



## Maintenance and welfare of parents and senior citizens act, 2007: A critical analysis

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### Abstract

In recent times, there is phenomenal increase in population of aging. As per the report of the Situation analysis of the Elderly in India – 2011”, the elderly population aged sixty years and above account for 7.4 percentage of total population in 2001. About 65% of the aged had to depend on others for their day to day maintenance. The old age dependency ratio climbed from 10.9% in 1961 to 13.1% in 2001 for India as a whole. For females and males the value of the ratio was 13.8% and 12.5% in 2001 – Hence, in this paper the authors is going to analysis the effect of the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (Act, 2007) which are enacted for the welfare of the parents and senior citizens in India- Further, the authors is going to analyse lacunas in the existing legislation.

**Keywords:** senior citizens, parents, maintenance, liability of children/relative, hindu, christian, muslim, act, 2007

### Introduction

Indian society has a long cherished tradition to respect and protect the elders. It is the pious obligation of the siblings to maintain their parents and grandparents. The great saint Tamil poet “Avvaiyar” said “*Annaiyum Pithavum Munnari Deivam*” which means mother and father are the first God known to the children. Until few decades, in the past, these traditions, heritage and moral values were taught at the schools as part of curriculum. Since, the children learnt these invaluable tenets, in their childhood, it was not required to remind them of their obligation towards the elders, by making any law to respect and protect them. In recent years, under the guise of preparing the younger generation to compete globally in knowledge sharing and employment, we have gradually removed the moral studies from the school curriculum. On the other side of the coin, when the joint family system was in prevalence, the grandparents, in order to at-least while away their time, used to tell moral stories to their grandchildren.

“Patti Kathaigal” / “Grandmother's stories” played a major role to imbibe good qualities in the children. Now joint family system has also slowly faded away. As a result, the children hardly have the golden opportunity of learning moral values from the elders also. As a consequence, we have witnessed crimes by juvenile delinquents on the increase. Even the Government is forced to amend the Juvenile Justice (Care and Protection) Act to treat the Juveniles on par with adults in respect of certain heinous crimes. Feeling of togetherness has vanished. Love and respect for the elders have diminished. Some, among the younger generation, do also forget to maintain their parents. They are left in the lurch in the evening of their life. So, the Government had to think of converting the pious obligation to maintain the parents as a legal obligation. Thus, for the first time in the Code of Criminal Procedure, 1973, provision was made for payment of maintenance to the parents who are unable to maintain themselves. Though a claim for maintenance is in the nature of a civil claim, the said provision was inserted in the Criminal Procedure Code thereby giving jurisdiction to Judicial Magistrates hoping that it would be less expensive and speedy. But in course of time, the hope

was belied. The aged parents continue to suffer. Many of them have to spend their life in old age homes.

Taking note of the above hard realities, in order to make the procedure easier, less expensive and to be on fast track, the Government has brought into force a completely new legislation viz., “The Maintenance and Welfare of Parents and Senior Citizens Act, 2007”. With the above introduction as pointed by the Hon’ble Madurai Bench of the Madras High Court in *M. Venugopal Vs District Magistrate cum District Collector and Anr* <sup>[1]</sup>, the authors are going to analyse the provisions of the above Act in the light of various provisions available under the various Acts at present.

### Objective of the Research Paper

- To identify the benefits available under the Act, 2007
- To identify the liability of children
- To compare the provisions of the Act, 2007 along with the provisions of the other laws
- To identify the lacunas in the existing legislation
- To make suggestion for the effective implementation of the Act, 2007.

### Object of the Act, 2007

The object of the Act is to provide for more effective provisions for the maintenance and welfare of the senior citizens guaranteed and recognised under the Constitution and for matters connected therewith or incidental thereto. The Constitution of India under Article 41 mandates “*the state to make effective provision for securing the old age*”. Article 46 also states that “*Promotion of educational and economic interests of ....other weaker sections: The State shall promote with special care .... of the weaker sections of the people, and shall protect them from social injustice and all forms of exploitation*”.

