



Closing the Gaps: Human Rights and Elder Care in Legal and Policy Frameworks

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DOI : <https://doi.org/10.5281/zenodo.17696033>

ARTICLE DETAILS

Research Paper

Accepted: 27-10-2025

Published: 10-11-2025

Keywords:

Elderly Rights, Senior Citizens, Ageing Population, Indian Constitution, Maintenance and Welfare of Parents and Senior Citizens Act, Elder Abuse, Social Security, Healthcare, Policy Gaps.

ABSTRACT

As India's elderly population surges toward 300 million by 2050, the challenges of ageing demand urgent legal and policy attention. While the Constitution and statutes such as the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 provide a foundational framework, the existing legal regime remains fragmented, under-enforced, and narrowly focused on familial obligations. This chapter critically examines the current legislative and policy landscape relating to elderly care in India, explores judicial interpretations safeguarding senior citizens' rights, and highlights persistent gaps in state responsibility, healthcare access, income security, and protection from abuse. It argues for a shift from welfare-based approaches to a rights-based legal regime that ensures dignity, autonomy, and meaningful inclusion for older persons. The chapter concludes by proposing comprehensive legislative reform, increased state accountability, and a human rights-centered elder care policy to protect India's ageing population.

Introduction

Ageing is a natural and inevitable part of the human lifecycle, marking a phase that deserves dignity, security, and care. However, in many parts of the world—particularly in developing nations like India—the legal, institutional, and social frameworks necessary to safeguard the rights and well-being of the elderly remain profoundly inadequate. The rapid demographic transformation underway in India has amplified these concerns. As per the **Census of 2011**, over **104 million Indians** were aged 60 years or



above, a figure projected to rise dramatically to **nearly 300 million by 2050**, thereby making India one of the countries with the largest elderly populations in the world. This sharp increase—driven by enhanced life expectancy, improved healthcare, and declining fertility rates—poses significant challenges to existing legal structures, public welfare systems, and socio-economic policies.

Historically, Indian society held the elderly in high regard, embedding their care and reverence within the framework of joint families and intergenerational cohabitation. However, the forces of **urbanization, globalization, internal migration, changing employment patterns**, and the growing nuclear family model have steadily eroded these traditional support systems. The elderly is increasingly exposed to **social isolation, economic dependency, inadequate healthcare**, and even **neglect or abuse**, both within and outside the family sphere.

In this context, the protection of elderly rights is not merely a welfare issue but a question of constitutional justice and social responsibility. This chapter seeks to critically examine the current legal frameworks and policy initiatives aimed at supporting senior citizens in India. It delves into the existing statutory provisions, governmental programs, and judicial interventions while identifying the gaps and inconsistencies in enforcement and implementation. Further, it advocates for comprehensive reforms to build a rights-based, inclusive, and responsive eldercare system—one that affirms the elderly not as passive dependents, but as integral members of society entitled to autonomy, dignity, and active participation in public life.

Constitutional and International Commitments

- **Constitutional Provisions**

Although the Indian Constitution does not contain a specific chapter or article solely dedicated to the rights of the elderly, a purposive interpretation of certain provisions—particularly the Directive Principles of State Policy and the expansive interpretation of fundamental rights by the judiciary—supports the welfare and protection of senior citizens.

Article 41 of the Constitution directs the State to make effective provisions for securing the right to work, education, and public assistance in cases of unemployment, old age, sickness, and disablement. While non-justiciable, this Directive Principle lays the normative foundation for the State's role in supporting elderly citizens, particularly in contexts of economic vulnerability and retirement.



Article 46 obligates the State to promote the educational and economic interests of the weaker sections of the population. The elderly, especially those belonging to marginalized communities, often find themselves doubly disadvantaged due to age-related and socio-economic vulnerabilities. This provision serves as a constitutional basis for special welfare programs for aged persons.

Article 21, which guarantees the fundamental right to life and personal liberty, has been interpreted by the Supreme Court to encompass the right to live with dignity. In several landmark judgments, the Court has affirmed that this includes the right to a life free from exploitation, neglect, and abuse—concerns that are especially pertinent to the elderly. For instance, in *Francis Coralie Mullin v. Administrator, Union Territory of Delhi* (1981), the Court held that the right to life is not merely a physical right but includes the right to live with human dignity.

