

An Exhaustive Examination of Person Laws and Precedent Cases for the Protection of Elderly People- Elder Justice

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ABSTRACT

Everything regarding personal laws and precedents for protecting elderly persons in India has been discussed under the framework of elder justice in the research. As senior citizen demography crosses limits, an understanding of how law protects them becomes more essential than ever. This study critically examines certain pertinent personal laws, one of the major laws being the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, which has enshrined the right of elderly persons to maintenance and protection against abuses. It also reviews some importing judicial precedents that shaped the interpretation and implementation of these laws with highlighted important judgments dealing with issues such as neglect or financial exploitation and, above all, the right to dignity. This research is based on the strong requirement to identify those gaps in the existing legal protection of elderly rights, as well as making suggestions to these gaps so that they could become good improvements in the protective betterment of elderly rights. It integrates a critical analysis of legal texts with evaluation by case law for bringing illumination on the many challenges that senior citizens encounter in accessing justice as well as bringing forward recommendations for the policymakers and legal practitioners.

This research will comprehensively cover established applicable personal laws, major cases, and potential reforms to improve elder justice in India.

Keywords: Elder Justice, Personal Laws, Senior Citizens, Legal Protections, Maintenance and Welfare of Parents and Senior Citizens Act

INTRODUCTION

A very considerable demographic change takes place in the emerging landscapes of India wherein its people are aged increasingly older. As of 2024, the number of individuals aged 60 and above was estimated to exceed 156.7 million, a figure projected to rise sharply in the coming decades¹. This demographic transition creates the need for the construction of sound legal frameworks to protect the rights and interests of older citizens. Yet, despite the existence of many personal laws and protective measures, the elderly may continue to face various problems, including those about neglect, financial exploitation, and issues of access to justice.

What this means is that Elder justice is an important dimension that relates to the entire legal rights of older persons with regard to their dignity and welfare. It has to be seen in terms of the comprehensive

¹ New Senior Citizens policy in the works after 25 years – The Economic Times, m.economictimes.com

understanding of laws governing their lives, whether personal or statutory, concerning maintenance, inheritance, and guardianship. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, is definitely one landmark legislation that covers the interests of older persons, wherein it makes a provision for the duties of children towards parents. However, such laws' efficacy naturally depends on the interpretation and application by the judiciary.

This paper aims to provide an exhaustive regarding personal law and case law on the protection of old people in India. It attempts to identify the gaps in protection through the driving authorities and laws for elder justice, along with practical recommendations. The research arises out of the necessity of instituting a legal system that recognizes and actually prescribes the rights of senior citizens. The paper is expected to go further in the compass of this study for contributing to the advocacy for elder welfare and justice.

CONSTITUTIONAL PROVISIONS

Part IV of DPSP outlines the states responsibilities to protect and promote the rights of citizens including senior citizens.

Art. 41 - It basically says that the state to provide public assistance and support for the elderly and ensure their right to work, education and public assistance in case of underserved want.

For eg; the state could create employment opportunities tailored to the skills and capacities of senior citizens².

Art. 46 instructs the state to support the educational and economic interests of vulnerable sections, including economically challenged senior citizens. One way to implement this could be by offering financial aid or special training programs for elderly individuals seeking to enhance their skills for employment.

While DPSP are not legally enforceable they guide the government in formulating policies and programs that benefits senior citizens.

Section 20 of the Hindu Adoptions and maintenance Act, 1956 deals about the maintenance of aged parents³. The Hindu Adoptions and maintenance Act, 1956 is the first personal law statute in India which imposes an obligation to maintain their parents upon the children.

Both son and daughter, as per the provision of the act, had a legal obligation in maintenance to their aged parents who could not maintain themselves while in old times the same obligation was by son alone. The reason was because, only son inherits all the properties and daughters do not inherit. But time changed, as society changed and daughter too became responsible towards maintenance of her parent.

Both the father and the mother can claim by law maintenance supported by their children. Also, stepmother may claim the same if there is not other child of her own. If there is her own child, she should claim against them.

² Rights of Senior Citizens in India, EduRev (2024), <https://edurev.in/t/335829/Rights-of-Senior-Citizens-in-India>.

³ Section 20 of the Hindu Adoptions and maintenance Act, 1956 – Maintenance of children and aged parents:

(1) Subject to the provisions of this section a Hindu is bound, during his or her lifetime, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents.

(2) A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor.

(3) The obligation of a person to maintain his or her aged or infirm parent or a daughter who is unmarried extends in so far as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or other property. Explanation. —In this section “parent” includes a childless step-mother.

Children have a duty to maintain their aged parents even under the Muslim law.

According to Mulla:

1. Children in easy circumstances are bound to maintain their poor parents, although the latter may be able to earn something for themselves.
2. A son though in strained circumstances is bound to maintain his mother, if the mother is poor though she may not be infirm.
3. A son, who though poor, is earning something, is bound to support his father who earns nothing⁴.