### Maintenance under Personal Laws

#### Liability of Hindu Children to maintain their aged parents

The Hindu Adoption and Maintenance Act, 1956 under Section 20 deals with Maintenance of ... aged parents. Sub section (1)

of Section 20 says “*Subject to the provisions of this section, a Hindu is bound, during his or her lifetime, to maintain his or her ....aged or infirm parents.* Further, sub section (3) says “*the obligation of a person to maintain his or her aged or infirm parent ....extends in so far as the parent <sup>[2]</sup> ....is unable to maintain himself or herself out of his or her own earnings or other property.*”

**Liability of heirs of the deceased Hindu to maintain their aged parents**

Section 21, while defining the term “dependants <sup>[3]</sup>” also speaks about the liability of the relatives under Section 22, to maintain the parents of the deceased son or daughter to the following extent:

“22. Maintenance of dependents:-

- 1) Subject to the provisions of sub-section (2), *the heirs of a deceased Hindu are bound to maintain the dependents of the deceased out of the estate inherited by them from the deceased.*
- 2) Where a dependent has not obtained, by testamentary or intestate succession, any share in the estate of a Hindu dying after the commencement of this Act, the dependent shall be entitled, subject to the provisions of this Act, to maintenance from those who take the estate.
- 3) The liability of each of the persons who take the estate shall be in proportion to the value of the share or part of the estate taken by him or her.
- 4) Notwithstanding anything contained in sub-section (2) or sub-section (3), no person who is himself or herself a dependent shall be liable to contribute to the maintenance of others, if he or she has obtained a share or part, the value of which is, or would, if the liability to contribute were enforced, become less than what would be awarded to him or her by way of maintenance under this Act.

As per the above provision, the heirs of a deceased Hindu are bound to maintain the dependents of the deceased out of the estate inherited by them from the deceased. So, if a Hindu son or daughter who is having the obligation to maintain their parents dies leaving his aged parents and his or her son or daughter who is not a minor, the son or daughter as the case may be, having the obligation to maintain their grandfather or grandmother to the extent they are inheriting the property from their deceased parents. On the other hand, if the son or daughter of the deceased has not obtained any share in the estate of a Hindu dying after the commencement of this Act, the aged parents as a dependant, shall be entitled to maintenance from those who take the estate and not from the son or daughter of the deceased son or daughter as the case may be.

The liability of relatives to maintain their aged relatives shall be in proportion to the value of the share or part of the estate taken by them. Suppose, if the son or daughter or heirs or relative are themselves is a dependant, then the above obligation shall not apply.

Under section 23 certain criteria has been mentioned subject to which the Courts are having discretionary power to grant maintenance. The above legal provisions deal with the rights of the parents alone and not about the senior citizens as mentioned in the Act, 2007.

Further, the things to be noted here is *the above provisions are applicable to Hindus only and not to other religious sector <sup>[4]</sup>.*

**Liability of Muslim to maintain their aged parents and relatives**

The term “maintenance” under the Muslim Law, is called as ‘*nafaqa*’ which means “what a person spends over his family”. Hedaya defines ‘maintenance’ as all those things which are necessary to the support of life such as, food, clothes and lodging.

There are three causes for which it is incumbent on one person to maintain other: – (i) *marriage*, (ii) *relationship and (iii) property*. The highest obligation arises on marriage; The second class of obligation arises when certain person has ‘means’ and another is ‘indigent’. It is true that the obligation to maintain one’s children is a personal obligation. *The obligation to maintain one’s aged and infirm parents arises only if one is in easy circumstances and the parents are destitute. The obligation to maintain other relations arises only if one is in easy circumstances and the relations are poor, and it extends to only those relations who are within the degree of prohibited relationship and then too, only in proportion to the share one would inherit from them on their death.*

**Quantum of maintenance**

In fixing the maintenance, the judge in exercising his discretion should consider the rank and circumstances of both parties. According to Hedaya, the quantum of maintenance should be determined on the basis of rank and financial position of both the parties. Imam Shafii was also of the view that the financial position of both the parties should be taken into consideration.

**Maintenance of parents**

As the parents are under an obligation to maintain their children as stated above, so are the children are liable to maintain their parents. Every child whether male or female, adult or minor, who has sufficient property, is responsible to provide maintenance to their parents.

**Maintenance of grandparents**

A person is bound to maintain his paternal and maternal grandfathers and grandmothers, if they are poor and *not otherwise to the same extent* as he is bound to maintain his poor father.

**Maintenance of other relations**

Persons who are not themselves poor are bound to maintain their poor relations within the prohibited degrees *in a proportion to the share which they would inherit from them on their death.*

**Liability of Christian and Parsi to maintain their aged parents and relatives**

There are no personal laws for Christian and Parsis for providing maintenance to the parents. The parents who wish to claim maintenance from their children have to approach the Court of law under Section 125 of Code of Criminal Procedure, 1973.

