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ABOUT US



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

ELDER CARE LAWS IN INDIA

AUTHORED BY - SHREEYA KAJARIA

*“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.**”*

- Article 41, Constitution of India¹

1. INTRODUCTION

1.1. FILIAL PIETY

India is a country of varied cultures and traditions. With Tamilian families playing Kutthi Kolam to celebrate their harvest to children of Calcutta lighting up their houses and decorating the streets to celebrate and welcome the glory of their Maa Durga, India really is a place of rich heritage. Despite such diversity what strings us together is our Indian values like filial piety and honesty. The concept of **filial piety** is commonly recognized in various East Asian settings as a younger generation's responsibility to respect and obey older generations, which shapes both intergenerational duties and inheritance customs². It also involves the ideology of **salvation of predecessors**.³ However, it is interpreted differently and can be a subject of debate⁴. In numerous situations, the eldest sons are considered accountable for providing financial assistance to their elderly parents, while their wives are primarily responsible for the day-to-day physical and household care⁵. The laws in India have adapted themselves to substantiate these values and promote the sentiment of elderly care. What, however, goes on to become a sad reality is that what once was just an unsaid social expectation has now become a rather uncommon phenomenon. It is in such desperate times that one has to depend on the **formalisation** of what once were fundamental Indian values.

¹ The Constitution of India, 1950, Article 41

² Buch ED, “Anthropology of Aging and Care” (2015) 44 Annual Review of Anthropology 277

³ ibid

⁴ Ikels C, “Introduction” [2004] Filial Piety 1

⁵ Smith V, “Circles of Care: Work and Identity in Women's Lives” (1992) 17 Signs: Journal of Women in Culture and Society 834

1.2. NEED FOR ELDER CARE LEGISLATIONS

Elders form an essential part of our society as well as our families. They hold invaluable experience and contribute to society through their wisdom, and they also aid in carrying forward social customs and traditions. They also play an important role in holding a family together. As children grow up and become busy with their lives, the love and care provided by their parents, grandparents, and other relatives become a distant memory which often turns into **neglect**. A recent uptrend has been observed in elders' neglect in urban areas. This uptrend has further been followed by abuse-both mental and physical- throughout India. According to a study conducted by the National Institute of Health Canada, it was found that the elders in India are, in fact, more emotionally abused than in any other country in the world⁶. This staggering data further strengthens the need for strong legislation protecting the rights of the elderly. The Constitution, through a few provisions, does provide for elderly care. However, it becomes important to note that while the Constitution does not make a distinction between people based on their age, it is important to recognise that the needs of individuals can vary significantly across different age groups. For example, while a child's right to life would naturally include access to education, this may not be the case for someone who is over 40 years old, especially in the case of elderly individuals. Therefore, when passing laws, it is important to be mindful of the specific vulnerabilities that come with age and to take special care to ensure that these vulnerabilities do not become obstacles for individuals in **accessing their rights**, particularly for the elderly. The constitution accompanied by the public policies, Personal Laws and the several Acts help ensure the protection of the elderly. These provisions find its roots in **Article 14**⁷ and **21**⁸ to ensure the elderly's **right to equality** and **right to dignified life** respectively. This paper aims to analyse the evolution of the Elder Care legislations with the help of cases and laws and further provides an insight into the inadequacies posed by it.

⁶ Pillemer K and others, "Elder Abuse: Global Situation, Risk Factors, and Prevention Strategies" (*The Gerontologist* April 2016)

<[https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5291158/#:~:text=Among%20these%20studies%20using%20emotional,%2C%20and%20Canada%20\(4.0%25\).-%3E](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5291158/#:~:text=Among%20these%20studies%20using%20emotional,%2C%20and%20Canada%20(4.0%25).-%3E)> accessed April 18, 2024

