

EFFICACY OF “THE MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS ACT, 2007”: A CRITICAL ANALYSIS

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This paper contains many schemes and legal provisions for aged persons. This paper covers the both national and international perspective. At international level includes Articles of Universal Declaration of Human Right, United Nation programs, different convention and Declaration. At national level includes constitution, Traditional Hindu law, Hindu adoption and maintenance Act, 1956 Muslim law, Code of criminal procedure. Salient features and critical analysis of The Maintenance and Welfare of Parents and senior citizens Act, 2007 and conclusion of my research paper is that the Legislature has done good work but the provisions of this Act has not been implemented in right direction.

The complete life, the perfect pattern, includes old age as well as youth and maturity. The beauty of the morning and the radiance of noon are good, but it would be a very silly person who drew the curtains and turned on the light in order to shut out the tranquility of the evening. Old age has its pleasures, which, though different, are not less than the pleasures of youth.

SOMERSET MAUGHAM

INTRODUCTION

Old age is a real truth of life which considered the second childhood of a person. This is the time when old persons want to receive something from them to whom they have devoted their whole life and at that time they need more love, respect and time from their children but children are busy to give a beautiful life to their own children. In this way old persons are being neglected by their children and society and forced to live a meaningless and painful life either in old age home or in their own home.

In ancient time the position of parents was very good and they were treated as living God or Goddess for their children. Grand Parents plays a very important role to develop a child to be a well cultured person. But in present scenario due to the nuclear family system the feelings of the children towards their parents are changing day by day. Nowadays children are become so practical and they want to live their life without any interfere and parents are only a burden for them. So the responsibility to maintain the parents has been shifted from children to Government. No doubt different

legislation and welfare schemes and policies for elderly have been implemented by the Government.

Till 2007 there were no special or separate legislation exclusively for Senior Citizens. However, there are efforts made by the Government to initiate a special law to govern and regulate important problems of Senior Citizens. In 2006, on 3rd March, Ms. Sushma Swaraj of BJP has tried to introduce the Bill titled as Senior Citizens (Maintenance, Protection and Welfare) 2006[1], but the Bill could not proceed further. Thereafter, the Government of India, through its Ministry of Social Justice and Empowerment, through then Minister, Smt. Mira Kumar introduced the Bill on 9th March, 2007, titled as “The Maintenance and Welfare of Parents and Senior Citizens Bill 2007” in Lok Sabha. The basic object of the Bill of 2007 was to provide effective remedies for the maintenance and welfare of Parents and Senior Citizens. The above referred bill is now became the Act, which received an ascent of the President of India on 31 December, 2007[2].

Finally India got a special legislation for the benefits of senior citizens and parents. India, a country of Shraavan kumar to whom his life means happiness of his parents and he devoted his whole life in the service of his parents. India is a land of lord Rama who gave up the kingdom and lived in forest for fourteen years to keep the promise of his father and now in that country Government is trying to give respect and maintenance to the parents and senior citizens by an Act means by force.

INTERNATIONAL PERSPECTIVE

The question of ageing was first debated at the United Nations in 1948 at the initiative of Argentina. The issue was again raised by Malta in 1969. In 1971 the General Assembly asked the Secretary-General to prepare a comprehensive report on the elderly and to suggest guideline for the national and international action. In 1978, Assembly decided to hold a World Conference on the Ageing. Accordingly, the World Assembly on Ageing was held in Vienna from July 26 to August 6, 1982 wherein an International Plan of Action on Ageing was adopted. The overall goal of the Plan was to strengthen the ability of individual countries to deal effectively with the ageing in their population, keeping in mind the special concerns and needs of the elderly. The Plan attempted to promote understanding of the social, economic and cultural implications of ageing and of related humanitarian and developed issues. The International Plan of Action on Ageing was adopted by the General Assembly in 1982 and the Assembly in subsequent years called on governments to continue to implement its principles and recommendations.

