



Analysis of Judgements and Laws Regarding Maintenance and Welfare of Parents and Senior Citizens

Dr Seema Totla

Prosecution officer

Rajasthan

By despising all that has preceded us,

We teach others to despise our self.

Maintenance not solely include basic necessities like food, clothing and residence however it also embody the things necessary for comfort and status within which, the person entitled is reasonably expected to live. The complete thought of maintenance and welfare is established because if parents or senior citizens don't seem to be financially independent and couldn't care themselves they need help. The other family members should help them in order to facilitate them so as to form a living of the other person possible and dignified.

“The old age is the time once the mind is matured however the body is decayed.” At this age many of the elderly want to spend their time by raising their lives and spending time with family, in reading books, newspapers and lots of additional spiritual work. Some of them get associated with old age association or groups and social work. But many senior citizen face problems of health, isolation and many more and because of this the importance of family support and care always needed.

Slowly the time has modified. The globalization and modernization have changed the lifetime of elderly. Now the nuclear family system is more commonly adopted. All around the world families are scattered and the joint family system is breaking down. It's the main reason of depression and other forms of illness to the oldsters because they are not properly cared by their sons and daughter in laws. This is the biggest issue which is faced by them.

India could be a progressing country. Day by day it's achieved solutions of many issues, however 12% of the whole population which are senior citizens are not getting the meaningful support and life which they deserve. For this they need a positive perspective from all aspect.

It is the wealthy culture prevailing in India to respect, regard and maintain the oldsters and other members of the family like God. This culture, as a custom and tradition, prevailed in Indian society from time immemorial. When there is any lacuna in such culture, the legislation always try to fill that. Apart from all customary protection for the parents and senior citizens, it'll be correct to debate the legislative protection provided to the parents under the legislation.

Analysis of laws regarding maintenance and welfare of parents and senior citizens:

The maintenance legislation in India is incredibly effective. Laws and rules made for parents and senior citizens are very wealthy. Rights which are provided by laws safeguard them. Parents cannot be evicted from a house without due process of law if they have been staying there before, other than this by these laws parents are entitled to get maintenance from their children. "These laws are:

- (1) Section 20 of Hindu Adoption and Maintenance Act, 1956
- (2) Under Muslim Law
- (3) Section 125 of Criminal Procedure Code, 1973
- (4) The Domestic Violence Act, 2005
- (5) Maintenance and Welfare of Parents and Senior Citizens Act, 2007"

(1) **Section 20 of the Hindu Adoption and Maintenance Act, 1956** states rules for maintenance of children and parents. Section 20 of the Hindu Adoption and Maintenance Act, stated that “The obligation of a person to maintain his or her aged or infirm parent extends in so far as the parent is unable to maintain himself or herself out of his own earnings or other property.”

According to the explanation to Section 20 of the Act, “the word 'parents' includes natural father, mother and childless step-mother.” However, grandfather or grandmother does not come under the word parent. The word parents in the present context would include the adoptive father and adoptive mother. The oldest case decided on the subject of maintenance is one *Khetramani Das v. Kashinath Das*,¹ in this case the Calcutta High Court referred to the Shastric Law as under -

“The duty of maintaining one's family is, however, clearly laid down in the Dayabhaga Law, Chapter-II, Section XXIII, in these words:

The maintenance of the family is an indispensable obligation, as Manu positively declares.”

In the case *Jagjit Singh Bhatia v. Balbir Singh Bhatia*,² it is held that a Hindu son is personally obliged to maintain his aged mother irrespective of inheritance of his father's estate.

(2) In **Muslim Law** the Law of maintenance is something different from the Law of maintenance in most other systems of Law. Basically the obligation to maintain another arises in Muslim law as long as the claiming party has no any resources from which he or she can maintain himself or herself. It is clear that the main ground of liability to maintain arises upon the capacity to inherit. But in any situation where a Muslim man has any means or not, he is obliged to maintain his wife and children, but as per their customary laws, distant relatives will be maintained solely if they are poor and the person himself is in easy circumstances.

¹ (1868)2 Beng LR 15.

² AIR 2003 NOC 450 (Del.)

(3) **Section 125 Criminal Procedure Code, 1973** aims at providing a speedy and inexpensive remedy to the neglected person, namely the wife, children and parents who may obtain relief from their husband, father and children respectively. Section 125 says that “If any person having sufficient means neglects or refuses to maintain- (d) his father or mother, unable to maintain himself or herself, a magistrate of first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of...his father or mother, at such monthly rate as such magistrate thinks fit.”³ It is there for to achieve a social purpose. This section over-rules the personal law if there is any conflict between the two. The criminal procedure code is a law of the land and not of any community. The legislative will be supreme in this land and is controlled only by the constitution.

Supreme Court in *Dr. Mrs. Vijaya Manohar Arbat v. Kashirao Rajaram Sawai & another*,⁴ said :

That An application under section 125(1)(d) of the Code of Criminal Procedure, 1973, by a father claiming maintenance from his married daughter is very well maintainable.

