



The Right to Maintenance of Parents and Senior Citizens in India

KEYWORDS

The Maintenance of Parents – Senior Citizens – Rights – The pious liabilities of heirs – Supreme Court of India – Universal Declaration of Human Rights – The Role of State and Central Government.

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ABSTRACT

There are several laws related with MAINTENANCE in India, such as, under section 125 of Criminal Procedure Code, The Hindu Marriage Act, The Hindu Adoption and Maintenance Act and what not ! As per the guidelines mentioned, under the International Law, it has been accepted that the venerable group is required to have special protection by enacting special laws. The Children, The woman, the older People, The weaker section all are the examples of venerable group. That is why our country is having The Maintenance of Parents and Senior Citizens Act, 2007 for this purpose. This research paper revolves round the necessity of the Act, Provisions regarding the maintenance and the loopholes along with suggestions.

(1) INTRODUCTION:

So far as, population statistics are concerned, there are three groups:

- (a) 0 years to 14 years,
- (b) 15 years to 59 years, and
- (c) 60 years and above.

This topic revolves round the third one. That is also known as VENERABLE GROUP. India is a country of many castes and religions. The third group also matters to the SOCIAL SECURITY POLICY of the State and the Country.

The Report of the Second World Assembly on AGEING, Madrid on dated 8-12 April 2002 says: "One out of every 10 People in the world is 60 years of age.

About ONE out of every SEVEN old persons (approximately 90 million people) is living ALONE! And the number of persons aged 60 years or over is expected nearly to TRIPLE by 2050..." Situation Analysis of the Elderly in India, the report in 2011 declares: "As per 2001 census, the populations of 60 years and above ages are only 7.4% in India. In Gujarat, there are only 6.9% populations of the same age. About 65% of them are dependent on other for their day to day maintenance in India..." All these suggest that it was the reason behind the enactment of the Act named THE MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS ACT, 2007. The parents in India need the maintenance from the children.

(2) THE EFFORTS OF LEGISLATION:

In India, the Hindu believes that it is the PIOUS RESPONSIBILITY of the son to maintain the parents. Muslims are also accepts by religion to have such duties but in Christian and Persian, we don't find any provision as such. That is why some provisions have been made by Indian Legislations for this purpose. Such as for the HINDU PARENTS, section 20 of the Hindu Adoption and Maintenance Act, 1956 deals with the imposition of the obligation on the children to maintain their parents. Regarding this HAM Act, 1956, those parents who are unable to maintain themselves are entitled to obtain maintenance from their son and daughter. The another provision is mentioned in the CRIMINAL PROCEDURE CODE, 1973 for Hindu, Muslim, Christian, Persian and other religions regarding maintenance of parents. Section 125 of Cr.P.C. deals with the maintenance of PARENTS. When any person, having sufficient means, neglects to maintain his parent, the parent may apply to get the same in the Judicial

Magistrate First Class. But there was no any separate law regarding the subject and to do justice with the parents and senior citizens, a new act named THE MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS ACT, 2007 (56 of 2007) has been enacted. The Act was published in Gazette on dated 31st December 2007 and it is applicable to all the parents and Senior Citizens of India. It is immaterial that the parents and senior citizens are belonging to any particular religion or not. We can see SECULARISM by framing such a socio-economic justice rendering law.

(3) PROVISIONS OF THE ACT REGARDING MAINTENANCE:

There are 32 Sections and VII Chapters in the Act. The main features of the Act are as such:

The Long Title of the Act says: "To provide for more effective provisions for the maintenance of Patents and Senior Citizens, this act has been enacted". By this Act, the parent and senior citizen may make a complaint against his children and relatives to the concerned authority where he or his children and relatives are residing. Only parents and senior citizens are having right to appeal against the order of lower authority.

MEANING OF SOME IMPORTANT WORDS

CHILDREN: Sec.2 (a): includes son, daughter, grandson, and granddaughter.

But does not include a minor.

MAINTENANCE: Sec.2 (b): includes provisions for FOOD, CLOTHING, RESIDENCE, and MEDICAL ATTENDANCE and TREATMENT.

WELFARE: Sec.2 (k): means provision for FOOD, HEALTH CARE, RECREATION CENTRES and other AMENITIES NECESSARY for the Senior Citizens.

PARENT: Sec.2 (d): means FATHER or MOTHER whether biological, adoptive or step father or step mother, as the case may be, whether or not the father or mother is a Senior Citizen.

RELATIVE: Sec.2 (g): means any legal heir of the childless senior citizen who is not a minor and is in possession of or would inherit his property after his death.

PROVISIONS FOR "NORMAL LIFE OF PARENTS"

Chapter II: Sec.4 deals with the Maintenance of Parents and Senior Citizens speaks itself that the object is to fulfill the need so that they may lead a normal life.

PROVISION FOR ALTERNATE DISPUTE RESOLUTION

Sec.6 (6) deals with the settlement by ADR. The matter related with maintenance of parents shall be put before a CILATION OFFICER who may be a member of N.G.O. as per mentioned under Section 18. However, in any proceedings regarding this, as mentioned in Sec.17, no any legal practitioner is allowed.

