

# Philosophy of Maintenance and Welfare of Parents and Senior Citizens Act, 2007 in India: An Appraisal

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## ABSTRACT

When the winds of change blow all around and new situations and conditions emerge, this necessitate newer responses conducive to achieve the broad national goal. There has been a steady rise in the population of older persons in India, because of an appreciable increase in the life expectancy. But with the increase in population the traditional norms and status of the senior citizens have deteriorated. The result of withering of the joint family system, industrialization, globalization etc. is that a large number of parents are not being maintained by their children, as was the normal social practice. Consequently, the elders are now exposed to emotional neglect and to lack of physical and financial support. They are facing a lot of problems in the absence of adequate social security. Keeping in view these facts, to ensure that the children perform their moral obligation towards their parents and to eliminate the agony and sufferings of this vulnerable section of society, legislation for the welfare of the Parents and Senior Citizens in pursuance of the provisions of Article 41 read with Entry 23 of the Concurrent List (Schedule VIII) of the Constitution of India has been enacted and titled as The Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

**Keywords :** Analysis; Improvisation ; legislative drawbacks; Judicial endeavour; Appraisal

## I. INTRODUCTION

God has imposed a pious duty on each and every child to maintain his parents as they are true images of Brahma, Vishnu and Mahesh. This is a universal concept and has been accepted worldwide. The moral duty under divine law to maintain parents, is recognised by all people although, the position and extent of such duty varies from community to community. In earlier days, amongst the Hindus, the obligation of sons to maintain their aged parents, who were not able to maintain themselves out of their own earning and property, was not dependant upon their possession of family property rather it was a personal legal obligation enforceable by the sovereign or the state. Similarly, Muslim law imposes duty on children to maintain their aged and poor parents. The obligation, however, is dependent on their having means to do so. With the gradual decline in this moral duty, the statutory provisions for the protection of parents were added under different laws. Hindu Adoption and Maintenance Act<sup>1</sup> imposes an equal obligation on the children to maintain their parents who are financially unable to maintain themselves from any source. The secular provision was introduced in the Code of Criminal Procedure<sup>2</sup> which imposes duty on persons belonging to all religions and communities including married daughters, to maintain their parents. The Domestic Violence Act, 2005 too confers rights on the parents to seek relief from any kind of abuse. It is however surprising that none of the aforementioned acts contain any effective provisions to maintain the parents or senior citizens.

Non existence of welfare laws have virtually worsened the position of these poor creatures and are being victimized for want of such legislations.

Further, with the withering away of the joint family system, traditional family bonds, industrialization, urbanization, globalization, demographic shift, new life style etc., the traditional norms and status of the senior citizens have deteriorated. Parents who were compared to God and addressed "Matru-deo Bhava", "Pitrudeo Bhava" etc., who were the country's once-revered elders are becoming increasingly marginalized, which was not the normal social practice. Consequently, the elders are now exposed to emotional neglect, feeling of rejection, dwindled physical and financial support and social insecurity making ageing a major social challenge. When such winds of change blow all around and new situations and conditions emerge, this necessitates newer responses conducive to achieve the broad national goal.

Keeping in view the growing problems of the elders, the legislators have earnestly endeavoured to come forth with the various bills like Destitute and needy Senior Citizens (care, protection and welfare) Bill, 2005, Needy and neglected Senior Citizens and Orphans and Runaway Children (care and rehabilitation and welfare) Bill, 2005, Destitute, Abandoned and Neglected Widows and Old Women (welfare and rehabilitation) Bill, 2007, Destitute, Indigent and Neglected Citizens (maintenance and welfare) Bill, 2007. However these bills failed to find place in the statute book because of one or the other reasons. But the legal battle to bring the legislation for the welfare of parents and senior citizens did not stop here. The legislators mustered their potential and have ultimately

1. Sec 20, Hindu Adoption and Maintenance Act, 1956.

2. Sec. 125, Code of Criminal Procedure, 1973.

come out with the legislation<sup>3</sup> titled as The Maintenance and Welfare of Parents and Senior Citizens Act, 2007. It aims at elimination of sufferings of this vulnerable section of the society with an assurance that the children donot run away from their moral obligations which perhaps the God himself has taught to every soul. The Act is an embodiment and reflection of Indian traditional strong sense of ethical values and moral obligations of the children towards their parents. The Act certainly obligates the children not to forget their duties and responsibilities towards their parents and elders. What is apparent is not to back out from their moral obligations towards their parents and elders.

