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A critical study on the maintenance and welfare of parents and senior citizens act, 2007

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Abstract

A large percentage of the elderly in Indian society are now vulnerable to neglect, abuse, and loneliness as a result of the country's growing materialism. The National Policy on Older Persons was introduced in 1999 by the Ageing Division of the Government of India in response to this. A crucial measure that followed was the 2007 Maintenance and Welfare of Parents and Senior Citizens Act (MWP Act). This paper examines the MWP Act, emphasising the need that children give their ageing parents necessary maintenance. In addition to providing financial assistance, the Act assures medical services, creates old age homes for the impoverished, and protects property. Penalties for negligence, property revocation, and the creation of tribunals to settle maintenance disputes are among the provisions. The Act gives elderly people legal options, allowing them to request maintenance and making desertion a crime. In conclusion, it emphasises the Act's function in establishing a legal framework for the care of the elderly by giving them a choice between the MWPC Act and the Bharatiya Nagarik Suraksha Sanhita, 2023 (previously Criminal Procedure Code, 1973) when it comes to requesting maintenance. Nonetheless, the courts have contributed to the well-being of senior individuals.

Keywords: Elderly neglect, MWP act 2007, maintenance rights, legal protection, old age homes medical assistance, property rights

Introduction

Elder protection and respect have long been valued traditions in Indian society. Children's attitudes towards their parents have been steadily shifting in recent years under the pretence of preparing the next generation to compete worldwide in jobs and information exchange. As per estimations carried out in 2019, it was found that by the year 2050, India would be home to 319 million elderly people, i.e., 19.5 per cent of the population^[1]. The joint family system is now gradually disappearing as well. Because of this, children rarely get the chance to absorb moral principles from their elders. There is less reverence and affection for the elderly. Some members of the younger generation also neglect to provide for their parents. Therefore, the government had to consider making the religious duty to support one's parents a legal requirement. Therefore, the Code of Criminal Procedure, 1973, for the first time, provided for the payment of support to parents who are unable of providing for themselves. In light of some harsh facts, the government has implemented a brand-new law called "The Maintenance and Welfare of Parents and Senior Citizens Act, 2007" to streamline, lower the cost, and expedite the process. The term 'senior citizen', in India, refers to those people who have attained the age of sixty years or above^[2]. However, the initial approach was not confined, for example, the Policy of 1999^[3], referred to 'older persons'^[4].

National Policies of 1999 and 2001 for Senior Citizens: Policy Statements

India has actively participated in international discussions, such as the Vienna International Plan of Action on ageing (1983). However, issues pertaining to senior folks were not given the attention they deserved at the national level before to 1999. It is abundantly evident that elderly persons should be regarded as a distinct class, exclusive and comprehensive, like women and children, given the substantial demographic shifts occurring and the UN's projections. This class looks for a particular and altered viewpoint—one that is grounded in social reactions to what society owes them rather than in sympathy, pity, or empathy. The "National Policy on Older Persons 1999" was the name of the first senior citizen policy created by the Indian government.

The influence of the demographic shift as well as societal and economic developments on the circumstances of older people has been the subject of much research and controversy over the past 20 years.

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To encourage governments to create their own policies and programs in this area, the UN General Assembly adopted the Proclamation of Ageing and the Global Targets on Ageing for the Year 2001, the United Nations Principles for Older Persons in 1991, and several other resolutions from time to time ^[5].

The policy's nomenclature changed from "older persons" in 1999 to "senior citizens" in 2011. The 2011 Draft Policy took international events into consideration. The focal areas are the areas that the draft policy designated as needing special attention ^[6]. The aging population expansion, the shifting social and economic landscape, the development of science and technology, medical research, and the high rates of poverty among the old rural poor were some of the elements that shaped the new policy.

Object of the Act of 2007

The Act moves forward with the policies that are already in place. However, given how quickly society is changing, the protections offered by the Act are out of step. In addition to subjects related to or incidental to the Constitution, the Act aims to establish more efficient arrangements for the maintenance and care of older persons. The Constitution of India under Article 41 mandates "*the state to make effective provision for securing the old age*" ^[7]. Article 46 also states that "Promotion of educational and economic interests of other weaker sections: The State shall promote with special care of the weaker sections of the people, and shall protect them from social injustice and all forms of exploitation" ^[8]. The Act is wide in its application and encompasses the elderly citizens residing both within and outside India including India. The statement of objects and reasons highlights the declining ideals of Indian society, which once placed a premium on the love and care that today's elderly require. It makes it very evident that elder care and safety must receive more attention since aging has become a significant social issue. The Act refers to two terms which can be read in conjunction, 'maintenance' and 'welfare'. In addition to this there some more objectives of the Act.

