



Maintenance And Welfare Of Parents And Senior Citizens – Legal Protection

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INTRODUCTION

Globally, the population of elder persons is rising faster than the general population. The population ageing has its implications on the life of elder person. This would affect their social, economic and physical well being. More specifically, they are facing so many problems and challenges that may relate to their physical and mental health, problems relating to ageing like, memory loss, declining mobility, absence of interaction to members of family or society due to physical inaccessibility, etc. Financial insecurity is another major issue which declines the quality of life. These problems create the feeling of loneliness and seclusion. Often they are not in a position to manage or maintain their life. Hence, they need regular support from other family members.

At International level various initiatives were taken by UN to tackle the problem. The United Nations in 1982 approved the 1st International Plan of Action on Ageing and in 1991 the General Assembly approved the resolution, UN Principles for Older Persons (Resolution 46/91) and its four main themes - independence, participation, care, self-fulfillment and dignity. The year 1999 was observed as the International Year of Older Persons. The second World Assembly on Ageing (WAA) had adopted collectively a Political Declaration and an International Strategic Plan of Action on Ageing in Madrid in 2002. The 2004 report of the Secretary-General to the General Assembly recommends "assigning full-time focal points on ageing and providing them with adequate resources to further implementation". The International day of older persons is celebrating on 1st October every year. Sustainable Development Goal 3 gives consideration to welfare for all at all ages and thus addresses the problem of ageing too. India is committed to SDGs and has been progressively streamlining global indicators into national development indicators.¹ For handling the issue of Population ageing the government has to frame policies and actions to maintain sustainable economic growth, elimination of poverty and to prevent discrimination.

Government of India has also adopted various policy decisions and administrative measures to ensure financial stability, food security, health care, shelter and other common needs of older persons, equitable share in development, protection against abuse and exploitation, and availability of services to improve the quality of their lives. The Ministry of Social Justice and Empowerment, the nodal agency for the welfare of senior citizens in India has initiated various programmes for the elderly for their maintenance with the cooperation of state governments, NGOs and other members of civil Society. The main focus of this initiative was to help the indigent senior citizens by supporting them by way of old age homes, mobile medicare units, etc. This was implemented by providing support for capacity building of Government, Non-Governmental Organizations, Panchayati Raj Institutions and the Community at large. The Government of India announced the National Policy on Older Persons (NPOP) in January 1999 to reaffirm the commitment to ensure the well-being of the older persons.² National Action Plan for the Welfare of Senior Citizens, Scheme of Integrated Programme for Senior Citizens, State Action Plan for Senior Citizens, National Awards for Senior Citizens-Vayoshreshtha Samman, Senior Citizens Welfare Fund, National Council for Senior Citizens to advise the Government in the formulation and implementation of policy and programmes for the aged, Pradhan Mantri Jan Arogya Yojana, National Programme for Health Care of the Elderly, Indira Gandhi National Old Age Pension Scheme etc. are some of the important initiatives on the part of Government.

The most important proposal on the part of the government is the decision to enact the law for recognizing the rights of parents and senior citizens and its implementation. The Maintenance and Welfare of parents

¹ https://mospi.gov.in/sites/default/files/publication_reports/Elderly%20in%20India%202021.pdf

² Ibid

and senior citizens Act 2007 was enacted by the Parliament to provide more effective provisions for their maintenance which is guaranteed and recognized under the Constitution.³

Due to expansion in life expectancy, the number of old age persons increased considerably. This increase in population caused substantial changes in society and also in the economy. The situation of large number of senior citizens becomes vulnerable without anybody to look after them when they are in need of support from others. As the society has transformed educationally and culturally to a modern 'new gen' one having its own lifestyle and values, their position became so pathetic. So it becomes the responsibility of the government to support these persons and for this the governments have to evolve their policies for holding them. International agencies like UN have encouraged the governments to design their policies for the aged, the welfare of senior citizens national policy on older persons was framed in 1999 to help these persons to ensure a dignified life. The policy gives the assurance that the state will support for their welfare and other needs including financial security, health care, shelter etc., provide protection against abuse and exploitation, make available opportunities for development of the potential of older persons, seek their participation, and provide services so that they can improve the quality of their lives. These are some of the broad principles on which the Policy is based on. The first Act that ensure protection to senior citizens was enacted by the state of Himachal Pradesh.

