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## Legal Provisions For Ageing Adults In India

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**Abstract:** Ageing is a continuous, irreversible and universal process that begins at conception and lasts until a person dies. However, the age at which one's productive contribution declines and one tends to be economically dependent can probably be treated as the onset of the aged stage of life. During childhood years children depend on their parents and in elderly years the elderly depend upon on people younger to them, which are normal dependant states of living. Under the influence of industrialisation, urbanisation, technical and technological progress, education and globalisation, Indian society is undergoing a fast shift. Since intergenerational links were a defining characteristic of the traditional family, they are eroding and changing the conventional beliefs and institutions. The concept of the nuclear family disturbed the conventional social cycle, violating a thousand-year-old Indian norm in which parents are worshipped as a fervent incarnation of God. When parents lose their capacity to work and earn, they become a financial burden on their children. This led to an imbalanced manner of living for the elderly and sometimes leading to feeling of powerlessness, loneliness, uselessness and isolation in elderly. The article discusses the available legal rights and bylaws and government provisions in this article to discover the various mechanisms by which ageing adults's human rights are protected.

**Index Terms - Regulations, Ageing Adult, Human Rights**

### INTRODUCTION

'*Elderly in India 2021*' report was published in August 2021 by the Social Statistics Division at the National Statistical Office (NSO), Ministry of Statistics and Programme Implementation. It is the fifth *Elderly in India* report, the first of which was brought out in the year 2000. The report uses the terms 'senior citizen' and 'elderly' for persons aged 60 or more – in keeping with the National Policy for Older Persons adopted by the government of India in 1999<sup>1</sup>.

India, the world's second most populous country, has experienced a dramatic demographic transition in the past 50 years, entailing almost a tripling of the population over the age of 60 years (Government of India, 2011)<sup>2</sup>. In the past 50 years, India's population has about tripled, but the proportion of elderly Indians has more than quadrupled. The elderly are now the segment of society that is increasing the quickest in India, thanks to improved medical services, compassionate care, and liberal family planning laws; the country's average life expectancy has also increased to almost 70 years. Indian customs, culture and scriptures give special position to its elders, even comparing them to god. Unfortunately, India is one of those nations where there is lack of awareness regarding the laws protecting elderly' rights. A massive programme is necessary for addressing the needs of the country's elderly persons.

### LEGAL PROVISIONS

In India, we have not only have statutory laws pertaining to the maintenance of aged but also there are personal laws of different religions that provide for care of elderly people. Provisions regarding maintenance of elderly under these laws are discussed below:

**The Hindu Adoption and Maintenance Act, 1956** - The aged are provided for in terms of food, clothes, housing, education, and medical care under this Act. The upholding of elderly parents, infants, children, and wife is regarded as one's religious obligation. A personal obligation resulting from the parent-child connection is the responsibility to care for elderly or infirm parents. The definition of "parent" in Section 20 of the HAMA includes a stepmother who is childless. Throughout one's lifetime, one has a responsibility to care for their elderly parents. (Paras Diwan, 2008). Under the old law it was only the sons who had the duty to maintain their parents. The reasons were obvious. The sons alone inherited properties. The daughters neither inherited nor had any other income of their own by way of personal earnings. With the changing times, the law has recognised that daughters also should have a duty to maintain parents<sup>7</sup>.

Under the Hindu Adoptions and Maintenance Act, 1956, mother and father both have an equal right to claim maintenance from their children. The section explicitly refers to step-mother also. However, it is only a childless step-mother who can claim maintenance. If she has her own children, she has to proceed against them. It is important to note that only those parents who are financially unable to maintain themselves from any source, are entitled to seek maintenance under this Act. This section makes no reference to the capacity of the children or child against whom maintenance is sought. In fact, the

<sup>1</sup> <https://ruralindiaonline.org/en/library/resource/elderly-in-india-2021/>

<sup>2</sup> <https://www.who.int/india/health-topics/ageing>

word used is 'bound' to maintain. This is in contrast to the provisions under the Code of Criminal Procedure, 1973 where the liability is imposed only on a person who has sufficient means<sup>3</sup>.

**Muslim Law** - Children have a duty to maintain their aged parents even under the 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 the Muslim law. The obligation, however, is dependent on their having the means to do so<sup>4</sup>.

According to the Privy Council, sons and daughters who have the resources are obligated by Islamic law to support their needy parents. If some of the kids are impoverished themselves, then the responsibility falls on the kids who have it easy. Therefore, according to Islamic Law, not all children are required to support their parents. It depends on their ability to pay. According to Hanafi Law, the dedicator may stipulate in the waqf deed that he shall be supported throughout his life on the proceeds of the waqf property. He is able to save aside the entirety of his income throughout his lifetime. The dedicator may stipulate that the revenue from the waqf property will be used to pay off obligations. (Aqil Ahmad. M, 2009).