Thus, while not explicit, the Constitution's moral architecture, coupled with progressive judicial interpretations, provides a constitutional mandate for protecting the rights and well-being of senior citizens.

- **International Instruments**

India's obligations toward elderly care are further reinforced by its commitment to various international human rights instruments and global policy frameworks that advocate for the protection and empowerment of older persons.

The United Nations Principles for Older Persons (1991) outline five fundamental principles— independence, participation, care, self-fulfilment, and dignity—which serve as global standards for the treatment and well-being of older persons. These principles underscore the right of senior citizens to access basic necessities, remain integrated in society, and be free from exploitation and discrimination.

The Madrid International Plan of Action on ageing (2002), adopted at the Second World Assembly on Ageing, urges countries to incorporate ageing concerns into national development agendas. It emphasizes three priority directions: older persons and development; advancing health and well-being into old age; and ensuring enabling and supportive environments.

Despite being a signatory to these instruments, India's domestic legal framework remains fragmented, largely reactive, and inadequate in translating these global principles into enforceable legal rights. The absence of a comprehensive national law dedicated to elderly welfare and protection reflects a significant disconnect between international commitments and domestic realization.

Statutory Frameworks for Elderly Welfare



The Maintenance and Welfare of Parents and Senior Citizens Act, 2007

The **Maintenance and Welfare of Parents and Senior Citizens Act, 2007** (hereinafter MWPSA Act) represents the most comprehensive legislative effort in India aimed specifically at ensuring the welfare of elderly persons. Enacted in response to the growing incidence of elder neglect and abandonment, the Act reflects a blend of traditional family obligations with statutory enforceability.

Key Features:

- **Statutory Duty of Maintenance:** The Act legally obligates children and legal heirs to provide for the maintenance of parents and senior citizens, including provisions for food, clothing, residence, and medical attendance.
- **Establishment of Maintenance Tribunals:** It mandates the creation of maintenance tribunals at the sub-divisional level to ensure quick and effective adjudication of claims filed by elderly persons seeking support from their children or heirs.
- **Penal Provisions:** The Act criminalizes the abandonment of senior citizens and provides for punishment, including imprisonment up to three months or a fine, or both.
- **Institutional Care:** It empowers State Governments to establish **old age homes in every district** to accommodate indigent senior citizens.

Critiques and Limitations:

Despite its good intentions, the MWPSA Act faces several criticisms and structural limitations:

- **Familial Burden without State Accountability:** The Act places primary responsibility on the family unit, thereby absolving the State from its broader welfare obligations. This model assumes the continued strength of familial bonds, which no longer hold true in many modern urban settings.
- **Poor Implementation:** In many states, maintenance tribunals are under-functioning or non-operational, resulting in delays and denial of justice. Furthermore, there is widespread lack of awareness among senior citizens about their rights under this Act.
- **Inadequate Institutional Infrastructure:** The requirement for each district to have an old age home remains unfulfilled in several states, undermining the promise of institutional care for the destitute elderly.
- **Outdated Financial Ceiling:** The maintenance ceiling of Rs. 10,000 per month (as prescribed in various state notifications) does not reflect the current cost of living and inflationary trends, rendering the relief inadequate for senior citizens, especially in urban areas.



This Act, though foundational, remains limited in scope and implementation, and needs urgent reform to reflect contemporary socio-economic realities and ensure greater state participation in elderly care.

Other Relevant Legal Provisions

In addition to the MWPC Act, several general and community-specific laws address the financial and health security of elderly persons, albeit in a fragmented manner:

- **Section 125 of the Code of Criminal Procedure, 1973:** This provision allows parents, including elderly parents, to claim maintenance from their children through a summary legal process. However, its application is often delayed due to backlog and procedural inefficiencies.
- **Hindu Adoption and Maintenance Act, 1956:** Under Section 20, Hindu sons and daughters are legally bound to maintain their aged or infirm parents who are unable to maintain themselves. This provision, however, applies only to Hindus and lacks procedural machinery for enforcement.
- **Employees' Provident Funds and Miscellaneous Provisions Act, 1952** and the **Employees' State Insurance Act, 1948:** These laws provide for retirement benefits, pensions, and medical insurance for employees in the formal sector. However, given that over 90% of India's workforce is in the informal sector, a vast majority of elderly citizens remain excluded from such protections.

