

# **A Comparative Analysis between the Legal Protection Regimes Governing the Elderly Population of Bangladesh and India**

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## **Abstract:**

Elderly population is considered to be one of the most vulnerable sectors of a society. Both in Bangladesh and India, the part of the population now considered as elderly population, contributed significantly to the formative period of the two nations and are still playing significant roles in the growth and development in diverse sectors. However, very little effort has been made to develop a model of health and social care in line with the changing needs and time. In reality, the needs and well-being of the elderly population are often overlooked and they are considered often as ‘burdens’ on their family and society as a whole. Keeping the well-being of the elderly persons in mind, both Bangladesh and India enacted legislations to protect the rights of the elderly persons. Even though their rights are constitutionally protected, they are often deprived of their necessities required for living a dignified life due to various constraining factors. Moreover, lack of awareness about their Human Rights and legal protection is another major factor responsible for elder abuse. Given the context, it is essential to discuss and compare the existing legislative pieces made concerning this issue to shed light on the current situation. Based on the comparative analysis between the legislations of Bangladesh and India, this paper intends to put forth recommendations to bring about necessary changes in legislations in Bangladesh to ensure better care and well-being of the elderly population.

**Keywords:** Senior citizen, elderly care, maintenance, legal protection

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## **I. Introduction**

In recent times, the number of elderly persons keeps increasing all over the world owing to decreased mortality and birth rate and significant improvement in the health sector (Al Mamun and Chowdhury, 2022). With the changing times, the social values and norms keep evolving all over the world including Bangladesh and India. Aged population is bearing the brunt of such changes the most. Even though the percentage of elderly population is on the rise every year, their well-being is often overlooked. They are being deprived of their rights to which they are inherently entitled as human beings. As such, they are considered to be one of the most vulnerable sectors of the society. In recent years, the issue of elderly abuse has also received significant attention all over the world. Although many praiseworthy initiatives have been undertaken both globally and regionally, violation of elderly people’s human rights continues to be a pertinent issue both in Bangladesh and India. As of 2022, there are more than 15 million of elderly people in Bangladesh which is about 9.28% of the total population (Molla, 2022). According to UNFPA, this percentage is expected to be more than doubled by 2050 (Molla, 2022). Even though the number is ever growing, the number of legislations and policies for the protection of older people is still insufficient. This severely impacts their social and financial security and precludes them from living a dignified life.

## **II. Objectives of the Study**

Firstly, this paper attempts to examine the rights of the elderly populations in light of the Constitutional provisions of Bangladesh and India. Secondly, the purpose is to examine the personal laws of Bangladesh and India and analyze as to how far these legal instruments guarantee protection of the rights of the elderly population. Thirdly, this paper will analyze the laws concerning welfare of older parents in Bangladesh and India; examine the extent of their application in protecting the rights of older parents and identify loopholes in these legislations. Finally, this paper will put forth recommendations to bring necessary changes in the existing legal instruments to ensure protection of elderly population in Bangladesh.

### **III. Research Methodology**

In this research paper, an overall explorative approach of research has been followed through which the loopholes in the existing legal system and policies and its contribution to the disadvantageous position of elderly population in the society in both Bangladesh and India have been analyzed. To conduct this research, The Constitutions of Bangladesh and India, personal and customary laws and case laws have been consulted to compare the legal provisions. In addition, resort has been taken to books, journals, scholarly articles, newspapers, booklets, and relevant websites as well.

### **IV. Definition of Older Persons in the National and International Instruments**

There is no universal definition of elderly persons. Generally, people aged 60 years or above are considered as elderly people. According to the 1982 Vienna Action Plan on Ageing, people aged 60 years or above are considered as elderly persons. The United Nations also categorized any person aged 60 years or above as older persons. In most of the developed countries, people aged 60-65 are eligible to receive old age benefits which implies that a person within 60-65 years of age is deemed to be an older person in most of the developed countries. In Bangladesh, India and South Asia in general, people aged 60-65 years are generally considered as older persons. According to the National Policy of Older Persons 2013, a person of 60 years of age is considered to be an older person. However, due to poverty, ill-health, malnutrition, many persons become older before even reaching the required age to receive old age benefits.