## II. Analytical outlines of the Legislation

The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, protects the interests of senior citizens and requires children to provide for maintenance of their parents. A senior citizen including parent, who is unable to maintain himself from his own earning or property owned by him, is entitled to make an application for maintenance against one or more of his children, not being a minor<sup>4</sup>. Also, a childless senior citizen<sup>5</sup>, has right of maintenance against his relative having sufficient means to maintain such senior citizen, provided he is in possession of the property of such senior citizen or he would inherit the property of such senior citizen so that they may lead a normal life. The idea of maintenance has many perspectives. Firstly, it is the most apt form of granting financial independence to the old parents and senior people; secondly, it provides the senior citizens a much needed sense of liberty and also grants them the power to live not bowed down before their children, but independently and with elegance and also the aged being weak and frail physically need more care and attention from their loved ones.

To redress the grievances of parents and senior citizens, the Act provides for the constitution of the Tribunal which is to be presided over by an officer not below the rank of Sub-Divisional Officer of a State<sup>6</sup>. Tribunal may for the purpose of adjudicating and deciding upon any claim for maintenance, choose one or more persons possessing special knowledge of any matter relevant to the inquiry, to assist it in holding the inquiry<sup>7</sup>. The appeal against the order of the Tribunal lies to the Appellate Tribunal presided over by an officer not below the rank of District Magistrate<sup>8</sup>.

An application for maintenance is to be made by a senior citizen or a parent, or if he is incapable, by any other person or organisation authorised by him or the Tribunal may take cognizance suo motu<sup>9</sup>. The Tribunal before hearing an application may refer the matter to a Conciliation Officer for arriving at amicable settlement<sup>10</sup>. Where the children or

relative is residing out of India, the summons are served by the Tribunal through such authority, as the Central Government may specify in this behalf<sup>11</sup>. If the Conciliation Officer is not successful in reaching the settlement, the Tribunal may proceed further but no party to a proceeding before a Tribunal or Appellate Tribunal shall be represented by a legal practitioner<sup>12</sup>. But State Government may designate Maintenance Officer who shall represent a parent if he so desires<sup>13</sup>. The Tribunal may, during the pendency of the proceeding regarding monthly allowance for the maintenance, direct such children or relative to pay a monthly allowance for the interim maintenance to senior citizen including parent<sup>14</sup>. Such application is to be disposed of within ninety days from the date of the service of notice of the application to such person, which is extendable to a maximum period of thirty days in exceptional circumstances for reasons to be recorded in writing<sup>15</sup>. If, children or relative so ordered fail, without sufficient cause to comply with the order, Tribunal may, for every breach of the order, issue a warrant for levying fines, and may sentence such person to imprisonment for a term which may extend to one month or until payment<sup>16</sup>. If the Tribunal is satisfied that the children or relative against whom an order for payment of maintenance is proposed to be passed is willfully avoiding or neglecting to attend the Tribunal, the Tribunal may proceed to hear and determine the case ex parte<sup>17</sup>. The maximum maintenance allowance shall not exceed ten thousand rupees per month<sup>18</sup>. Tribunal may direct for payment of simple interest which shall not be less than five per cent, and not more than eighteen percent, in addition to the amount of maintenance<sup>19</sup>. A copy of the order of maintenance is given to the senior citizen or to parent without payment of any fee<sup>20</sup>. The appeal against the order lies within sixty days from the date of the order to the Appellate Tribunal<sup>21</sup>. The Appellate Tribunal shall make an endeavour to pronounce its order in writing within one month of the receipt of an appeal<sup>22</sup>.