While these legal provisions indicate an emerging framework for elderly care in India, they suffer from incoherence, sectorial bias, and weak enforcement. A rights-based and state-supported legal regime, with uniform application and robust implementation mechanisms, is urgently needed to address the challenges of India's ageing society.

Key Policy Initiatives

While legislative frameworks provide a formal legal structure for elderly rights and obligations, public policy plays a pivotal role in operationalizing state responsibility. Over the years, the Government of India has launched various initiatives to address the socio-economic and healthcare needs of senior citizens. However, many of these policies suffer from weak implementation, inadequate funding, and limited reach.

National Policy on Older Persons (1999)

The National Policy on Older Persons (NPOP) was a landmark policy document that acknowledged the changing demographic profile of India and the increasing vulnerabilities faced by its senior citizens. Framed by the Ministry of Social Justice and Empowerment, it laid out a comprehensive vision for elder care.

**Key Features:**

- It **recognizes the elderly as a vulnerable demographic** requiring state intervention in areas such as income security, healthcare, housing, welfare, and protection from abuse.
- The policy emphasizes the importance of public-private partnerships, involvement of non-governmental organizations (NGOs), and the mobilization of community resources for implementing elderly welfare programs.
- It supports the development of geriatric care services, promotion of employment opportunities for able-bodied elderly, and tax relief for income generated by or for senior citizens.

Despite its progressive goals, the policy has largely remained advisory in nature and has not been updated in over two decades. The absence of legally binding obligations and measurable targets has rendered it ineffective in driving systemic change.

National Programme for Health Care of the Elderly (NPHCE), 2010

Recognizing the lack of age-specific healthcare infrastructure, the Ministry of Health and Family Welfare launched the National Programme for Health Care of the Elderly (NPHCE) in 2010 as part of the National Health Mission.

Objectives and Components:

- The program aims to deliver dedicated geriatric care at primary, secondary, and tertiary levels, especially in rural and underserved areas.
- It provides for the establishment of Geriatric Units in District Hospitals, Regional Geriatric Centres in medical colleges, and rehabilitation services through Community Health Centres (CHCs) and Primary Health Centres (PHCs).
- NPHCE also includes training of healthcare workers, research in ageing-related diseases, and IEC (Information, Education, and Communication) activities to raise awareness.

However, its reach remains limited due to resource constraints, lack of trained personnel, and poor integration with existing health infrastructure. A significant portion of the elderly—particularly in rural and tribal regions—remains outside the fold of this initiative.

Indira Gandhi National Old Age Pension Scheme (IGNOAPS)

The Indira Gandhi National Old Age Pension Scheme (IGNOAPS), under the National Social Assistance Programme (NSAP), is a central government initiative aimed at providing non-contributory social security to the elderly poor.

**Key Provisions:**

- It offers a **monthly pension** to elderly individuals (aged 60 and above) who live **below the poverty line (BPL)**.
- The pension amount varies: **Rs. 200 per month** for those between 60 and 79 years, and **Rs. 500 per month** for those aged 80 and above. State governments may provide additional top-up amounts.

While IGNOAPS attempts to provide a basic income floor, the amounts are grossly insufficient to meet even the minimal needs of the elderly, particularly in urban contexts. Furthermore, exclusion errors, irregular disbursements, and bureaucratic hurdles have limited its effectiveness as a social protection tool. India's policy framework for the elderly reflects an evolving recognition of their multifaceted needs, particularly in health, income security, and social inclusion. However, the disconnect between policy formulation and implementation continues to undermine their impact. There is an urgent need to update outdated policies, scale up healthcare delivery, and enhance pension coverage with inflation-indexed and needs-based provisions. Above all, a shift from a welfare-centric approach to a rights-based policy regime is essential to address the structural inequities faced by the ageing population.

