

LEGALFOXES LAW TIMES

A CRITICAL STUDY ON THE RIGHTS OF PARENTS WITH SPECIAL REFERENCE TO MAINTENANCE AND PERSONAL LAWS.

By Sanjula Sachdeva

1. INTRODUCTION: Maintenance includes the daily necessity of a person who lives with the help of a person whose prior duty is to maintain him. Maintenance includes shelter, clothing, etc.

The object of the procedure under section 125 is to secure maintenance speedily and to compel those persons who could maintain those persons who are unable to maintain themselves.

HONOUR THY FATHER & THY MOTHER, THAT THE DAYS MAY BE LONG UPON THE LORD THAT LORD THY GIVETH THY...

There is no prior requirement to state that old persons forms a distinctive class. They are non-identical as compared to the rest of the population. Old persons have attained an age where their physique starts collapsing. Old persons are more inclined to the diseases as compared to any other section of the population.

Maintenance and welfare of parents and senior citizens act,2007 states the claim for the monthly maintenance for the parents and senior citizens. This act imposes duty on children to maintain their parents and grandparents and also the prior relatives of the senior citizens. This act further provides establishment of old age homes for providing maintenance to the indigent senior citizens & parents.

2. MEANING AND DEFINITION: According to the maintenance and welfare of parents and senior citizens act,2007 defines certain definitions which are as under:

- ❖ **Children-** Children includes son, daughter ,grandson, grand daughter, son-in-law, daughter-in-law but it does not include minor in the act.
- ❖ **Maintenance-** Maintenance means that to secure the maintenance for children, father, mother and old persons by providing daily necessities to the person such as food, clothing, shelter, etc.
- ❖ **Parent-** Parent means father or mother whether biological, adoptive or step father or mother, whether or not parents which includes mother and father are senior citizens.
- ❖ **Property-** Any kind of property whether movable or immovable, ancestral or self acquired, tangible or intangible and which includes rights or interests in such kind of property.
- ❖ **Relative-**Relative means a person who is a legal heir of a senior citizen who is childless who is not a minor and would have his possession over his property after his death.
- ❖ **Senior citizen-** Senior citizen means any person who has attained the age of 60 years or above.

3. IDENTIFYING A RIGHT TO SPECIAL PRIVILEGE:

“If all men are created equal and remained equal throughout their lives therefore the same laws would apply to all men. But “we know” that men are unequal consecutively, a right conferred on the persons that they shall not be denied “equal protection of law”, cannot mean the protection of same laws for all & to separate persons similarly situated from those who are not we must ‘discriminate’, i.e., act on the basis of a difference between persons , or observe distinction carefully between persons who are and persons who are not similarly situated.”

In *Indira Sawhney v. Union of India*, it has been laid down that to bring the equality among the inequality , it is necessary to adopt positive measures to abolish inequality.

4. HISTORICAL BACKGROUND OF THE MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS ACT,2007:

INTERNATIONAL PERSPECTIVE-

Old age is a worldwide issue in today's scenario. In this scenario, those persons have become burden on their families and their state itself and has been retired who have served their society in their younger age and also served for the services or the public posts. For the due purpose to find out the cost effective and the human ways to empower, assistance and the care required for the old age people. The utmost concerned segment of the population is international community.

The motive for the International plan of ageing is to deal effectively with the ageing of the population and to address the needs of the older people by strengthening capacities of the government. It promotes both regional as well as international cooperation.

International plan of ageing includes 62 recommendations for the action addressed to the research and the data collection with the sectoral areas which includes health and the nutrition, protection of the old age people, housing, family, education, etc.

NATIONAL PERSPECTIVE- Various statutes are being enumerated by the parliament namely provisions relating to the rights of parents and the prior duties of the children.

5. CONSTITUTIONAL PERSPECTIVE VIDE ARTICLE 41 AND ARTICLE 46:

As far as it is approachment of old age, problems such as physical and mental problems has become a part of daily affairs. The old age person is unable to work for his livelihood due to this disorder and it makes him to be dependent on others. In order to protect the interests of elderly people, the constitutional framers have inserted certain provisions on this subject under part IV of the Constitution i.e. Directive Principles of State Policy.

