiciary has been proactive in protection of the rights of the elderly by interpreting the provisions of the MWPS Act, 2007 in a liberal manner in line with the scope and object of the Act.

With reference to the rights of the aged parents vis a vis eviction of the major children from the self-acquired property, in the case of **Anil Kumar Dhiman vs State of Haryana**, the Hon'ble Punjab and Haryana High Court held that the aged parents would have the right to evict their son and daughter in law; also observing humanly 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 get totally shattered which marks as the beginning for the unfortunate tale of their moving from one Forum to another for redressal.'

The Hon'ble Punjab and Haryana High Court in **Ramesh v. Ishwar Devi**, held that, "Section 23 is adequate protection of property of aged parent's against such sons and daughters who abandon the parents after receiving the property despite knowing that the elderly old-aged people are incapable of taking care of themselves in their last phase of life."

The Section 17 of the MWPC, 2007 which bars the legal representation in proceedings before the Tribunals and Appellate authorities under the Act was challenged in multiple High Courts and it has been conclusively held in the cases of **Paramjit Kumar Saroya v. Union of India**, **Tarun Saxena v. Union of India** and **Adv KG Suresh v. The Union of India** that Section 30 of the Advocates Act, 1961 allowing for legal representation in all tribunals would supersede Section 17 of the MWPC, 2007 hence advocates may in the interest of elderly persons appear on their behalf in any proceedings in the Tribunal.

In **GS Manju vs KS Gopi** it was decided by the Hon'ble Kerala HC that the Tribunals set up under MWPC Act, 2017 must elicit truth of the matter and follow inquisitorial approach to find the nature of the case. The case revolved around revocation of gift deed and it was held that the matter is not essentially a civil dispute and the transferor has the right to revoke gift in case the transferee fails to maintain the transferor.

The Hon'ble Court in the case of **Debashish Mukherjee vs. Sanjib Mukherjee** held that gift deed for transfer of immovable property executed by the parents in favour of their children cannot be declared null & void by the Tribunal until and unless such deed contains a clause that the child in whose favour the deed is being executed is liable to maintain their parents and provide them with basic amenities then such cancellation.

The Court also observed that since the gift deed is not conditional as per S.23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 it is not revocable. Same held in **Sudesh Chhikara vs Ramti Devi**.

Further increasing the powers of the Tribunals under the MWPC Act, 2007 it was held in the case of **Mr. Dattatrey Shivaji Mane v. Mrs. Lilabai Shivaji Mane and Ors.** that the tribunal has jurisdiction to pass an order of eviction under Section 4 of the Act in order to safeguard the rights of the elderly.

The PIL in the Supreme Court of India has highlighted the need for effective implementation of the MWP Act, 2007, to ensure the fulfillment of the fundamental and statutory rights of senior citizens such as Right to Live with Dignity, Right to Health, and Right to Shelter.

#### **THE MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS ACT 2019**

Considering the challenges it posed, amendment to the 2007 Act was proposed and the Cabinet approved an amendment of the MWP Act, 2007, prepared with the inputs from the consultative meetings with the experts and various stakeholders on December 4, 2019. To further strengthen the law, few additional measures such as importance of mental health issues in senior citizens were also considered and a specific provision in Section 20 to mandate adequate facilities for counselling senior citizens is also provided. The important features of "The Maintenance and welfare of parents and Senior Citizens Act, 2019"

are summarized as follows:

1. The scope of the maintenance and welfare has been expanded with the emphasis on comprehensive measures to ensure the physical and mental well-being of parents and senior citizens.
2. Daughter-in-law and Son-in-law under the definition of “Children” in section 2(a) has been included to enable their accountability for the care of senior citizens.
3. The maximum ceiling of Rs. 10,000 per month as maintenance amount in section 9(2) has been removed which further enhanced the scope for the tribunal to decide the appropriate maintenance amount in each case depending on the need and resources available.
4. The time limit for the disposal of applications by the tribunal by considering the date of receipt of the application instead of the date of service of the notice for respondents has been improved. Higher priority for the disposal of the applications filed by those aged 80 years and above with further reduced time limit.
5. Enhanced measures for the regulation of institutions (senior citizen care homes and day care centers) and home care services for senior citizens.
6. The provision of appeal has extended to children/relatives as per the principles of natural justice.
7. Improving the access for senior citizens to claim maintenance by including the option of online submission of application to the tribunal.
8. The role of maintenance officer has been expanded to facilitate single-point guidance for senior citizens.
9. Provision for “Nodal officer for senior citizens” in every police station and “Special police units for senior citizens” in each district.
10. Creation of a national helpline for senior citizens with one common number to promote safety and security of senior citizens

## CONCLUSION

In summary, the evolution of legal measures for the social protection of senior citizens in India, influenced by global initiatives and local legal reforms, represents a significant step forward in acknowledging and addressing the needs of an aging population. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, stands as a landmark legislation, filling a critical gap left by previous laws that only provided for parental maintenance. This Act not only broadens the scope of protection to include all senior citizens but also introduces specialized mechanisms like Maintenance Tribunals and Old Age Homes, aiming to ensure the dignity, health, and security of the elderly.

However, the Act's implementation faces several challenges, including financial limitations, lack of awareness, administrative hurdles, and delayed judicial processes, all of which can diminish its effectiveness. Moreover, the need for a streamlined process in old-age homes to guarantee quality care and safeguard rights is evident, as elder abuse remains a potential risk in the absence of stringent quality assurance and safety measures.

The judiciary's role has been proactive and instrumental in interpreting and reinforcing the provisions of the Act. Various High Court judgments have underscored the rights of senior citizens, particularly in property matters and the right to evict abusive offspring. Legal challenges to certain provisions of the Act,



like the bar on legal representation in tribunals, have led to clarifications and amendments that enhance its applicability and effectiveness.

Ultimately, the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, alongside the judicial interpretations and amendments, reflects a growing recognition of the rights and needs of senior citizens. It underscores the necessity for continued legal and social efforts to ensure that the elderly can live their twilight years with dignity, health, and security. The ongoing Public Interest Litigation in the Supreme Court emphasizes the need for effective implementation of the Act, highlighting fundamental rights like the Right to Live with Dignity, Right to Health, and Right to Shelter, thereby reinforcing the commitment to a more caring and inclusive society for India's senior citizens.

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