**The Christian and Parsi Laws** - The Christians and Parsis have no personal laws providing for maintenance for the parents. Parents who wish to seek maintenance have to apply under provisions of the Criminal Procedure Code. (III) Under The Code of Criminal Procedure: Prior to 1973, there was no provision for maintenance of parents under the code. The Law Commission, however, was not in favour of making such provision. According to its report: The Cr.P.C is not the proper place for such a provision. There will be considerably difficulty in the amount of maintenance awarded to parents apportioning amongst the children in a summary proceeding of this type. It is desirable to leave this matter for adjudication by civil courts. The provision, however, was introduced for the first time in Sec. 125 of the Code of Criminal Procedure in 1973. It is also essential that the parent establishes that the other party has sufficient means and has neglected or refused to maintain his, i.e., the parent, who is unable to maintain himself. It is important to note that Cr.P.C 1973, is a secular law and governs persons belonging to all religions and communities. Daughters, including married daughters, also have a duty to maintain their parents<sup>5</sup>.

**The Maintenance and Welfare of Parents and Senior Citizens Act was enacted in December 2007-** inter alia, to ensure need based maintenance for parents and senior citizens and their welfare. A National Council for Older Persons (NCOP) was established in 1999 in accordance with the National Policy for Older Persons to oversee the Policy's implementation and it is now chaired by the Minister for Social Justice and Empowerment. In 2012, NCOP was reorganised and given the new name, National Council of Senior Citizens<sup>6</sup>. The Act defines senior citizen in the following lines, "senior citizen means any person being a Citizen of India, who has attained the age of sixty years or above includes parent whether or not a senior citizen11," it means that the children are responsible to maintain their parent even they have not completed the age of sixty. This Act seeks to make it a legal obligation for children (including grand children) and heirs to provide maintenance to senior citizens. It includes in its purview all Indian citizens, including those living abroad<sup>7</sup>.

**Integrated Program for Older Persons (IPOP)-** Since 1992, the Ministry of Social Justice and Empowerment has been implementing the Central Sector Scheme of the Integrated Program for Older Persons (IPOP), which aims to improve the quality of life for senior citizens by providing them with amenities such as housing, food, medical care, and opportunities for entertainment, among other things, by supporting the development of the capacity of government, non-governmental organisations, panchayati. The Scheme was revised with effect from 01.04.2008 and 01.04.2015<sup>8</sup>.

**The National Policy on Older Persons (NPOP) 1999-** In order to reinforce the State's commitment to ensuring the well-being of the elderly, the National Policy on Older Persons (NPOP) was unveiled in January 1999. The Policy calls for state assistance to meet older people's requirements for housing, health care, and other necessities as well as for a fair share in development, protection from abuse and exploitation, and access to programmes that would enhance their quality of life<sup>9</sup>. Its main features are as follows:

- Old age Pension Scheme
- Tax Exemption for Senior Citizens
- Subsidy in healthcare, mental health services, counseling facilities
- Grants, land grant at concessional rates and private hospitals to provide economical and specialized care for the older person.
- Earmarking 10% of the houses in housing schemes and easy access to loans.
- Layout of housing colonies to be sensitive to the needs of the older persons.
- Quick disposal of cases of property-transfer, property tax, etc.,
- Assistance for construction/maintenance of old age home, Daycare centers, multi-service citizens center, outreach services, supply of disability related aids and appliances etc.,

<sup>3</sup> <https://www.ijlmh.com/wp-content/uploads/2019/03/>

<sup>4</sup> <http://www.legalservicesindia.com/article/2054/Laws-for-Senior-citizens-in-India.html>

<sup>5</sup> <http://www.legalservicesindia.com/article/2054/Laws-for-Senior-citizens-in-India.html>

<sup>6</sup> <http://www.helpageindia.org>

<sup>7</sup> [https://www.indiacode.nic.in/bitstream/123456789/13696/1/act\\_200756.pdf](https://www.indiacode.nic.in/bitstream/123456789/13696/1/act_200756.pdf)

<sup>8</sup> <http://www.helpageindia.org>

<sup>9</sup> <http://www.helpageindia.org>

- Setting up a welfare fund for older persons.

**International Day for Older Persons (IDOP) and National Awards: Vayoshreshtha Samman-** Every year on October 1st, the Ministry of Social Justice and Empowerment honours the International Day for Older Persons (IDOP) in a suitable manner by planning a number of activities and programmes for the elderly. The goal of the day is to recognise senior persons' contributions to society, raise awareness of their needs and issues among the general public, and improve the quality of life for the aged in our society (Mandal S N. 2011).

