

WALKING FROM SHADOW TO LIGHT: REVIEW OF THE MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS ACT, 2007**Dr. Pramila Dsouza**

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ABSTRACT

In an era of rampant abuse, exploitation, manipulation and violence of elderly, we see a light of hope emerging from the shadows of sorrow and misery to the light of justice with the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. This research paper attempts to highlight various provisions of legality which can act as a shielding recourse to the failure of social system towards our own parents and elderly.

Keywords: elderly abuse, Senior Citizens Act

INTRODUCTION

Elderly abuse can be defined as an act of commission or any omission leading to neglect which can be either with a malafide intention or otherwise involving financial, physical and mental distress to the elderly and a breach of human rights leading to a shrunk life quality of the elderly. The World Health Organization has defined elderly maltreatment as a solitary or rehashed act or absence of appropriate action occurring with any relationship where there is an assumption for trust, that makes hurt or misery partner degree more seasoned individual (WHO, 2002). Recent studies from developing world attributed deteriorating conditions of the elderly due to demographic transitions, changing traditional old family systems in the name of urbanisation, migration and modernization (WHO, 2004). The change of customary joint family into nuclear family units with quick declining values and a most optimized plan of attack, current life and way of life are to add on to the way that old maltreatment is expanding and developing at a disturbing rate (Age well, 2014). Article 14 speaks of the well-being and protection of senior citizens and expects adherence to the same not only by the citizens but also the State with the words — The State shall, within the limits of its economic capacity and development make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want (Constitution of India) With broad framework of the Act in mind the Legislature enacted this Act with the following objectives which would be helpful to all elderly irrespective of caste, gender, age, color or any other differences. The broad objectives considered were as follows:

1. To provide for mechanisms to protect the life and property of elderly
2. To provide and set up an appropriate mechanism for maintenance for parents and senior citizens
3. Provide better and sustainable medical facilities to the elderly.
4. To set up old age homes in every district of every state.
5. Provide for effective legal mechanism for the registration of Complaints by the Elderly.

SIGNIFICANCE OF THE STUDY

The study on abuse and crimes against the older is vital from the purpose of understanding the vulnerability of elders facing the same. Elderly abuse, practice and torture of older folks is a manifestation of the unaltered development of social violence in India. In the light of such exploitations and abuse it is important to understand the important provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 which is instrumental though if argued on paper to help the seniors and parents to move from the shadows of sorrow to the light of happiness and justice.

REVIEW OF LITERATURE

Mandal (2008) in his analysis article Protection of Human Rights of adulthood Person: A Dynamic Perspective explains in detail how adulthood is an imperative stage in human life that a person cannot refute except untimely death. Legal, social, ethical and governmental frameworks are analysed to identify the ways by which older individuals' human rights are infringed and that they are sure to suffer pain and agony. Against this backdrop, an attempt has been made to collate the various forms of abuse experienced by the elderly, as highlighted in the study by D. Sebastian and T. V. Sekher (2010) in their research paper titled "Abuse and Neglect of the Elderly in Indian Families." Findings of Elder Abuse Screening look at in Kerala reveal abuse

