

## **Maintenance And Welfare Of Parents And Senior Citizens: Legal Insights**

**Dr. G. Indira Priyadarsini<sup>1\*</sup>, Dr. Sunitha Kanipakam<sup>2</sup>**

### **Introduction:**

In India dharma has placed a pious obligation on the younger generation to take care of parents. Family law also imposes such obligation on the sons to clear the debts of the father. In Indian culture caring the old age people is blessings from God and was considered as punya. In Indian family's son is having great responsibility in taking care of his aged parents. India has a great tradition of joint family system. But due to paradigm shift from age old ethos to urban system, most of the families are not accepting the concept of extended family system. Younger generations have forgot their grandparents and living with them together. Earlier grandparents and other members of the family Traditional values are made imbibed in Indian children from their childhood that older people are wise, experienced and must have due regards, respect and esteem towards them which was variously provided in Vedas, Purana and dharma shastra during the pre-constitution period.

### **International Perception:**

Globally there is a need to pay attention to senior citizens and policy-measures to meet the needs of older people. Bangladesh, China, India and Singapore provided statutory protection since 1990s. With the change in culture, socio demography and economic snag, elderly are prone to problems. Laws adopted are not remedies for addressing all of the problems, they can help persuade families to provide a greater share of the social responsibility and health-care needs of their old members.

Elderly support laws create a statutory responsibility on grownup children to support their parents whose sustenance become unfeasible financially & physically and needs external support. The laws assign responsibilities and establish the extent to which grownup children must provide for their older parents. The laws are predicated on two conditions that defining need through systematic apparatus by the governments where support must be rendered with the social-welfare laws and identify a needy poor person that they must be supported at public expense. The other is statutory responsibilities must be assigned on the legal heirs grounded on the concept of intergenerational equality and mutuality. This is not a newly established but basing on the traditional belief that, in adulthood, children should compensate their parents for the sacrifices that their parents made in supporting them to adulthood. Children shall not abandon their obligations. In such cases, family courts or special tribunals can act as adjudicators and or arbitrators in supporting the elderly.

The Universal Declaration of Human Rights applies to people of all ages. Both the International Covenant on Civil and Political Rights (ICCPR 1966) and the International Covenant on Economic, Social and Cultural Rights (ICESCR 1966) apply to every person regardless of their age.

Apart from rights to all people in general, there are no specific conventions to protect the elderly. The problem is not only local but global hence states and UN must take initiative better late than never.

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<sup>1\*</sup>Asst. Professor, Department of Law, Sri Padmavati Mahila Visvavidyalayam

<sup>2</sup>Asst. Professor, Department of Law, Sri Padmavati Mahila Visvavidyalayam

## **National Insights:**

### **Constitutional Provisions:**

Indian Constitution has given due recognition to the elderly citizens though not explicitly. Article 38(1) provides that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice social, economic and political, shall inform all institutions of the national life. The article further stipulates that the State should endeavour to minimize the inequalities in status, facilities and opportunities.

Article 39(e) entails the State to secure that the health and strength of workers, men and women and children of tender age are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their area of strength. To achieve these goals, the State provides pensions as a monetary benefit to former employees so that they can live a meaningful life with dignity. Article 41 provides that, “the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want”. Article 41 of Indian Constitution provides social security support and welfare of senior citizens, secures the right of senior citizens to employment, education and public assistance, also ensures that the state must uphold these rights in cases of disability, old age or sickness. Meanwhile Article 46 asserts that the educational and economic rights of the elderly must be protected by the state.

In the constitution of India, entry 24 in list III of schedule VII deals with the concept of welfare of labour, including condition of work, provident funds, liability for workmen’s compensation, invalidity and old age pension scheme etc. Therefore, Union and State both can make separate pension rules to provide social protection and security to the aged. The story does not end here. Our Constitution also empowers the states under the entry no. 42 to frame the laws, rules and schemes separately for the aged. Item No. 9 of the state list and item no. 20, 23 and 24 of concurrent list relate to old age pension, social security, insurance, social and economic planning.

The parameters laid down in the Preamble and the concepts of welfare states are the guiding principles. For security and protection through the means of socio-political-economic justice, the state shall strive to reduce the inequalities in income, status and provide facilities and opportunities. In order to achieve these goals some statutory provisions are provided for the upliftment of aged persons or senior people in every sphere of their lives. Senior Citizen Act is most prominently one of them. Apart from these provisions which infer the protection of senior citizens are article 21 which confers right to lead a dignified life, right to livelihood, right to health care, not to be neglected etc., article 14 strikes on arbitrariness, article 19(1g) provides for freedom of speech and expression.