### **V. Constraints faced by People in Their Old Age**

Many difficulties are faced by people in their old age. They suffer from various physical illnesses. They are inevitably struck by decreased mobility, full or partial loss of eyesight, fragile muscle and lack of strength. Older people also get diagnosed with diabetes, hypertension, heart attack, stroke and many other forms of physical diseases. In the developing countries, many are often denied adequate healthcare leading to their untimely demise (Sultana, 2020).

Due to the advancement in science and technology, increased longevity has become an emerging issue all over the world. With the evolving norms and traditions, the priorities and well-being of older people are not getting the due attention. Moreover, the issue of elderly abuse is also of great concern. Younger people consider them as burdens to the society disregarding their contributions. As such, elderly people are more often subjected to various types of mental illnesses i.e., depression, loneliness, Alzheimer's disease, dementia and so on.

Older persons often confront socio-economic crises as well. More often, they are deemed unable for work in various sectors. Such inability leads to a condition of chronic poverty. They are sometimes deprived of their proprietary rights as well. As such, they often are at the risk of being homeless. Because of neglect from the family and community, they are often unable to seek legal assistance to address such discriminatory and derogatory actions. Because of all these issues, they live in a constant state of vulnerability and helplessness.

### **VI. Protection of Older People under the International Instruments**

Although protection of older people's rights and well-being has emerged to be a much-concerned issue in recent times, the notion has been impliedly incorporated in a number of international instruments before the international initiatives focused specifically on older people.

According to Article 1 of the Universal Declaration of Human Rights (UDHR), 1948, all human beings are entitled to live a free and dignified life. As per Article 2 which incorporates the principle of non-discrimination states that no one shall be discriminated. Article 5 of UDHR clearly states that no one shall be subjected to cruel or inhuman behavior. Articles 7 and 8 of UDHR speak of equality before law and of taking recourse to the national tribunal for enforcing fundamental rights granted by the Constitution. Although these provisions do not explicitly mention anything regarding old age, the application of these provisions also extends to the elderly population as these rights are inalienable and inviolable for people of all age. Article 25(1) speaks of right to an adequate standard of living and right to social security in the event of unemployment, disability or old age etc. Thus, Article 25(1) read with Article 2 together reaffirm the rights of the elderly population to an adequate standard of living and right to social security as inalienable, inviolable and inherent human rights.

As part of the Bill of Rights together with UDHR, the International Covenant on Civil and Political Rights (ICCPR), 1966 and the International Covenant on Economic, Social and Cultural Rights (ICESCR) also incorporate provisions applicable to the elderly population. Article 7 of ICCPR states that no one shall be subjected to inhuman, cruel or degrading behavior. As per Article 26, everyone is equal before law and entitled to equal protection of law. Articles 2, 7, 9, 11 and 12 of ICESCR 1966 also contain provisions for the protection of the elderly people.

Article 11 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) states that all women are equally entitled to social security. Hence, this provision implicitly affords protection to the elderly women.

Article 25 of the Convention on the Rights of Persons with Disabilities (CRPD) states that disabled persons are entitled to the highest attainable standard of healthcare without any discrimination. Article 28 of CRPD contains provisions relating to social security and retirement benefits. These provisions cover the protection of disabled elderly persons.