and neglect of older in the Indian families. Their study reveals that the extent of severe abuse among the females was nearly 7 times more than the male older. Neglect and verbal abuse were the foremost unremarkably rumoured varieties of practice followed by physical abuse and material exploitation. The most perpetrators were sons, son-in-law and relative-in-law. Their study additionally unconcealed that not solely the poor, even the wealthy are prone to neglect and abuse in several families. Sebastian and Sekher, (2011) in their analysis paper — Extent and Nature of Elder Abuse in Indian Families: A Study in Kerala, speak of the joint family in which older individuals were regarded as the most significant members reflecting the primate situations in India families. With a growing trend towards relations set - up, the vulnerability of older people is significantly increasing. Mishra et al (2013) in –Crimes against the older in India: A content Analysis on Factors inflicting concern of Crime has centred the study primarily on secondary knowledge collected through newspapers. The findings show that there are varied factors like residential location, previous victimization expertise, vulnerability defensibility and rudeness that cause the concern of crime within the minds of elders in India. Age well (2014) in “Human rights of older individuals in India; A reality check (Age well analysis and support Centre (For wants and Rights of older people) was a national study discussing the issues of right for the aged from economic, physical, psychological further as psycho-social and its impact on the older individual. The article examined the issue from the Indian perspective drawing from different personal laws as well as the Maintenance and Welfare of oldsters and senior voters Act, 2007. The study covered three hundred districts across twenty-five states and Union Territories. The study highlights the exploitation, manipulation, and distress experienced by this older vulnerable group. Yatish et al (2014) within the analysis article on – Elder Abuse in Indian families: Problems and preventive actions - speak of various styles of abuse, right from family abuse to no respect, verbal abuse, etc. They examined different schemes initiated by the government covering the legal safeguards to older individuals in India. Furthermore, they additionally studied in depth the Older Persons (Maintenance Care & Protection Bill 2005 with Tribunals, Conciliation Officers. In additional the study addresses special cases like gift of property of older adults, senior having no kids or single elders and old age homes for senior citizens. Family system was dominant. Except census enumeration, government of India lacks in assortment data on older connected factors like prevalence and incidence of elderly abuse and neglect. Martin J. Gordian et al (2005) in their analysis paper –Elder Abuse and Neglect: Associate in nursing Overview vividly understands the challenges faced by older persons within the broader framework of violence taking in mind the dramatic growth of the Yankee population and the health care system. The Authors have stressed on the requirement of all health care professionals operating with older ought to become accustomed to the popularity, treatment and interference of elder abuse and neglect.

HIGHLIGHTS OF THE ACT

The act aims at providing maintenance, healthcare and protection for parents and citizens aged 60 plus. It makes it a legal obligation for children and heirs to provide for the maintenance which includes food clothing residence as well as medical care and dignity of their elderly across genders. The 2006 the Orissa High Court highlighted that under section 16 of the Act, the Right of appeal against maintenance orders in specifically intended for elderly and not for children to challenge the granting of maintenance to the elderly. The speciality of this Act is that it extends to the whole of India applying to all citizens including those outside India.

Following are the Highlights of this Act:

1. This Act is applicable to all the citizens of our nation extending itself to the whole of the country except Jammu and Kashmir and it is authenticated through an Official Gazette passed by the Legislature.
2. The word Maintenance includes various provisions for food, clothing, shelter in terms of residence, medical attendance and consistent treatment.
3. Maintenance under this Act is applicable to Parents which include both biological and adoptive parents as well as grand-parents and senior citizens (who may not be able to maintain themselves from their own property or income). Senior citizens are elaborated as those who are the citizens of India and who have attained 60 years of age.
4. However, it is important to note that although Age is a prescribed factor for senior citizens, even parents who though below the age of 60 years can claim maintenance under this Act.
5. Children under this Act would include son, daughter, granddaughter, grandson who are major in age. No minor can be held account for his or her parents.
6. Parents or grandparents may file a petition for maintenance from one or more of his or her children.
7. Even senior citizens who are childless may claim maintenance under this Act from the relative who is a