This is clear that the natural parents are entitled to receive maintenance from their children provided two conditions are fulfilled :

- (i) the son or daughter have sufficient means, and
- (ii) the father or the mother is unable to maintain himself of herself.

It is decided that even a daughter possessing sufficient means has the obligation to maintain her parents unable to maintain themselves.⁵

(4) According to the **Section 3 of Domestic Violence Act, 2005**, “any act, omission, commission or conduct of the respondent shall constitute domestic violence in case if it harms or injures or endangers the health, safety, life, limb or wellbeing, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical and

³ Section 125 of criminal procedure code, 1973

⁴ AIR 1987 SC 1100

⁵ Vijaya Monohar Arbat v. Kashirao Rajaram Sawai, 1987 (1) Crimes 713 (SC).

sexual abuse and assault, verbal and emotional abuse and economic abuse; or harasses, harms, injures or endangers the aggrieved person with a view to force her or any other person associated with her to meet any unlawful demand for any dowry or other property or valuable security; or has the effect of threatening the aggrieved person or any person associated with her by any conduct mentioned in clause (a) or clause (b); or otherwise injures or causes harm, whether physical or mental, to the aggrieved person.”

Though, the maintenance of parents was included in section 125 of Criminal Procedure Code, 1973 and in section 20 of Hindu Adoption and Maintenance Act 1956, but these provisions have been proved really insufficient due to various reasons like the tedious and time consuming court procedure, expensive recourse to justice and execution. Interestingly, there is no provision in these statutes regarding childless elderly people. So there's need of an easy, inexpensive and speedy procedure to claim maintenance by the needy parents and elderly. Indeed, the National policy on Older Persons states, “Some areas of concern in the situations of older persons will also emerge, signs of which are already evident, resulting in pressures in living arrangements for older persons” and hence “To cast an obligation on the persons who inherit the property of their aged relatives to take care and maintain them and to form provisions for fixing up old age homes for providing maintenance to indigent older persons and to supply better medical facilities to senior citizens and to make provisions for protection of their life and property Maintenance and Welfare of Parents and Senior Citizen's Act was introduced in the Parliament”.

(5)The Maintenance and Welfare of Parents and Senior Citizens Act 2007 aims "to provide for more effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognized under the Constitution and for matter connected therewith or incidental thereto."

As the name says, this Act made to protect the interests and rights of not only parents but also of elderly childless people. The Act enables a senior citizen (aged 60 or above) or a parent who is not able to maintain him/herself from his/her own sources, a right for legal maintenance. The other imported feature of the Act is time bound system.

It is mentioned that the case for maintenance has to be decided within a period of ninety days (extendable for another thirty days in exceptional circumstances), from the date of filing of application. Moreover, this Act is made not only to provide maintenance to the elderly, but also gives directives for care, welfare and protection of this vulnerable group of citizens by the State Governments. The act is having 32 sections.

Judicial analysis on Maintenance and welfare of parents and senior citizens :

For the enforcement of laws the Supreme Court and High Court's verdict plays a vital role. Their pronouncement made the laws effective and with a penalized system it is very powerful. For effectiveness of any law the role of judiciary is very stronger. In some recent matters the Supreme court and high court at the time, explaining the provisions under maintenance and welfare of parents and senior citizens Act 2007 also elaborated the other beneficiary laws and declare their importance.

1. Smt. S Vanitha

Versues

The deputy commissioner Bengluru Urban District and ors. ⁶

In this matter an application filed by the Second and Third respondents against the appellant, who is their daughter-in-law. They filed an application under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act 2007, and inter alia, wanted the eviction of appellant and her daughter's from their residential house. The Assistant Commissioner and the Deputy Commissioner by allowing the application directed the appellant to vacate the premises. After this the appellant went for a writ proceeding under Article 226 of the Constitution before a Single Judge, and in appeal before a Division Bench of the High Court of Karnataka. The Bench decided that the suit premises belonged to the mother-in-law (the Second respondent) of the appellant and the remedy of the appellant for maintenance and shelter can get only against her husband (the Fourth respondent). The Bench upheld the Order of the Deputy Commissioner, and directed the appellant to vacate the suit premises before 31 December 2019. Challenging the jurisdiction of the authorities the

appellant has gone to Supreme Court under Article 136 of the Constitution. The court found that “Section 23 of the said Act confers two separate and distinct rights: (a) Section 23(1) empowers the Tribunal to declare a transfer of property by a senior citizen void, where the transfer was conditioned upon providing basic amenities and physical needs to a senior citizen, where the transferee fails to provide them; Section 23(2) recognizes a pre-existing right of a senior citizen to receive maintenance out of an estate and secures the right of making it enforceable against a transferee who had notice of the right.” The expression “maintenance” in Section 2(b) includes “provision for residence and a right to reside can be enforced by a senior citizen, if the property is transferred without making a suitable provision for maintenance”. Though the Senior Citizens Act 2007 does not contain an express provision enabling the Tribunal to pass eviction orders, the power has to be read within its jurisdiction by necessary implication. The contrary view would cause hardship to senior citizens who would be powerless, despite being forcibly dispossessed of their means of sustenance. Court concluded the claim of the appellant that “the premises constitute a shared household within the meaning of the 2005 Act would have to be determined by the appropriate forum”.

