

# LEGISLATIVE FRAMEWORK REGARDING MAINTENANCE OF PARENTS AND SENIOR CITIZENS IN INDIA: A CRITICAL STUDY

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**Abstract:** The most vulnerable time in a person's life is their senior years. The elderly need the most attention and safety at this stage. Every kid has a moral obligation to uphold their parents as the accurate representations of Brahma, Vishnu, and Mahesh that God has bestowed upon them. However, change is in the air everywhere we look, and fresh circumstances are emerging. The current state of affairs moved the author to tears, prompting him to conduct this research study on The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, in accordance with the guidelines of Article 41 read with Entry 23 of the Concurrent List (Schedule VIII) of the Indian Constitution. To make known which safeguarding laws and penal provisions were created to offer social safety to elderly parents. And what legal changes would be necessary to strengthen Indian cultural roots? And how successful has the legal system been in upholding the right of this vulnerable population elderly parents and senior citizens to live in dignity? Prior to 2007, there was no explicit law in India guaranteeing the rights of senior folks. Under the protection of numerous general laws, including personal laws, the Code of Civil Procedure of 1908, the Indian Penal Code of 1860, the Protection of Women from Domestic Violence Act of 2005, and the Fundamental Rights mentioned in Part III of our Indian Constitution, they were able to assert maintenance and protection against physical torture and mental abuse. However, according to the 2007 Maintenance and Welfare of Parents and Senior Citizens Act, elderly people can now request maintenance and protection under a single piece of legislation. The large gap that is established between the Act and its actual execution is where the gaping hole is. It has been concluded that the rights of senior citizens are not treated seriously by critically examining the terms of the applicable laws and on the basis of empirical facts obtained from the Tribunal formed under the aforementioned Act. Therefore, a list of suggestions is made that could result in the successful application of laws to safeguard senior citizens' fundamental human rights.

**Keywords:** Senior Citizen Rights, Laws, Tribunal, Elderly, Existing Law, Improvisation, Legislative, Amendment Bill

**1.0 Introduction:** Old age is a necessary period of life that a man cannot avoid, short of dying suddenly. Parents are typically regarded as a religious manifestation of God. The obligation to care for elderly parents is a commonly understood concept. Mother and father are the first Gods known to children, unfortunately, in the 21st century, it is difficult to find people who are like God Shri Ram Ji. The nuclear family system, the absence of traditional family ties, industrialization, urbanisation, globalisation, demographic change, new lifestyles, education, etc. are all contributory elements that have led to the breakdown of conventional standards and a decline in the status of older persons. Maybe the entire thing is the result of western nations' misguided views about materialistic living? As a result, there are more occurrences involving elderly people being reported. Even elderly people are occasionally carelessly abandoned to live like strays; in some severe cases, they are removed from their own homes like worthless pieces of paper and eventually discovered begging on the streets in their golden years. The youngsters had

no remorse in directing elderly parents to their door after taking advantage of their parents' wealth. They had no choice but to flee their house and face death. Is this what a parent has dedicated their entire lives to? Parents, who were once seen as a huge benefit to the family, are now seen as a problem and usually mistreated. All agree that it is morally required to support one's parents, albeit the extent of this duty differs from society to civilization. In the past, Hindu sons had a legal obligation to provide for their elderly parents, who were unable to care for themselves, with their earnings and property. They were also obligated to settle any outstanding debts as a sign of piety; today, this obligation is purely private and cannot be enforced by the government. Muslim law holds children accountable for caring for their elderly parents as well. The willingness to maintain is conditioned on having the resources to do so. The legal protections for parents under social laws were added due to the gradual loss in adherence to this moral obligation. For instance, the Indian Constitution states, "The State shall, within the limits of its economic ability and growth, make effective provision for securing the right to work, to education, and to public assistance in cases of unemployment, old age, illness, and disability, and other cases of undeserved want." According to the Hindu Adoption and Maintenance Act, "A person's duty to sustain his or her aged or infirm parent extends in so far as the parent is unable to maintain himself or herself out of his or her own wages or other property." The secular clause, which holds persons of all faiths, including married daughters, accountable for their parents' maintenance, was inserted to the Code of Criminal Procedure. It's astonishing to find that the problem hasn't been resolved despite numerous provisions. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, was passed by lawmakers in a solemn effort to make the process easier and less expensive in light of the aforementioned hard realities. It aims to lessen the pain of this weaker section of society while also making sure that kids don't run away from their moral obligations, which may have been instilled in every soul by God himself.

