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Nautiyal



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E.MBA, LL.M, Ph.D, PGDSAPM

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Subhrajit Chanda



BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

ANALYSING THE INTERSECTION OF FAMILY LAW AND ELDER LAW IN AN INDIAN PERSPECTIVE

Authored By: Raghav Kartik,

2nd year, BBA LLB (Hons.), School of law, SASTRA Deemed to be University.

Thirumalaisamudhram, Tanjavur,

Email id: 127118023@sastra.ac.in

Phone no: 8870307630

Registered Number: 127118023

Orcid ID: 0009-0009-7922-478X

Abstract:

India is an emotionally charged nation. Indians uphold the traditional joint family structure, and the concept of familial ties is deeply rooted in the nation. Elder abuse has not previously been considered to be an issue in India; rather, it has only been considered to be a concern in Western countries. The younger generation has profited from the idea of estate planning, while the older population frequently faces major challenge. The most vulnerable time in a person's life is their senior years. The elderly need the most attention and safety at this stage. Prior to 2007, there was no explicit law in India guaranteeing the rights of older individuals. They were able to make claims for maintenance and defence against mental and physical abuse under the protection of a number of general laws, including the Protection of Women from Domestic Violence Act of 2005, personal laws, the Criminal Procedure code of 1973, the Indian Penal Code of 1860, and Hindu Adoption and maintenance Act 1956.

The protection of elderly people's rights is one of the Directive Principles of state policy under Article 41 of the Indian Constitution. However, this goal has not yet been achieved.

Keeping this in view the Maintenance and Welfare of Parents and Senior Citizens (MWPSA) Act 2007 was passed through which elderly people are entitled to protection and maintenance through a

single piece of law. The gap between the Act's legal implementation and its actual practical application is where the lacuna exists. This article's main objective is to analyse critically the Hindu Adoption and Maintenance (HAM) Act 1956 and the Maintenance and Welfare of Parents and Senior Citizens (MWPSA) Act 2007 and provide a list of suggestions for the successful implementation of legislation to safeguard older citizens' rights in India.

Key Words: Hindu Adoption and Maintenance (HAM) Act 1956, Maintenance and Welfare of Parents and Senior Citizens Act (MWPSA), Elder Abuse, Estate planning.

1. INTRODUCTION:

India is a country which gives lot of importance to culture and its traditions. Under the ancient Indian system, the parents were placed at a very high position by giving them the status of living Gods and Goddesses. With the advent of modernisation and the Western impact on the Indian society this scenario has been changed completely. The ability of the youngsters to cope has recently been tested as an increasing number of old people began to rely on their relatives and young children.

The relationship between parents and their kids has only become worse as parents age, have mental health problems, and see physical and mental decline. Young people have begun to ignore their parents, and they frequently end up abandoning them. Their future generations are merely concerned with their parent's assets and lack the willingness to care for them.

Every human being must experience the inevitable era of aging parents as part of their natural life cycle. Due to the generational divide, they are more likely to suffer abuse and neglect.

In India, we use the term 'Senior Citizen' for any person being a citizen of India, who has attained the age of 60 years or above.¹

¹ Sec 2(h) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007

2. CHALLENGES FACED BY SENIOR CITIZENS IN INDIA:

- **Health:** Age-related chronic diseases gradually manifest themselves, and it is not always feasible to fully restore health to its pre-ailment state. Some elderly people must entirely rely on taking their medications on a regular basis until they pass away. They are psychologically, socially, and functionally disabled as a result of these health issues.²
- **Lack of infrastructure:** Senior citizens are suffering for longer periods of time as a result of maladies and chronic diseases. In the approaching years, physical infrastructure needs to be more easily accessible. Senior adults are not receiving as much comfort as they need because of inadequate infrastructure. Senior citizens' chronic diseases may go untreated if there is a poor infrastructure.
- **Family structure is changing:** Since ancient times, Indian culture has been based on the joint family structure, which has been extremely important in shielding and protecting the elderly from social, physical, and psychological abuse. But with the new tendency, there has been a move in recent years toward the nuclear family paradigm. As a result, family care for the elderly is projected to decline even further with modernisation.
- **Lack of social support:** It's a well-known fact that the elderly are the population most at risk because the Indian government is unwilling to invest in social security. Elderly people in metropolitan domestic homes are taken care of by a hired caregiver, but things are far worse in villages and among low-income households. They are considered as a burden by their family members.³

3. MAINTENANCE

3.1 Hindu Law on Maintenance of Family Members:

A significant influence on the creation of legal statutes such as the Hindu Marriage Act of 1955 and the Hindu Adoption and Marriage Act of 1956 was the codification of Hindu law pertaining to the right to maintenance. These legislative acts serve as the foundation for the legal framework that safeguards a married couple's right to maintenance, as do the court rulings regarding Hindu laws under personal laws.