The Vienna International Plan of Action on Ageing, 1982 is considered to be the first comprehensive document on the protection of elderly population (Ferdousi, 2019). Created by the first World Assembly on Ageing, it puts special emphasis on a number of issues on elderly people such as physical ailments, mental health, loneliness, isolation and social security programs. Moreover, references have been made to the principles and objectives of UDHR in order to affirm the applicability of human rights to the elderly population (Ferdousi, 2019). The United Nations General Assembly, through one of its Resolutions (Resolution 45/106, 1990), declared 1 October as the International Day of Older Persons and adopted Principles for the Older Persons in 1991 (Al Mamun and Chowdhury, 2022). Again, the Madrid International Plan of Action of Ageing (2002), endorsed by the UNGA (resolution 57/167), is a complete document on the protection of ageing population. As per Article 1 of the plan, the plan focuses on three primary themes namely, development, health and well-being and enabling environment (Al Mamun and Chowdhury, 2022). Governments and Policy makers can take recourse to these guidelines along with the international instruments to enact laws and policies relating to older persons.

## **VII. Comparative Analysis between the Legal Protection Regimes of the Elderly Population of Bangladesh and India**

### ***Constitutional Mandates:***

In the Constitution of Bangladesh, the term ‘elderly population’ or ‘elderly people’ is not expressly mentioned. However, as the supreme law of the land, the Constitution guarantees protection of the elderly population through a number of provisions contained in Part II and Part III. In Part II of the Constitution which contains the provisions relating to the fundamental principles of state policy, there are a number of provisions which contain the notion of protecting elderly people’s right to live a dignified life. As per Article 15(a), the State has the fundamental responsibility to provide the basic necessities of life to its citizens. According to Article 15(d), the State has a fundamental responsibility to secure the right to social security and to public assistance in case of unemployment, disability, old age or in such other cases. Even though these provisions are not judicially enforceable, these principles shall act as guidelines and be applied by the State in creating and interpreting laws as per Article 8(2) of the Constitution. Thus, these provisions in the form of guidelines afford protection to the rights of the elderly population. Part III of the Constitution contains provisions relating to fundamental rights which are judicially enforceable. These provisions guarantee protection to all the citizens of the State including the older citizens. Article 27 states that everyone is equal before law and entitled to equal protection of law. Article 31 speaks of the right to protection of law and to be treated in accordance with law which is an inalienable human right. As per Article 32, no person shall be deprived of right to life or liberty. Although not expressly mentioned, through Articles 31 and 32, protection of the older people from abuse, cruelty and torture has been guaranteed effectively.

Under the Constitution of India, all the citizens, including senior citizens, are entitled to fundamental rights of equality before law and of life and liberty under the constitution. As per Article 39A, the State shall ensure equal justice and free legal aid for the citizens without any discrimination. As per Article 41, State shall secure public assistance in cases of unemployment, old age, disability etc. Both of these Articles are contained in Part IV of the Constitution which contain the directive principles. These principles are not judicially enforceable as per Article 37 of the Constitution.

Therefore, in light of the above discussion, it is evident that both the Constitutions of Bangladesh and India provide constitutional safeguards through the provisions of directive principles and fundamental rights to protect the rights of the older population and to ensure their well-being.

### ***Personal Laws Governing People Belonging to Various Religious Communities:***

In Bangladesh, there are a number of laws to regulate personal matters of the Muslim, Hindu and Christian religious communities. The Muslim Family Laws Ordinance, 1961 (MFLO, 1961) incorporates provisions relating to polygamy, dissolution of marriage and maintenance. Section 9 of the MFLO, 1961 states that a wife, on failure of husband to pay maintenance, may apply to the Chairman for payment of maintenance. This provision is concerned with wife’s maintenance only. However, the application of this provision extends to all Muslim women including elderly women because there is no mention of age. Thus, it can be implied that the MFLO, 1961 affords protection to elderly married Muslim women on receiving adequate maintenance from husband. The Hindu Community in Bangladesh is governed by the Dayabhaga School. There is no specific law relating to maintenance of Hindu Community as they are governed by the traditional Hindu law. Under the traditional Hindu law, a son is under an absolute obligation to maintain aged parents whether or not he possesses

any property (Karim, 2021). Under Section 2 and 3 of the Hindu Women's Right to Separate Residence and Maintenance Act, 1946, Hindu married woman can claim separate residence and maintenance on fulfillment of certain conditions. Since there is no specific mention of age, it can be inferred that the provisions are applicable to elderly married Hindu women as well. There is no specific law to regulate the matters relating to maintenance of older people belonging to the Christian community in Bangladesh. Under sections 36-38 of the Divorce Act 1869, the wife may claim alimony from the husband on fulfillment of certain conditions.