The Act also directs State governments in every district to establish and maintain old age homes at accessible places to accommodate in such homes a minimum of one hundred fifty senior citizens who are indigent<sup>23</sup>. It also imposes duty on the Government to prescribe a scheme for management of old age homes, including the standards and various types of services to be provided by them which are necessary for medical care and means of entertainment to the inhabitants of such

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11. Id; Section 6(5).

12. Id; Section 17.

13. Id; Section 18(2).

14. Id; Section 5(2).

15. Id; Section 5(4).

16. Id; Section 5(8).

17. Id; Section 6 Proviso to (4).

18. Id; Section 9(2).

19. Id; Section 14.

20. Id; Section 11(1).

21. Id; Section 16(1).

22. Id; Section 16(5)(1).

23. Id; Section 19(1).

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3. Article 41 read with Entry 23 of the Concurrent List (Schedule VIII).

4. Section 4(1)(i), The Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

5. Id; Section 4(1)(ii).

6. Id; Section 7(1) and (2).

7. Id; Section 8(3).

8. Id; Section 15(1) and (2).

9. Id; Section 5(1).

10. Id; Section 6(6).

homes<sup>24</sup>. For establishment of such homes, Government of India gives grant in aid to NGO to provide homes with food, shelter and other welfare measures.

The major cause of anxiety in old age is deteriorating health condition coupled with dwindling financial position. Therefore, provisions to provide better medical facilities to older persons have been incorporated in the Act. It states that State Government shall ensure for all senior citizens that the Government hospitals are providing beds, separate queues, facility for treatment, and research activities for chronic elderly diseases and earmarked facilities for geriatric patients in every district and are also duly headed by a medical officer with experience in geriatric care<sup>25</sup>.

The Act necessitates that State Government shall take all measures to give wide publicity through public media including the television, radio and the print, at regular intervals, periodic sensitization and awareness training on the issues relating to this Act to the police officers and the members of the judicial service and to make 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 their periodical review<sup>26</sup>.

To ensure the security of senior citizens, the Act obligates States to prescribe a comprehensive action plan for providing protection of life and property of senior citizens<sup>27</sup>. For ensuring properly carrying out provisions of this Act, State Government is empowered to confer powers and impose duties on a District Magistrate<sup>28</sup>. This is because some older persons may be without any family support or their children may all be settled abroad, or they may not be able to live amicably with their children for any reason and hence, they are increasingly becoming soft targets of anti social elements. According to provision in the Act, the Central Government may make periodic review and monitor the progress of the implementation of the provisions of this Act by the State Governments<sup>29</sup>.

Where any senior citizen who, after the commencement of this Act, has by way of gift or otherwise, transferred 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<sup>30</sup>. The right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous, but not against the transferee for consideration and without notice of right<sup>31</sup>. Also, if a person, having the care or protection of senior citizen

leaves, such senior citizen in any place with the intention of wholly abandoning him, that person shall be punishable with imprisonment for a term which may extend to three months or fine which may extend to five thousand rupees or with both<sup>32</sup>. Every offence under this Act is cognizable and bailable and shall be tried summarily by a Magistrate<sup>33</sup>. No Civil Court has jurisdiction in respect of any matter to which any provision of this Act applies and no injunction can be granted by any Civil Court in respect of anything which is done or intended to be done by or under this Act<sup>34</sup>.

