



A Critical Analysis of the Support Provided by the Government and the Legal System for the Maintenance and Welfare of the Elderly

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ABSTRACT

It hardly needs to be emphasised that due to the rising life expectancy across the country, there has been a significant rise in the number of older persons in our country too. We all know that India has had a long-standing tradition of giving the older persons a position of respect in all spheres of life. However, the position and status of the elderly in the contemporary society is being undermined due to several factors including the breakdown of the joint family system. The objective of this paper is to analyse the various reliefs provided by the Indian Legal System and the Government, for the maintenance and well being of the elderly.

KEYWORDS

elderly, Government, legal system, breakdown, contemporary society;

1. INTRODUCTION

"It's not how old you are, it's how you are old." - JULES RENARD

Elderly or old age consists of ages nearing or surpassing the average life span of human beings. The boundary of old age cannot be defined exactly because it does not have the same meaning in all societies. Government of India had adopted National Policy on Older Persons in January, 1999. The policy defines "senior citizen" or "elderly" as a person who is of age 60 years or above. Sec. 2(h) of the Maintenance and Welfare of Parents and Senior Citizen's Act, 2007 also defines 'senior citizen' as a person being a citizen of India, who has attained the age of sixty years or above.

2. STATUTORY PROVISIONS

(a) HINDU ADOPTIONS AND MAINTENANCE ACT, 1956

In order to tone down the problems of the elderly people, the legislature had laid down various enactments including the Hindu Adoptions and Maintenance Act, 1956. Hindu law recognizes and puts the obligation of maintenance of aged parents on their sons, who are not able to maintain themselves out of their earning and property. Maintenance of aged parents was recognized as a personal legal obligation enforceable by sovereign or the state. "The Hindu Adoption and Maintenance act 1956 is the first personal law statute in India which imposes an obligation on the children to maintain their parents". It was not only the duty of the sons to take care of their aged parents, the daughters are equally liable for it. The most important that we can infer from this is that financially unstable parents are the ones who could go for maintenance as guaranteed under this act. Though this act was an important milestone it had limited scope with respect to the maintenance of parents. Moreover this act is a part of Hindu personal laws, and is not secular in nature.

(b) THE CRIMINAL PROCEDURE CODE, 1973

In order to provide relief every elderly person, irrespective of their religion, the Criminal Procedure Code 1973 made it obligatory for every person to maintain his or her parent's. In *Baban vs. Parvatibai*, Parvatibai after her husband's death adopted a child. She filed a claim for maintenance against her adopted son Baban, and the ground on which the case was mainly contested on was that was not his real mother and an adoptive one. It was held by the Court that "*upon adoption the son occupies the position of a natural born son in the family. Consequently, the adoptive father becomes his father and the adoptive mother becomes his mother for all purposes.*"

es. It would be anomalous if only the adoptive father were to be given a right to maintenance and not the adoptive mother." The decision holds high on equitable justice as the adoptive mother or father treats his/her adopted son as his/her real son providing him all the love, care and affection and so he/she should be entitled to hold the position as that of a real mother or father.

(a) THE MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS ACT, 2007

This Act places the obligation of maintaining a senior citizen by his or her, grand children or any legal heir. This provision has to be commended by the law makers for they were able to look into the matter of such importance with greater insights. There are many families in India in which children are being brought up by grandparents. So as a result they act in place of parents so the law has looked into the fact that these people should be included for claim of maintenance as they too require support from the their families and also in some cases there maybe only grandchildren due to death of the son. A major flaw in this Act which should have had been addressed but unfortunately did not is that it does not mention the responsibility of son/ daughter in law to maintain their parents in law. As we know that son/ daughter have equal share in property and if they will inherit the property it is but obvious that there better half will do the same. Now the question that arises is if they enjoy the benefits, shouldn't they be held responsible for their duties as well? They utilize the benefits of the property as the legal heirs do (in normal circumstances) and are left unperturbed when the issue of maintenance arises. This is quite a matter of concern which was overlooked by the law makers but should have found a place in the act due to its very premise.

3. GOVERNMENTAL INITIATIVES:

It is a well known fact that ageing poses twin challenges. Firstly, we need to ensure care and protection of the elderly so that they can lead a healthy, dignified and productive life. Secondly, the older people must be looked upon as partners in progress rather than as a burden on the society. The Government of India on recognising the challenges posed by this demographic change took certain initiatives to ensure that the process of ageing for the people is both active and productive.

A. National Council for Older Persons

The National Council for Older Persons (NCOP) was constituted in 1999 under the Chairpersonship of the Minister for Social Justice and Empowerment. The NCOP is the highest body

to advise the Government in the formulation and implementation of policy and programmes for the aged. The Council was re-constituted in 2005 with members comprising Central and State Governments representatives, representatives of NGOs, Citizen's Groups, retired person's associations, and experts in the field of Law, Social Welfare, and Medicine.

B. Central Sector Scheme of Integrated Programme for Older Persons (IPOP)

An Integrated Programme for Older Persons (IPOP) is being implemented since 1992 with the objective of improving the quality of life of senior citizens by providing basic amenities like shelter, food, medical care and entertainment opportunities and by encouraging productive and active ageing through providing support for capacity building of Government/ Non-Governmental Organizations/Panchayati Raj Institutions/ local bodies and the community at large. Under the Scheme, financial assistance up to 90% of the project cost is provided to non-governmental organizations for establishing and maintaining old age homes, day care centres and mobile Medicare units.