⁷ Constitution of India, 1950, Article 14

⁸ Constitution of India, 1950, Article 21

2. EVOLUTION OF ELDER CARE LEGISLATIONS: JUDGMENTS AND LAWS

2.1. PRE AND POST CONSTITUTION

The history of elder neglect dates way back to the pre-independence era, i.e., before the birth of the Indian Constitution. One such case was the 1879 Privy Council judgement in *Narayanrao Ramchandra Pant V Ramabai*, where the mother who was also the widow of the testator was neglected by her son who had inherited the property. The Council upheld the principles of justice for the elderly by granting her the right the right to claim maintenance from her son⁹. Following this the Constitution of India was adopted as the highest law of the country in 1950. The core of social, economic, and political justice in India is contained in Parts III and IV of the Constitution. Although the chapter on fundamental rights does not explicitly mention rights for senior citizens, there are provisions for protecting such vulnerable groups. The Directive Principles of State Policy contained in Part IV, although not legally enforceable are crucial for governing the country. The framers of the Constitution considered this part to be essential for promoting the welfare and democratic governance. **Article 41** contained herein emphasises on the importance of addressing the needs of older people.¹⁰ This article was the first step of the Independent India towards creating **positive obligations** on the State to protect the rights of the elderly. This along with the fundamental rights of **Articles 14¹¹ and 21¹²** ensure an equitable approach towards a dignified life for this vulnerable group.

2.2. PERSONAL LAWS

While religions recognise the moral obligation to support their parents, the specifics vary depending on personal laws.

2.2.1. MUSLIM LAWS

“O Lord: have mercy on them both, as they nursed me and give unto him that is of kin to you his due.”

- **Quran, Chapter XVII¹³**

⁹ *Narayanrao Ramchandra Pant V Ramabai* LR Cal 1880 162

¹⁰ Article 41 (n1)

¹¹ Article 14 (n7)

¹² Article 21 (n8)

¹³ Quran, Chapter XVII

Muslim Law recognises the assiduous efforts of the parents in raising their children and considers it to be latter's moral obligation to provide for the former. According to Hanafi law, capable children and grandchildren must provide maintenance for their parents and grandparents, even if the said parents and grandparents can earn a livelihood.¹⁴ The mother under this school of thought, has a preferred right to be maintained by her children.¹⁵ However, under Shia law, both parents have equal rights, and if necessary, the maintenance allowance must be divided equally between the mother and father.¹⁶ This maintenance is paid out of 'Nafaqah', i.e., what a person spends over his family.¹⁷

2.2.2. HINDU LAWS

In 1956, the **Hindu Adoption and Maintenance Act** ("HAMA") was adopted. This Personal Law mandated for the elderly parents to be maintained under **Section 20**.¹⁸ It provides that a Hindu must maintain their elder or infirm parent(s) throughout their life, provided that the parent is unable to maintain themselves out of their personal earnings or income through property.¹⁹ This law provided for a formal structure for Hindu parents (a majority religion in the country) to claim maintenance from their children.²⁰ **Section 23(2)**²¹ outlines the factors that must be considered by the court when determining the amount of maintenance to be awarded to children or elderly or disabled parents. These factors include the position and status of the parties involved, the reasonable needs of the claimants, whether the claimant is justified in living separately, and the income and property of the claimant.²² However, it is important to note that by virtue of **Section 24**²³, if an individual ceases to be a Hindu (through conversion), they will not be eligible to claim maintenance under this Act. Additionally, if a change in circumstances warrants a modification to the amount of maintenance, it may be adjusted as per **Section 25**.²⁴ HAMA acknowledges the significance of familial support and care for elderly parents, and promotes the concept of joint family, emphasizing the moral obligation of family members to provide for their elderly parents. This is particularly crucial for elderly individuals

¹⁴ 1972 Mulla DF, Hidayatullah M and P. SRK, *Principles of Mohammedan Law* (NM Tripathi 1968)

¹⁵ *ibid*

¹⁶ ad-dīn TAYYABJI Fayz Badr and ṬAYYIBĠĪ Muhsin, *Muslim Law. The Personal Law of Muslims in India and Pakistan ... Fourth Edition by Muhsin Tayyibji* (NM Tripaki Private 1968)

¹⁷ *ibid*

¹⁸ Hindu Adoption and Maintenance Act, 1956, Section 20

¹⁹ *ibid*

²⁰ *ibid*

²¹ Hindu Adoption and Maintenance Act, 1956, Section 23(2)

²² *ibid*

²³ Hindu Adoption and Maintenance Act, 1956, Section 24

²⁴ Hindu Adoption and Maintenance Act, 1956, Section 25

who depend on familial support for their social and emotional well-being.

