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Maintenance of Senior Citizens and Parents

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Abstract

It is essential to provide our elderly parents with a dignified, special, safe, and happy life, and to aspire to a life of similar quality for ourselves. After all, aging is a normal process, not a disability. The only possible connection between the past and the present is by elders. We can still learn something from them. The flourished us have become a burden on the overburdened shoulders of the current generation, so what else is there to do but use the stick of law to hold them accountable parents who gave us birth and the relatives who nurtured, groomed, and to their obligations, which are essentially moral obligations? This paper aims to see how advantageous the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 is concerning section 125 of the Criminal Procedure Code, 1973. Another attempt has been made to consider the Act's role in India.

Introduction

Family is a strong social unit and a self-contained community. Its membership is derived from marriage, birth, and adoption. Family is the first school of human experience for children. It allows for a long and ongoing period of affectionate training and adaptation to improve inherited characteristics and abilities. It provides a platform for parents and children to strengthen their bonds. It carves out an environment for sociability, unity, and affinity cultivation, just like a religious entity or social organization. When viewed from a practical standpoint, it is a welcoming and warm social support structure. Family may also be a haven, a haven. However, in the "Machine Age," these statuses within the family have changed. Unlike

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the traditional role of the family to support and retain family members that are closer or further apart, the traditional role of the family has changed significantly. Previously, the moral and religious obligation to care for and protect one's parents and elderly relatives, which later became a criminal responsibility, has now become a liability under a new act defining criminal liability.

The Maintenance and Welfare of Parents and Senior Citizens Act of 2007 makes more appropriate arrangements for the maintenance and welfare of parents and senior citizens, as guaranteed and recognized by the Constitution, as well as medical assistance, the establishment of an old age home, and maintenance tribunals, among other things. The MWPSA provides maintenance and assistance not only to parents but also to issueless senior citizens, to whom the respondent is the legal heir.

Constitutional Protection to Right to Maintenance and its Justiciability

Article 41 of the Indian Constitution states, “Within the limits of its economic ability and growth, the State shall make effective provision for...old age, illness and disablement, and in other cases of undeserved want.”² While the current clause is not justiciable since it is part of the DPSP, the state should create a law to enforce it, and if there is no harmony between the DPSP and Fundamental Right, the FR would provide for a harmonious construction of these two clauses. The MWPSA³ is a step toward achieving the target set out in Article 41 of the Constituent Assembly.

The MWPSA is a step toward achieving the target outlined in Article 41 of the Constitution, as well as other legal provisions in this region. When parents are unable to provide for

² India Const. Art. 41

³ The Maintenance and Welfare of Parents and Senior Citizens Act, 2007

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themselves, the Hindu Adoption and Maintenance Act of 1956 requires Hindu sons and daughters to care for their elderly parents.

The Act on the Maintenance and Welfare of Parents and Senior Citizens

India's success in raising life expectancy has increased the number of elderly people in the world. The Registrar General of India predicted that the proportion of people aged 60 and up will increase. Other Maintenance-Providing Laws-

Section 125⁴ mandates persons with ample means to care for their parents if they are unable to care for they would increase their share of the total population from 6.9% in 2001 to 12.4 percent in 2026. Financial and social security issues for the elderly will become increasingly relevant. "Some areas of concern in the circumstances of older persons will also arise, indicators of which are already visible, resulting in pressures and fissures in living arrangements for older persons," the National Policy on Older Persons says.

It is now a legal requirement under the 2007 Maintenance and Welfare of Parents and Senior Citizens Act. The Maintenance and Welfare of Parents and Senior Citizens Act of 2007 makes it a legal duty for children and heirs to provide adequate support for senior citizens, and it recommends that state governments create old age homes in each district.

Application of the Act

- The Act requires children and relatives to care for a senior citizen (defined as someone over the age of 60) or a parent to the degree that they can live a "normal life."
- Senior citizens who are unable to support themselves can petition a maintenance tribunal for a monthly payment from their children or heirs.

⁴ The Code of Criminal Procedure, 1973

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- If he is unable to do so, He can allow any other individual or registered charitable organization to apply on his behalf if he is unable to do so himself. The maintenance tribunal will also start the procedure for maintenance on its own.

Persons who are protected

- A senior citizen who is unable to support himself from his earnings or property has the right to request a monthly payment from a child or parent through a maintenance tribunal.
- Biological, adoptive, and stepparents are both examples of parents.

Recipients

- The Act describes 'children' as sons, daughters, grandsons, and granddaughters, and relative' as any legal heir of a childless senior citizen who owns or writ on the senior citizen's estate. • The Act describes "children" as sons, daughters, grandsons, and granddaughters, and "relative" as any legitimate heir of a childless senior citizen who owns or may inherit his property upon his death. Minors are not included in either definition.
- If a senior citizen's property is inherited by more than one parent, each relative is responsible for paying the maintenance fee concerning the property they will inherit.
- All Indian people, including those living abroad, are subject to this requirement.