On 3rd March 2006 first attempt was made by Smt. Sushma Swaraj to introduce Senior Citizens (Maintenance, Protection and Welfare) Bill 2006, but it couldn't proceed further. Later, the 'Ministry of Social Justice and Empowerment' of the Government of India finally introduced 'The Maintenance and Welfare of Parents and Senior Citizens Bill, 2007' on 9th March through the Lok Sabha speaker Smt. Meira Kumar in the lower house of Parliament. This bill received the final assent from the President on 31st December, 2007 and became an Act. The object of the Act is to provide effective legal remedies for the Maintenance and Welfare of Parents and Senior Citizens who are unable to maintain themselves or are above the age of sixty years.

From the above-mentioned provisions and schemes, it seems that the Rights of the Senior Citizens are well protected; however, in reality the problem still remains unsolved. The dilemma lies in the lack of effectiveness of the available laws. There is not even a single piece of 'stringent' legislation which provides complete protection to the Senior Citizens. The 2007 Act undoubtedly, is the only legislation so far enforced in India, solely for Senior Citizens; but the problem with it is that it addresses only economic and financial abuse and fails to provide protection against mental and physical abuses. Many more lacunas may be pointed out through this detailed research.

In the latest August 2018 judgment, the Delhi High Court in one of its cases held that, the daughter-in-law cannot stay at the house of the in-laws, if she mistreats them. This is a remarkable judgment because the Delhi Maintenance and Welfare of Parents and Senior Citizens (Amendment) Rules 2016, mentions only the eviction of son, daughter or legal heirs in case of ill treatment, but does not talk about eviction of daughter-in-law. This is the reason there is need to figure out the lacunas in the legislations, so that it can be corrected urgently.

The Maintenance and Welfare of Parents & Senior Citizens (Amendment) Bill, 2018 amending the 2007 Act has been proposed. Even though the bill seeks to broaden the objective of the act and tries to overcome the lacunas, the issue still remains the same. Hence there is need to critically analyze and study the legislations, its implementations and its effectiveness.

## **2.0 Objective of the Research Paper**

- To discuss the Indian Laws available for the welfare and protection of Senior citizens.
- To make suggestion for the effective implementation of the Act, 2007.
- To discuss what changes were aimed by the implementation of "The Maintenance And Welfare of Parents And Senior Citizens (Amendment) Bill, 2019
- To identify the lacunas in the existing legislation.

**3.0 Analysis of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007**

The Indian legislature passed a unique piece of central legislation in 2007 under Article 41 and Entry 23 of Concurrent Lists that was focused entirely on defending senior citizens' rights. The "Himachal Pradesh Maintenance of Parents and Dependents Act, 2001" passed by the state of Himachal Pradesh is the model for the legislation. The need for enactment of the aforementioned law was underlined in the Standing Committee on Social Justice and Empowerment's twenty-eighth report. This law creates a low-cost, quick, and straightforward procedure for defending older folks' rights. After being approved by both houses, the Bill was published in the official gazette on December 31, 2007, and on December 29, 2007, the President of India gave his assent. Some states have already put the Act into effect, while others have yet to do so and set rules.

According to the Act, senior persons' offspring and heirs are legally obligated to pay for their support. Additionally, it places obligations on the state government for the construction of nursing facilities. According to this Act, parents or older persons may submit a claim to the tribunal for a monthly stipend from their own children or other legal heirs.

According to Section 2(a) of the Act, "children" include sons, daughters, grandsons, and grand daughters. This implies that only biological children and grandkids are included. The court has been informed of numerous cases when adoptive children or daughter-in-laws have mistreated parents or senior persons and have been able to elude justice because of this gap in the system.