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

This Act makes provisions for maintenance of parents and senior citizens who is not able to maintain himself either from his earnings or property. The parent can file an application for maintenance either against his children or grand children who is not a minor. If the person is a childless senior citizen application for maintenance can be filed against a relative who is his legal heir and not a minor. The children or grandchildren have an obligation to maintain their parent according to the need of such person to lead a normal life. Under The Maintenance and Welfare of Parents and Senior Citizens (Amendment) Bill, 2019, the definition of the children has been expanded to include biological and adopted sons, daughters, step children, son-in-law and daughter-in-law, grandson, granddaughter and legal guardian of minor children. Likewise, the definition of parent would include biological and adoptive father and mother, grandparents, father-in-law and mother-in-law.

But the obligation of the relatives depends upon their possession of property of the senior citizen in proportion to which the property inherited by him.⁴ Application for maintenance can be made by a parent or a senior citizen by themselves and if they are incapable any other person or any voluntary organization authorized by them or the tribunal may take cognizance suo motu.⁵ The Maintenance and Welfare of Parents and Senior Citizens (Amendment) Bill, 2019 suggests that the application can also be filed by registered post or online or by any other means. It also provides that the applications of senior citizens who are above 80 years must be disposed of within 60 days of receiving the application. But this period will be 90 days for those who are below 80 years. However, in exceptional cases, the period may be extended once by up to 30 days.

The tribunal may order monthly allowance or an interim maintenance to such senior citizen including parents. The maintenance amount can be ordered only after giving notice of application to the children or relatives and after giving the parties an opportunity of being heard and only after inquiry. The time limit for disposing the application is also provided as ninety days from the date of service of notice of application. This may also be extended to thirty days in exceptional circumstances after recording reasons for the same. If children or relative fails to obey the order of the tribunal, warrant may be issued for levying the amount due in the manner provided for levying fines and may sentence him to imprisonment for a term which may extend to one month or until payment whichever is earlier for the maintenance due and remaining unpaid after the execution of the warrant. For recovering the amount due, application must be made to the tribunal.

PROCEEDINGS BEFORE THE TRIBUNAL

On receipt of the application from a parent or a senior citizen, the Tribunal shall issues a process to assure the presence of children or relative against whom the application is made.⁶ If the opposite parties are willfully avoiding the tribunal, it can hear the matter ex parte and decide accordingly. Before hearing an application, the tribunal may, refer the same to a Conciliation Officer who shall submit his findings within one month and if amicable settlement has been arrived at, the Tribunal shall pass an order accordingly.⁷

³ Art.21 guarantees Right to life and personal liberty which implies a dignified life. Article 41 of creates an obligation on the part of the State to make effective provisions for old age, sickness and disablement.

⁴ See sec 4

⁵ Sec 5

⁶ See sec 6 (2)

⁷ Sec 6

MAINTENANCE TRIBUNAL- PROCEDURE

The State Government shall within six months from the date of the Act, constitute for each Sub-division one or more Tribunals for the purpose of adjudicating and deciding upon the order for maintenance. Tribunal may, subject to the rules prescribed by the State Government follow such summary procedure as it deems fit and for the purpose of adjudication of 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.

ORDER FOR MAINTENANCE

The Tribunal may, on satisfaction of neglect or refuse to maintain a senior citizen order the children or relatives to make a monthly allowance at such monthly rate for the maintenance of such senior citizen.⁸ The maximum maintenance allowance to be ordered by the Tribunal shall not exceed ten thousand rupees per month. Tribunal may make such alteration, in the allowance for the maintenance on proof of misrepresentation or mistake of fact or a change in the circumstances of any person receiving a monthly allowance. The order shall also be cancelled or varied in accordance with the decision of a competent Civil Court. But the new amendment bill 2019 seeks to remove the upper limit of ₹10,000 as the monthly maintenance amount. This would definitely help the parents to lead a dignified life based on the standard of living of the senior citizens and their earnings.