² Arokiasamy, J., & Sm. (n.d.). *Social Problems and Care of the Elderly*. https://www.emjm.org/1997/v52n3/Social_Problems.pdf Last Visited on 13/10/23.

³ Rajan, S. (n.d.). POPULATION AGEING AND HEALTH IN INDIA. Retrieved October 16, 2023, from [https://www.cehat.org/cehat/uploads/files/ageing\(1\).pdf](https://www.cehat.org/cehat/uploads/files/ageing(1).pdf). Last Visited on 16/10/23.

According to the HAM Act, those who are unable to support themselves due to justifiable reasons must get maintenance in order to satisfy their basic needs. Children and seniors might be among these individuals.

Maintenance of children and aged parents under Sec 20 States that:

- a) Hindu men and women are required to support their offspring, regardless of whether they are born legally or not.
- b) As long as they are minors, children have a right to maintenance from their parents.
- c) Even after reaching majority, a daughter who is not married is entitled to support until the day she marries.

The section further specifies that:

- If parents are unable to care for themselves due to age, physical infirmity, or mental impairment, they need to be maintained.
- In this section, a stepmother who is childless will also be referred to as a "parent."⁴

In the case of *Mst. Samu Bai And Anr. vs Shahji Magan Lal* it was held that in circumstances where the parents lack the means to support themselves or are unable to do so using their own assets or incomes must maintenance be given to elderly and infirm parents. Therefore, we might conclude that children's responsibility to care for aging parents can be relaxed if they have sufficient resources to do so.⁵

3.2 Maintenance of Dependants:

A dependent person is one who depends on their parents, sibling, or another relative to support them.

As per the HAM Act Section 21 dependants include:

- a male parent
- a female parent.
- a widow who is still single.

⁴ Section 20 of Hindu Adoption and Maintenance Act.

⁵*Mst. Samu Bai And Anr. vs Shahji Magan Lal* on 19 January 1961 <https://indiankanoon.org/doc/1345969/>. Last Visited on 17/10/2023.

- a son, grandson, or great-grandson who is under the age of 18 and whose father and grandfather have passed away. if he has not been able to get maintenance from another source.
- Daughter, granddaughter, or great-granddaughter who is single and whose father and grandfather have passed away. if she hasn't been able to get maintenance from another source.
- a widowed daughter who hasn't been successful in getting support from her husband's estate, her kids, or her in-laws.
- widowed daughter-in-law or widowed granddaughter-in-law who is not receiving support from any other sources.
- a minor son or unwed daughter born out of wedlock.⁶

3.3 Why do dependants need to be maintained?

Hindus believe in the ancient Vedic phrases "Matru Devo Bhava" and "Pitru Devo Bhava," which state that parents were elevated to a very high rank by bestowing upon them the status of living God and Goddess. This belief plays a major role in preserving the elderly population in India. In the current period, younger generations receive assets from their ancestors, and as the elder generation ages, they transfer their property or make a will that benefits their children. On the other hand, they ultimately abandon or abuse them after this.

In order to eliminate such difficulties faced by the elder population in India it is clearly stated in the Act that maintenance must be provided if the:

- Hindus who pass away must provide for their dependents using the estate they got from the deceased.
- The heir to the estate has the right to sustain the dependents if they have not received any part in an asset or estate through a will or succession.
- Each individual who inherited the deceased's possessions will be responsible for maintaining the dependents.⁷

⁶ Section 21 of Hindu Adoption and Maintenance Act

⁷ Section 22 of Hindu Adoption and Maintenance Act

4. OTHER LEGISLATIONS REGARDING MAINTENANCE:

4.1 Section 125 of Criminal Procedure Code:

Other personal laws do not have a special statute similar to the HAM Act. The aforementioned clause, which indicates that if any individual with sufficient resources neglects or refuses to support his parents who are unable to sustain himself or herself, can be used to seek maintenance by those who do not come within the Hindu group. When a person is found to have neglected or refused to take care of their parents, a Magistrate of the first class has the authority to order them to pay a monthly allowance for their maintenance at a rate that the magistrate deems appropriate and to give the money to such person which may change from time to time. Accordingly, the purpose of Section 125 of the CrPC is to give people of different religions a consistent method to collect alimony.⁸

4.2. Indian Penal Code 1860 and Protection of Women from Domestic Violence Act, 2005

IPC is a comprehensive law that primarily prohibits physical abuse, without making any distinctions based on factors such as age, gender, caste, or religion. The PWDV Act solely shields senior women from monetary, psychological, and physical abuse. The primary shortcoming of both legislation is that they only address citizen abuse and assault; they do not address the particular regulations pertaining to senior citizen upkeep and protection.

5. MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS (MWPSA) ACT:

5.1. Synopsis and Background of the Act.

A notable accomplishment (although on a smaller scale) in the initial 10 years of the twenty-first century was the passing of the (MWPSA) Act 2007.

Perhaps the first strategy to try to highlight the shifting social, economic, cultural, infrastructure, medical, and legal demands of India's aging population was the National strategy on Older Persons (NPOP), 1999. The state of Himachal Pradesh may have been the first to pass the Himachal Pradesh Maintenance of Parents and Dependents Act (HPMPDA), 2001⁷ but even state legislatures were

⁸Diva Rai, *Concept of Maintenance in Hindu Marriage Act, 1955* - iPleaders, IPleaders (June 13, 2019), <https://blog.ipleaders.in/concept-of-maintenance-in-hindu-marriage-act-1955/>. Last Visited on 29/10/23.

thinking about establishing welfare laws to address the needs of the elderly. It's interesting to note that the MWPSC Act and the HPMPDA contain a good deal of identical requirements.

In accordance with the Act, if a senior citizen becomes incapable of supporting themselves, children (who are not minors), relatives, or legal heirs are required to take care of them as well. In addition, the Act requires state governments to build and manage senior citizen residences, particularly for individuals who are too elderly to find alternative suitable housing. Although the Indian Parliament made a commendable effort by passing the Act, the desired outcome was not realized. The Supreme Court noted in its landmark decision in *Ashwani Kumar v. Union of India*⁹ that the government had not carried out its obligations under the 2007 Act. Notwithstanding the government's repeated violations of the Act's requirements, the Court ordered the government to recognize and carry out certain actions. Based on the rationale presented in the *M/S. Shantistar Builders* case,¹⁰ the Supreme Court determined that reasonable accommodations are crucial for the cognitive, mental, and physical growth of an individual.

5.2. A Sceptical Examination of the MWPSC Act:

The Act requires the legal heir and children of the elderly to legally pay maintenance for them. Additionally, it mandates that the state government must create senior living facilities. Senior people or parents may seek before a tribunal under this Act to receive a monthly stipend from their own children or heirs. "Children" is defined by the Act as son, daughter, grandsons, and granddaughters¹¹. Thus, it only covers biological children and their descendants. Numerous cases involving abusive treatment of parents or elderly individuals by son-in-laws, daughter-in-laws, or adopted children have been brought before the court, and these cases have been able to elude prosecution because of this legal loophole. Only bare needs like food, clothes, shelter, and medical attention are included under "maintenance."¹²

However, it ignores the issue of parents' or older citizens' safety and security. "Relative" refers to the person who currently owns the property or will do so upon the death of the elderly person without

⁹ *Dr. Ashwani Kumar v. Union of India & Ors*, CWP No. 193 of 2016 <https://indiankanoon.org/doc/19090773/> Last Visited on 30/10/23.

¹⁰ *M/S. Shantistar Builders v. Narayan Khimalal Totame and Ors*, AIR 1990 SC 630. <https://indiankanoon.org/doc/1813295/> Last Visited on 03/11/23.

¹¹ Section 2(a) of Maintenance and Welfare of Parents and Senior Citizens (MWPSC) Act.

¹² Section 2(b) of Maintenance and Welfare of Parents and Senior Citizens (MWPSC) Act.

children.¹³

5.2.1. Application for Maintenance.

A senior citizen or parent, as applicable, may make an application for support under section 4; if he is incompetent, any other person or organization authorized by him may do so; alternatively, the Tribunal may take cognisance suo motu.¹⁴ The said provision stipulates that cases must be resolved by the Maintenance Tribunals in a timely manner and that the four-month period starting on the day the notice is given must be adhered to.

5.2.2. Establishment of the Maintenance Tribunal:

The MWPSC Act requires the states to establish one or more Maintenance Tribunals in each subdivision within six months of the Act's start date. The Sub-divisional official (SDO) or an official above the grade of SDO must preside over these tribunals, which are tasked with considering and ruling on the petitions filed pursuant to Section 5.¹⁵

5.2.3. Maintenance order

The Act empowers the Tribunals to issue maintenance orders, requiring children or relatives to provide a monthly maintenance payment not to exceed ten thousand rupees, in the event that the senior citizen in question is not able to support themselves and their family¹⁶. Tribunal-issued maintenance orders are equally enforceable as those issued according to Section 128 of the CrPC, 1973¹⁷.