**Analysis of Maintenance and Welfare of Senior Citizens Act, 2007**

**Meaning of Maintenance**

According to Section 2(b) of the Act 2007, “*Maintenance*” includes provision for food, clothing, residence and medical

attendance and treatment <sup>[5]</sup>. The term “welfare” has been defined under section 2 (k). According to which, “welfare” means provision for food, health care, recreation centres and other amenities necessary for the senior citizens. “Parent” means father or mother whether biological, adoptive or step father or step mother, as the case may be whether or not the father or the mother is a senior citizen <sup>[6]</sup>. “Senior citizen” means any person being a citizens of India, who has attained the age of sixty years or above <sup>[7]</sup>. As per Section 2 (g) of the Act, 2007, “relative” 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.

### **Maintenance of parents and Senior citizens Who can make an application?**

Under section 4 of the Act, 2007, (i) the parents or senior citizens who is unable to maintain themselves from their own earning or out of property owned by them, shall be entitled to make an application against their one or more of his children who is not a minor or against, in case of senior citizens, his relative. (ii) In case, where senior citizens or parents are unable to file a case, they can authorize any other person or organization to file the case or (iii) the Tribunal is itself may take the case as *suo moto* <sup>[8]</sup>. *To make the application under this section, the applicant has to prove any one of the two essential conditions. i.e., (i) unable to maintain themselves from their own earning or (ii) unable to maintain themselves out of property owned by them. Whether the parents or senior citizens who is not earning or not having own property is eligible to claim maintenance under this Act?*

In *M.Venugopal Vs District Magistrate cum District Collector and Anr* <sup>[9]</sup>, the Madurai Bench of the Madras High Court observed that “A senior citizen, including parents, will be entitled for maintenance only if he/she satisfies the requirements indicated in sub-section (1) of Section 4. The said provision states that a senior citizen, including parent, shall be entitled for maintenance, only if he is unable to maintain from his own earnings or out of the income from the property owned by him. These two are factual aspects which are to be proved before the Tribunal. Unless maintenance is asked for in the petition by stating either both or any one of these contingencies, it will not afford an opportunity to the respondent to either admit these facts or to deny the same and thereafter to prove his stand.

The application filed under this section shall be disposed of within a period of sixty days from the date of the service of notice of the application to such person. For the reasons to be recorded in writing, this sixty days period may be extended, by the Tribunal, upto one more period of thirty days in exceptional circumstances <sup>[10]</sup>. Where a maintenance order was made under this Act against more than one person, the death of one of them does not affect the liability of others to continue paying of maintenance <sup>[11]</sup>. The Tribunal is having the power to order for maintenance or the expenses for the proceeding from the date of the order or from the date of the application.

### **Failure to comply with the order**

If any person against whom the order for maintenance or of expenses of the proceeding ordered, failed to comply with the order, without sufficient cause, for every breach of the order the Tribunal, issue a warrant for levying the amount ordered and may sentence the defaulter for the whole or any part of the

each month’s allowance for the maintenance or expenses of the proceedings, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extent to one month <sup>[12]</sup>. The things to be noted here is, to issue the warrant under this provision, application should be made, within a period of three months from the date on which the amount becomes due, to the Tribunal to levy the amount <sup>[13]</sup>.

### **Ex parte order**

Where any children or relative against whom the order for maintenance is proposed to be made, is willfully avoiding the service or willfully neglecting to attend the Tribunal, the Tribunal may proceed to hear and determine matter *ex parte*, by taking evidence of the applicant and making such other enquiry as it deem fit <sup>[14]</sup>.

### **Whether this Act is applicable for the persons/relatives residing outside the territory of India?**

Chapter – I of sub section (2) of Section 1 declare that this Act is also applicable to Citizens of India outside India. Further, Section 6 (5) also deals with the procedure for the service of summons. It say “where the children or relative is residing outside India, summon should be served by the Tribunal through such authority as the Central Government specify in this behalf”. The Central Government appointed Director, Social Defence Ageing in the Ministry of Social Justice and Empowerment, New Delhi to act as a nodal authority through whom summons shall be served by the Tribunal to the children or relative of the parents or senior citizens who are residing outside India <sup>[15]</sup>.