### III. Comparative Analysis-Improvisation of the existing laws

There is a considerable difference between S.125 Cr.PC and the said Act<sup>35</sup>. Under Cr.PC there is no provision for maintenance of senior citizen who is without child; only the Magistrate orders the claim for maintenance; proceedings are time consuming and cumbersome in addition to being expensive; advocate can participate in proceedings; there is no provision for conciliation; only an affected parent can file a case for maintenance; case has to go through all the normal channels of appeal; no time limit for disposal of appeal and also, there is restrictive definition of parents. But under this Act a childless senior citizen can claim maintenance; tribunal decides the case within the time limit of 90 days and hence simpler, speedier and inexpensive remedy; participation of advocate is barred; there is provision for conciliation; in addition to the parent, his representatives/NGOs authorized by the parents can file application for claiming maintenance or Tribunal can also take suo-motu cognizance and initiate proceedings of the case; only one appeal is allowed, there is time bound disposal of appeal and the definition of parent is wide enough to cover grandparents, parents biological, adopted or step and even relatives or anyone who inherit the property of the senior citizens. The Act also contains a penal provision of imprisonment to the children for a term that can be extended upto a period of three months for neglect and abandonment of their parents. Further, it also contains comprehensive provisions for welfare of senior citizens such as providing health, security, shelter, protection of life and property. Over and above this, a provision in the Act enables the parents who transfer their property to their children or anybody, on the condition of providing maintenance to them, to revoke such transfer on their failure to fulfill such condition. The definition of maintenance is wide enough which includes provision for food, clothing, residence, medical attendance and treatment. It is obligation of children to maintain their parents and attend to their needs, to enable them to lead a normal life. The Acts also casts duty upon the relatives of the childless senior citizens to carry out certain obligations for senior citizens related to them. The definition of relative also brings in its purview cases of those families of defence personnel where son makes the supreme sacrifice and their daughter-in-law, after getting all benefits, rehabilitates herself elsewhere or even goes in for remarriage.

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24. Id; Section 19(2).

25. Id; Section 20(1) to (5).

26. Id; Section 21(i) to (iii).

27. Id; Section 22(2).

28. Id; Section 22(1).

29. Id; Section 31.

30. Id; Section 23(1).

31. Id; Section 23(2).

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32. Id; Section 24.

33. Id; Section 25(1) and (2).

34. Id; Section 27.

35. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

Earlier, provision for maintenance provided under Hindu Adoption and Maintenance Act<sup>36</sup> in which the aged parents can file the proceedings for their maintenance is religion restricted protection. It imposes liability both on son and daughter to maintain their infirm and aged parents, who are unable to maintain themselves out of their own property and earnings. Domestic Violence Act, 2005 provides only for the prevention of abuse of parents by their children.

#### IV. Legislative drawbacks

The legislature has taken adequate care to safeguard the rights of the elderly to the optimum under this Act yet, there lie a few grey areas. They should be worked upon so that they no longer hamper the apt functioning of the Act. It is though opined that as time progresses, there would be a complete code substantial in all aspects to safeguard the interests of this assailable section of the society. The following are some of the demerits which can obstruct the functioning of the Act:

1. The purpose of the Act is to secure financial security of parents who are unable to maintain themselves. The Constitution through its directive principles<sup>37</sup> directs the state and private citizens to make effective provisions for maintenance of senior citizens. In the present Act, the onus has been placed on children and relatives of senior citizens. Additionally, while the Act allows the state governments to establish old age homes, it does not make it mandatory. Also, the Act does not address the needs of senior citizens who do not have either children or property. Further the Act does not make it entirely clear that how the state will deal with children who can't afford to pay for their parents. If the son is also indigent, how can he maintain his parents and grand parents? How would the Tribunal adjudicate such disputes? The indigent son does not have any option than to go behind bars because he is at least assured there of two square meals a day. This may result in pressures and fissures in living arrangement for older persons.

2. The Act provides that the children of a senior citizen have the obligation to maintain a senior citizen to the extent that he "may lead a normal life". The Act does not define what consists of a 'normal life.' However, the maximum compensation or maintenance allowance is Rs 10,000, which is not sufficient for people living in cities.

3. Imposing 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 the senior citizen may sell his property to any third party before his death and there is no guarantee that the relative will definitely inherit the property of the senior citizen. The relative may not be interested in inheriting the property of such senior citizen. As wills are changeable, it is unclear as how one would determine who would inherit the property after death.

