
MAINTENANCE, WELFARE AND PROTECTION OF THE RIGHTS OF PARENTS AND SENIOR CITIZENS: A SOCIO-LEGAL ANALYSIS

Gazala Noor, Jammu University

ABSTRACT

This present research paper will addresses a pressing issue in our culture, challenges that the elderly face and the reasons for them, as well as a number of government programmes and rights for the aged people, also concentrated on the upkeep of parents and their welfare, as well as the parents' reliance on family and children in their old age. The most important in the present research is given to the relationship of law with other behavioural sciences and to people, social values and social institutions. The elderly and senior persons in our society, as well as old age facilities, Even the present research help me study how a childless parents can claim maintenance from his relative who is in possession of, or would inherit the senior citizen's property. And the how the State Government are also constituted the maintenance tribunals to decide the level of maintenance

I. INTRODUCTION

Indian Society lays high importance on providing care and protection for parents and elderly. As the withering of joint family system has contributed to the challenges faced by elderly persons because very old people, due to their reduced mobility and debilitating disabilities, needs other people to do things for them. Besides with the rise of nuclear families in the society and having fewer children in the family, the care of older persons in the families are getting increasingly worse. As such to fulfil caring needs of aged persons more and more nursing people with appropriate skills are required.¹

Furthermore, it is the natural approach to identify old age through progressive changes in appearances such as greying hair, tooth loss, sagging skins, wrinkles, and loss of sensing functions. Not only that, but ageing is a lifelong process that includes physical, social, psychological, and spiritual changes from birth to death. Although aging is an on-going process yet the value of aging is seen differently at different points in the process and it occurs naturally in the human life cycle. It is the decline in the capacity of the functioning of the organs of human body. The population of the aged has been increasing over the years. The estimated population growth rate of elderly increased to 10 crores as per 2015 census reports i.e. 8.6 per cent of the total population.²

II. AGEING IN INDIA

India has the second largest global population of ageing people. This created a lot of social, economic and political problems. In the years to come, the number of elderly persons may increase, But our country lacks basic expertise to support and respond to the needs of this section. They are the most vulnerable class of our society. If in a society where there are poor facilities for sanitation, infrastructure, and health care, it is the elderly people who suffer the most.

In addition to it the changes in the civil society is associated with modernity weakening the traditional values and family support systems for senior citizens (above the age of 60 years). A person to live a dignified life, requires basic amenities like food, clothing, shelter and other

¹ Elderly India, *Central Statistics Office Ministry of Statistics and Programme Implementation Government of India* available at www.mospi.gov.in 2016, last visited 10 december 2021

² Chandramouli C. *Census of India 2011 Registrar General & Census Commissioner, India. Ministry of Home Affairs. 2013*

necessary requirements. It is the moral duty of a man to provide the above mentioned amenities to his wife, parents and children in the form of maintenance etc. Also there is an increase in the prevalence of elder abuse and difficulties in getting appropriate care and support.

So much as the problems of elderly people were considered during the colonial period also but not as a class apart. They took certain steps, which were basically for the social security.³ As maintenance is the process of maintaining or preserving for maintenance of parents under the code of criminal procedure.⁴ Today's older individuals are compelled to live alone and face a variety of issues, including a lack of physical, social, emotional, and financial support. Therefore to overcome such difficulties and to face new challenges, the Government of India enacted the new legislation i.e: The Maintenance and Welfare of Parents and Senior Citizens Act, 2007⁵ in the fifty-eighth year of Republic so as to provide maintenance and protection to parents and senior citizens. Importantly there is mandatory legal provisions to protect the rights of the senior citizens and to provide them care and support by the family and other stakeholders. Consequently being the signatory for the "Madrid International Plan of Action on Ageing, 2002," several countries, including India, have introduced legislation for the social protection of senior citizens.⁶

In India, Senior Citizens is defined as 'any citizens of India who has attained the age of sixty years or above'⁷. Basically there is a law to give them social security. It includes parents as well as other senior citizens. However this is special legislation and to implement the scheme and to achieve the objective of law, a tribunal has to be established in every state under the Act.⁸ However in 2007, The Maintenance and Welfare of Parents and Senior Citizens Act, was passed providing provisions for the maintenance to support elderly parents and senior citizens. Hence, parents can claim maintenance either under section 125⁹ or under the Act, 2007.¹⁰ This Act provides in-expensive and speedy procedure to claim monthly maintenance for parents and senior citizens. It casts obligations on the children to maintain their parents/ grandparents

³ The Pension Act, 1871; The Workmen's Compensation Act, 1897; The Adarkar Commission Report 1944.

⁴ section-125Cr.P.C (Section 125 Criminal Procedure Code, 1973 was enacted to provide an effective remedy for the neglected persons to seek maintenance.)