Remedial Machinery

- State governments may establish maintenance tribunals in each subdivision to determine the level of maintenance, which will be presided over by an officer, not lower than the rank of sub-divisional officer.
- No civil court shall have jurisdiction over any matter relating to any section of this Act; the tribunal shall have all of the powers of a civil court. If the tribunal determines that the senior citizen is unable to care for himself and that the children or relatives have

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neglected or refused to provide maintenance, the tribunal will order the children or relatives to provide a monthly maintenance payment to the senior citizen.

- The state government will set the maximum maintenance allowance, which could be up to Rs 10,000 per month.
- While the application is pending, the tribunal may order children or relatives to pay a monthly allowance as interim maintenance.
- The application must be processed within 90 days, if at all possible.
- The maintenance allowance is payable either from the date of the order or from the date of the application and must be deposited within 30 days of the order.
- A simple interest payment between 5 percent and 18 percent on the monthly allowance from the date of the application may also be required.
- On proof of misrepresentation or mistake of fact or a change in the circumstances of the senior citizen or parent receiving the monthly payment, the tribunal can change the allowance for maintenance. The tribunal's maintenance order has the same legal effect as an order issued under Chapter IX of the Code of Criminal Procedure, 1973 (Cr.P.C.), which also addresses senior citizen maintenance. If a senior citizen is eligible for maintenance under both Acts, he may only file a petition under one of them.

Conciliation

Before hearing an application, the tribunal can refer it to a conciliation officer who will try to find an agreement within one month.

Appellate Tribunals

- Appellate tribunals may be established at the district level. The state government can establish one appellate tribunal per district, which would be presided over by a District-level officer.

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- The appellate tribunal shall try to pronounce its order in writing within one month of the appeal.

Penalties and Offences

- Failure to pay the prescribed monthly allowance would result in a fine of Rs 5,000 or up to three months in jail or both.
- If the maintenance fee is not paid within three months of the due date, the tribunal may issue a warrant for collection. If the fee is not charged, the accused may be detained for up to one month or until the fee is paid, whichever comes first.
- Leaving a senior citizen is punishable by up to three months in jail or a fine of up to Rs 5,000, or both.
- If a transfer of property (as a gift or otherwise) from a senior citizen to a transferee was made under the condition of maintenance and the transferee fails to keep the arrangement, the tribunal will declare the transfer invalid. If the senior citizen is unable to enforce his or her rights, a registered non-profit organization can act on his or her behalf.

Legal Representation is prohibited

- A party before a maintenance or appeal tribunal should not be represented by a lawyer. A senior citizen can request that the maintenance officer represent them (a district social welfare officer).

Other Provisions

- The state government can build and maintain at least one old age home per district with a minimum capacity of 150 senior citizens. The state government can also impose a management plan for such facilities. The scheme would outline the expectations and facilities to be offered, including medical treatment and entertainment for residents of these old-age homes.

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- The state government shall ensure that government hospitals and those funded by the government provide beds for all senior citizens as far as possible. It shall ensure separate queues for senior citizens, expand facilities for treatment of diseases and expand research for chronic elderly diseases and aging. Every district hospital shall also earmark facilities for geriatric patients.
- The state government is responsible for publicizing the provisions, as well as ensuring that government officers undergo periodic sensitizations and awareness training on issues relating to the Bill. The district magistrate will be in charge of enforcing Bill's provisions.

The Positive Aspect

The act ensures that the right to maintenance is protected under the law, including but not limited to perpetual proceedings. It makes the abandonment and neglect of the parents and citizens, punishable. Childless senior citizens can have the benefit from this act. Further under Sec 23 of the act, the transfer of property in favour of children or relatives may be cancelled if the parents/ senior citizens are not taken care of. The Act provides for maintenance as well as the establishment of old age homes by the state government and provision for medical assistance to senior citizens.

Conclusion

There is no question that the MWPSCA is a welfare piece of legislation that can be used as a tool for social reform, but it does have certain flaws that need to be addressed.

- The term "senior citizen" refers to someone over the age of 60, but people without property are not covered by the act, which is misleading.
- The order for maintenance must be fair and equal. When the parents' separation is not justified, the children/relative is obligated to pay maintenance if the tribunal orders it, even if the children/relative wishes to keep them with him.

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- A human decision is not perfect. Despite all of the provisions for a just verdict, errors will happen, and since the act does not allow the respondent to appeal, it is a violation of the right to a fair trial.
- The act accounts for up to Rs. 10,000 in maintenance, which is far more than the liability assumed by states under the old-age pension scheme.
- Article 41 establishes the state's responsibility to make effective provisions for...old age, sickness, and disablement, as well as other cases of undeserved poverty. On the other hand, the state had deftly transferred liability to private individuals.
- The state does not require the establishment of old-age homes.
- This act allows parents to be liable to maintenance even though they are under the age of 40 since it places the presumption of proof on the child above the age of 18.
- The concept of parents differs from the definition of children in that it includes grandchildren as well.

The act's positive side is that it has guidelines for publicizing the act. The goal can be accomplished if the states commit to this region. The finding of the Delhi High Court can be summarized as follows: Though not directly relevant, the court is aware that Parliament enacted the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, to provide for senior citizens who are neglected by their children or close relatives; the enactment provides positive rights of claiming maintenance from those relatives who are likely to inherit their property..."

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