In India, both sons and daughters are bound to provide maintenance to parents under the Hindu Adoption and Maintenance Act 1956. Under section 20 of the Act, the children are bound to maintain parents including childless step-mother. In case of providing maintenance, financial capacity of children is of no concern as they are 'bound' to maintain their parents. Again, children have a duty to maintain their parents under Muslim Law as well. Section 371 of the Muslim Law states that children are bound to maintain their poor parents (Manjula, 2019). There is no separate personal law for seeking maintenance by older people in the Christian community. They have to take resort to the provisions of the Code of Criminal Procedure, 1973 to file for maintenance.

In light of the above discussion, it can be stated that the personal laws of both Bangladesh and India contain provisions to protect and preserve the right of maintenance of older parents. In India, significant reforms have been made to the Hindu personal laws in line with the socio-economic changes. However, compared to India's personal laws, no noteworthy change has been made in personal laws to protect the rights of the elderly people. Notably, there are no laws for Hindu and Christian community through which they can enforce their rights. Besides, due to lack of awareness, many older people are not aware of the existence of these personal laws through which they can seek legal remedy.

#### ***Secular Statutes:***

Through section 4 of the Family Courts Ordinance 1985 (FCO, 1985), family courts have been established to regulate certain family matters. According to section 5(d) of the FCO 1985, a suit for maintenance can be filed in the family court. As there is no specific mention of maintenance for any particular group concerning relations, it can be inferred that there is no bar in claiming maintenance from children by older parents. Even though there is no bar, suits instituted by parents for maintenance had been seldom found. In the case of Jamila Khatun Vs. Rostom Ali [48 DLR (AD) 1996 110] it was observed that poor parents might claim maintenance from their children. Moreover, there are provisions to amicably resolve the disputes through reconciliation or compromise under section 10 and 13 of the FCO, 1985. Another groundbreaking act enacted in recent times is the Maintenance of Parents Act, 2013. This legislative piece is considered to be an ingenious law for affording protection to the elderly parents in Bangladesh. Due to rapid changes in the socio-economic norms and trends, parents are often denied of their rightful claims. Hence, this act has been enacted for the protection of the parents' rights. According to section 2 of the Act, the term 'maintenance' includes food, clothing, medical and housing facilities and company. According to section 3 of the Act, every child will maintain his or her parent. According to section 4, children will maintain their grandparents in the absence of parents. Under section 5 and 6 of the Act, if any child fails to give maintenance to his or her parents, the parent(s) will be entitled to bring legal action against the children and any offence under this act will be cognizable, bailable and compoundable. The act also incorporates provision under section 8 to peacefully settle disputes through Alternative Dispute Resolution. As to the institution of cases under this act, there is no reported case as of now.

In India, Maintenance and Welfare of Parents and Senior Citizens Act, 2007 has been passed by the Central Government of India. Under section 2(h) of this act, any person aged 60 years or above has been defined as a senior citizen. Children of aged parents are under an obligation to provide maintenance to their parents. One of the unique characteristics of this act is that the children will be bound to maintain their parents even if they live abroad. Another salient feature of this act is the inclusion of provisions for the protection of childless senior citizens. Under this act, relatives who inherited or are in possession of the property of childless senior citizens will look after them. Section 19 of the Act contains mandates regarding establishment of old age homes and section 23 of the Act speaks of protection of senior citizens' property. Again, parents in India can also claim maintenance under section 125 of the Code of Criminal Procedure, 1973. However, parents cannot claim maintenance under both Acts simultaneously (Manjula, 2019).