(i) In 1992, the U.N.General Assembly adopted the proclamation to observe the year 1999 as

the International Year of the Older Persons.

(ii) The U.N.General Assembly has declared “Fist October” as the International Day for the

Elderly later rechristened as the International Day of the Older Persons.

(iii) The U.N.General Assembly on December 16, 1991 adopted 18 principles which are organized into 5 clusters, namely-independence, participation, care, self-fulfillment, and dignity of the older persons.

UNIVERSAL DECLARATION OF HUMAN RIGHT

In Article 25, paragraph 1, it is established that:- “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.” right to security includes right to healthcare if one, due to old age, is unable to afford or pursue healthcare on one’s own., right to an adequate standard of living, right to be free from torture or cruel, inhuman or degrading treatment ,right to participation ,right to non-discrimination.

Convention Relating to the Status of Refugees (1951)

This convention establishes that states shall treat refugees lawfully abiding in their territory with the same respect for rights as other nationals including providing for a refugee’s social security in the event of sickness, disability or old age. As elderly refugees can face very specific challenges from other refugees, this article is particularly applicable to them and their legal rights[3].

European Social Charter (1961) (article 11, 12, 13, 14)

This charter indirectly clarifies rights that are applicable to the situations of many elderly people: the need for a system of social security and medical care. European states are obligated under this charter to eradicate, as far as science will currently allow, the sources and conditions of ill-health as well as prevent the spread of disease. They are also committed to developing systems of social security for those who lack the resources to provide for their own security. Those individuals are also

entitled to receiving appropriate medical care for when their condition necessitates it.

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (1966)

This treaty reiterates the right of everyone to social security. Additionally, all people are entitled to an adequate standard of living, including food, clothing and housing. Going further than the Universal Declaration of Human Rights, the International Covenant also guarantees everyone the right to continuous improvement of living conditions. This can be interpreted to mean that governments should be continuously work toward improving the living conditions of all people, including those under the care of the state, for example, some aged persons.[4]

DECLARATION ON THE RIGHTS OF DISABLED PERSONS (1975)

This declaration defines the status of disabled persons. As some **elderly persons** often suffer from various types of disabilities, the rules established in this declaration are also applicable to them. Disabled people are entitled to all measures designed to assist them in becoming as self-reliant as possible. If a disabled person must stay in an institution for assistance, that individual is entitled to living conditions that come as close as possible to those of other people of the same age. Disabled persons are protected from exploitation and abuse. Organizations of disabled persons are to play a useful consulting role in any issue regarding the rights of the disabled.

Arab Charter on Human Rights (1994)

Every citizen of states in the League has the right to comprehensive social security. Although detail is lacking on rules of implementation for member states, the charter recognizes that member states will also provide care for the aged.[5]

INDIAN PERSPECTIVE

CONSTITUTIONAL PROVISIONS

Art. 38: State to secure a social order for the promotion of welfare of the people

(1)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 the institutions of the national life.

(2) The State shall, in particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

Art. 41: Right to work, to education and to public assistance in certain cases: The State shall, within the limits of economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

Art. 46. Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections -The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

Art.47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health.

TRADITIONAL HINDU LAW:

In traditional period most of the communities founded patriarchal pattern wherein the eldest male parents called "Paterfamilias". He dominated the entire family included all its male, female member and children. The word of the paterfamilias was law for them, which they supposed to follow. There were also some communities which followed matriarchal pattern in which the eldest female of family was central authority to manage all affairs of the family.

HINDU ADOPTION AND MAINTENANCE ACT, 1956

This Act is the personal law in India which imposes an obligation on the children to maintain their parents. With the enactment of said Act the obligation to maintain their parents is not confined to sons only now the daughter also have an equal obligation or duty towards their parents whether she is married or unmarried. It is important to note that only those parents who are financially unable to maintain themselves from any sources, are entitled to seek maintenance under this Act.

Muslim Law:

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

(a) Children in easy circumstances are bound to maintain their poor parents, although the latter may be able to earn something for themselves.