### **Establishment of Tribunal**

Under Section 7(2) of the Act, 2007, the Tribunal is presided over by an officer not below the rank of Sub Divisional Officer of a State. In the state of Tamilnadu, the Tribunal is presided over by Revenue Divisional Officer (R.D.O). The Tribunal may order for maintenance for an amount of not exceeding Rs.10,000/- per month <sup>[16]</sup>. Any senior citizens or a parent aggrieved by the order of a Tribunal may prefer an appeal to the Appellate authority, within a period of sixty days from the date of the order <sup>[17]</sup>. If sufficient cause is shown for not preferring the appeal within sixty days, the appellate Tribunal may entertain the appeal even after the expiry of the sixty days time limit <sup>[18]</sup>. The Appellate Tribunal shall be presided over by an officer not below the rank of District Magistrate <sup>[19]</sup> (District Collector). A close reading of section 16 shows that the right of appeal is not available to the children or relatives. In *M.Venugopal Vs District Magistrate cum District Collector and Anr* <sup>[20]</sup>, it has been observed that “right of appeal is a creature of statute and unless there is a specific provision made for appeal, such right of appeal cannot be readily inferred”. Citing the case in *N. Kannadasan Vs. Ajoy Khose and others*, reported in 2009 (7) SCC 1, the Judge viewed that the missing of the words “aggrieved child or relative” in Section 16 of the Act is only an unconscious omission by the Parliament. By applying the principle of *casus omissus*, the Court held that such a right of appeal is available for the aggrieved son/daughter/relative as well. Further, the Judge observed as follows:

*“I only hope that the law makers would take note of this anomaly and rectify the defect in the drafting of Section 16 of the Act”*. With respect to this provision the Panjab and Haryana

High in *Paramjit Kumar Saroya vs the union of India and another* <sup>[21]</sup>, also gave the same opinion. The Court observed as follows:

*“It is a case of an accidental omission and not of conscious exclusion”* accordingly the Court held that Section 16(1) of the said Act is valid, but must be read to provide for the right of appeal to any of the affected parties.

### Protection of Life and Property of Senior citizens

For the protection of life and property of senior citizens, the Act, 2007 under section 23 describe as follows:

Transfer of property to be void in certain circumstances:

- 1) Where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property, *subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal.*

Under this section, if the senior citizens transfer his property by way of gift or otherwise with a condition that the person who receives the property, has to provide basic amenities and basic physical needs to the transferor and if the person who received the property fails to fulfill the condition as already stipulated, the transfer of the property shall be deemed to have been made by fraud or coercion or under undue influence and such transfer *shall be declared void by the Tribunal*, provided the transferor has to exercise this option to declare the transaction as void.

In *M.Venugopal's case (supra)*, The Madurai Bench of Madras High Court held that the expression “otherwise” employed in sub Section 1 of Section 23 should be liberally interpreted to include even transfer of possession but, such transfer of possession should be on condition of providing basic amenities and physical needs. But, the High Court of Kerala in *Radhamani and Ors. Vs. State of Kerala and Ors* <sup>[22]</sup> held that “the condition referred in Section 23 has to be understood based on the conduct of the transferee and not with reference to the specific stipulation in the deed of transfer. Thus, it is not necessary that there should be a specific recital or stipulation as a condition in the transfer of deed itself. This condition mentioned in Section 23 is only referable as a conduct of the transferee, prior to and after execution of the deed of transfer. Thus, challenge based on the ground that there is no reference in the recital of deed that transferee will provide basic amenities and physical needs to the transferor is of no consequence”. The Court further observed that the object of section is that transferee is bound to provide all provisions of welfare measures as understood as referable to the word “welfare” under Section 2(k) of Senior Citizens Act. The above view has been affirmed in *Shabeen Martin and ors Vs Muriel and Ors* <sup>[23]</sup>.

- 2) Where any senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right.
- 3) If, any senior citizen is incapable of enforcing the rights

under sub-sections (1) and (2), action may be taken on his behalf by any of the organisation referred to in Explanation to sub-section (1) of section 5.

### Option regarding Maintenance in certain cases

Under Section 12 of the Act, 2007, an option has been given to the parents or senior citizen to claim maintenance even under Section 125 of Code of Criminal Procedure, 1973. But, not under both the Acts.

### Comparison of Section 125 of Cr.P.C and Section 9 of the Act, 2007

Section 125 of Cr.P.C does not put any limit for the maintenance, whereas under the Act, 2007, the maximum limit of maintenance to be awarded is fixed as 10,000 <sup>[24]</sup>/. Since there is specific bar in section 12, they cannot claim more than 10,000/- repress. If they want to get more amount of maintenance under the Code of Criminal Procedure, the more expeditious remedy available under the Act, 2007 will be precluded.

### Suggestions and Conclusion

According to a report titled “Situation analysis of the Elderly in India – 2011” released by Central Statistics office Ministry of Statistic and Programme Implementation, In India, as a result of the change in the age composition of the population over time, there has been a progressive increase in both the number and proportion of aged people. The proportion of the population aged 60 years or more has been increasing consistently over the last century, particularly after 1951. In 1901 the proportion of the population aged 60 or over of India was about 5 percent, which marginally increased to 5.4 percent in 1951, and by 2001 this share was found to have risen to about 7.4 percent. About 75% of persons of age 60 and above reside in rural areas. The size of the elderly population has risen from 12.1 million in 1901 to approximately 77 million in Census 2001. According to official population projections, the number of elderly persons will rise to approximately 140 million by 2021. Therefore, to protect the welfare of the parents and senior citizens “*an unambiguous legislation is better than thousands of ambiguous legislation*”.