Section 2(b) defines "maintenance" as only including "basic essentials" such food, shelter, clothing, and medical assistance. However, it does not address the issue of the parents' or older citizens' safety and security.

According to Section 2(g), a "relative" is someone who is in possession of the property or will inherit it when the childless senior citizen passes away. Given that wills are subject to change, how would one decide who would inherit the senior's possessions in such circumstances?

Section 7 of the Act deals with the establishment of Maintenance Tribunals at each sub-division, where the Tribunals will have all the authority of a civil court. The disagreement may be referred to a conciliating officer for an amicable resolution within a month before an application is considered. A maximum of 90 days shall pass before the tribunal decides the application. According to section 16, an appeal can be brought before the state-established appellate tribunal and must be resolved within a month.

The maximum maintenance allowance, which the tribunal may order, is set at Rs. 10,000 per month by Section 9(2). The elderly may find that this sum is frequently insufficient to maintain a respectable quality of life, especially if their medical or other costs are higher. It may not be possible for parents or older persons in some situations when they have lived luxuriously or at a very high quality of living their entire life to get by on this meagre sum.

Section 17 of the Act lays out a crucial provision relating to legal representation. The purpose of this clause is to save the parties from the high costs of litigation by providing that the parties shall not be represented by counsel. However, in reality, it won't be possible for the elderly folks to go before the tribunal on their own given their advanced age and state of health. Who is authorised to speak on behalf of older persons can be disputed by the text of the clause.

Section 21 requires the state government to take certain actions for promoting the requirements of the act in order to make elderly persons aware in order to protect their lives and property. In accordance with Section 23, the tribunal may declare the transfer of a senior's property null and unlawful if the senior's children or heirs neglect to take care of their fundamental needs.

The Act's Chapter VI covers the offences and punishments. If a person doesn't pay the monthly allowance fee, he will be put in jail for one month or until the maintenance fee is paid, whichever comes first. A five thousand rupee fine, up to three months in jail, or both may be imposed on the offender for abandoning parents or senior folks.

If a senior adult has neither property nor offspring, the Act does not handle the problem. And even if they have children, how probable is it that they will bring a maintenance action against their own kids before the court? 2018 saw the Ministry of Social Justice and Empowerment propose a draught bill to address the aforementioned flaws. However, it has not yet been introduced in Parliament. Here is a quick summary of the proposals mentioned in the draught bill:

- The elimination of the monthly maintenance allowance cap of 10,000 rupees.
- Including adopted children, minors under guardianship, and the daughter- and son-in-law under section 2(a) definition of "children".
- The bill suggests defining "maintenance" to include the "safety and security" of parents and senior adults.

- It has been suggested that the current three-month maximum sentence for abandoning and abusing parents be enhanced to six months.

#### **4.0 Indian Judicial Interpretation**

Prior to 2007, when senior citizens' rights were not given much consideration, Indian courts still construed situations involving aged rights in light of the aforementioned personal laws and in accordance with the provisions of the Indian Penal Code, 1860, and Code of Criminal Procedure 1973.

The situation has altered since 2007, when the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (2007 Act) was passed specifically to protect the rights of the elderly. But as evidenced by the writ petition submitted by Dr. Ashwani Kumar before the Supreme Court of India, the issues still haven't been resolved even after almost ten years have passed since its implementation. The elderly citizen's right to a sufficient pension was the main point of contention. According to the Indira Gandhi National Old Age Pension Scheme of 1995, the pension rate for seniors between the ages of sixty and seventy-nine was set at rupees two hundred per month, while for those over the age of eighty, it was set at Rs five hundred per month. Dr. Ashwani Kumar said that even if the pension amount was amended in 2007 without any increases, it was initially set under the system in 1995. If the rupee's current value is taken into account, this sum becomes inadequate. He pleaded for relief from three other difficulties in addition to pension rights, including the right to shelter under article 21 and geriatric care and medical facilities for the elderly under articles 21, 39, 41, and 42. He concluded by asking God to help the 2007 Act be implemented successfully. The Supreme Court addressed the petition regarding the rights of the elderly for the first time and determined that Article 21 should be given a broad interpretation to include the elderly's right to health care and housing as a component of their right to life, which cannot be restricted by the government or any other citizen. The court dismissed the Union of India's claim about pension benefits by declaring that the government cannot use economic planning or a lack of resources as a defence. The assumption is that if the government develops a welfare programme, it will undoubtedly have considered financial budgeting. The court ultimately issued the following rules:

- a) The Union of India will gather the appropriate data from all State Governments and Union Territories regarding the number of old age homes in each district of the nation and produce a Status Report in this regard," reads the first sentence of clause a.
- b) The Union of India will also request information about the medical centres and geriatric care facilities that are accessible to elderly citizens in each district from all of the State Governments and submit a Status Report in this regard.
- c) A plan of action for educating senior folks about the requirements of the 2007 Act should be created based on the status report.
- d) In accordance with Section 30 and Section 31 of the 2007 Act, respectively, the Central Government must use its authority to direct the State Government and undertake reviews in order to monitor the 2007 Act's implementation.
- e) Instructed the government to review out-of-date programmes and bring about convergence to prevent programme duplication.
- f) A few more instances were presented to the High Court in light of the 2007 Act's rights for parents and senior citizens. The following categories can be used to group the issues.
- g) The court imposed eviction and maintenance as requested by the elderly mother under the 2007 Act in cases where family members were witnessed abusing and injuring the elderly parents' hands and legs, as well as preventing them from using the toilet and water.

#### **5.0 Parent's Nationality**

The High Court of Punjab and Haryana in Chandigarh addressed a crucial question regarding the nationality of senior parents or senior people. According to the 2007 Act, a parent must be a "citizen of India" in order to meet the criteria for "senior citizen" status. In this instance, the parent was an Indian national who had also attained American citizenship. However, he recently registered himself as a "Overseas Citizen of India" because he intends to retire in India. He had requested the recovery of property possession under the 2007 Act. The Court determined that a parent would be eligible to receive benefits under the 2007 Act regardless of his or her age or nationality because the act's primary goal is to safeguard the rights of parents and older persons.

**6.0 Eviction of Daughter-in-law Under the 2007 Act.**

The 2007 Act's flaw was used as a defence by the appellant in the case of Darshna v. Govt. of NCT of Delhi Ors. She argued that the 2007 Act does not permit the in-laws to ask her to leave their property because of verbal or physical abuse. Sons, daughters, or legal heirs may be evicted under the Delhi Maintenance and Welfare of Parents and Senior Citizens (Amendment) Rules 2016, although daughter-in-laws are not covered. She lost her argument, and the High Court ruled that "Women cannot stay at her in-laws residence if she mistreats them."

When it comes to the social and humanitarian needs of the populace, the judiciary has been acting as an activist. The majority of rulings up to this point have favoured the rights of the elderly.

**Conclusion and Recommendations**

India's first piece of legislation specifically designed with senior citizens' interests in mind is the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. It anticipates government responsibilities for providing enough physical facilities and social mechanisms to ensure the welfare of the elderly in addition to family care. This groundbreaking piece of law gives the younger generation's moral obligation to look out for and help their parents and elders legal protection.

The State Government is authorised to develop an action plan for protecting the safety of life and property of elderly citizens in their respective States under Section 22(2) of the Act. It is proposed that the Act be changed to give the Tribunals the authority to order eviction in situations where the senior citizens' ownership of the property is undeniable. The Tribunal established by the Act should only be presided over by a practising attorney, preferably a retired judge, as they are better qualified for the position. To ensure effective implementation, parents and older children should be made aware of the issue. We have come to the conclusion through this research paper that this current law needs to be revised and taken into account in order to make it effective and viable so that the elderly population of India, like every other citizen, has their fundamental rights protected. In addition, it is everyone's duty out of a sense of social responsibility to stop the erosion of the Indian value that regards parents as mortal Gods.

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