A copy of maintenance order including the order regarding expenses of proceedings shall be given without payment of fee to the senior citizen or to the parent and shall be executed in the manner prescribed for the execution of such order by that Code.

Where a senior citizen or a parent is entitled for maintenance under the provisions of Code of Criminal Procedure 1973 also entitled for maintenance under this Act without prejudice to the provisions of Chapter IX Cr. P. C. He claim such maintenance under either of those Acts but not under both.

When an order is made by the Tribunal, the children or relative who is required to pay any amount in terms of such order shall within thirty days of the order deposit the entire amount ordered in such manner as the Tribunal may direct.⁹ The Tribunal also has the power to award interest of such amount but shall not be less than five per cent and not more than eighteen per cent.

Under Section 15, The State Government may constitute one Appellate Tribunal for each district to hear the appeal against the order of the Tribunal which shall be presided over by an officer not below the rank of District Magistrate. Appeal shall be filed within sixty days from the order of the Tribunal.

On receipt of an appeal, the Appellate Tribunal shall issue notice to respondent and may call for the record of proceedings from the Tribunal against whose order the appeal is preferred. The Appellate Tribunal may either allow or reject the appeal. Provided that an appeal shall not be rejected without giving an opportunity of being heard to both the parties. Appeal shall be in writing and shall be disposed of within one month from the date of receipt of the appeal.

No party to a proceeding before a Tribunal or Appellate Tribunal shall be represented by a legal practitioner.¹⁰ The State Government shall designate the District Social Welfare or an officer or an officer equivalent to that designation as Maintenance Officer. The Maintenance Officer shall represent a parent if he so desires, during the proceedings of the Tribunal, or the Appellate Tribunal.¹¹

The jurisdiction and powers of the tribunal and appellate Tribunal was considered by the Court in various instances. In *C.K.Vasu v. The Circle Inspector Of Police*¹² the petitioner, aged 85 years, complained that his three sons caused bodily injury and tried to evict him from his residence. He filed a complaint before the Tribunal and obtained an order of eviction. The single Bench of the Kerala High Court took the view that the Act does not empower the Tribunal to grant relief of eviction. Even a relief of injunction to prevent the senior citizens' children from trespassing upon his or her property was held beyond the jurisdictional bounds of the Tribunal. Similar view was held in *Anand Kumar Agarwal v. Ashok Kumar Agarwal*¹³. In the opinion of the Court, "Leading a 'normal life' could not amount to having a right to evict children or relatives, that too from a portion of the property which was not originally occupied by the parents or senior citizens. The obligation of a relative to maintain a senior citizen, provided he is in possession of the property of such senior citizen or he would inherit the property of such senior citizen cannot stretch its purview to encompass a right to evict, since not provided specifically in the statute."

ESTABLISHMENT OF OLDAGE HOMES

The State Government may establish and maintain such number of old age homes at accessible places, as it may deem necessary and in the beginning at least one in each district to accommodate in such homes a

⁸ Sec 9

⁹ Sec 13

¹⁰ Sec 17

¹¹ Sec 18(2)

¹² Kerala HC on 25 May, 2012 <https://indiankanoon.org/doc/160330556/>

¹³ Calcutta High Court on 5 December, 2018 <https://indiankanoon.org/doc/160330556/>

minimum of one hundred fifty senior citizens who are indigent. The State Government may, 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 homes.¹⁴

The Maintenance and Welfare of Parents and Senior Citizens (Amendment) Bill, 2019 provides that senior citizen care homes may be set up by the central or state government or any organization. It recommended that the Bill should mandate at least one care home and one multi-service day care centre in each district.

MEDICAL CARE OF SENIOR CITIZEN

Section 20 of the Act states, the State Government shall ensure that, the Government hospitals or hospitals funded by the Government shall provide beds for all senior citizens as far as possible; separate queues for senior citizens; facility for treatment of chronic, terminal and degenerative diseases, research activities for chronic elderly diseases, and ageing. There are earmarked facilities for geriatric patients in every district hospital duly headed by a medical officer with experience in geriatric care. The 2019 amendment Bill requires all hospitals, including private hospitals to provide facilities for senior citizens. The District hospitals shall also provide adequate counseling facilities for senior citizens. The government shall set up separate geriatric health facilities, hospitals, and research centres for senior citizens in all states in a time bound manner.