3. STATUTORY PROVISIONS

3.1. The Code of Criminal Procedure, 1973

While Hinduism and Islam had its own personal laws protecting the rights of the elderly, the dearth of the same was felt in religions like Christianity and Parsi. Thus, in 1973, a secular and nationwide applicable law, i.e., Criminal Procedure Code (“CrPC”), was implemented.²⁵ Section 125 of CrPC enables one to claim their right to maintenance.²⁶ According to this section, if someone who has sufficient means neglects or refuses to maintain their father or mother, who are unable to support themselves, the magistrate can order them to pay a monthly allowance for maintenance.²⁷ This exhaustive code also includes a provision for maintenance to be paid during the proceedings for maintenance.²⁸ In addition, if someone applies for interim maintenance while the proceedings are pending, the magistrate must decide on the application within sixty days of the date of service of notice of the application. If an individual fails to comply with the order of the magistrate without sufficient cause, they may be sent to prison.²⁹ Section 488 of the code further lays down the guidelines for maintenance a wife can claim from her husband who has sufficient means to provide for her.³⁰

These legislations further went on to become the prime resource to resolve cases related to elder care and the related maintenance issues. In *Vijaya Manohar Arbat v. Kashirao Rajaram Sawai*, the question of whether a daughter is liable to maintain her parents was raised.³¹ It was held that a son and a daughter are equally liable to maintain their parents regardless of their marital status, given that they have sufficient means to do so u/s 125(1)(d).³² However, they’re only liable to maintain them if the parents are unable to do so themselves.³³

In *Kirtikant D. Vadodaria v. State of Gujarat* the Supreme Court held that Section 125(1)(d) of CrPC within its definition of ‘mother’ includes ‘stepmother’ and that she can claim the right

²⁵ The Code of Criminal Procedure, 1973

²⁶ The Code of Criminal Procedure, 1973, Section 125

²⁷ *ibid*

²⁸ *ibid*

²⁹ *ibid*

³⁰ The Code of Criminal Procedure, 1973, Section 488

³¹ *Vijaya Manohar Arbat v. Kashirao Rajaram Sawai* SCC 1987 SC 278

³² *ibid*

³³ *ibid*

to be maintained from her stepchild.³⁴ The case overruled previous judgements to state that only a childless stepmother, in the name of social justice for women, can claim maintenance in cases where the stepmother is unable to maintain herself and her husband, too, isn't able to do so.³⁵ The case also mentions that the child is to maintain her regardless of them inheriting any property.³⁶

This was followed by the judgement of *Baban Alias Madhav Dagadu Dange V Parvatibai Dagadu Dange and Anr* which further widened the term 'mother'.³⁷ The High Court while referring to the General Clauses Act stated that since the terms 'father' and 'son' have a wide definition, the term 'mother' must too include within its purview adoptive mothers in cases of maintenance.³⁸

3.2. Protection of Women from Domestic Violence Act, 2005

The Domestic Violence Act, 2005 ("DV Act") becomes relevant in regard to the violence practiced against the old and infirm females of the society.³⁹ While being a female already puts one in a vulnerable position, the disadvantage is amplified when the same is also an aged person. Thus, this act holds great importance in protecting this disadvantaged segment of the society. While this act protects a woman against violence from her husband, it also protects her against violence from her children.⁴⁰ Several times when a parent transfers their property out of love and affection to their children, the children tend to take advantage of it and neglect them completely. One such case was of *Goutam Chanda V Gouri Ram Chandan* wherein the mother had transferred the property to her son only for him to make permanent constructions on it.⁴¹ When she opposed it, he sought to abuse. Filing a case under Section 12⁴² of the DV Act, 2005, the Sessions Court directed the son to pay a monthly relief to his mother.⁴³ The High Court upheld the decision stating that the mother was an 'aggrieved party' u/s 2(a)⁴⁴ and given that both parties were in a domestic relationship u/s 2(f)⁴⁵, the case fell under the purview of the