### **Statutory Protection in India:**

With respect to legislations relating to elderly protection in India, before 1956, there were no proper laws for providing maintenance to elder parents. During the privy council period also right to maintenance of the old widow was identified also passed the decree protecting the old widowed mother in *Narayanarao Ramachandra Pant V. Ramabai*, at the outset identified the of the deceased whereas there was no such provision made by the testator and back in her husband’s property.

Hindu Adoption and Maintenance Act, 1956 vests a legal right to claim maintenance from their children on elderly people. It further stipulates that it is the responsibility of a person to maintain their old aged parents in the event they are unable to maintain themselves. Section 20(1) of the act provides that every Hindu son or daughter is under obligation to maintain aged and infirm parent. Parents are entitled to maintenance if they are unable to maintain themselves. The amount is determined by the court taking into consideration the position and status of the parties. Supreme court observed that whether the father or the mother is a Hindu or not, but is entitled to claim maintenance against him or her in *K.M.Adam V. Gopalakrishnan* and also court held in *Kirtikant D. Vadodaria v. State of*

Gujarat that old and infirm parents are entitled to maintenance under this Act from their daughter same way as from son, supreme court opined. The shortcoming this Act was that it was applicable to Hindus only.

Muslim personal Law also imposes a duty on children to maintain their aged parents. According to Mulla Children are bound to maintain their poor parents although they may be able to earn something for themselves, son is bound to maintain his mother, son though poor if earning is bound to support his father who earns nothing. Under Hanafi Law, maintenance of their children and grandchildren who have the means, even if parents are able to earn their livelihood. Both sons and daughters have a duty to maintain their parents under the Muslim law.

There are no such provisions regarding Christians or Parsis in their personal laws.

The Criminal Procedure Code is a secular law which is applicable to every citizen of the country. Section 125(1)(d) of the Criminal Procedure Code provides maintenance to parents and wife which indirectly covers the interim maintenance of elder parents ensuring the economic security of the elders. To claim maintenance under this law, it is necessary to prove that the parents are neglected and do not have sufficient means of income to maintain themselves. Speedy remedy is possible in Cr.P.C when compared to civil procedure. The provision under Cr.P.C is applicable to all, irrespective of their religion and includes adoptive parents. Supreme Court made daughters and sons, married or unmarried, equally responsible to maintain their parents.

Supreme court correctly held that a married daughter who is self-sufficient has to maintain the father or mother who don't have any other son, and the step mother is also equally entitled for the maintenance as the father in *Dr. (Mrs.) Vijaya Manohar Arbat vs Kashi Rao Rajaram Sawai* and also the term mother includes adoptive mother held by the supreme court in *Madhav Dagadu Dange V. Parvatibai Dagadu Dange*.

In 2007, the Maintenance and Welfare of Parents and Senior Citizens Act was passed to provide maintenance support to elderly parents and senior citizens. Until 2007, there was no special or separate legislation exclusively addressing the issues faced by elders. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 seeks to make it a legal obligation for children and heirs to provide sufficient maintenance to senior citizens, and proposes to make provisions for state governments to establish old age homes in every district.

The Act establishes the Maintenance Tribunal to provide speedy and effective relief to elderly persons. Section 19 of the act also mandates the establishment of an old age home in every district and provides for the protection of life and property of the elderly. A significant provision in the Act deals with the Transfer of Property, which can be made void under certain circumstances - like if children/relatives refuse to provide elders with basic amenities and physical needs. This is only applicable in cases where the property was transferred after the commencement of the Act - in 2007. According to the section 24 of the Act, any person who abandons a senior citizen they're responsible for can be jailed for up to 3 months, and/or be made to pay a fine of up to five thousand rupees. The High Courts also directed to establish the state Old Age Homes in each district of the State with the immediate effect along with directing state government to arrange different queues in hospitals and other steps for easement for elderly people while taking medical treatment and also to provide welfare means even if there are no successor interests arising from the senior citizen's property.

The Act attempted to support the care of all old people, including those with no surviving children, and to stipulate civil and criminal penalties for noncompliance. The act also established a tribunal not only to review claims but also to file claims on behalf of old people. For those who did not have any children were still out of the ambit of maintenance and were not covered by any legislation till 2007. The Maintenance and Welfare of Parents and Senior Citizens (Amendment) Bill, 2019 has been introduced in the Lok Sabha on 11-12-2019. The bill seeks to expand the scope of the Act by

modifying the definitions of 'children', 'parents', 'maintenance', 'welfare' and 'senior citizens'. the amendment also proposed to remove the maximum restricted limit of Rs 10,000 per month for maintenance as prescribed in the principal Act. The 2007 Act had restricted the maintenance relief per month to an amount not exceeding Rs 10,000. Now, the order for maintenance may also direct to provide other resources and care for the maintenance, besides the monthly allowance. The tribunal may now take into consideration the standard of living and earning of the parent/senior citizens or of the children or relative, while determining the maintenance. The Bill also includes Homecare services for senior citizens who suffer from difficulties in performing activities of daily life due to any physical or mental impairment.