According to Tyabji, "parents and grandparents in indigent circumstances are entitled, under Hanafi law, to maintenance from their children and grandchildren who have the means, even if they are able to earn their livelihood. Both sons and daughters have a duty to maintain their parents under the Muslim law".

Under christian and parsi laws do not explicitly mention maintenance provisions for parents, requiring claims to be made under Crpc.

CODE OF CRIMINAL PROCEDURE, 1973

Section 125 in The Code of Criminal Procedure, 1973⁵ are provided for the maintenance of wives, children and parents. As per the section of the CrPC, both the parents who are unable to maintain themselves can raise a claim for maintenance. It should be proved by the parent that the other person having sufficient

⁴ Laws Regarding Maintenance and Care of Senior Citizens and Parents, LawLex (2024), <https://lawlex.org/lex-bulletin/laws-regarding-maintenance-and-care-of-senior-citizens-and-parents/9010>.

⁵ Section 125 in The Code of Criminal Procedure, 1973 – Order for maintenance of wives, children and parents.

(1) If any person having sufficient means neglects or refuses to maintain-

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(C) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself,

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate as such Magistrate thinks fit and to pay the same to such person as the Magistrate may from time to time direct: Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

Explanation. - For the purposes of this Chapter, -

(a) " minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875); is deemed not to have attained his majority;

(b) " wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

(2) Such allowance shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month' s allowances remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made: Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due: Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such

Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing. Explanation. - If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife' s refusal to live with him.

(4) No Wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

sources or financial assistance does not maintain them. Both son and daughter including married have legal obligation to maintain their parents.

MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS ACT, 2007

The enactment of MWPSA Act has been a watershed moment in history when it comes to the creation of special legislation for the elderly. Up to 2007, there was no special or separate legislation which could independently address the senior citizens. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, intends to make it mandatory for children and heirs legally to maintain senior citizens and thereby. This act proposes provisions under state governments to establish old age homes in every district. The MWPSA Act purportedly intends to provide maintenance and welfare to parents and senior citizens as per the relevant provisions of the Indian Constitution. Presumably, it is the only welfare enactment which grants rights to aged people in India. Section 1(2) extends the applicability of this Act even outside the territories of India and it refers to the respective rights and obligations as conceived under the Act of an Indian citizen who has settled outside India. Section 1(3) envisages the Act will be operational if the respective states decide so; interestingly, although it is a central enactment, the operation of the law depends on the states. The interpretation section of this Act defines important words: 'children', 'maintenance', 'parent', 'relative', 'senior citizen', and 'welfare'. On the contrary, the section has not incorporated the individual definitions of words like 'maintenance officer', 'old-age homes', 'medical care', 'desertion', etc. Besides many definitions seem to be unsuitable; for example definition of 'children'; does not include adoptive children, step children, etc. Likewise too narrow are the definitions of 'parent' and 'relative'; thus under Section 2(d), definition of 'parent' includes biological father/mother, adoptive father/mother and step-father/step-mother, but does not include grandparents and parent-in-laws. Another glaring flaw in the interpretation section may be found in the expression 'maintenance'. What the Maintenance Act defines as 'maintenance' is definitely food, clothing, shelter, and medical attendance; in other words, the barest minimum of these. The simple reading of the expression shows that safety and security, which are very much required to lead a peaceful and dignified life by elderly persons, are out of the definition maintenance. Section 3 of the Act has the overriding effect of its provisions above all concurrent laws. In a way the above provision again reiterates the uniqueness and special nature of the Act.

By virtue of Section 4, a parent or a senior citizen unable to maintain himself/herself can prefer an application (in pursuance of Section 5 of the Act) against his/her children or relative(s) if the children or relative(s) fail(s) in maintaining such parent or senior citizen. Equally, the senior citizen can file an application against his relative, who possesses the property, or is likely to inherit the property of the senior citizen, for maintenance. Section 4 has to be understood with reference to Section 12 of the Act, which permits a parent or a senior citizen to file a petition under Chapter 9 of the Code of Criminal Procedure (CPC), 1973 (Act 2 of 1974) for maintenance⁶.

Section 5 of the Act stipulates the procedure of application for maintenance. According to this provision, any parent or senior citizen⁷ who seeks maintenance from his/her children/relative may make an

⁶ Such claims can be made under the relevant provisions of either the MWPSA Act or CrPC. Section 12 of the MWPSA Act makes it optional for a parent or senior citizen to file a maintenance application in any of the forums. Interestingly, Section 12 does not refer to Section 20 of the HAMA.