4. Complete exclusion of the professional lawyers from the purview of the Tribunal simply defies logic and reasoning.

5. The exclusion of the jurisdiction of civil courts is not justified, because Tribunals are not manned by legally qualified or experienced persons.

36. Supra note 1.

37. (Art 41), Constitution of India.

6. Only parents may appeal against the decision of the Tribunal. There are always two sides of a coin which has to be seen before deciding, which is not done so, in general. Child who has provided whatever possible from her/his side to the parents but still has unsatisfied parents is not protected under this Act. Such parents can make use of the Act to extract more from the child. Threat of punishment can provide maintenance but not family life which is the real goal and necessary for senior citizens and for parents to lead a life of security, care and dignity.

7. The big issue is whether parents will like to take their children to the Tribunal to obtain a maintenance or allowance from them under various social pressures. A better approach may be to design a social security system, including financial security such as pension schemes and reverse mortgages that enable the elderly to live a dignified life.

8. The Act mentions that the tribunal is to be presided over by an officer not below the rank of sub-divisional officer of a state. This job is entrusted to a person, who has already a number of other responsibilities.

9. This Act is silent in case of transfer of property to children. There should be some responsibility on parents not to prepare any will in favour of third parties when the children or relatives are taking care of them.

#### V. Judicial endeavour

Judiciary can play a pivotal role to put the paper rules into action. What is needed is that the judges need to be sensitized to the growing menace of which the parents have become victims. To sensitise judges, judicial officers, senior government officials and non-governmental organisations on implementing this law, the National Legal Services Authority conducted national seminar<sup>38</sup>. On this day, Chief Justice of India K.G Balakrishnan said that there should be proper guidelines to govern private old-age homes to ensure 'right benefits' for the elderly and prevent any exploitation. Further he added while talking about money-making practices adopted by some homes meant for parents of NRIs, "The Jammu and Kashmir High Court recently talked about having guidelines for health clinics...(similarly) it's high time to have guidelines for private old-age homes so that the elderly get the right benefits".

In a case<sup>39</sup> Orissa High Court held that Mother is one who gives birth to and nurtures the newborn. We call her mother because of her mothering and creative qualities. All created beings are inter-dependent and sustain one another with actions. The whole creation is kept in motion when a harmonious relationship between one another is maintained. Social order is preserved through selfless and constant action. But here is a mother who has knocked the doors of justice for sustenance. In a landmark judgment<sup>40</sup>, the Bombay High Court has held that pension is a vital aspect of social security and that the right to receive it constitutes a right to life under the

38 <http://www.seniorsworldchronicle.com/india-judiciary-sensitized-on-law-for.html>

39. Premlata Singh vs. State of Orissa and ors. AIR 2009 (NOC) 3024(ORI.)

40. Manager, Solapur Municipal Corporation and ors. Vs. Devidas Mahadev Potdar and ors. 2009 (3) AIR Bom R 498.

constitution. Delayed pensionary payments place a pensioner in a position of uncertainty and dependence which impinges on the quality of life under Article 21, and the right to dignified existence of the aged.

#### **VI. Appraisal**

To be true, there can be no progress unless and until the pace of progress is linked with the achievement of empowerment of the marginalized sections. There was no social security for senior citizens in our land. Some laws and regulations no doubt provided some concessions to them, but these could be enjoyed only by the selected sections of the society. Now, there is hope that passing of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 would provide great relief to the parents and senior citizens. It provides for positive rights of senior citizens, who are neglected by their children or near relatives for claiming maintenance, from those children and relatives who are likely to inherit their property. This Act is very important as it ensures speedy, inexpensive proceedings. Also the precious time of Hon'ble court can be saved as Tribunals are established. This Act is made applicable to senior citizens who are childless. So a very broad view is adopted in this Act. No hiring of Advocates is allowed and hence the cost of proceedings is reduced. It also contains provisions so that very quick and fast steps are taken to make people aware of the stated Act. It imposes duty on Centre and the States to work out effective strategies to ensure greater security, greater dignity, greater equality and more non-discriminatory treatment to the vulnerable sections of our population. Whatever gaps the Act has, it is going to be a landmark in the life of older people in India. It is a great initiative, and will go a long way in improving the basic fabric of our society, which we are fast losing. Hope this legislation will make a person of seventy years feel young and far more cheerful and hopeful than forty years old.