³⁴ *Kirtikant D. Vadodaria v. State of Gujarat* SCC 1996 SC 479

³⁵ *ibid*

³⁶ *ibid*

³⁷ *Baban Alias Madhav Dagadu Dange V Parvatibai Dagadu Dange and Anr* LR 1978 BOM 305

³⁸ *ibid*

³⁹ The Domestic Violence Act, 2005

⁴⁰ *ibid*

⁴¹ *Goutam Chanda V Gouri Ram Chandan* SCC OnLine Cal 3832

⁴² The Domestic Violence Act, 2005, Section 12

⁴³ *Goutam Chanda* (n41)

⁴⁴ The Domestic Violence Act, 2005, Section 2(a)

⁴⁵ The Domestic Violence Act, 2005, Section 2(f)

DV Act.

4. THE MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZEN ACT, 2007

In 1999, the Government of India introduced its initial policy for the elderly, called the '**National Policy on Older Persons**'.⁴⁶ This policy was later amended in 2011, where the term 'Older Person' was changed to '**Senior Citizen**'.⁴⁷ The policy aimed to provide various forms of support to senior citizens, including *financial security, healthcare, shelter, welfare*, and other needs.⁴⁸ It also emphasised the importance of protecting senior citizens from abuse and exploitation, providing opportunities for their development and participation, and offering services to improve their quality of life.⁴⁹ The 2011 draft policy took into account various factors, such as the growing elderly population, changes in the economic and social landscape, medical, scientific and technological advancements, and high levels of poverty among the elderly in rural areas.⁵⁰

This was followed by what now is considered to be the *backbone* of elder care laws in India: **The Maintenance and Welfare of Parents and Senior Citizen Act, 2007** ("MW Act 2007").⁵¹ A parent (biological, adoptive, stepfather, or stepmother) or grandparent, whether a senior citizen or not, who cannot support themselves, may claim maintenance from their *adult* children (*major* son, daughter, grandson, and granddaughter).⁵² The children's responsibility to maintain their parents extends to providing for their **basic needs for a normal life**.⁵³ Furthermore, this law provides for the maintenance of childless senior citizens (aged 60 years or above) by their *relatives*. "Relative" refers to any legal heir of the childless senior citizen who is in possession of their property or would inherit it after their death but is not a minor. If the parents or senior citizens are unable to apply for maintenance themselves, they can authorize any other person or organization to apply on their behalf.⁵⁴ The Maintenance Tribunal must decide on such an application within a maximum of 120 days from the date of service of

⁴⁶ National Policy on Older Persons, 1999

⁴⁷ National Policy on Older Persons (Amendment), 2011

⁴⁸ *ibid*

⁴⁹ *ibid*

⁵⁰ *ibid*

⁵¹ The Maintenance and Welfare of Parents and Senior Citizen Act, 2007

⁵² *ibid*

⁵³ *ibid*

⁵⁴ *ibid*

notice to the children/relative.⁵⁵ Failure to comply with the Tribunal's orders by the children/relative may result in imprisonment of up to one month as in accordance with Section 5 of the Act⁵⁶. It is these provisions that ensure quick justice and convenience for the elderly and help avoid harassments to great extents.⁵⁷ The Tribunal may order them to pay a monthly allowance at a rate deemed appropriate by the Tribunal, but the *maximum amount* of maintenance cannot exceed *Rs 10,000 per month* as per provisions of Section 9.⁵⁸ Section 4 of the act provides for the elders to lead a '**normal life**'.⁵⁹ The act aims to promote the sentiment of *filial responsibility* and further make the provisions for elder care more efficient. With this purpose, Section 19 of the act also makes it mandatory for all states to have old age homes in all districts with a minimum capacity of 150 elders and further has provisions to protect the life and property of the elderly.⁶⁰