- major in age, as well as in possession of the property of the senior and has chances of inheritance of the property after the death of the senior citizen.
8. The authority for maintenance petitions to be instituted is the Tribunal which is headed by the Sub-Divisional Officer in charge.
 9. The major question which often arises is where and how can the proceedings be initiated for maintenance under this Act. The Act very clearly states that the proceedings for maintenance can commence against any relative or child or children in any district where either the parent or senior citizen lives or has lived last in that place in that district or where the relative or children of the parent resides. Similarly the petition or application for maintenance can be filed either by the parent or senior citizen as the case or in case the parent or senior is unable or incapable to file the petition on his or her own then in such a case either of illiteracy or sickness or otherwise any person or voluntary organization registered under the Society Registration Act, 1860 may be authorized to make a petition as the need may be. In other cases, sometimes the Tribunal too takes up matters suo motto if it is in the interest of justice.
 10. On the receipt of application or petition, the Tribunal acts expeditiously and issues notices to the party or parties concerned, i.e. either the relatives or the children and makes provision for hearings and conduct of evidence. Once the Tribunal has completed its hearings and evidence as well as examination of witnesses it issues orders or order of maintenance. Depending upon the case, the Tribunal may also refer to the case for reconciliation with attached orders accordingly and pass interim orders for maintenance depending upon the case.
 11. The Court can also, during the pendency of the proceedings pass such interim orders so as to cover the monthly allowance expenses of the seniors which the relatives or children would be directed to pay accordingly.
 12. Where an order of maintenance was given or passed against few individuals holding them accountable to pay to their parents or seniors, the death of one of them in no way put an end to the liability or responsibility of others to continue to pay maintenance under the order of the court or tribunal.
 13. Sec 11 of the Act provides for a copy of the order of maintenance as well as order regarding expenses for proceedings of the case free of cost. The Act has been very careful to take care of all minutest needs of the elderly and accordingly no fees have been levied for any copy of orders to be received from the Tribunal.
 14. It is to be noted that no parent or senior citizen is entitled to the benefits of maintenance under this Act as well as Cr. PC. No two Acts can be evoked simultaneously. They have to choose between the filing of proceedings either under this Act or under the Criminal Law and accordingly based on their decision one of the proceedings in the court of Law or Tribunal moves.
 15. The order of maintenance given or passed by the Tribunal will have the same effect as the order of maintenance passed under Sec.125 of Criminal Penal Code. This includes not only imprisonment up to 1 month but also the issue of warrant for the levy of amount which is due in the manner provided for the levying of fines under the Act.
 16. The State Government may provide for the maximum amount of maintenance allowance which is payable every month. However, it is to be noted that the maintenance allowance shall not exceed 10,000/- per month as laid down under this Act.
 17. However, the Tribunal may alter or change the amount of monthly allowance in case it has proof to the effect that there was element of misrepresentation, or mistake of fact or certain circumstances leading to this decision which then is to be recorded in writing to that effect to avoid any further litigation to that effect.
 18. Also, the Maintenance Tribunal has the power to cancel or change and vary the monthly allowance for maintenance in consequence of or in accordance with any decision of a competent Civil Court of Law.
 19. Sec, 24 of the Act clearly states that if anyone in charge of the care and protection of the senior citizen abandons or leaves him in any place whatsoever with an malafide intention, then in such case the person who has such a vital responsibility shall be punishable under this Act with imprisonment which can extend upto 3 months or fine of Rs. Five thousand or both depending upon the gravity of the case and the irreparable harm or damage caused. However, the offence is cognizable but bailable in nature.
 20. The Act also speaks of appeal in case any senior is not satisfied or aggrieved with the order of the Tribunal.

Any such senior parent or citizen if aggrieved by the order of the Tribunal may within a period of 60 days from the date of the order given file an Appeal to the Appellate Tribunal against that order. On receipt of such an Appeal it is the duty of the Appellate Tribunal under Sec 16 subsection 15 to pronounce within 1 month of the appeal petition its order in writing.

21. Senior Citizens or parents may also file an application before the Tribunal for declaration of the property so transferred to be null and void. However, such transfer would be declared to be null and void only when such property was transferred by the Senior as a gift or otherwise to someone who as the transferee was in charge of providing basic amenities and basic needs of the senior and has failed to provide the parent or senior with those basic needs and amenities.
22. Most importantly the Act provides the State Government with responsibility to ensure that
 - a. All Government hospitals or Hospitals funded partially or fully by the Government shall provide requisite beds for all seniors as far as possible keeping in mind the limitation of the Government expenditure.
 - b. Arrangement of separate queues for senior citizens
 - c. All necessary and vital facilities for the treatment of terminal, chronic as well as degenerative diseases of the senior citizens on an emergency basis and extensive research is to be carried out in this regard for the better health of all elderly.
 - d. Every district hospital has facilities for geriatric patients who shall be headed by a medical officer with good experience in this field.
23. In case the children or relatives fails to make allowance payment to the elderly inspite of directions or orders from the Tribunal, and repeats this consistently, then a warrant can be issued against such defaulting party and in some cases depending on the circumstances of the case imprisonment of 1 month too can be levied along with interest on the amount of allowance by following due process of law.
24. In order to secure the attendance of children or relatives the court shall have the powers of the Judicial Magistrate of 1 st Class provided under Cr. PC. Similarly, all proofs of evidence and the proceedings shall be taken in the presence of the relatives and children as the manner prescribed for any summons case. In case the concerned relatives or children are consistently absent from the proceedings, then on application of the same an ex-parte order can be passed by the Tribunal.
25. In case the opposite party or parties are residing outside any of the Asian nations, summons shall be served by the Court through such authority as the Central Government by notification would specify in this behalf.
26. In case both the parties decide to settle their disputes amicably, then the Court or Tribunal on application by the parties with clarity in terms of arrangement order for Conciliation proceedings and a Conciliation Officer is duly appointed by the Court who shall then submit its report at regular intervals as per the directions of the Court or Tribunal.
27. The Courts under this Act shall have all the powers of those of a Civil Court with the objective of taking oath of the witness, imposing attendance of the witnesses, recording of evidence etc.
28. In case the Tribunal or Court has given an order of maintenance under this Act, and the relative or the children fail to make the payment thereof, then the Court may decide to levy an interest of amount which can vary between five to 18 percent on the amount unpaid depending upon the circumstances of the case and with reasons to be recorded in writing thereof.
29. Under the provisions of this Act, the State Government may establish at least 1 old age Home in every District for indigent senior citizens or elderly. Such Old Age Homes established and managed by the Government should have the capacity to hold or accommodate at least 150 elderly people who are indigent. The State Government will regulate the functioning of these Old Age Homes with standards and services prescribed by the Government from time to time for the efficient and better functioning of these Homes and also keep checking that these Homes are not malfunctional in any way.