### **Policies protecting the rights of elders**

The Govt. of India initiated and declared National Policy on Older Persons in 1999. This NPOP recognized certain rights of the aged people and further declared government's responsibilities towards providing economic and social security along with healthcare facilities and protection of life and property of the aged people. In spite of the declaration of said policy in 1999, even after decade no steps were taken to implement it. There was strong and consistent pressure from different organizations, NGOS on the Govt. regarding the implementation of it. This resulted in the passing of the legislation in 2007.

The Policy was launched by the Ministry of Social Justice and Empowerment in pursuance of Article 41 of the Constitution which mandates the state to look after the well-being of the older person in 1999 to improve the situations of the older citizen of the society. The National Policy seeks to assure older persons concerns are national concerns and they will not live unprotected, ignored or marginalized. Thus, the goal of the National Policy is the wellbeing of older persons which aims to strengthen their legitimate place in society and to help them to live the last phase of their life with dignity and peace. The policy ensure that the State will extend support in terms of financial security, health care, shelter, welfare and other needs of older persons, provide protection against abuse and exploitation, make available opportunities for the development of the potential of older persons, seek their participation, and provide services to improve the quality of their lives.

Ministry of Rural Development of India has introduced Indira Gandhi National Old Age Pension Scheme (IGNOAPS) under the National Social Assistance Programme (NSAP) in the year 2007. This scheme provided central assistance by providing pension of Rs. 200/- per month to persons above 60 years of age and Rs. 500/- per month to persons above 80 years of age who belong to households below the poverty line. The State Government is also under the obligation to provide benefits to the senior citizens. Accordingly, the State Government of Maharashtra, under Shravanbal Seva Rajya Nivruttivetan Yojana provides Rs. 400 to the citizens who are eligible for the scheme.

The National Programme for the Health Care for the Elderly is an articulation of the International and national commitment of the Government as envisaged under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), National Policy on Older Person (NPOP) adopted by the Government of India in 1999 and Section 20 of "The Maintenance and Welfare of Parents Act, 2007" dealing with provisions for medical care of Senior Citizen. The main objective of the programme is to provide preventive, curative and rehabilitative services to the elderly persons at various level of health care delivery system of the country.

A Central Sector Scheme to improve the quality of life of the Senior Citizens with an objective to improve the quality of life of the Senior Citizens by providing basic amenities like shelter, food, medical care and entertainment opportunities and by encouraging productive and active ageing through providing support for capacity building of State/ Union Territory, Governments/Non-Governmental Organizations (NGOs)/Panchayati Raj Institutions (PRIs) / local bodies and the community at large. In 2018 this scheme was revised to improve the conditions of the senior citizens

and was implemented to undertake various programmes to ensure the senior citizen gets the basic needs including proper health care.

### **Conclusion:**

Senior Citizens are the most experienced and should be given a higher status in the society. The elderly in our society, are the treasure to be cherished. There is a need to serve the elders in a holistic manner so as to help them to lead a dignified life. Though NGOs and other institutions are creating the awareness on the abuse of elders and working for the protection of the rights of the elderly, it is imperative that it is due responsibility of all the members of the family and our society to take proper care and help the senior citizens to lead a dignified life. The younger generations need to realise their responsibility and acknowledge the sacrifices of elders, respect them and give them due recognition and support. When the older people become weak, the younger ones need to look after all the needs and requirements of them. Even though there are many laws and policies which protect the rights of the senior citizens and prevent their abuse but the current positions of the elderly need greater attention. The Government has been making continuous efforts in preventing financial susceptibility by through several fiscal policies that facilitate the senior citizens in leading a normal life. It is vital for each one of us to understand that it is the moral and social duty of every member of the society to prevent the abuse of the elder citizens and support them in every aspect of their life. It is the need of the hour that the younger need to look back and follow the traditional standards and ethos. The changing modern and fast-moving life may not give time to notice that the same plight soon they will be placed. Values are getting vanished endangering the very foundation of humanity. Hence, there is need for international and national measures to protect the rights of the elders and help them to lead a respectful and dignified life.

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