Older persons should have their income support from their families and the community and have opportunity to work for obtaining income to obtain adequate access to food, water, housing, clothing and health care. Its their own choice to reside in their houses as long as it is possible. The legal right can be secured by affirming their right to maintenance of the elderly persons which will help them in securing financial security.

Section 41 states that limits the economic capacity which makes effective provision for the development and which secures right to work, education and public assistance in case of unemployment, sickness and disablement and in any other case of desertion & neglect. In order to provide job opportunities and other help to the elderly they could put obligation on them so that they could earn their livelihood by their own and have a independent life.

Section 46 states that above impose a positive obligation on the state to promote with special care i.e. economic interests of the weaker section of the society and to protect them from social injustice and all forms of exploitation.

In the case of PUCL v. UOI which relates to food filed by People's Union for Civil Liberties, the Supreme Court held that the most importance is to check that food is being provided to the aged, disabled, destitute women and men who are in lack of starvation, danger of pregnancy and destitute children, especially in such cases where the person or the family members do not have sufficient funds to provide food for them.

As far as it is approachment of old age, problems such as physical and mental problems has become a part of daily affairs. The old age person is unable to work for his livelihood due to this disorder and it makes him to be dependent on others. In order to protect the interests of elderly people, the constitutional framers have inserted certain provisions on this subject under part IV of the Constitution i.e. Directive Principles of State Policy.

Section 41 states that limits the economic capacity which makes effective provision for the development and which secures right to work, education and public assistance in case of unemployment, sickness and disablement and in any other case of desertion & neglect. In order to provide job opportunities and other help to the elderly they could put obligation on them so that they could earn their livelihood by their own and have a independent life.

Section 46 states that above impose a positive obligation on the state to promote with special care i.e. economic interests of the weaker section of the society and to protect them from social injustice and all forms of exploitation.

6. LEGISLATIVE PROVISIONS:

❖ Parental right to claim maintenance:

✚ SECTION 125 OF CODE OF CRIMINAL PROCEDURE, 1973-

❖ **Right of parents to claim maintenance:** For the purpose of claiming maintenance to father and mother and the elderly persons who are unable to maintain themselves by their own means of livelihood, the certain provisions are being provided under the Code of Criminal Procedure, 1973. The certain provisions are being provided in Chapter IX from Section 125-128 which provides whole procedure for claiming maintenance.

❖ **Who can claim maintenance-** The provisions contained in sections 125-128 are applicable to all persons belonging to all persons belonging to all religions and have no relationship with the personal law of the parties.

A father or mother, who is unable to maintain themselves is entitled to claim maintenance from his or her son. The Indian society imposes duty upon the children to maintain their parents, but before making any order against married daughter the court satisfies themselves that the daughter is capable and is independent to maintain themselves. Children cannot deny to provide maintenance to the parents on the ground that the parents are not living with them as it is not necessary according to law to live with their children for the purpose to claim maintenance.

✚ MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS

ACT,2007- Until 2007, no special legislation laid down to address the elderly population. The directive principles further mentions rights of elderly and not applicable for private citizens. As far as private citizens are concerned, two acts have been laid down for the purpose of placing obligation for the care of parents with the help of their children if they are not able to take care of themselves i.e. code of criminal procedure, 1973 and Hindu adoption and maintenance act, 1956. In Maintenance and welfare of parents and senior citizens act, 2007, it helps to make

legal obligations for children to provide prior maintenance to senior citizens and make old age home in every district by making provisions for state government.

According to this act, obligation has been laid down on the children and relatives in order to maintain a senior citizen or a parent for the sake of living normal life. The definition of senior citizen is been stated as which mentions Indian citizens aged 60 years as well as all parents who are irrespective of their age. This obligation seeks to both Indian citizens as well as citizens residing in abroad

This act states that children includes sons, daughters, grandsons and granddaughters and parents includes biological, adoptive or step parents. A senior citizen shall have right to seek maintenance tribunal for a monthly allowance from their child or relatives who is unable to maintain himself on his own earnings or property.

As far as childless senior citizens are concerned, relatives are obligate to provide maintenance. In this act, relatives are defined as a person who would be in possession of any other person. In such there are more than one relative who would inherit property, the proportionate payment would be proposed by all relatives where maintenance would be payable in prior proportion by relatives in which relatives would inherit the property.