⁷ If such parent or senior citizen is incapable of moving the application, then any other person or even a registered voluntary association may move such application on behalf of such parent or senior citizen.

application to the Maintenance Tribunal⁸, which may grant interim maintenance while the inquiry⁹ to determine the maintenance amount may be ongoing¹⁰.

Section 5 also requires Maintenance Tribunals to hear matters as soon as possible and to dispose of cases within four months from the date of service of notice. The Maintenance Tribunal is established as a First Class Judicial Magistrate under Section 6 since the territory that can be taken cognizance of by such Maintenance Tribunal is provided by the concerned Act. Further, Section 6 stipulates the procedure to be followed by such tribunals while expeditious disposal of cases—for instance, in terms of taking and recording evidence and making ex parte orders under Section 6(4) of the Act. In pursuance of Section 6(5) of the Act, a Director of Social Defence Division, MSJE was appointed¹¹ as the nodal officer through whom summons are served to children/relatives (of senior citizens and parents) who are staying outside India. To Section 6(6) of the Act, it authorizes the Tribunals at their discretion to get the service of a Conciliation Officer prior to adjudication of any application made under Section 5 of the same Act with regard to the result of the said application, for conciliation of the applicant and the respondent.¹²

Section 7 of the Act imposes an obligation on the states to constitute one or more than one Maintenance Tribunals in all sub-divisions within six months from the date of its commencement concerning the MWPSA Act. The Maintenance Tribunals, which will sit before a SDO or an officer above the post of SDO, shall perform adjudication and decide applications under Section 5. However, debatably not a few states could effectively form Maintenance Tribunals in each of the respective sub-divisions. Section 9 provides the powers to the Tribunal for issuance of a maintenance order to the extent of Rs. 10,000 per month, directing children or relatives to pay the amount, if such relatives refused to maintain such senior citizens who cannot maintain themselves with their own means. Such amount should be given to the senior citizen in question within 30 days from the date of that maintenance order(s) passed by the Tribunals.¹³ These orders can also be set aside or modified by the tribunal if subsequent circumstances have changed or if there is proof of a factual mistake; then the tribunals can change the maintenance allowance accordingly¹⁴.

Section 15 of the Act deals with the establishment of at least one Appellate Tribunal in each district. Such Tribunal must be presided over by the District Magistrate (DM) or an officer above the post of DM. As per Section 16 of the Act, any parent or senior citizen who is not satisfied with the decision of a Maintenance Tribunal may prefer an appeal within sixty days from the date of the maintenance order. The time limit of sixty days may, nevertheless, be condoned by the Appellate Tribunal if the petitioner(s) can sufficiently explain the cause of delay in filing the appeal. After hearing both the sides, the Appellate Tribunal may either allow or reject the appeal. The decision rendered by the Appellate Tribunal is final

⁸ Vide Sec. 7 of the Act, the state governments shall constitute one or more Maintenance Tribunals in each sub-division of a district within six months from the date of the commencement of the MWPSA Act. Such Maintenance Tribunals, may also take *suo motu* cognizance of maintenance matters vide Sec. 5(1)(c) of the Act.

⁹ While conducting such inquiry, the Maintenance Tribunal, which functions as a Civil Court, may follow summary procedures. The Tribunal may also seek the assistance of persons who may otherwise have material knowledge critical to such inquiry. For further details, refer to Sec. 8 of the MWPSA Act.

¹⁰ In the event a Maintenance Tribunal conducts an inquiry in conjunction with the provisions under Section 5(3) of the Act, it can follow summary procedure

¹¹ The appointment was made in pursuance of a Gazette Notification dated 22.06.2011.

¹² The Conciliation Officer is supposed to submit his/her findings to the Maintenance Tribunal within one month. If the Conciliation Officer is able to amicably settle the matter between the contending parties, the Tribunal shall pass an order effecting such settlement.

¹³ Maintenance and Welfare of Parents and Senior Citizens Act, No. 56 of 2007, Sec. 13 (India).

¹⁴ Maintenance and Welfare of Parents and Senior Citizens Act, No. 56 of 2007, sec. 10 (India).

and binding on both the parties. Arguably, Section 16 of the Act is one of the contentious sections because on the one hand it extends the *audi alteram partem* rule to the respondents (children and relatives) while on the other hand it does not allow children and relatives to file appeals before the Appellate Tribunal(s). In addition, the provision does not allow any further appeal to a higher forum, indicating that aggrieved parties may only invoke writs or Special Leave Petitions (SLPs) for any prospective remedy.

According to Section 23(1) of the Act, a senior citizen can dispossess his/her son/relative/legal heir from any property which the senior citizen transferred under the terms of providing minimal physical needs or amenities on the part of the transferee and which the transferee fails to provide. Section 23(1) reads:

“... where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal ...”

In *M. Venugopal Vs. D.M Kanyakumari*¹⁵ it was held by the Court that the only condition to receive maintenance is that if seniors are unable to maintain themselves.