Judicial Interpretations and Rights Discourse

The Indian judiciary has played a pivotal role in expanding the rights discourse surrounding the elderly, interpreting constitutional guarantees and statutory mandates to safeguard their dignity and welfare. Although the Constitution does not specifically enumerate the rights of senior citizens, the courts have consistently invoked Articles 14, 21, and 41 to assert their right to live with dignity, economic security, and protection from neglect and abuse. The following case laws highlight the progressive judicial interventions, arranged chronologically to illustrate the trajectory of judicial reasoning in this area:

People's Union for Civil Liberties v. Union of India (2003)

In this significant PIL, the Supreme Court examined the implementation of social welfare schemes, including the National Old Age Pension Scheme (now IGNOAPS). The Court observed that non-disbursal of pensions due to administrative lapses violated the right to life under Article 21. It directed the State to ensure timely and adequate pensions, acknowledging the role of pensions in ensuring basic sustenance and dignity for the elderly poor. This case marked a shift from seeing old age care as charity to recognizing it as a constitutional obligation.

**Lily Thomas v. Union of India (2000)**

While primarily addressing a different issue, this case affirmed the expanded interpretation of Article 21, emphasizing the right to live with dignity and not merely physical survival. The Court observed that vulnerable groups—including the aged—must receive affirmative protection by the State to enjoy this right meaningfully. This ruling contributed to the foundation of later jurisprudence on senior citizens' welfare.

In re Noise Pollution (V), (2005)

Although this case primarily dealt with environmental concerns, the Supreme Court explicitly recognized senior citizens as a group requiring special protection from high noise levels, which can adversely affect their health. This marked an early acknowledgment of the special vulnerabilities of the elderly in judicial discourse.

Common Cause (A Regd. Society) v. Union of India (2018)

In this landmark case on passive euthanasia and living wills, the Supreme Court recognized the autonomy and dignity of elderly and terminally ill patients. It allowed individuals to exercise control over their end-of-life decisions, thereby reinforcing the right to die with dignity as a natural extension of the right to live with dignity under Article 21. This ruling was especially significant in the context of geriatric care, mental competence, and medical ethics for the aged.

Eera v. State (NCT of Delhi) (2017)

Though dealing with the definition of mental age in the context of disability law, the Court reiterated that **justice must be sensitive to the needs of vulnerable groups**, including the elderly. The judgment broadened the principle of **substantive equality**, recognizing that **equal treatment may not always yield just outcomes** for disadvantaged sections of society.

Ashwani Kumar v. Union of India (2018)

This pivotal judgment focused directly on the condition of senior citizens. The Supreme Court, responding to public interest litigation, issued a series of directions to the Union and State governments for the effective implementation of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. Key directives included:



- Increasing awareness of the rights of senior citizens under the 2007 Act.
- Establishing and strengthening maintenance tribunals and old age homes.
- Creating dedicated geriatric care units in hospitals.
- Framing state-specific action plans for the welfare of elderly citizens.

The Court affirmed that the right to live with dignity under Article 21 must extend meaningfully to the elderly and that the Directive Principles of State Policy (Articles 41 and 46) provide important guidance in this regard.

Dr. Ashwani Kumar v. Union of India (2023)

In a follow-up petition, the Supreme Court reiterated its concern regarding the slow implementation of earlier directives. The Court emphasized that the failure of the State to act with urgency amounted to a violation of the constitutional promise of social justice. It reminded governments that judicial pronouncements are not advisory opinions but binding mandates under Article 141 of the Constitution.

From recognizing pension as a component of the right to life to directing structural reforms for elderly care, the Indian judiciary has progressively broadened the rights discourse surrounding senior citizens. The evolution from ad hoc relief to structural accountability reflects a deepening constitutional understanding that ageing is not a personal misfortune but a shared societal responsibility. Yet, judicial interventions must be met with legislative vigor and executive compliance to transform these principles into lived realities for India's growing elderly population.

Policy Gaps and Implementation Failures

Despite a growing policy interest in elderly welfare, India's framework for elder care remains fragmented, under-resourced, and poorly implemented. The gap between constitutional vision, statutory mandates, and on-ground realities is stark. Several critical shortcomings impede the effective realization of senior citizens' rights and well-being.

