

Protection of the Rights of Parents and Senior Citizens: An socio-legal Analysis

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Abstract

“This research emphasises the relevance of interactions among law and other cognitive science, as well as individuals, social values, and social structures. Our community's elderly and senior residents, as well as old age homes, have all helped me comprehend how a childless parent can seek support from a relative who owns or will acquire the senior citizen's assets. The issues that the elderly experience and the causes behind these challenges, as well as a range of public services and rights for senior citizens, will be the focus of this research study. It will also focus on the upkeep of parental figures and their well-being, as well as parents' dependency on their children as they get older. Also, how the regional government has established maintenance commissioners to decide the level of maintenance that must be paid.”

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I. INTRODUCTION

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.¹As maintenance is the process of maintaining or preserving for maintenance of parents under the code of criminal procedure.² 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, 2007³in 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.⁴

¹ The Pension Act, 1871; The Workmen's Compensation Act, 1897;The Adarkar Commission Report 1944.

²section-125Cr.P.C (Section 125 Criminal Procedure Code, 1973 was enacted to provide an effective remedy for the neglected persons to seek maintenance.)

³Act No. 56 of 2007

⁴Issac 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

In India, Senior Citizens is defined as ‘any citizens of India who has attained the age of sixty years or above’.⁵ 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.⁶ 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 125⁷ or under the Act, 2007.⁸ This Act⁹ 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 and also the relatives of the senior citizens to maintain such senior citizens.¹⁰ 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 Act,¹² 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

⁵ *Id.*, section 2(h).

⁶ *Id.*, section 7.

⁷ Sec.125 Code of criminal procedure, 1973

⁸ The maintenance and welfare of parents and sr. citizen Act, 2007.

⁹ *ibid.*

¹⁰ <http://socialjustice.nic.in/oldageact.last> visited 7.02.2022

¹¹ *supra* 9

¹² section 7 of the Act, 2007

¹³ *supra* 3

¹⁴ The Constitution of India

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 Act¹⁶ 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, even in the UT of Kashmir Division. It is applicable to all citizens of India, those living in India as well as abroad. The Act¹⁷ 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 bill¹⁸ 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.

II. REVIEW OF LITERATURE

¹⁵Agewell 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)

¹⁶ supra 3

¹⁷ supra 3

¹⁸The 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*

Review of literature simply means to look again on the literary work already existing in the various forms viz. books, text books, journals, statute books research work both academics as well as non-academic, reports of various commissions or committees and case law in the legal research etc. Before the research looks for the statement for research work he must know about the available literature in various form published or unpublished. It will provide knowledge of the related field to enable researcher to define the frontier of his research area through the study of related literature. The review of available leads to following information.

- a. Prof. Kamlesh M.pandey on his Research paper “The Right to Maintenance of Parents and Senior Citizens in India”¹⁹, had highlighted many provisions of legislations including meaning of some important words, case laws, provisions for normal life of parents and for alternate dispute resolution and explained the maintenance amount with interest. The author also gave instruction on the role of central as well as the state Government with considered the role of judiciary in case laws. Although author has well explained the roles but has not explained the establishing old age residences
- b. Dr. Shashi Nath Mandal, in her article on “Protection of Rights of Old age Person in India: A Challenging Facet of Human Rights”,²⁰ mentioned the human right perspective of old age people. The subject choice is excellent because it addresses a pressing issue in our culture. The author also stated that old age is an unavoidable period of a human's existence that no guy can avoid unless he dies prematurely. Childhood and old age are natural dependant life stages in which children rely on their parents and vice versa. She has addressed the challenges that the elderly face and the reasons for them, as well as a number of government programmes and rights for the aged. Because it was doctrinal study, only journals and books were used to acquire data. The entire piece is well-written and emphasises the need of basic human rights for the elderly. However, the researcher has not written about the value degradation, which is the primary cause of their human rights violations.
- c. Jannathul Fathima, on “Maintenance And Welfare Of Parents And Senior Citizens Act 2007”²¹ she is author of this blog, in which she just explained the contradict part of the Act,2007²² and also explained only two

¹⁹Prof. KamleshM.Pandey, “The Right to maintenance of Parents and Senior Citizens in India”vol.4/Issue:1 *Indian Journal of applied research* 262(2014)

²⁰Dr. Shashi Nath Mandal, “Protection of Rights of Old age Person in India: A Challenging Facet of Human Rights”.*Global Journal of Human Social Science* Volume 11 Issue 5 Version 1.0 (August 2011)

²¹ Jannath ul Fathima.I-“ Maintenance And Welfare Of Parents And Senior Citizens Act 2007” *IJALR (International Journal of Advanced legal Research)*.vol 2: issue 3(2020)

²² supra 3

case laws to suggest how government is responsible for the protection of elderly people, but she fails to explain the positivism of the whole Act²³.