- i) The purpose of this Act is to establish suitable mechanisms for the provision of need-based maintenance to elderly individuals and their parents.
- ii) It institutionalizes an appropriate system for safeguarding elderly people's lives and possessions.
- iii) Old Age Homes are being established in each district. It is evident from the aforementioned clauses that the Act encompasses and brings nearly every facet of the lives of elderly individuals in India under its purview, with the solemn goal of ensuring their dignity.

Important Features and analysis of the Act of 2007

The name of the Act is descriptive and indicates that children must provide for their parents and elderly parents. All Indian nationals, regardless of their religion, as well as Indian citizens living abroad who are 60 years of age or older, are covered by this Act; however, no age restriction has been placed on parents. This Act contains 7 chapters and 32 sections some important features are given below

1. In essence, this Act provides for senior citizens' and parents' upkeep. All of life's fundamental needs and requirements are included in the definition of maintenance.
2. This also applies to elderly people without children. He is entitled to maintenance from a family member who is

the senior citizen's legitimate heir and who owns or will inherit his assets upon his passing.

3. If the person against whom a maintenance order is issued does not comply with the order within a month, the Tribunal may imprison them for up to one month.
4. The Tribunal will be considered a Civil Court and will have all of the powers of a Civil Court.
5. A lawyer is not permitted to represent a party. This clause is crucial because it is in charge of reducing the proceedings' expenses.
6. According to this Act, the State Government must build and maintain old age homes in assessable locations, with a minimum of one in each District that can accommodate at least 150 elderly, impoverished people. As a result, this will help senior citizens.
7. This Act includes provisions for senior citizens' medical care.
8. A senior citizen who has given their property to their son, daughter, or close relative through a will or gift may revoke the transfer by applying to the Tribunal if the transferee neglects or refuses to meet their fundamental needs.
9. A person who is responsible for providing care and protection for parents or older persons and intentionally abandons them faces up to three months in prison, a fine of up to Rs. 5,000, or both. According to the aforementioned features, older citizens are now shielded from any threats, and any offense committed under this act is punishable by law and subject to bail. However, it seems that diverse positions were held during the Act's implementation.

The Maintenance and Welfare of Parents and Senior Citizens (Amendment) Bill, 2019, 2022 & 2023

The Maintenance and Welfare of Parents and Senior Citizens (Amendment) Bill, 2019 amended the some provision of the Act of 2007, which are summarized below.

1. Inclusion of daughter-in-law and son-in-law under the definition of "Children" to enable their accountability for the care of senior citizens ^[9].
2. Removal of the maximum ceiling of Rs. 10,000 per month as maintenance amount giving the scope for the tribunal to decide the appropriate maintenance amount in each case depending on the need and resources available ^[10].
3. By taking into account the date of application receipt rather than the date the notice was served to the respondents, the tribunal can improve the time limit for deciding on applications. Applications submitted by those 80 years of age and older will be given higher priority and have a shorter processing period.
4. Adding the option for older citizens to submit their applications to the tribunal online in order to improve their access to maintenance claims.
5. Extending the right to appeal to family members or children in accordance with natural justice principles.
6. "Special police units for senior citizens" in each district and "Nodal officers for senior citizens" in each police station are provided.
7. To encourage elderly persons' safety and security, a nationwide helpline with a single number has been established.

The Maintenance and Welfare of Parents and Senior Citizens (Amendment) Bill, 2022 suggested that pension be

provided to senior citizens. It allows all elderly people and senior citizens to come out of their lives of financial instability, dependence, and vulnerability. According to this Bill every senior who earns less than Rs. 8 lakhs a year is eligible to receive a fixed pension payment from the Senior Citizen Welfare Fund, which was created by the Finance Act of 2015, in a way that may be specified. This sum cannot exceed Rs. 20,000 per month^[11].

The Maintenance and Welfare of Parents and Senior Citizens (Amendment) Bill, 2023 has again suggested the following provisions.

1. Free medical and healthcare facilities to the senior citizens in all Government and private hospitals including full reimbursement of amount spent on medicines and treatment^[12].
2. The State Government shall provide social security to all senior citizens and ensure their protection from exploitation and ill-treatment to ensure a peaceful life and healthcare for them, such as monthly pension to each senior citizen, who is unable to maintain himself and who does not have any children or relative, subsidy to each senior citizen up to ninety percent for amount spent on travel by road, air and railways; providing free legal aid to all the senior citizens including setting up of "fast track courts" for prompt disposal of cases wherein senior citizens are involved; and determining criteria for accreditation and registration of voluntary organizations and trusts involved in the welfare of senior citizen^[13].