Absence of a Comprehensive Senior Citizens' Code

India lacks a unified legal and policy framework that holistically addresses the multifaceted needs of the elderly. While the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, provides for maintenance and old age homes, it fails to integrate critical domains such as geriatric healthcare, housing, elder abuse prevention, social inclusion, and participatory rights. Unlike countries such as Australia and



Canada, India does not have a codified charter of elderly rights, resulting in policy fragmentation and jurisdictional ambiguity among ministries and departments.

Inadequate Infrastructure for Elderly Care

The physical and institutional infrastructure required to support the elderly is grossly inadequate. A 2020 Help Age India report reveals that only a marginal proportion of India's senior citizens have access to institutional care facilities, and even fewer have access to quality services. Most government-run old age homes are underfunded, overcrowded, and lack trained staff, leading to neglect and substandard living conditions. The failure to expand public infrastructure is especially stark in rural and semi-urban regions, where private eldercare services are virtually nonexistent.

Economic Insecurity and Inadequate Social Security

A significant proportion of India's elderly population suffers from chronic economic insecurity. According to estimates by the Economic Survey (2018-19), more than 90% of India's workforce is in the informal sector, and a large share of this population retires without any form of pension or retirement savings. While schemes like IGNOAPS exist, the pension amounts (Rs. 200–500 per month) are grossly inadequate in light of inflation and rising healthcare costs. Moreover, procedural hurdles, stringent documentation requirements, and digital illiteracy exclude large numbers from accessing even these limited benefits.

Elder Abuse: A Persistent but Invisible Crisis

Elder abuse—ranging from verbal and emotional mistreatment to physical violence and economic exploitation—is a pervasive and underreported issue. The HelpAge India Report 2022 found that 44% of elderly respondents had experienced some form of abuse, with family members being the most common perpetrators. Yet, the existing legal framework offers limited recourse or protective mechanisms, especially in cases involving psychological abuse or financial coercion. The taboo surrounding intra-family disputes often discourages elderly individuals from reporting abuse, leading to cycles of silent suffering.

Digital Divide and Exclusion from Welfare

With the increasing digitization of welfare delivery mechanisms, elderly persons—especially in rural and low-income urban areas—are being systematically excluded. Whether it's applying for pensions,



accessing healthcare benefits, or updating Aadhaar-linked information, most government interfaces now require digital literacy and smartphone access. However, studies show that a vast majority of the elderly population in India lack basic digital skills, and often do not own or cannot operate digital devices. This digital divide has further deepened their marginalization from state services and civic participation.

These structural and operational gaps reveal the need for a paradigm shift in how the Indian state approaches ageing. The current model, which relies heavily on family-centric care and sporadic state interventions, is both unsustainable and exclusionary. To address these deficits, India must move toward a rights-based, universally accessible, and state-supported eldercare system, embedded in a comprehensive national policy and legislative framework. Without such reforms, the promise of dignity in old age enshrined under Article 21 of the Constitution remains aspirational rather than actionable.

Towards an Inclusive Elder Law Regime: The Way Forward

As India stands on the cusp of a demographic transition, the urgency to evolve an inclusive and responsive elder law regime has never been greater. Mere reliance on familial obligation and fragmented welfare schemes is insufficient in ensuring the dignity, autonomy, and well-being of the elderly. A multidimensional and rights-based approach is imperative to bridge the widening gap between existing laws and the lived realities of senior citizens. The following measures outline a strategic roadmap for reform:

Drafting a Senior Citizens' Rights Bill

The absence of a comprehensive statutory charter of rights for the elderly necessitates the formulation of a Senior Citizens' Rights Bill. This proposed legislation should go beyond maintenance and establish enforceable, justiciable rights across various domains of life. Key elements of such a law should include:

- **Universal and inflation-indexed pension coverage**, especially for the unorganised and informal sectors.
- A **statutory right to quality, affordable, and accessible geriatric healthcare**, including health insurance and long-term care.
- **Robust safeguards against elder abuse**, encompassing physical, emotional, financial, and institutional abuse, along with responsive legal remedies and protective services.
- **Participatory provisions** ensuring that senior citizens have representation in policy-making processes that affect their lives and dignity.



Such a framework must also define and penalize neglect, and ensure State accountability through clear duties and performance benchmarks.