(b) A son though in strained circumstances is bound to maintain his mother, if the mother is poor though she may not be infirm.

(c) A son, who though poor, is earning something, is bound to support his father who earns nothing.

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"[6].

SECTION 125 OF CRIMINAL PROCEDURE CODE, 1973

The provision, however, was introduced for the first time in Sec. 125 of the Code of Criminal Procedure in 1973. It is also essential that the parent establishes that the other party has sufficient means and has neglected or refused to maintain his, i.e., the parent, who is unable to maintain himself. It is important to note that Cr.P.C 1973 is a secular law and governs persons belonging to all religions and communities. Daughters, including married daughters, also have a duty to maintain their parents.

GOVERNMENTAL PROTECTIONS

1. The Government of India approved the National Policy for Older Persons on January 13, 1999 in order to accelerate welfare measures and empowering the elderly in ways beneficial for them. This policy included the following major steps:
 - (i) Setting up of a pension fund for ensuring security for those persons who have been serving in the unorganized sector,
 - (ii) Construction of old age homes and day care centers for every 3-4 districts,
 - (iii) Establishment of resource centers and re-employment bureaus for people above 60 years,
 - (iv) Concessional rail/air fares for travel within and between cities, i.e., 30% discount in train and 50% in Indian Airlines.
 - (v) Enacting legislation for ensuring compulsory geriatric care in all the public hospitals.

2. The Ministry of Justice and Empowerment has announced regarding the setting up of a National Council for Older Person, called age well Foundation. It will seek opinion of aged on measures to make life easier for them.
3. Attempts to sensitize school children to live and work with the elderly. Setting up of around the clock help line and discouraging social ostracism of the older persons are being taken up.
4. The government policy encourages a prompt settlement of pension, provident fund (PF), gratuity, etc. in order to save the superannuated persons from any hardships. It also encourages to make the taxation policies elder sensitive.
5. The policy also accords high priority to their health care needs.
6. According to Sec.88-B, 88-D and 88-DDB of Income Tax Act there are discount in tax for the elderly persons.
7. Life Insurance Corporation of India (LIC) has also been providing several scheme for the benefit of aged persons, i.e., Jeevan Dhara Yojana, Jeevan Akshay Yojana, Senior Citizen Unit Yojana, Medical Insurance Yojana.
8. Former Prime Minister A.B. Bajpai was also launch 'Annapurana Yojana' for the benefit of aged persons. Under this yojana unattended aged persons are being given 10 kg food for every month.
9. It is proposed to allot 10 percent of the houses constructed under government schemes for the urban and rural lower income segments to the older persons on easy loan. The policy mentions.

It may be pointed out that recently the Madurai Bench of the Madras High Court has ruled that the benefits conferred on a Government employee, who is disabled during his/her service period, under Section 47 of Persons with Disabilities (equal opportunities, protection of rights and full participation) Act, 1995 cannot be confined only seven types of medical conditions defined as 'disability' in the Act.

THE MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS ACT, 2007

In pursuance of the understanding at international level, Government of India initiated and declared national policy on older persons in 1999. This policy recognized certain rights of the aged people and further declared Government's responsibility towards providing economic and social security along with healthcare facilities and protection of life and property of the aged people. In spite of the fact that the said policy was declared in 1999, even after decade no steps were taken to implement said policy. There was strong and consistent pressure from different NGOS and demand by aged people, senior citizens organizations etc. on the

government regarding implementation of the same by appropriate Legislation. Therefore, Ministry Of Law And Justice drafted a legislature titled 'The Maintenance and Welfare of Parents and Senior Citizens Act' (hereinafter referred to as the Act), and it was published on December 31, 2007, after receiving the assent of President on December 29, 2007. As mentioned in Section 1 of the Act, it shall come into force in a State on such date as the State Government may appoint. The Act mentions that the person would be considered as a 'senior citizen' if he is a citizen of India and has attained the age of 60 years or above.