It is evident from the above analysis of the secular laws that both laws in Bangladesh and India relating to maintenance of parents and senior citizens are praiseworthy and progressive in line with the mandates of the international instruments and changing times. The MPA, 2013 is a precise and progressive piece of legislation which paves way for the protection of aged parents. One of the salient features of this act is that the definition of maintenance includes companionship which implies that the act provides for both physical and mental support in the form of maintenance. However, the law is not without its defects. According to section 7 of the Act, a written complaint is to be filed in the Court of 1<sup>st</sup> Class Judicial Magistrate or Metropolitan Magistrate; otherwise the complaint will not be entertained. Again, no remedy is provided against violation of proprietary

rights. The Act is also silent on maintenance of parents by children living abroad. Moreover, whether or not the parents can file for maintenance under the FCO 1985 and the MPA 2013 is yet to be clarified.

### **VIII. Recommendations**

Based on the comparative discussion, following measures should be undertaken to ameliorate the sufferings of the elderly population in Bangladesh:

**Enactment of Separate Legislation:** At present, there is no law to ensure welfare of the senior citizens of the country. Hence, a separate piece of legislation ensuring overall welfare of the senior citizens of Bangladesh should be enacted.

**Legal Protection for Childless Senior Citizens:** Even though the provisions of the MPA, 2013 afford legal protection to parents regarding maintenance, there is no provision for guaranteeing legal protection to the childless senior citizens in Bangladesh either in the MPA, 2013 or in any other existing law. Thus, changes should be made to provide legal protection to the childless senior citizens.

**Amendment of the MPA, 2013:** The MPA, 2013 should be amended to incorporate provisions guaranteeing legal protection regarding maintenance of step parents as well.

**Prevention of Violation of Proprietary Rights:** One of the most glaring instances of elder abuse in Bangladesh is the constant violation of their proprietary rights. Thus, changes must be made to the existing laws to afford protection to the elderly persons regarding violation of proprietary rights.

**Protection regarding Old Age Homes:** Because of the rapid shift in socio-cultural norms and traditions, significant changes are visible in the family structure and relationship dynamics among the family members. Elderly family members are suffering the negative consequences of such changes the most and they are often sent to old age homes or care homes which are often in dilapidated conditions and lack basic facilities required to look after elderly persons. Thus, initiatives should be undertaken to ensure legal protection concerning old age homes and facilities to be provided in such homes.

**Social and Financial Security:** As people grow older, the issue of social and financial security poses a serious concern to them, especially in a developing nation like Bangladesh. Thus, steps should be taken to guarantee social and financial security for the elderly citizens and bring about necessary changes in the legal regime accordingly.

**Mass Awareness:** A large portion of the population is still unaware of the rights of the elderly people in Bangladesh. Hence, steps should be taken to create mass awareness about the elderly people's rights under the existing legal provisions in various pieces of legislations.

### **IX. Conclusion**

In this fast paced world, people's worth is evaluated based on their capacity to work efficiently. Since elderly people become feeble, they are deemed worthless and are often left to fend for themselves. As such, they are susceptible to abuse and dehumanizing behavior in most parts of the world. Bangladesh and India are also no exceptions in this scenario. Even though a number of policies and laws have been adopted and enacted in Bangladesh which deserves praise and recognition, there are still some loopholes prevalent in the legal protection regime concerning the elderly population compared to our neighbor state, India. It must not be forgotten that aging is a part of natural life cycle of all living beings including humans. A person deserves to be loved and cared for in all stages of life. Affording legal protection to the elderly will pave way for them to live a dignified and secured life. Thus, initiatives should be taken to amend the existing laws and to enact new pieces of legislation to guarantee comprehensive protection of the rights of the elderly.

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