Strengthening the Maintenance and Welfare of Parents and Senior Citizens Act, 2007

While the 2007 Act marked a significant legislative step, it requires urgent strengthening and updating to meet contemporary challenges:

- **Raise the ceiling on maintenance amounts** to reflect current economic realities and inflationary pressures.
- **Improve the accessibility and functionality of Maintenance Tribunals** by ensuring time-bound resolution, appointing trained members, and simplifying procedures.
- **Introduce regulatory oversight of eldercare institutions**, mandating licensing, periodic audits, quality certification, and penal sanctions for negligence or abuse.
- **Make registration of old age homes and retirement facilities mandatory**, with standard operating procedures on medical care, nutrition, and staff qualifications.

Amendments must also address the needs of single, widowed, disabled, and destitute elderly persons, with specific protective mechanisms.

Enhancing State Responsibility and Public Investment

The paradigm must shift from individual and family-centric responsibility to State-led institutional care and welfare assurance. Key initiatives in this regard include:

- **Universal expansion of public health insurance** for the elderly, including coverage for pre-existing conditions, home care, mobility aids, and rehabilitation services.
- **Substantial increase in public spending on geriatric care infrastructure**, including the establishment of day-care centres, community kitchens, and palliative care units.
- **Support for community-based eldercare models** that leverage local NGOs, panchayats, and civil society to deliver grassroots-level care.
- **Integration of elderly welfare into urban and rural planning**, ensuring elder-friendly transportation, housing, and public amenities.

Additionally, State governments must be mandated to prepare and publish annual action plans for elder welfare with earmarked budget allocations.



Promoting Awareness, Legal Literacy, and Reporting Mechanisms

The effectiveness of elder law also depends on how well the rights and mechanisms are known and utilized. Therefore:

- **Legal literacy initiatives** must be expanded to include senior citizens and their caregivers, particularly in rural and tribal regions.
- **Awareness campaigns** through media, educational institutions, and health networks should destigmatize elder abuse and inform about available remedies.
- **Create confidential, accessible, and trauma-informed reporting systems**, such as helplines and mobile grievance redressal units, for victims of elder abuse.
- **Train legal, medical, and law enforcement professionals** in elder rights and age-sensitive service delivery.

Elder rights must be mainstreamed into law school curricula, judicial training programs, and administrative service modules to foster a culture of respect and protection.

Ensuring justice and dignity for India's ageing population demands not just reactive interventions but a comprehensive, anticipatory legal and policy framework. The future of elder care must be rooted in rights, not charity; in entitlement, not benevolence. As India advances as a welfare state, the realization of inclusive and equitable elder law will be a litmus test of its commitment to intergenerational justice and constitutional morality.

Conclusion

Protecting the grey years of life demands far more than mere token welfare schemes or superficial gestures of support. It requires a fundamental transformation in both the legal and moral imagination of society—one that recognizes the elderly not simply as passive recipients of care but as active, rights-bearing individuals. Their autonomy, dignity, and well-being must be at the core of all efforts, safeguarded through strong and comprehensive legal frameworks alongside responsive and inclusive policy interventions. The elderly deserve to live with respect, security, and the freedom to make choices about their own lives, rather than being sidelined or overlooked.

As India stands on the threshold of becoming a “super-aged” society by 2050, with a rapidly growing population of senior citizens, the urgency to rethink and recalibrate its approach to elder justice has never been greater. This shift calls for proactive measures that go beyond basic social security—addressing issues such as healthcare access, protection against abuse, economic independence, and social inclusion.



Only by embedding the rights and needs of older adults into the very fabric of law and policy can India ensure that its elders are not left behind in the march of progress, but instead are empowered to live their later years with dignity, respect, and hope.

Future Scope

It is very important to protect the dignity of the older persons. Future reforms may include legislation that may explicitly recognize the human rights and protect the legal rights of elderly persons. It is very likely that the Government will adopt **human rights-based approaches** in elderly care, ensuring participation, accountability, and transparency in caregiving institutions and policy implementation beyond general welfare of this population.

The future will likely provide financial support to older persons in the form of pensions, insurance schemes and above all social security programmes. Future strategies aim at developing such institutions and grievance redressal forums that will check/ monitor old age human rights violations and will provide legal safeguards.

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