Several cases went on to interpret the MW Act 2007, setting important precedents. The court in a maintenance claim made by financially ill-equipped parents in the case of *M. Venugopal v. DM, Kanyakumari*, held that all senior citizens, including parents, can claim maintenance under the 2007 Act if they are unable to support themselves financially⁶¹. However, in *Ulleppa v. Gangabai*, when a stepmother with other children who were adequately financially equipped wished to claim maintenance from her stepson, the Court denied her plea stating that if a stepmother has other sources of support, she may not be eligible to receive maintenance from her stepsons.⁶² The court in *Jharkhand Senior Citizen Advocates Service Sansthan and Another v. State of Jharkhand* while acknowledging the needs of the elderly, issued a directive for the establishment of state Old Age Homes in every district of the state and also instructed the state government to take steps to make it easier for elderly individuals to receive medical treatment such as arranging separate queues in hospitals⁶³. In the case of *Reju and Ors. V The Maintenance Tribunal, Thiruvananthapuram*, the Kerala High Court affirmed the tribunal's ruling that obligated the provision of welfare assistance to a relative, even if there is no

⁵⁵ *ibid*

⁵⁶ The Maintenance and Welfare of Parents and Senior Citizen Act, 2007, Section 5

⁵⁷ *ibid*

⁵⁸ The Maintenance and Welfare of Parents and Senior Citizen Act, 2007, Section 9

⁵⁹ The Maintenance and Welfare of Parents and Senior Citizen Act, 2007, Section 4

⁶⁰ The Maintenance and Welfare of Parents and Senior Citizen Act, 2007, Section 19

⁶¹ *Kanyakumari M. Venugopal v. DM*, SCC OnLine 2014 MAD 5642

⁶² *Ulleppa v. Gangabai* CriLJ 2003 2566

⁶³ *Jharkhand Senior Citizen Advocates Service Sansthan and Another v. State of Jharkhand* SCC OnLine Jhar 2016 Jhar HC 721.

succession interest arising from the senior citizen's property, as requested by the petitioner.⁶⁴ In *Santosh Surendra Patil Vs. Surendra Narasgopnda Patil*, the parents while suffering from arthritis, were also unable to maintain themselves in their infirm state. As the children refused to maintain them, they forced to resort to legal measures. On analysing the case, the court held that a child is to maintain their elder parents as a legal obligation while the State is to provide a helping hand to the old and infirm⁶⁵. In another *Sunny Paul and Anr. V NCT of Delhi*, the parents were who were living in a property maintained by their children were seen to be abused for years by their adult children. The court while acknowledging the regressiveness of the same, held that abusive adult children can be evicted from the property if the parents have the legal possession of the same⁶⁶. The Court directed the Delhi government to amend rule 22 of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009, and create an action plan to protect senior citizens' life and property, as the current rules only allow complaints for eviction from self-acquired property.⁶⁷ The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 also protects parents in rented accommodation.⁶⁸

5. OTHER GOVERNMENT POLICIES

The Government of India has time and time implemented policies for the upliftment of this vulnerable group. These policies are aimed at promoting the welfare of the elderly by identifying the unfulfilled needs of the sector and furthering the laws. One such scheme is the '*Rashtriya Vayoshri Yojana (RVY)*' that aims at providing the old and infirm below the poverty line or the ones earning below Rs. 15,000 with free aid and assistances devices like walking sticks and wheelchairs.⁶⁹ Another successful scheme of the government aiding 221 Lakh Indian Citizens is the *Indira Gandhi National Old Age Pension Scheme (IGNOAPS)* that provides for a fixed pension for the elderly above 60+ years who falls BPL.⁷⁰ Another *Senior Able Citizens for Re-Employment in Dignity (SACRED)* aims at providing employment to the senior citizens with adequate experience and time.⁷¹ The portal connected enterprises in search for a stable

⁶⁴ *Reju and Ors. V The Maintenance Tribunal, Thiruvananthapuram* SCC OnLine Ker 2016 Ker HC 15005.

⁶⁵ *Santosh Surendra Patil Vs. Surendra Narasgopnda Patil* SCC OnLine Ker 2016 Ker HC 15005.

⁶⁶ *Sunny Paul and Anr. V NCT of Delhi Patil* SCC OnLine Bom 2017 Bom HC 3053.