**The Maintenance and Welfare of Parents and Senior Citizens Act, 2007-**In order to secure need-based support for parents and senior citizens as well as their welfare, the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, were passed in December 2007. The Act shall take effect in a State on the day specified by the State Government in a notification published in the Official Gazette. All of the States and UTs have so far given notice of the Act. Jammu and Kashmir is not included in the scope of the Act. The Act for the Welfare of Parents and Senior Citizens is exclusive to Himachal Pradesh (Mandal S N .2011).

**National Council for Older Persons (NCOP)/ National Council of Senior Citizens, 1999-** A National Council for Older Persons (NCOP) was established in 1999 in accordance with the National Policy for Older Persons (NPOP) to monitor the Policy's implementation, and it is now chaired by the Minister for Social Justice and Empowerment. The NCOP is the highest authority to advise the government on the creation and execution of aged-related policies and programmes.

In particular, Article 41 of the Directive Principles of State Policy applies to Old Age Social Security. This Article states that "the State shall make effective provision for safeguarding the right to labour, to education, and to public assistance in case of undeserved want, within the limitations of its economic ability and development.

**The Code of Criminal Procedure (Cr.P.C)-** The Cr.P.C 1973 is a secular law and governs persons belonging to all religions and communities. Daughters, including married daughters, also have a duty to maintain their parents. The provision for maintenance of parents under the code was introduced for the first time in Section 125(1) of the Code of Criminal Procedure in 1973 (Section 125(1)(d) of Criminal Procedure Code 1973).

**Governmental Protections - 1.** The Government of India approved the National Policy for Older Persons on January 13, 1999 in order to accelerate welfare measures and empowering the elderly in ways beneficial for them. This policy included the following major steps :

- (i) Setting up of a pension fund for ensuring security for those persons who have been serving in the unorganised sector,
- (ii) Construction of old age homes and day care centres for every 34 districts,
- (iii) Establishment of resource centres and reemployment bureaus for people above 60 years,
- (iv) Concessional rail/air fares for travel within and between cities, i.e., 30% discount in train and 50% in Indian Airlines.
- (v) Enacting legislation for ensuring compulsory geriatric care in all the public hospitals.

2. The Ministry of Justice and Empowerment has announced regarding the setting up of a National Council for Older Person, called agewell Foundation. It will seek opinion of aged on measures to make life easier for them.

3. Attempts to sensitise school children to live and work with the elderly. Setting up of a round the clock help line and discouraging social ostracism of the older persons are being taken up.

4. The government policy encourages a prompt settlement of pension, provident fund (PF), gratuity, etc. in order to save the superannuated persons from any hardships. It also encourages to make the taxation policies elder sensitive.

5. The policy also accords high priority to their health care needs.

6. According to Sec.88B, 88D and 88DDB of Income Tax Act there are discount in tax for the elderly persons.

7. Life Insurance Corporation of India (LIC) has also been providing several scheme for the benefit of aged persons, i.e., Jeevan Dhara Yojana, Jeevan Akshay Yojana, Senior Citizen Unit Yojana, Medical Insurance Yojana.

8. Former Prime Minister A.B.Bajpai was also launch 'Annapurana Yojana 'for the benefit of aged persons. Under this yojana unattended aged persons are- being given 10 kg food for every month.

9. It is proposed to allot 10 percent of the houses constructed under government schemes for the urban and rural lower income segments to the older persons on easy loan.

The policy mentions: The layout of the housing colonies will respond to the needs and life styles of the elderly so that there is no physical barriers to their mobility; they are allotted ground floor; and their social interaction with older society members exists.

## CONCLUSION

In India, the government addresses the well-being of parents and elderly through various laws, programmes, and initiatives. It can be suggested that it is now time for a new paradigm, one that sees ageing adults as active participants in an age-integrated society and as active contributors as well as recipients of advancement. The first step toward a focused advocacy effort is raising awareness. The Senior Citizen's Guide and other literature pertaining to the protection of the elderly must be made available to them. Apart from the critiques levelled at the Act of 2007, some of the causes for the elderly's neglect include, on the one hand, a lack of understanding about existing legislations, government programmes, and plans, as well as an inability to approach the relevant authorities for justice. On the other hand, even if it is easier than going to court, parents and the elderly might be hesitant to seek a tribunal against their children and close relatives. The government should assume greater responsibility for enforcing laws, rules, and programmes, as well as make good efforts.

Therefore, in order to safeguard the human rights of ageing people, India urgently requires a comprehensive social security programme for them at the local level that also makes use of lobbying, research, and teaching based on values.

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