SUGGESTIONS AND RECOMMENDATIONS

Basically, introducing the Act and fixing the obligations isn't adequate to manage the issue.

1. Active investment of local area individuals is fundamental.
2. Youths are to be sharpened.

3. Even old individuals themselves should take measures to prevent and be mindful of legitimate arrangements.
4. Senior resident cells should be set up in various regions.
5. Elderly helplines work enormously.
6. Police should focus on the security of the people who are alone in vanity. Relational connections among relatives ought to be fortified. Quick, successful, and effective review system is expected to ensure a protected and cheerful life for old individuals.
7. Additionally, various government protection and welfare programmes must support elders with disabilities.
8. Strengthen family ties and social network as family is the major care provider.
9. Reduce social isolation.
10. NGOs should take up screening programmes in communities and educational programmes for victims.

CONCLUSION

These and many more were a great learning experience to we researchers. Most of the time inspite of knowing the law and its implementation we are unable to do anything for the aggrieved as the very fact of their life remains that they unconditionally love their children and do not want any action to be taken against them. But what a shame on such children and relatives who have valued and measured the love and concern of parents in terms of money and property only.

Moving from shadows to light is never an easy task and will definitely not be possible without the will of God Almighty. Faith alone is not enough. It will have to be supported by action. We need effective Laws that protects the rights and dignity of the elderly coupled with strong and appropriate implementation mechanism that will ensure that the laws are followed. The role of NGOs and attitudinal change together can help elderly reach their phase of solace in life.

On the part of the Government measures to create awareness is a requisite which can be instilled through the curriculum in schools with the help of value education right at school level so that the basic values are imbibed at a right age.

Other than this the media can also be effective in bringing awareness about the rights of the elderly and moreover to throw light on such children or relatives who are guilty. Social stigma is necessary for such individuals. Also, sensitization programs for the police personnel would help in effective implementation of the Act. Moreover, effective coordination between the law makers and law managing departments along with NGOs and health officers would help in strengthening elders in all aspects of life.

BIBLIOGRAPHY

1. Aggarwal, D.D, (2004): Educational technology. New Delhi: Sarup and Sons.
2. CEWA (1982). Care of the elderly: Directory of voluntary agencies for the welfare of the aged in India: Madras.
3. Help Age India (2011). Elder Abuse & Crime in India. New Delhi, pp.1.
4. Mahajan, A., Mohanty, P. N., & Singh, R. (1987). Problems of the aged in unorganised sector. Mittal Publications.
5. Martin, L.G., & Preston, S.H. (1994). Demography of aging. National Academy Press: Washington.
6. Mishra, G. (2006). Ageing: The people's concerns. Changing Indian society and status of aged, 136-147.
7. Mandal, M. (1998). The work of the NGOs for older persons. Research and Development Journal, 5, 24-.
8. Sebastian, D. & Sekher, T.V. (2011). Extent and Nature of Elder Abuse in Indian Families: A Study in Kerala. Help Age India-Research & Development Journal, 17, 20-28.
9. Yatish, M., Parantap D. K. (2008). Crime against senior citizens in changing social order. Social welfare, Vol. 55(8), pp.27-29 Zimet, G.D., Dahlem, N.W., Zimet, S.G. & Farley, G.K. (1988). The Multidimensional Scale of Perceived Social Support. Journal of Personality Assessment, 52, 30-41.