SALIENT FEATERS OF THE ACT

- Under Section 4 of the Act senior citizen including a parent who is unable to maintain himself from his own earning or property owned by him can claim maintenance.
- Clause (g) of section 2 of The Act further states that, if the person claiming the maintenance is a parent or grandparent, then he can do so against one or more of his children not being a minor. However if the claimant is a childless senior citizen, then he can do so against his relative. Here 'relative' would mean any legal heir of the childless senior citizen who is not a minor and is in possession of or would inherit his property after his death.
- Under section 4 An application for claiming maintenance before a Tribunal as constituted under Section 7 of the Act, may be made
 1. By a senior citizen or a parent, as the case may be.
 2. If he is incapable, by any other person or organization authorized by him.
 3. The Tribunal may take suo motu.
- Under section 9 of the Act, The Tribunal may pass an order directing children or relatives to make a monthly allowance at such monthly rate for the maintenance of such senior citizen or parent, as it thinks fit, to such parent or senior citizen. However, before passing such order the Tribunal has to take care of these points:
 1. That the children or relatives, as the case may be, have neglected or refused to maintain that parent or the senior citizen concerned.
 2. that the parent or senior citizen, as the case may be, is unable to maintain himself; and
 3. That the Tribunal is satisfied with such neglect or refusal by the children or relatives.
- The maximum maintenance allowance which may be ordered by such Tribunal should be prescribed by the State Government, but the

amount in no case can exceed ten thousand rupees per month.

- Section 10 states that where it is proved that there was any misrepresentation or mistake of fact or a change in the circumstances of any person has to take place, who has been receiving a monthly allowance, then in those situations, the Tribunal is empowered to make such alteration, as it thinks fit, in the allowance for the maintenance
- Section 23 states that where a senior citizen after the commencement of this Act, has transferred his property(movable or immovable), by way of gift or any such transfer, but the condition that the transferee shall provide him basic amenities and physical needs, is attached with the transfer, and thereafter such transferee refuses or fails to fulfill such condition, such transfer of property shall be deemed to have been made by fraud, coercion or undue influence and the Tribunal can declare such transfer as void.
- Section 19 of the Act makes it compulsory for the State Government to establish and maintain at least one old-age home in each district to accommodate a minimum of one hundred fifty senior citizens who are indigent.
- Section 20 of the Act states that State Government shall ensure that-
 1. the hospitals which are controlled by the Government or hospitals which receive whole or part of their funds from the Government, shall provide beds for all senior citizens as far as possible;
 2. separate queues be arranged for senior citizens, so that they don't have to wait long in the queue;
 3. facility for treatment of chronic, terminal and degenerative diseases is expanded for senior citizens;
 4. research activities for chronic elderly diseases and ageing is expanded;
 5. There are earmarked facilities for geriatric patients in every district hospital duly headed by a medical officer with experience in geriatric care.
- Section 21 states that State Government shall take all measures to ensure that-
 1. the provisions of this Act are given wide publicity through public media including the television, radio and the print, at regular intervals;
 2. the police officers and the members of the judicial service, along with the Central and State Government Officers, are given periodic sensitization and awareness training on the issues relating to this Act;
 3. Effective co-ordination between the services provided by the concerned Ministries or

Departments dealing with law, home affairs, health and welfare, to address the issues relating to the welfare of the senior citizens and periodical review of the same is conducted.

CRITICAL ANALYSIS OF THE ACT

This Act was passed by central government in 2007 but most of states passed the Act within last few years and show no interest in this Act due to no sound directions by the central government to the states. Act is not achieving its objectives.