2. Balbir Kaur
Vs
Presiding Officer-cum-Sdm And.....⁷

In this case court said that “whether relationship has a chain with maintenance, which is dealt in chapter II, but the same has no connection with protection, which is consisted in chapter V. The head note of chapter II is “Maintenance of parents and senior citizen.” This contains sections 5 to 18 of the Act, where section 22 comes in chapter V, with the name of “Protection of life and property of a senior citizen.” Chapter II is applicable to both parents and senior citizens whereas chapter V applies to only senior citizens. Therefore, it is clear that the relationship is of no importance as far as the applicability of chapter V of the Act is concerned”.

⁶ Civil appeal No. 3822 of 2020

⁷ Civil writ petition No 15477 of 2014

3. Justice Shanti Sarup dewan

Vs

Union territory ⁸

In this case the court held that “the courts can’t be left helpless to assist the senior citizen whose rights are protected under the maintenance and welfare of parents and senior citizens act 2007 because of obdurate and unreasonable stand of the son. So the court directs the administration of union territory Chandigarh that it should take steps to bring into force proper rules under sec 32(1) of the said act for the purposes mentioned under subsection 2 of sec 32, so as to protect life and property of senior citizen as envisaged under section 22 of said act.” The court held that the MWPSA Act is not only restricted to grant of Maintenance, but also cast and obligation on the persons who inherit the property of the senior citizens to maintain such relatives by providing protection of life and liberty.

4. Ritika Prashant Jasani

Vs

Anjana Niranjana Jasani ⁹

The Division Bench of Ujjal Bhuyan and Madhav J. Jamdar, J., While explaining the provisions under MWPSA Act, 2007 also elaborated upon the concept of shared household in view of the protection guaranteed under section 17 of protection of women from domestic violence Act 2005 and remanded back the matter to the Tribunal .

⁸ Appeal No. 1007 of 2013

⁹ 2021 SCC Online Bom 1802

5. Dr. Ashwani kumar

Vs

Union of India and Ors.¹⁰

In this case the court clearly announces his verdict about integrated programme for senior citizens. It is noted in the introduction of the programme that there has been a steady rise in the population of senior citizens in India. “The number of elderly persons has increased from 1.98 crore in 1951 to 7.6 crore in 2001 and 10.38 crore in 2011. It is projected that the number of 60plus in india would increase to 14.3 crore in 2021”. The focus of the programme “is to improve the quality of life of the senior citizens by providing basic amenities like shelter, food, medical care and entertainment opportunities.....”. Other than this, programme will provide grant in aid to run and Maintain Senior citizen’s homes etc. Court also drawn to sec 20 of the MWPSCAct which provide for medical support for senior citizen, it clears that govt. hospitals or fully funded or partially funded hospital by the government are bound to give beds and facility for all senior citizens.

6. Simrat Randhawa

Vs

State of Punjab and Haryana¹¹

In this matter the court said that the state Govt. shall prescribe a comprehensive action plan for providing protection of life and property of senior citizens. “Sec 2(e)¹² “prescribed” means prescribed by rules made by the state govt. under this act.” The scope of such comprehensive action plan made by the respective state govt. is aimed at providing protection of life and property of senior citizen.

¹⁰ Civil writ petition 193 of 2016

¹¹ Civil Writ petition No. 4744 of 2018

¹² Maintenance and welfare of parents and senior citizens Act 2007

Mainly the laws and legislations are made for the benefit of the needy. Whether there are many laws and many organizations which are doing enforcement of these beneficiary laws but somehow in today's scenario there are more need to do the stronger efforts because till today the parents and senior citizens are facing many complications and problems.

Some of the Problems faced by parents and senior citizens are:-

1. Ill treatment by sons and daughter in laws is major problem.
2. The senior citizens who are living alone are being looted and killed by anti social elements.
3. The parents and senior citizen which have limited financial resources faces medical problems. They are not able to access a good health care.
4. The rules and process of pension for senior citizens is very tough to adapt.

Some of the Solutions and suggestions for the benefit of parents and senior citizens are :-

- 1- The penalized system should be more strong and effective.
- 2- There must be more laws to be made for protection of Senior citizens.
- 3- Govt. Hospitals as well as private hospitals should have strict rules about care and treatment of older people.
- 4- Govt. should check about the pension system and it must be much easier for senior citizen.

The purpose of making multiple legislation, which are providing laws related to maintenance, to ensure the protection and benefit of parents and senior citizens. It should be used in a manner that compliments such an intention not to be misused. It is common thing that despite of constitutional safeguards, legislative provisions and many pronouncements to support the welfare of parents and senior citizens, there must be a basic change in attitudes and total optimism is needed to achieve the needed goal for elderly.