PROTECTION OF LIFE AND PROPERTY OF SENIOR CITIZEN

The State Government shall, take all measures to ensure that the provisions of this Act are given wide publicity through public media including the television, radio and the print, at regular intervals. Government and police Officers, members of the judicial service etc. are given periodic sensitization and awareness training on the issues relating to this Act, effective co-ordination of various departments of the government to address the issues relating to the welfare of the senior citizens and timely review of the same is also to be conducted.¹⁵

As per section 22 of the Act the state government may confer such powers and duties to the District Magistrate and the District Magistrate may specify to the subordinate officer who shall exercise all or any of the powers and duties, so conferred and the local limits within which such powers or duties shall be exercised.

If any senior citizen 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.

¹⁶Any senior citizen who has a right to receive maintenance out of an estate is transferred that estate, 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 it is not applicable against the transferee for consideration and without notice of right. This provision creates confusion in many cases. Whether this provision is applicable to one who has a birth right in the family property, whether the tribunal has the power to issue an order of eviction against the transferee etc. were dealt by different courts and pronounced different opinions.

In *Janardhanan v. The Maintenance Tribunal Appellate*¹⁷ the extend of jurisdiction of the maintenance Tribunal was in issue. The mother made a complaint before the maintenance tribunal alleging that her daughter and son-in-law, the appellants in the present case, had forcefully evicted her from her house and refused to let her in and prevented her entry whenever it is tried by the mother. The appellants contented that the property in issue is ancestral property and the daughter also has a birth right along with the mother. The Tribunal ordered the daughter and the son-in-law to vacate the house within 45 days and to maintain the mother according to her need. The mother again approached the appellate authority complaining that they did not comply with the order. The daughter and the son-in-law filed writ petition before the High Court which observed that "a senior citizen, including those who are unable to maintain himself or herself, has a statutory right for being maintained by his or her children. The only qualification against the reciprocal statutory obligation of children to maintain their parents is that they are not in possession of the property of such senior citizen or that they would not inherit such property and that the daughter and the son-in-law are, admittedly, enjoying both these benefits." The daughter challenged the order of eviction and questioned the jurisdiction of the Tribunal in this writ appeal. Dispute to title was already pending before the civil court. Hence, the order of eviction, in the face of a civil court decree was held erroneous and unsustainable. Consequently the Court set aside the orders and remanded the matter to the Tribunal for fresh adjudication.

¹⁴ Sec 19

¹⁵ Sec 21

¹⁶ Sec 23

¹⁷ Kerala HC 24 March 2017 <https://indiankanoon.org/doc/180275315/>

In *Ranjana Rajkumar Makharia v. Mayadevi Subhkaran Makharia*¹⁸ an appeal from the Tribunal which decided in favour of the applicant praying for the eviction of daughter –in-law from the matrimonial home, given to her husband by his parents when the relationship between the petitioner in this case and the husband has been strained. The petitioner submits that the sub Divisional Magistrate has no authority to pass an order of eviction and there was no case for declaring the transfer of property as void as no property was transferred by way of any gift or otherwise subject to any provision for providing basic amenities. There has been no failure or refusal by the petitioner in this case. In this case the Court discussed rights and liabilities of parties under the Act especially section 4 and section 23.

As per Section 4, a relative of the senior citizen who inherits the property of such senior citizen shall pay maintenance to him in proportion to the property that would be inherited by him. Here the property was obtained by the petitioner's husband under a registered agreement. In this case recovery of possession or eviction was demanded without reference to the need of a senior citizen to use the said property as a part of her maintenance. Moreover the obligation on the part of the relative would arise only in case of a childless senior citizen. Accordingly the Court took the view that the decision of the tribunal was purely erroneous and untenable. With respect to the applicability of these provisions some clarity is needed and that is necessary for the protection of senior citizens and ultimately for the ends of justice.