C. National Programme for Health Care for Elderly (NPHCE)

NPHCE was implemented by the Ministry of Health and Family Welfare from the year 2010-11 with an approved outlay of Rs.288 crore for the remaining period of the 11th Five Year Plan. The Ministry also provides the following facilities for senior citizens:

- Separate queues for older persons in government hospitals.
- Geriatric clinic in several government hospitals.

D. Indira Gandhi National Old Age Pension Scheme (IGNOAPS)

IGNOAPS was implemented by the Ministry of Rural Development under which Central assistance is given towards pension @ Rs. 200/- per month to persons above 60 years and @ Rs.500/- per month for senior citizens of 80 years and above belonging to a household below poverty line, which is meant to be supplemented by at least an equal contribution by the States. With effect from 1 July, 2013, the pension schemes under NSAP have been brought under the ambit of Direct Benefit Transfer (DBT), wherein the money is directly transferred into the bank account of beneficiaries. 121 Districts in 26 States/Union Territories were selected under Phase I and Phase II for implementation of the DBT. It has been decided to roll out DBT all over the country.

E. Income Tax Exemptions

Income Tax exemptions are provided to the senior citizens by the Ministry of Finance. Some other facilities provided by the Ministry are as under:

- Income tax exemption for Senior Citizens of 60 years and above up to Rs. 2.50 lakh per annum.
- Income tax exemption for Senior Citizens of 80 years and above up to Rs. 5.0 lakh per annum.
- Deduction of Rs 20,000 under Section 80D is allowed to an individual who pays medical insurance premium for his/ her parent or parents, who is a senior citizen.
- An individual is eligible for a deduction of the amount spent or Rs 60,000, whichever is less for medical treatment of a dependent senior citizen.

F. Insurance Regulatory Development Authority (IRDA)
IRDA which is working under the Ministry of Finance has issued instructions on health insurance for senior citizens to CEOs of all General Health Insurance Companies like:

- allowing entry into health insurance scheme till 65 years of age,
- transparency in the premium charged,
- reasons to be recorded for denial of any proposals etc. on all health insurance products catering to the needs of senior citizens. Likewise the insurance companies cannot deny renewability without specific reasons.
- to design their products in such a way that various options are available to policy holders so that those who are unable to pay can go for reduced premium with reduced sum assured.

G. Pensions Portal

A Pension Portal has been set up by the Department of Pensions, Government of India, to enable senior citizens to get information regarding the status of their application, the amount of pension, documents required, if any, etc. The Portal also provides for lodging of grievances. As per recommendation of the Sixth Pay Commission, additional pension will be provided as per details given below to older persons:

AGE GROUP	% OF PENSION ADDED
80+	20
85+	30
90+	40
95+	50
100+	100

H. Twelfth Five Year Plan and Senior Citizens

The major focus in the Twelfth Plan has been the consolidation, expansion and strengthening of the various programmes into comprehensive coordinated system to fulfill the aspirations of these vulnerable sections of the society. With a view to ensure the well-being of senior citizen, efforts need to be made for (i) setting up a National Commission for Senior Citizen to look into their grievances on priority for redressal and ensure that services and facilities meant for them are being provided; (ii) establishment of Old Age Homes for Indigent Senior Citizens with integrated multi- facility centre of varying capacity in 640 districts of the country, through State Governments; (iii) setting up of a Helpline and District level help lines for older persons; (iv) setting up of Bureau for Socio-Economic Empowerment of Senior Citizens at district level; (v) creation of National Trust for the Aged; (vi) issue of Smart Identity Cards for senior citizens; and (vii) health insurance for senior citizens.

4. CONCLUSION

Considering God is a distant thing, people nowadays don't even treat their parents humanly. For those helpless parents the Indian legal system and the Government have provided a recluse in the form of the various statutory provisions as mentioned above in the paper. These statutes can have positive effect on the lives of unfortunate parents but only if they exercise their authority and stand up for what is rightfully theirs. They shouldn't let their children use them and throw them as per their wish. These legislative actions can only prove to be effective when parents use them as a tool to protect themselves. As for the children, they should accompany their parents and support them, instead of completely neglecting them. We are so busy growing up, that we tend to forget that our parents are also growing old.

REFERENCES

India, Ministry of Statistics and Programme Implementation, Situation Analysis of the Elderly in India, | 2011, p. (iii) | Sec. 20-Maintenance of children and aged parents; | Sec.125-Order for maintenance of wives, children and parents; | (1978) 80 BOMLR 305 | National Council on Older Persons, 1999 available at <http://www.socialjustice.nic.in/> | Situation Analysis of the Elderly in India, 2011, p. 24 | India, Ministry of Social Justice and Empowerment, Annual Report 2011-12, p. 210 | Ibid, p. 211 | Section 80 D of Income Tax Act, 1961 as amended by the Finance Act, 2014 | India, Ministry of Social Justice and Empowerment, Annual Report 2011-12, p. 211 | India, Planning Commission, 12th Five Year Plan 2012-2017, Vol. 3, pp. 270-271