⁶⁷ Delhi Maintenance and Welfare of Parents and Senior Citizens Rules 2009, Rule 22

⁶⁸ Sunny Paul (n65)

⁶⁹ "Schemes for the Welfare of Senior Citizens" (Press Information Bureau)

<<https://pib.gov.in/PressReleasePage.aspx?PRID=1806506#:~:text=Indira%20Gandhi%20National%20Old%20Age,the%20Age%20of%2080%20years>>

accessed April 19, 2023

⁷⁰ ibid

⁷¹ ibid

employee with the interested elderly applicants.

6. INADEQUACIES

6.1.FUNDAMENTAL FLAWS

Despite the well-intended legal prescriptions, there remain to be several inadequacies in the provisions made for senior citizens. There lies a fundamental flaw in the concept that the law fails to consider, or rather is incapable of integrating the same into its systematic regime. As humans grow older, they tend to grow lonelier. Their desire for affection and spending time with their loved one's increases. This dependency gives rise to several insecurities. These elderly individuals experience hardship and deprivation. Many of them have poor health, and they lack access to social welfare. They also lack social standing and meaningful employment, leaving them feeling neglected and purposeless⁷². They miss out on important aspects of a fulfilling life without opportunities to engage in creative pursuits during their leisure time.⁷³ All of these issues are significant within our society. While laws can ensure financial and medical security to some extent, they cannot assure love and affection from the children. In many cases, these parents are self-sufficient and do not need their children to support them financially. The only thing they desire to get is one of the few things the law cannot provide them with. This feeling of abandonment leaves a void that no provision can ever fulfil.⁷⁴ Not only does this prove to be a major flaw of the legal system, but it also proves to be a major drawback for the elder care systems. Additionally, a survey conducted by HelpAge India found that emotional and verbal abuse remains to be one of the top methods of abuse.⁷⁵ Arguably mental abuse becomes arduous to prove in court as compared to physical abuse.⁷⁶ It becomes inconvenient for the elderly to prove any such form of disrespect, considering (a) The *barrier of age* and the illnesses that follow, and (b) the *burden of proof* falling on the senior citizen, i.e., the plaintiff.⁷⁷ However, these become secondary thoughts considering that in Indian culture, family prestige and name have always been given more importance than everything else. Protecting the *family honour seems necessary* to most citizens, even if it comes at the cost of one's health. Thus, most elderly end up not filing a complaint or even making the information public in an attempt to save the family name that they've worked so hard to secure.

⁷² Dey D, "A Socio-Legal Analysis of Elder Care Laws in India" (2020) 21 Theoretical Inquiries in Law 77

⁷³ *ibid*

⁷⁴ *ibid*

⁷⁵ India HA, "Elderly Abuse, Elder Abuse Prevention, Elder Abuse Laws - Helpage India" (HelpAge India November 28, 2017) <<https://www.helpageindia.org/elder-abuse/>> accessed April 17, 2023

⁷⁶ *ibid*

⁷⁷ *ibid*

6.2. THE INADEQUACIES OF THE MW ACT

The MW Act was implemented with the intention of bettering the provisions for the elderly. However, there seem to be several loopholes in the act itself that are often exploited. With Section 4 of the Act aiming to provide for a ‘normal life’ for the aged, it seems to be inherently flawed owing to its subjective nature.⁷⁸ Normal life varies depending on personal values. It could even include accepting abusive behaviour in familial relationships. The act has structural oversights such as the lack of definitions of ‘normal life’ and ‘abuse’.

When a study was conducted to analyse the elder needs, it was found that while their children provided for them, but they still lodged complaints, mostly for emotional and verbal abuse, and sometimes for physical threats⁷⁹. The law has gradually expanded its reach since 2007 when ‘abuse’ was added to section 24 of the Maintenance and Welfare of Parents and Senior Citizens Act (MW Act).⁸⁰

6.2.1. FLAWS OF ELDER CARE LEGISLATIONS

The elder care laws have been founded keeping in mind ‘*maintenance*’ and ‘*welfare*’ of the elder that have often been used interchangeably. However, these terms are separate and have different connotations.⁸¹ While ‘Maintenance’ includes *basic necessities* such as food, clothing, housing, and medical care, ‘Welfare’ means providing seniors with things like food, healthcare, recreational facilities, and other important amenities required for living a quality life⁸². It is evident that the term ‘maintenance’ has a narrower interpretation than ‘welfare’ and thus these terms must be used separately in distinct places.⁸³ This approach appears to be unfair as ‘maintenance’ has been defined in terms of subsistence for normal life and does not consider the aspect of a dignified life. In contrast, ‘welfare’ considers well-being as a whole and identifies aspects beyond just normal life.