OPTION FOR MAINTENANCE

The parent and senior citizens may either get the relief by the provisions of Section 125 of Criminal Procedure Code or by the provisions of this Act. It means, as per Section 12 of the Act, they cannot get the benefits from both the legislations.

SPECIAL PROTECTION IN CASE OF TRANSACTION BY GIFT

As per Sec.23 (1), in case of GIFT TRANSACTION, the transferee shall be bound to maintain. The condition should be mentioned in Gift Deed. It suggests the protection from FRAUD, COERCION or under UNDUE INFLUENCE. By this way, the makers of the Act believe that the tendered aged people may be victim of any fraud, coercion and undue influence. So, this provision is the precaution measure in such cases. That is why Chandigarh Administration has recently issued a notification that by producing relevant documents of the property they had transferred or gifted to their children, after 2007, the senior citizens can get the transfer declared void and claim back their properties.

MAINTENANCE AMOUNT WITH INTEREST

As per Section 9(2), the concerned authority may grant maintenance up to Rs.10000/- per month, in failure of it, the opponent party is bound to pay the maintenance amount with interest. As per Section 14, the minimum interest rate is 5% and maximum interest rate is 8%.

PUNISHMENT AND FINE

Chapter VI deals with this. The concerned authority may impose imprisonment up to 3 months or fine up to Rs.5000/- or both.

(4) THE ROLE OF CENTRAL GOVERNMENT AND STATE GOVERNMENT:

As per the instructions of International Documents and the Act, the state governments as well as central government are bound to play a vital role for the betterment of older persons like parents and senior citizens.

As per Section 19 of the Act, it is required to establish OLD-AGE HOMES in the country.

As per Section 20 of the Act, the state is responsible for the medical care of the senior citizens. It is also responsibilities of State Governments to provide:

- Separate beds in govt. or govt.funded hospitals.
- Separate queues in public sector services.
- Facility for treatment of chronic, terminal and degenerative disease.

As per Section 21 of the Act, the state is responsible to protect the LIFE and PROPERTY of Senior Citizens. Regarding the same, the Police Department or the other concerned department may pay visit to such a senior citizen to ask for his security.

All these are the responsibilities of the Central and State Governments to the parents and senior citizens. The State Government may make rules to fulfill the responsibilities in the territory of the State.

(5) THE ROLE OF JUDICIARY:

The Judiciary of India is known as the most active in the world. The efforts made by the Judiciary is truly appreciated. Here is one of the examples of its :

GLORY BAI VS. S.K.A. NOORJAKAN BEEVI

In this case, the married daughter of the petitioners was died along with the other relatives in a road accident. The M.A.C.T. denied the claim of the petitioner on account of the meaning of Legal Representatives. According to the Tribunal, the parents of a married daughter are not entitled to get compensation. In this case, the Honourable Mr.Justice D.Hariparanthaman has held that the parents of died married daughter are entitled to get compensation in accident cases. So Rs.3.5 Lac was granted to the parents.

(6) CRITICISM:

According to the survey made by "HelpAge India" in Mumbai, it was found that only 16% elders are aware of the Act. So the awareness ratio is too low regarding this subject. Not only the elders but the officers concerned with the subject are also unaware of the provisions of this Act. Sufficient Police Staffs are needed in the implementation of the Act. We can see that people are asking "Old age Homes" for their parents in various web sites! Now it happens in India! It happens in incredible India! The western philosophy and globalization may be the basic root for the new evil in India. This Act does not protect the parent from the children who are jobless or bankrupt! It means such kinds of arguments may be excuses for the careless children! This Act can provide economic safety. But it cannot provide right to live with family and right to have love and affection to each other. This Act cannot remove the loneliness of the parents. Even in some states, the various schemes and rules regarding the safety of senior citizens have not been framed yet! Such States do not care for the venerable group of our country. Even there are lack of sufficient old age homes in India. Justice K.G.Balakrishnan, inaugurating a one day national seminar on this Act, has mentioned: "The Jammu and Kashmir High Court recently talked about having guidelines for health clinics. Similarly it's high time to have guidelines for private old-age homes so that the elderly get the right benefits." I agree with the same.

(7) SUGGESTIONS:

The states that have not yet made rules regarding the protection of the parents and senior citizens must frame the same as early as possible. The children who do not have sufficient means to protect themselves as well as parents should be in the purview of the Act and such persons must be punished for their carelessness towards themselves as well as parents. The Legal Literacy camp must be organized in both the rural and urban areas for the awareness of this subject. The children should be trained to be RELIGIOUS NATURE, so that they may not forget their duty towards parents, even in absence of any legislature regarding such subjects. The Elementary Education as well as College Education must have VIRTUE ORIENTED syllabus. The children must learn the lessons of FAITH, MORALITY, DEDICATION and other virtues that are required in their life journey. It means HOLISTIC EDUCATION is required for the same. NGOs must be welcomed to cope up the subject. Sufficient "Oldage Homes" must be established for the parents and senior citizens.

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