- d. Behera AK (2021) in his article on “Maintenance and Welfare of Parents and Senior Citizens - A Legal Analysis”²⁴, the author claims that elderly people suffer from poverty, loneliness, neglect, abuse, and abandonment, and that it is difficult for them to use their resources to meet their basic needs, implying that they are unable or unwilling to care for themselves. He also discusses the issue of widows, widowers, and childless elderly people in society. The author went on to explain the growing problems of parents and Senior Citizens in India, which is a source of concern, and advised the government to study issues affecting Senior Citizens as soon as possible. However, the author did not explain or work on the legislation already passed by the Indian Parliament.

III. RESEARCH METHODOLOGY

A technique is a manner of achieving something, whereas methodology is the science or study of a specific subject. The term "research technique" refers to a considerably broader concept. The method used by a researcher to do research is referred to as research methodology. One of the primary driving impulses of intelligent man is the quest of knowledge. The pursuit of knowledge and the desire to learn are as old as man's intellectual consciousness and desire to learn. This drive of the human brain to re-examine and re-understand things is properly referred to as research, at least in the beginning. The research is always expected to be something original, which may be done either by ways of re-understanding of an existing theory or investigation of an unexplored area or development of new theory. The Research methodology followed in the present work would be done by an empirical way. The research involves socio-legal study of the legal structure, legal frame work, case laws and also study of legal institutions through legal reasoning and rational deduction. The case law method is used to gain a better understanding of how legal rights of the elderly are interpreted. The socio-legal method has been used in present research work. Data for the study will be gathered from both primary and secondary sources.

IV. LEGAL DEVELOPMENTS FOR SENIOR CITIZENS'S SOCIAL PROTECTION

The Vienna International Plan of Action on Ageing, 1982, the United Nations Principles for Older Persons, 1991, and the Madrid International Plan of Action on Ageing, 2002, have all called for the need for legal and

²³ supra 14

²⁴ Behera AK (2021) “Maintenance and Welfare of Parents and Senior Citizens - A Legal Analysis”. *Sociology and Criminology-Open Access Editorial* - Volume 9, Issue 3(2021)

policy measures to safeguard older persons and enhance their well-being. These worldwide projects have been signed by India. Article 41 of the Indian Constitution, which is a directive principle of state policy, has made it possible to enable elderly persons' well-being. In 1999, the Indian government issued a national strategy for elderly people, focusing on their well-being in order to promote a life of purpose, dignity, and tranquilly for them. Economic security, shelter, universal healthcare & nutrition, and welfare are all significant areas covered by this programme, and legislative requirements are required to guarantee that these policies are implemented effectively.²⁵

V. LEGISLATION FOR PROTECTION OF PARENTS AND SENIOR CITIZENS-

The maintenance and welfare of parents and senior citizens Act, 2007 is one of the key legislative steps to help older folks who are being abused. The effective execution of the provisions of this Act, including the amendments suggested in the amendment, would greatly help to providing assistance to senior people who are victims of elder abuse. This Act, however, may not be able to afford redress in many other cases of elder abuse. There is an urgent need to significantly increase social steps to prevent elder abuse and to give support and justice to victims of elder abuse. Senior folks require education and counselling to seek remedy if they are abused. To encourage intergenerational relationships, awareness campaigns should target the younger generation. stakeholders to reduce future elder abuse.

Older population is a worldwide phenomena. In many nations, global ageing efforts have aided in the development of policies, programmes, and laws to guarantee the very well of elderly individuals. Several nations, including China, Bangladesh, and Singapore, have laws comparable to the MWP Act of 2007, which imposes children's filial obligation for older elders' upkeep and assistance. There are differences in the breadth of the laws, the means for enforcing them, and the consequences if the children fail to fulfil their obligations. Many industrialised nations, such as Australia, the United Kingdom, Sweden, and Norway, have well-established systems for the social care of elderly adults, with legislation guaranteeing their rights to government social care services.

Countries' social care systems differ. They might be comprehensive, means-tested, or dependent on insurance. The amount of home-based vs institutional-based care, as well as regulatory systems and quality requirements, differs among nations.

²⁵ Sathya T and Premkumar R. Association of functional limitations and disability with elder abuse in India: A cross-sectional study. *BMC Geriatr*, 2020; 20 1–11.

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