In *Leelamma Eapen v The District Magistrate, Kottayam*¹⁶ the petitioner, a senior citizen, is the wife of Sri. K.V. Eapen who had executed Will whereby life interest was created in favour of the petitioner in respect of properties in the Will, and after her death, the property is to devolve absolutely in favour of their son. During the life time of the petitioner, she can enjoy properties with absolute freedom including the right to collect and take all income and to reside in the house. The petitioner preferred an application before the Maintenance Tribunal under the Senior Citizens Act against son and daughter in law, alleging that they are not maintaining her and are not permitting her and her mother-in-law to stay in the house peacefully and to enjoy or collect usufructs from the property covered by the Will. The Maintenance Tribunal passed order directing respondents

1. not to obstruct the petitioner from taking usufructs from the property
2. to create a peaceful living atmosphere for the petitioner in the house, and
3. not to cause any harm to the petitioner.

The applicant had filed writ petition before high court whereby it has been contended that the Maintenance Tribunal cannot pass such kind of orders and the jurisdiction lies before Maintenance Tribunal only with regard to Maintenance and it does not involve the jurisdiction to pass order on other civil rights of the parties. The Court has observed that when a Senior Citizen or a parent, who earns, makes an application to the Maintenance Tribunal claiming that her right to earn is being obstructed by her son, who owed a statutory obligation to maintain the parent, the Maintenance Tribunal should ensure that the Senior Citizen or parent is able to maintain herself from her earnings. The work of the act is not only financial assistance towards an adult, but also to prevent its financial exploitation by such parent or senior citizen from any of his children or relatives. She has the right to occupy the house and take all income as per her will. When she is prevented to access her earnings and house, that doesn't mean she gets deprived of her maintenance. On the application of the parent under Section 5, the Maintenance Tribunal can issue direction to the children, who have obligation to maintain that parent, not to deprive such parent the access to her earnings and residence so that she maintains herself and thus has a normal life.

¹⁵ M. Venugopal v. D.M. Kanyakumari, 2014 (5) CTC 162; 1 (2015) DMC 202 (Mad) ; 2014-4-LW 412.

¹⁶ Leelamma Eapen v. The District Magistrate, Kottayam, WP(C) No. 17425 of 2014 (India).

So under the Act, a senior citizen or parent who is unable to maintain himself or herself because of deprivation of earnings by children or relatives can apply for maintenance, to which the Maintenance Tribunal has jurisdiction and power to issue directions to such children or relatives not to deprive him or her of his or her income, with the goal of making sure that he or she is self-sufficient. The Maintenance Tribunal under the Senior Citizens Act is not restricted to merely issuing orders for monthly allowance for maintenance of seniors, where the relatives or children neglect or refrain from taking care of the senior citizen or parent; rather, it aims to facilitate every senior citizen to maintain himself or herself through own earnings so that he or she could live a dignified life.

RECOMMENDATIONS

1. Awareness Campaigns:

Launch awareness programs at a national level for senior citizens concerning their rights under the MWPC Act and other relevant laws. This would comprise guidance on how to apply for maintenance and as well on litigation options against neglect or abuse.

2. Primarily Streamlining Legal Processes:

Streamlining procedures under MWPC for filing maintenance claims. Making application forms user-friendly with provision of legal aid services to assist elderly people with legal processes would suffice.

3. Safeguarding from Financial Mistreatment:

Establishment of measures that will protect the elderly from financial fraud and exploitation. This can be broadening financial literacy for seniors, or establishing clearer legal reporting and remediation avenues of such forms of abuses.

4. Judicial Oversight:

Promotion of consistent audits of Maintenance Tribunals for gauging their efficiency and effectiveness in dealing with senior citizen cases. This should be able to pin-point bottlenecks and potential improvements.

5. Legal Reforms:

Revisit and revise the existing personal laws pertaining to senior citizens with reference to contemporary contexts in terms of elder rights. This also includes doing away with any discriminatory practices the laws might have.

CONCLUSION

The modern golden society has rightly placed an acute imperative to guard the rights of senior citizens and provide welfare benefits because it is becoming greyer by the day. These constitutional provisions along with the personal laws and the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, would lay the framing for elder justice in the country. However, legislation must go beyond mere letter if we are to truly honour our elders and ensure that they live with dignity.

Creating a society where laws are understood, simplified, and supplemented by well-equipped support systems will empower senior citizens alongside being protective of them. Also, this must be partnered with government is tical action, societal empowerment, and family commitment.

Let us strive to create a society that honours the contributions of its seniors, respects their rights, and provides them with the care they deserve. Such a society will ensure justice and compassion, while also enabling communities to share in the wisdom and experience that only our elders can offer. Together we can move ahead toward building a world where elder justice will not remain a vague aspiration but will take on concrete reality.