Judicial Decisions to Protect the Parents and Senior Citizens under the Act of 2007

In the case of *Anil Kumar Dhiman v. State of Haryana*^[14], the Hon'ble Punjab and Haryana High Court held that the aged parents would have the right to evict their son and daughter in law; also observing humanly that, "when the children, who the parents have reared with untold sorrows and miseries, throw them at the mercy of their destiny and use their muscle power to torture and harass them, the parents' world get totally shattered which marks as the beginning for the unfortunate tale of their moving from one Forum to another for redressal."

Similar position was taken by the Hon'ble Delhi High Court in the matter of *Smt. Darshna v. Government of NCT of Delhi & Ors*^[15].

The Section 17 of the MWPC, 2007 which bars the legal representation in proceedings before the Tribunals and Appellate authorities under the Act was challenged in multiple High Courts and it has been conclusively held in the cases of *Paramjit Kumar Saroya v. Union of India*^[16] and *Tarun Saxena v. Union of India*^[17] that Section 30 of the Advocates Act, 1961 allowing for legal representation in all tribunals would supersede Section 17 of the MWPC, 2007 hence advocates may in the interest of elderly persons appear on their behalf in any proceedings in the Tribunal.

In *GS Manju v. KS Gopi*^[18] it was decided by the Hon'ble Kerala HC that the Tribunals set up under MWPC Act, 2017 must elicit truth of the matter and follow inquisitorial approach to find the nature of the case. The case revolved around revocation of gift deed and it was held that the matter is not essentially a civil dispute and the transferor has the right to revoke gift in case the transferee fails to maintain the transferor.

The Hon'ble Calcutta High Court in the case of *Debashish*

Mukherjee v. Sanjib Mukherjee^[19] held that gift deed for transfer of immovable property executed by the parents in favour of their children cannot be declared null & void by the Tribunal until and unless such deed contains a clause that the child in whose favour the deed is being executed is liable to maintain their parents and provide them with basic amenities then such cancellation.

The Court also observed that since the gift deed is not conditional as per section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 it is not revocable. Same held in *Sudesh Chhikara v. Ramti Devi*^[20]. Further increasing the powers of the Tribunals under the MWPC Act, 2007, in the case of *Mr. Dattatrey Shivaji Mane v. Mrs. Lilabai Shivaji Mane and Ors*^[21]. It was held that the tribunal has jurisdiction to pass an order of eviction under Section 4 of the Act in order to safeguard the rights of the elderly.

The Delhi High Court in *Sunny Paul & Anr. v. State NCT of Delhi and Ors*^[22]. Indicated that senior citizens of India still have some remedy against their own children and/or relatives if they are physically abusive. The Court had upheld the order of the Maintenance Tribunal to dispossess an abusive son from the property of his parents. The Maintenance Tribunal had passed the order by virtue of Section 23(1) of the Act.

In *Senior Citizen Welfare Organization & Anr. v. State of Uttarakhand*^[23], the Uttarakhand High Court had observed that senior citizens have the fundamental right to live with dignity and that the state is obliged to create conditions and circumstances to ensure social protection and welfare of senior citizens.

In *Dr Ashwani Kumar v. Union of India and Others*^[24] the Supreme Court highlighted the need for effective implementation of the MWP Act, 2007, to ensure the fulfilment of the fundamental and statutory rights of senior citizens such as Right to Live with Dignity, Right to Health, and Right to Shelter. The Supreme Court has emphasized the need for continuous and periodic monitoring to ensure effective implementation of MWP Act, 2007, and facilitate the promotion of the well-being of senior citizens.

In *Sudesh Chhikara v. Ramti Devi and Anr.*^[25] this Court refused to grant the benefit of Section 23 of the Act. The Court held that when a senior citizen parts with his or her property by executing a gift or a release or otherwise in favour of his or her near and dear ones, a condition of looking after the senior citizen is not necessarily attached to it. On the contrary, very often, such transfers are made out of love and affection without any expectation in return. Therefore, when it is alleged that the conditions mentioned in subsection (1) of Section 23 are attached to a transfer, existence of such conditions must be established before the Tribunal.

The Supreme Court in *Urmila Dixit v Sunil Sharan Dixit and others*^[26] has clarified that a Tribunal under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 has the power to order the eviction and transfer of possession.