There are some of the lacunas in the Act:

- The definition of senior citizens differs from the National Policy on Older People. Citizen includes both Indian citizens aged above 60 years and all parents irrespective of age. It also includes all parents with children above age of 18 years.
- Act states that the presiding Officer of the Tribunal will be Sub Divisional Officer and also the appellate powers are vested in the District Magistrate that means the persons from Revenue Department who may not be having the knowledge of law and proper proceeding of court.
- Revenue Department is already overburdened and assigning job of adjudicating issues/cases of the senior citizens which require to be decided on priority would not be given that much attention. If this happens then very object of enacting this special legislation would frustrate. In this circumstance senior citizens will suffer double injustice. Since jurisdiction of other courts are also barred by this legislation.
- Act prohibits the entry of the advocates and complete exclusion of the lawyers from the purview of the Tribunal has no reasons or details and logic behind it.
- The provisions of the Act provide that the Maintenance Officer designated by State Government shall represent senior citizen if he so desire, but no such facility is available to other party and this will be a violation of natural justice.
- There is a strong chance to face the problems by the aged persons because the entire responsibility of establishing Tribunals, enacting rules is subsists with state and this is not a mandatory provision so State may or may not establish Tribunal to adjudicate the cases of senior citizens
- The Presiding officer of the Tribunal has no power of discretion in awarding the maintenance amount and the power is vested with the State Government. This will again result in injustice

with the aged people. There is every possibility that the amount fixed by the government may vary from State to State.

- To impose a liability on a person who happens to be a relative of the senior citizen on the ground that he will inherit the property of the senior citizen is illogical and unreasonable because there is no guarantee that the relative will definitely inherit the property of the senior citizen and the senior citizen may sell his property to any third party before his death and there may also be a chance that relative is not interested to accept the aged persons property then can he be bound to give the maintenance?
- The exclusion of the jurisdiction of Civil Courts is not justified, because Tribunals are not manned by legally qualified or experienced persons. Further the protection given to Central and State Government and the authorities of the government that no proceedings can be initiated against them. This is a violation of principles of natural justice.
- The Act confer right to file appeal only to senior citizen and other party is not having said right. This is contradictory to the Constitutional principle of equality. There is no facility available to childless senior citizens.
- There is no provision in this Act about the management and administration of the old age home and In absence of clear cut provisions with regard to Old Age Home, the said provision may not work in reality and will frustrate the intent of legislature.
- The provision of the Act directing the government to provide medical support to the senior citizens, shall provide beds to senior citizens and such hospital shall be headed by a medical officer having experience in Geriatric care found to be ornamental only. Very few hospitals have Geriatric Care and medicine Experts in India.

CONCLUSION AND SUGGESTIONS

Being a democratic and welfare state, India have taken very important step to make a special law for the aged persons who are the real and very vital asset of our country but due to some changes in our traditional culture we are unable to get benefit from the precious ideas and suggestions of the aged persons and not fulfilling our duty to give the love, respect and maintenance to our aged persons. But this Act is not achieving the objectives for which this was enacted, even people are not aware about this Act and without awareness of the Act fruits can't be given to the needy persons.

Senior citizens, in spite of their number, collective wisdom and experience will continue to be ignored and marginalized, unless they unite. --- Kofi Annan.

There are some suggestions to make this Act more effective and meaningful for the needy:

- Some important steps should be taken for the awareness of the Act and this objective may be achieved by proper advertisement and for this purpose media, Law students and NGOs may play a vital role.
- No person can be forced to give love and respect to other person if he is not interested to do so, then some steps should be taken which will make feel to the people that aged persons are how much valuable for us and they have devoted their whole life for their children. Our present education system is making the students feeling less so we should think seriously and move towards traditional education system which shows us the value of aged persons.
- There should be a counseling of those persons who put their parents in to old age home and telecast by media.
- Old age home should be properly inspected by the efficient authority.
- Old age home and orphan child care center should be merged.
- Lacunas of the Act should be removed as soon as possible.

[1] Bill No. X of 2006.

[2] Bill No 40 Of 2007

[3] Article 24

[4] Article 9, 11, 12

[5] Article 30, 38

[6] <http://www.researchfront.in/13%20Special%20Issue%204/13.pdf>