With regard to gift deed, another controversial area i.e. section 23 of maintenance and welfare of parents and senior citizens act,2007 states those situations where transfer of property is not valid. The situation where basic amenities and physical basic needs will be provided to transferor by the transferee shall be made with condition in gift deed, if transferee does not do so, then transfer will take place by coercion or such fraudulent means.

Section 5 of the act states that within 90 days application for maintenance shall be disposed of. The act also states that if there is default in payment of maintenance, then punishment to be awarded and to provide speedy and effective relief to elderly persons, maintenance tribunal to be established. According to section 12 of the maintenance and welfare of parents and senior citizens act,2007 for the purpose of claiming maintenance even under section 125 of code of criminal procedure,1973 an option has been given to parents or senior citizens but can't be claimed under both acts.

The act states certain duties maintainable by the state government. The act states that atleast one old age home per district with minimum 150 senior citizens per home may be established and maintained. The state government shall also prescribe a scheme for management of old age homes which includes standards and services i.e. medical care and entertainment of residents of old age homes to be provided. The separate queues should be maintained for the people i.e. senior citizens, expand facilities for treatment of diseases and expand research for chronic elderly diseases.

In order to ensure that government hospitals and those funded by the government provide beds for all senior citizens, it will directed to state government.

✚ **Who can demand maintenance-** According to the Maintenance and welfare of parents and senior citizens act 2007, the person who are unsuccessful to maintain themselves from their own income i.e. parents and grandparents can claim maintenance from their children and people who are not having their children and are childless i.e. childless senior citizens who are unable to maintain themselves from their own income can claim maintenance from relatives as stated under the provision of section 5 of the act.

✚ **The person obligatory to maintain the elderly-**
The children and the specified relatives with sufficient means are obligatory to provide maintenance for their parents and childless senior citizens.

✚ **Certain provisions for the establishment of old age homes-**
What will happen if elderly and children and their specified relatives do not have sufficient means to maintain them?

State Government may establish at least one old age home in every district which are sufficient to accommodate at least 150 elderly who are indigent to maintain those who are indigent, abandoned or neglected. State Government may also set standards and prescribe minimum services for medical care and prescribe scheme for the management of old age homes for the elderly.

7. PERSONAL LAWS: In accordance with the moral duty to maintain parents it is being recognized by all the people. As far as law is being concerned, the position of such liability varies from community to community.

 **HINDU LAW:**

❖ **The Hindu Adoptions and Maintenance act,1956-** A Hindu person is duty bound to maintain his parents whether aged or infirm, if they are unable to maintain themselves out of their own earnings or property and includes a childless step-mother.

 **MUSLIM LAW:** As far as maintenance of aged parents are concerned, it is the duty of children to maintain them under Muslim law too.

According to Mulla –

- a) In the case of easy situations children are bound to maintain their indigent parents and grandparents whether they may be able to earn themselves.
- b) In the strained situations, A son is bound to maintain his mother and if the mother is poor though the mother should not be infirm.
- c) A son who though is poor and is earning something and he is bound to support his father who earns nothing.

According to Tyabji-

According to Hanafi Law, The Maintenance may be claimed from their children and Grandchildren who have their means by indigent parents and grandparents, even if they are able to earn their livelihood. It's a duty of both son and daughter to maintain their parents.

 **CHRISTIAN AND PARSI LAW:** There are no personal laws under Christian and parsi law provided for the maintenance of parents. The person who wish to claim maintenance parents have to apply under the provisions of Criminal Procedure Code,1973 or the Maintenance and Welfare of Parents and Senior Citizens Act,2007.

8. POLICIES ESTABLISHED BY THE GOVERNMENT FOR THE ELDERLY PERSONS: As far as welfare of old persons is being concerned, the government has put a step forward by establishing policies to ensure the welfare of senior citizens. Some of the national policies made by the government are being described under-

- ✚ **NATIONAL POLICY FOR OLD PERSONS,1999-** The National Policy for Old Persons states that the state will give full support to financial security, health care, shelter and welfare, provide protection against abuse and exploitation and provides services as to improve quality of their lives.
- ✚ **NATIONAL POLICY ON SENIOR CITIZENS, 2011-** A new policy ‘National Policy on Senior Citizens, 2011’ was formulated in 2011. It refocused onto the priority to issue of older women, increased employment opportunities, implementation of Maintenance and welfare of parents and senior citizens act, 2007 and the living facilities of abandoned senior citizens.