OFFENCES

Every offence under this Act shall be cognizable and bailable and shall be tried summarily by a Magistrate. Any person who is responsible for taking care of or protection of senior citizen leaves, such senior citizen in any place with the intention of abandoning such senior citizen, shall be punishable with imprisonment of either description for a term which may extend to three months or fine which may extend to five thousands rupees or with both.¹⁹ There is suggestion for increasing the sentence to six months instead of three months imprisonment and fine upto Ten thousand rupees instead of 3000 rupees. No Civil Court shall have jurisdiction to entertain matters in respect of any provision of this Act²⁰ and no injunction shall be granted by it. The Central Government may make periodic review and monitor the progress of the execution of this Act by the State Governments.²¹ With regard to the rights of older persons the Supreme court issued various directions in a petition filed before it in *Dr. Aswani kumar v. Union of India*.²² The Court directed the government to collect data of old age homes, medical facilities and the care of elderly from all states and to publicize the provisions of senior citizens Act 2007 and their constitutional and statutory rights in order to sensitize people especially the elderly. The Central government was asked to direct the state governments to implement the provisions of the Act and to monitor the progress in implementation of the Act. The Supreme court also directed scrutiny of pension schemes so as to be beneficial to the elderly depending upon the availability financial resources both at the Centre and state. The Additional solicitor of India has to file status report with respect to these directions. Here the Court tries to analyse the weak implementation of the provisions of the Act and welfare schemes.

CONCLUSION

There is significant increase in the population of elder people as result of overall development of the state especially in ensuring health care, nutrition, poverty eradication, employment guarantee and basic amenities of life. But at the same time, they are facing lot of challenges physically, mentally, socially and financially. United Nations also has initiated various projects for handling the problems of senior citizens which creates an obligation to the signatories of various international instruments relating to senior citizens to start similar initiatives in their country. Government of India framed strategic policies meant for the welfare and protection of senior citizens and accordingly various administrative and legislative measures were formulated to ensure the financial stability, food security, health care, shelter and other basic necessities which assure them the right to live with dignity.

The Parliament enacted Maintenance and Welfare of parents and senior citizens Act 2007 to provide more effective provisions for the maintenance and protection of senior citizens which is guaranteed and recognized under the Constitution. Provisions for maintenance of parents and senior citizens, the procedure for making an application for the same and for that purpose the Maintenance Tribunal and Appellate Tribunal is established as per the provisions of the Act. The Tribunal can order monthly allowance or interim allowance. The time limit for disposing the application is also provided as ninety days, If the children or relatives fails to

¹⁸ Bombay High Court, decided on 24 February, 2020, <https://indiankanoon.org/doc/64300165/> See also the decision of Calcutta High Court in *Anand Kumar Agarwal And Another v. Ashok Kumar Agarwal* which set aside the order of the Tribunal for eviction. <https://indiankanoon.org/doc/64300165>

¹⁹ Sec 24.

²⁰ Sec 27

²¹ Sec 31

²² Writ P (C) No. 193 OF 2016 <https://www.daaman.org/jd/dr-ashwani-kumar-vs-union-of-india-%26-ors/directions-issued-to-safeguard-the-rights-of-the-elderly>

obey the order there is provision for recovering the maintenance amount and punishment by way of imprisonment. Maintenance officer is appointed under the Act to whom the parent can empower the duty to represent him before the Tribunal if he so desires. The Act also prescribes the Scheme for establishment of old age homes for indigent senior citizens. Provision for medical care like, facility for treatment of chronic, terminal and degenerative diseases, separate queues for senior citizens, counseling facilities etc. The Act makes separate provision for recognizing the rights of senior citizens on transferring his property. If he transfers the property subject to the condition that the transferee shall provide the basic amenities and such transferee fails to provide such amenities, then such transfer can be declared void by the Tribunal. Whether the Tribunal can order eviction of transferee is a different thing on which there are differences of opinion. The right to receive maintenance may be enforced against the transferee. Thus the parents and senior citizens are endowed with benefits of statutory protection. The proposed amendment of the Act would be more effective in ensuring the rights of elderly people.