The sum mentioned in the Act might not be enough to maintain a respectable level of life for the elderly, particularly if their healthcare or other expenses are greater. In certain situations, if parents or elder persons have maintained an exceptionally high quality of living throughout their lives, they might not be able to make ends meet with this basic amount. There is no rationale behind the fixing of this amount.

¹³ Section 2(g) of Maintenance and Welfare of Parents and Senior Citizens (MWPSC) Act.

¹⁴ Section 5 of Maintenance and Welfare of Parents and Senior Citizens (MWPSC) Act.

¹⁵ Section 7 of Maintenance and Welfare of Parents and Senior Citizens (MWPSC) Act.

¹⁶ Section 9 of Maintenance and Welfare of Parents and Senior Citizens (MWPSC) Act.

¹⁷ Section 11(2) of Maintenance and Welfare of Parents and Senior Citizens (MWPSC) Act.

The Act also lays out a very significant rule governing legal representation. According to this, parties ought not to be represented by an attorney. This clause is intended to shield the parties from the high costs of litigation. However, practically speaking, given their advanced age and state of health, the elderly folks will not be able to visit the tribunal on their own. Who is authorized to speak on behalf of older individuals is not made apparent by the sections text.¹⁸

5.2.4. Offenses and the Trial Procedure:

If a person does to pay the recurring monthly charge, they will be placed in jail for one month, or until the maintenance cost is paid, whichever comes first. If the accused leaves their parents or older people behind, they may be fined five thousand rupees, imprisoned for up to three months, or both.¹⁹

5.3. Amendments to Be Made to the Act:

- The maintenance allowance limitation of ten thousand rupees per month to be removed.
- Adopted children, minors through guardianship, daughter-in-laws, and son-in-laws to be included in the definition of "children" under section 2(a).
- Add to the term of "maintenance" the "safety and security" of elderly people and parents.
- Sentence for abusing and abandoning parents be extended upto a period of six months.

6. JUDICIAL INTERPRETATION IN INDIA:

The writ suit filed by Dr. Ashwani Kumar shown that issues had not been resolved even after over ten years following the law's inception. The principal arguments made were that the pension for senior citizens has not increased and has been constant over time, and that the amount becomes insufficient when the current rupee exchange rate is taken into account. He appealed for relief under three additional concerns in addition to pension rights: the right to shelter under Article 21; geriatric care and medical facilities for older persons under Articles 21, 39, 41, and 42. 20

The Court ordered the Union of India to get data on the number of senior living facilities in each district of the nation from each state and union territory and to submit a Status Report on the subject

¹⁸ Section 17 of Maintenance and Welfare of Parents and Senior Citizens (MWPS) Act.

¹⁹ Section 24 of Maintenance and Welfare of Parents and Senior Citizens (MWPS) Act.

²⁰ IBID 10

,given instructions to compile data from each state government on the healthcare and geriatric amenities that need to be made accessible to elderly folks and was instructed to include a publicity plan and action plan for promoting public awareness of the 2007 Act.²¹

SUGGESTION AND CONCLUSION:

The parents, or older citizens, have dedicated many years of their lives to providing a pleasant living for their future generations. Therefore, it is directly our responsibility to keep them safe. There are certain gaps in the Act. The primary goal is to eliminate the Rs 10,000 cap. Prior to determining the maintenance amount, two things should be taken into account: the financial capacity of the legal successor and the standard of life that the senior citizen or parents were accustomed to. The MWPSA Act, 2007 gave the tribunal some *Suo Motu Cognisance*, however the tribunal almost never uses it. Given the rise in crimes committed against parents and senior citizens, it is recommended that the tribunal has to regularly exercise its discretionary power to defend the rights of elderly citizens and parents. Despite the introduction of the "Digital India" initiative, the tribunal has not included an online site. It is recommended that a dedicated web site be established, utilizing data such as daily cause lists and orders, for the advantage of advocates, parties, and other educational objectives. The public's ignorance of the tribunal's existence is one of the obstacles that has to be addressed; periodic awareness efforts and the free distribution of literacy pamphlets to families can aid in eradicating this ignorance.

Additionally, there is a conflict between the personal laws regarding the maintenance of dependents. In light of the current circumstances, the Uniform Civil Code (UCC) must be implemented in order to create a uniform legal framework for everyone and lessen the burden on the Indian Judiciary by allowing maintenance claims to be made through a single act. To conclude every Indian has a societal obligation to stop the Indian custom of seeing parents as living gods from being lost.

²¹ Sneha Mahawar, *Government's lethargic attitude towards senior citizens in India and the reparative role of the judiciary* - iPleaders, IPleaders (Sept. 10, 2021), <https://blog.ipleaders.in/governments-lethargic-attitude-towards-senior-citizens-india-reparative-role-judiciary/> Last Visited on 05/11/23.