⁵ Act No. 56 of 2007

⁶ Issac TS, Ramesh A, Reddy SS, Sivakumar PT., Kumar CN. and Math SB. Maintenance and Welfare of Parents and Senior Citizens Act 2007: A Critical Appraisal. *Indian J Psychol Med.* 2021;43(5S):107S–112S

⁷ *Id.*, section 2(h).

⁸ *Id.*, section 7.

⁹ Sec.125 Code of criminal procedure, 1973

¹⁰ The maintenance and welfare of parents and sr. citizen Act, 2007.

and also the relatives of the senior citizens to maintain such senior citizens. The main attraction of the Act, 2007 is that there are provisions to protect the life and property of such persons. It also provides for the setting up of old age homes for providing maintenance to the indigent senior citizens and parents. The different aspects of the Act, 2007¹¹ enumerates that, senior citizens including parents who is unable to maintain himself from his own earning or out of the property owned by him, is entitled to get relief and the children/ grandchildren are obligation to maintain his/her parents either father, mother or both. Even relatives is also bound to look after the senior citizens. If such children or relative is not maintaining his parents or senior citizens respectively, then the parents/senior citizens can seek the assistance of tribunal constituted under this Act¹², to enforce the remedy of maintenance. Such parents/senior citizens can file an application before the tribunal, claiming maintenance and other reliefs from their children/ relatives as the case may be.

In this regard the Indian Government has taken several initiatives to deal with the issue of the increasing number of the grey population. Even before independence, the Adarkar Commission¹³ has prepared a report these issues. Article 41¹⁴ also calls on the government to make adequate provisions for the old, the sick, and the disabled. Furthermore, despite the fact that the national policy on older persons has many provisions for older people, it is still purely a policy document, even after 13 years of development. Due to a lack of legal provisions, it has not been enforced. Programs and projects for the welfare and empowerment of older people have remained reliant on the goodwill and wishes of those who feel compelled to help them.

In the end, this just serves to incite violations of elderly people's human rights.¹⁵ But the Act provides for more effective provisions for the Maintenance and Welfare of Parents and Senior Citizens by their children and relatives who inherit the property of the aged and also applies to the people of whole of India.

III. AMENDMENT OF THE ACT, 2007

¹¹ supra 9

¹² section 7 of the Act, 2007

¹³ supra 3

¹⁴ The Constitution of India

¹⁵ Agewell Research & Advocacy Centre; "Study on legal provisions and practices With Special Focus on Human rights on old people; Agewell Foundation, Elderly Lonely & Neglected study," *Helpage India Research & Development Journal* (2012)

The Act was amended in 2019 to bring in key changes to improve Country's geriatric care and coverage. The following are the proposed changes in the amendment bill¹⁶ are as under below:-

- a. The definition of children has been broadened under the new law, Biological and adoptive sons, daughters, stepchildren, son-in-law and daughter-in-law, grandson and granddaughter, and legal guardians of minor children are all included in the new measure.
- b. Similarly, biological and adoptive father and mother, grandparents, father-in-law and mother-in-law are now included in the definition of parents.
- c. The phrase "maintenance" refers to the provision of food, clothing, housing, safety and security, medical attendance, healthcare, and treatment that are required for the parents to live a dignified life. The 2007 law defined maintenance as merely providing food, clothing, a place to live, and medical care and treatment.
- d. The measure proposes to remove the \$10,000 monthly maintenance cap, which is a significant change. The previous maximum limit was set at \$10,000 per month in the 2007 act. Senior folks may receive more than the sum if the amendment bill is ratified and signed into law.
- e. The tribunal in charge of these matters, on the other hand, would take into account the parent's or senior citizen's way of living, as well as their earnings and the earnings of their children or the person responsible. While the 2007 act compels the children to pay the maintenance amount within 30 days of the tribunal's order, the proposed amendment bill wants to shorten that period to 15 days.
- f. Children who forsake their parents, as defined by the bill, face a prison sentence of three to six months and a fine of up to Rs 10,000, or both, according to the amendment bill.

The Maintenance and welfare of Parents and senior citizens Act, is a piece of legislation that makes it permissible for children and heirs to grant monthly allowances to senior citizens and parents. It also provides a simple, quick, and low-cost technique for the protection of elderly people's lives and possessions. It also permits State Government to establish old age homes in

¹⁶ The Maintenance and Welfare of Parents and Senior Citizens (AMENDMENT) Bill, 2019 *A Bill further to amend the Maintenance and Welfare of Parents and Senior Citizens Act, 2007*

every district. The Senior citizens who are unable to maintain themselves shall have the right to apply to Maintenance Tribunal seeking monthly allowance from their children or heirs.