Conclusion and Suggestions

In the past, when joint families were popular and caring for the elderly was simple, things were different. But as society has developed, times have changed, and this also applies to the old. To handle the projected increase in the number of senior citizens and their care requirements in the future,

suitable social care systems must be created. Protecting the interests of the elderly is not just the duty of the government; everyone in society has a responsibility to work towards ensuring that the elderly are treated with dignity both within their families and in society at large. Since the issue is not just a legal one but also a social one, all of these rules and provisions would be pointless without the knowledge and assistance of the people in the community. It is important to remember that every youngster must mature and eventually become an elderly person or parent. Whatever we offer our parents will inevitably come back to haunt us. Accordingly this paper put forward the following concrete suggestions to protect the welfare and also maintenance of the senior citizens in India.

1. The maintenance jurisprudence that spans the breadth and depth of the Act is distinct from the elderly care and support jurisprudence that is primarily considered under Sections 19 and 20 of the MWPC Act. For the benefit of the elderly population, the Indian Parliament should prepare a draft an Elderly Care and Support Law.
2. To prevent elders from being emotionally and physically exhausted, lawyers should be permitted to argue their case on their behalf.
3. The government ought to actively engage in educating elderly citizens about the rights outlined in the elderly Citizenship Act of 2007. Mass media, including radio, television, newspapers, and others, should also raise awareness of them. Law schools should provide assistance in raising awareness, with the participation of advocates, instructors, students, and others. To raise awareness among senior citizens, regular seminars had to be planned. The government ought to plan awareness-raising events for senior persons.
4. Offences against senior citizens should be treated as cognizable offences and should be sentenced with grave penalty.
5. Separate police wing should be established to handle the cases relating to senior citizens.
6. For senior citizens, there have to be fast track courts. There should be no delay in justice. They should have their case heard on a daily basis. Senior citizen cases take a long time to hear because the judges are already overburdened with normal cases. For this reason, a special tribunal for older citizens ought to be established.
7. Minimum self-acquired property should be required to be held with the individual. Only after the person's death should the property be transferred. Without appropriate upkeep credited in the parents' names, property shouldn't be passed to the heir.

Every five years, the policy should be continuously revised, existing provisions in the relevant laws should be modified appropriately, and the phrases “welfare” and “maintenance” should be changed to reflect the requirements of a dignified life.

References

1. Statement of Objects and Reasons, The Maintenance and Welfare of Parents and Senior Citizens (Amendment) Bill, 2022
2. Section 2 (h), Maintenance and Welfare of Parents and Senior Citizens Act, 2007. "Senior citizen" means any

person being a citizen of India, who has attained the age of sixty years or above.”

3. National Policy on Older Persons, 1999, Available at: <http://socialjustice.nic.in/writereaddata/UploadFile/National%20Policy%20for%20Older%20Persons%20Year%201999.pdf>.
4. The term ‘older persons’, used in the National Policy on Older Persons, 1999 is wider than the term ‘senior citizens’ used in the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and National Policy on Senior Citizens, 2011. Available at: <http://socialjustice.nic.in/writereaddata/UploadFile/National%20Policy%20for%20Older%20Persons%20Year%201999.pdf> and <http://socialjustice.nic.in/writereaddata/UploadFile/dnpsc.pdf>
5. National Policy on Older Persons, 1999, Available at: <http://socialjustice.nic.in/writereaddata/UploadFile/National%20Policy%20for%20Older%20Persons%20Year%201999.pdf>, para 13
6. *Supra*, note 5
7. Constitution of India, art. 41
8. Constitution of India, art. 46
9. Section 2(a), The Maintenance and Welfare of Parents and Senior Citizens (Amendment) Bill, 2019
10. Section 9(2), The Maintenance and Welfare of Parents and Senior Citizens (Amendment) Bill, 2019
11. Section 2(iiiia), The Maintenance and Welfare of Parents and Senior Citizens (Amendment) Bill, 2022
12. Section 20(ia), The Maintenance and Welfare of Parents and Senior Citizens (Amendment) Bill, 2023
13. Section 21A, The Maintenance and Welfare of Parents and Senior Citizens (Amendment) Bill, 2023
14. CRWP 1357-2019, decided on 21.09.2021
15. WP(c) 6592/2018, decided on 03.10.2018
16. AIR 2014 P&H 121
17. AIR ONLINE Ker 152
18. 2019 SCC Online Ker 5363
19. 2018 SCC Online Cal 616
20. 2022 SCC Online SC 1684
21. 2018 SCC Online Bom 2246
22. 2017 SCC Online Del 7451
23. AIR ONLINE 2018 UTR 808
24. (2019)2 SCC 636
25. 2022 SCC Online SC 1684
26. 2025 SCC Online SC 2