Because, having more than one legislation would lead to absurdity rather than clarity.

Based on the above analysis, the authors would like to suggest the following:

- i) The Tribunal or the Appellate Tribunal may be presided over by a legally trained person for the reasons mentioned in the *M.Venugopal's case (Supra)*.
- ii) A new clause to be added in Section 16 (1): Namely 16 (1) (i) “*any children or relative as the case may be, aggrieved by an order of a Tribunal, may within sixty days from the date of the order prefer the appeal, subject to the condition that they should pay the amount awarded by the Tribunal to their parents or senior citizens as the case may be, to the appellate authority*”.
- iii) The section 16 (6) may be subsisted as “*the Appellate Authority shall disposed of the appeal within one month of the receipt of the appeal*”, instead of “*the Appellate Authority should make an endeavour to pronounce its order within one month of the receipt of the appeal*”. *Because we have to give prime importance to the senior citizens including the parents.*

- iv) With respect to section 17, there is similar provision in the Family court Act, 1984. in *Smt. Lata Pimple Vs The Union of India And Others* <sup>[25]</sup>, the Bombay High Court by referring various judgments held that "Now it is well-settled that apart from the provisions of Art. 22(1) of the Constitution, no litigant has a fundamental right to be represented by a lawyer in any Court. The only fundamental right recognised by the Constitution is that under Art. 22(1) by which an accused who is arrested and detained in custody is entitled to consult and be defended by a legal practitioner of his choice. In all other matters, i.e. suits or other proceedings in which the accused is not arrested and detained on a criminal charge, the litigant has no fundamental right to be represented by a legal practitioner." It is open to the legislature to put restrictions on such representation by legal practitioner, having regard to the aims and object of the Act. On an identical issue the Supreme Court in *Lingappa Pochanna Appelwar and Ors. v. State of Maharashtra and Anr. Etc* <sup>[26]</sup>, reiterated the same principle, the Court further observed. Hence section 17 does not require any re consideration.
- v) With respect to Section 23, the author with due respect, accept the view given by the Hon'ble High Court of Kerala in Radhamani's case (*Supra*).
- vi) To give effective implementation, awareness should be created among the ageis and Parents.

24. See Section 9(2) of the Act, 2007.
25. Equivalent citations: AIR 1993 Bom 255, (1993) 95 BOMLR 311.
26. Equivalent citations: 1985 AIR 389, 1985 SCR (2) 224.

#### References

1. WP. (MD)No.13733 of 2012 available at: <https://indiankanoon.org/doc/91169080/>.
2. According to the explanation, in this section parent includes a childless stepmother.
3. Section 21: For the purposes of this Chapter dependents mean the following relatives of the deceased- (i) his or her father; (ii) his or her mother; for details see section 21 of the Hindu Adoption and Maintenance Act, 1956.
4. See: Section 24 of the Hindu Adoption and Maintenance Act, 1956.
5. See also: Section 3(b) (i) of the Hindu Adoption and Maintenance Act, 1956.
6. Section 2(d) of the Act, 2007.
7. Section 2(h) *ibid*.
8. Section 5 of the Act, 2007.
9. WP. (MD) No. 13733 of 2012 available at: <https://indiankanoon.org/doc/91169080/>.
10. Section 4(4) of the Act, 2007.
11. Section 5(6) of the Act, 2007.
12. Section 5(8) of the Act, 2007.
13. Proviso to section 5 (8) of the Act, 2007.
14. Rule 6 of the Tamil Nadu Maintenance and Welfare of Parents and Senior Citizens Rules, 2009.
15. The Gazette of India, Extraordinary, Part –II, Section 3 – sub section ii, New Delhi, June 22, 2011.
16. Section 9(2) of the Act, 2007.
17. Section 16(1) of the Act, 2007.
18. Proviso to Section 16.
19. Section 15(2) of the Act.
20. WP (MD) No. 13733 of 2012 available at: <https://indiankanoon.org/doc/91169080/>.
21. Date of decision:-28.05.2014.
22. MANU/KE/2493/2015 = 2016 (1) KLT 185.
23. WA. NO.1851/2016; Dater of Judgment: The 2016.