6.2.2. OTHER FLAWS

There are several other flaws that prove to be a hurdle that the legislation, executive as well as

⁷⁸ Section 4 (n59)

⁷⁹ Dey (n70)

⁸⁰ The Maintenance and Welfare of Parents and Senior Citizen Act, 2007, Section 24

⁸¹ Dey (n70)

⁸² Issac TG;Ramesh A;Reddy SS;Sivakumar PT;Kumar CN;Math SB; “Maintenance and Welfare of Parents and Senior Citizens Act 2007: A Critical Appraisal” (*Indian journal of psychological medicine*)

<<https://pubmed.ncbi.nlm.nih.gov/34732962/>> accessed April 15, 2023

⁸³ Dey (n70)

the judiciary together have not been overcome that seem to form the biggest hurdles in delivery of justice. There seems to be a lack of awareness amongst the senior citizens about their rights and redressal systems available to them. Due to this failure on part of the executive, several elderly and infirm have been unknowingly denied justice and left to endure the abuse and torture. Further on, despite the provisions in the MW Act, there lacks proper implementation of the same. The executive has failed to establish old age homes in all districts and which some districts do have these facilities, they lack in quality or capacity owing to the inadequate allocation of resources. Moreover, there are several provisions for the inheriting relative to maintain a childless elder. However, the law fails to account for the dependency anxiety induced by the same in the elderly, making it seem like a two-way transaction. The law must take into consideration these factors and amend the laws to promote elder care to greater extents.

7. SUGGESTIONS

a. There are several correctional measures that the law can take to further the principles of justice of the old and infirm. The law must acknowledge and insert an element of mental suffering in the act, considering the frequency of the same. In 2018, a draft bill was presented in the Parliament seeking to include 'safety and security' in the definition of maintenance while also addressing the 'mental suffering' of the elderly.⁸⁴ The acceptance of this bill could be revolutionary, enabling the prosecution of children for abusive behaviour towards their parents and addressing the unarticulated needs of older individuals. When evaluating welfare and maintenance, the basic amenities under 'maintenance' should be considered while determining maintenance allowance regardless of the gender of the parent. However, if senior citizens file an application against their relatives who might inherit their property, the maintenance order should be based on the concept of 'welfare'.⁸⁵ The executive and the legislature must also consider providing the elderly with certain financial constraints with tax benefits such as the removal of taxes on deposits and interests. There must also be policies providing for assisted living facilities for the indigent elders suffering from dementia and other such diseases. Another factor that can be considered while reviewing the elder care laws are the outdated numbers for maintenance allowances paid to the elderly. The laws, instead of focusing on setting an upper limit must decide upon a lower limit while leaving the setting of the exact amount upon the

⁸⁴ Dey (n70)

⁸⁵ *ibid*

discretion of the courts. It is only through continuous revision and adaptation can the laws be able to achieve its objective of justice.

8. CONCLUSION

Elder care and respect continue to be at the core of Indian values and traditions. While the same has witnessed a continual decline through the years, the several legal prescriptions uphold these principles to uplift this vulnerable group. While the several personal laws and statutory provisions provide for their maintenance, there seems to be inherent fault in the construction of these laws that the legal system must thrive to overcome. Only by acknowledging the shortcomings of the law can the nation achieve justice in its truest sense. Old age is inevitable. It is the youth formulating the laws today who will be the ones using it tomorrow. A well-structured elder care regime is not only an investment for the present but a necessity for the future and thus making this often-neglected sector of law to be the need of the hour.



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LEGAL