#### **VII. A Few Suggestions**

1. State Governments should make provisions for setting up Help line, Counseling Centres etc. to cater to the psychological and emotional needs of the senior citizens, particularly those above the age of 70 and widowed women who often spend their twilight years lonely, in a state of negligence and deprivation.
2. Programmes should be organized to recognise the potential of the Senior Citizens by involving them in various activities. Senior Citizens through their experience and familiarity with their communities are well placed to identify the needs and vulnerabilities of their families and neighbours, including the most vulnerable older people. Their participation can contribute to increase confidence amongst older people, particularly older women. Involving older people in the planning processes results in the inclusion of older people in emergency responses, thus mainstreaming ageing in disaster risk reduction plans and activities.
3. Certain strategies and approaches at different levels of policy making, planning and programming etc. will have to be adopted in order to harness untapped potential of these people to make them equal productive citizens of our great Republic. The senior citizens constitute a precious reservoir of such human force as they are gifted with knowledge of varied sorts, plethora of experiences and a wondrous foresight. They

are not broken but are merely weak. Despite them having receded from the daily chores of work, still many of them are physically fit which still makes them an incredible workforce. Hence, given an appropriate opportunity, they are in a position to make immense and significant contribution to the socio-economic development of their nation.

4. The Act needs more publicity to achieve its real purpose. People are to be sensitized about elderly abuse especially the staff of Old Age Homes. The need is to change the mindset that sees people of disadvantage not as a productive national resource. If we encourage public private partnership by engaging NGOs, community organizations and corporate sectors for this programme, it will become cost-free and easier for the Government to work on it.

5. Provisions should be made for financial security by taking measures like Group Insurance and Old Age Pension at the early age. It is really disheartening to note that the senior citizens are mostly neglected, become desolate and find it very difficult to eke out their livelihood. Some of them manage to find a place in the old age homes, some of them choose to beg and most of them die of starvation and uncared for.

6. Elderly are represented by the congested and overloaded Ministry of Social Justice and Empowerment. There is need for separate proactive, vibrant, and dedicated Ministry. There is an urgent need for United Forum to fight for injustice, issues of seniors, to address the problems and work united on solution for the benefits of Elderly.

7. Act is passed by central government but still it has not been implemented by many states and also those states who have implemented the Act, the local government has not made serious effort to make Tribunals and redress the problems.

8. Attempts should be made to sensitise school children to live and work with the elderly. Hence, whether it is an organization or a party or a village or an association, there must be orientation classes for the youngsters to change their attitude towards the senior citizens of a country which is known for its culture, heritage and many a flourishing civilizations. They suffer from senility, immobility, lacking in confidence, lacking in basic amenities, they are forsaken by their own wards with their uncared yearn for love and affection and they suffer in silence. The most serious aspect that remains to be addressed as far as the Senior Citizens in India are concerned is the rank disrespect, discourtesy shown towards them by one and all and simply they are treated and considered as just superfluous elements in the society.

9. Leave rules and transfer rules are to be made liberal so that whenever parents need the care and protection of child, they are there to serve them.

10. In false cases of dowry, precautions should be taken and a procedure should be laid down to conduct enquiry before arresting a senior citizen.

11. Childless people should be allowed to select whom they trust as their caregivers whether they are friends or relatives. The obligations should be imposed on such persons who ensure proper care. Love and affection does not exist amongst all relatives entitling them to inheritance. Not everybody gets along with everybody. Surely, they should have a choice after having slogged throughout their lives. They need respect, companionship and dignity.

The effort should be not to move senior citizens and parents to Old Age Homes but to take them back to their homes.

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