

AN ANALYSIS OF SENIOR CITIZENS AND PARENTS RIGHTS TO MAINTENANCE

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Abstract

Ageing is a natural process of human life cycle. The population of the elderly people is steadily increasing, so the concern for welfare and maintenance of senior citizens is at apex. The younger generation has a responsibility to look after and care for the older. The custom of having a joint family has declined because of globalization. The current situation shows an increase in nuclear family system, which causes elderly people to be neglected and not receive the care and attention they need. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 is passed with the objective of providing for the maintenance to parents and senior citizens. The right for welfare of senior citizens is guaranteed and recognized under the Constitution of India. The fact remains that the Constitution of India does not expressly provide for any rights for parents and senior citizens except for the directive to the State to provide for public assistance in case of old age. This study focuses on the protection of the rights of older persons with respect to maintenance. The researcher tries to analyse the provisions for maintenance of senior citizens under personal laws in India. It further makes a study of existing personal and general laws of maintenance for parents and senior citizens in India.

Keywords: Maintenance, Senior Citizens, Parents, Constitution, Rights.

INTRODUCTION

Human Right is considered as basic rights of every individual. Every person is entitled to these rights irrespective of age, sex, race, caste, creed, etc. An elderly person is considered as a liability in today's world. Ageing is a process which occurs naturally in the human life cycle. It is the decline in the capacity of the functioning of the organs of human body. However, they constitute a reservoir of human resource, gifted with knowledge, deep insights and varied experiences. The population of the aged and elderly persons has increased over the years.

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Elderly persons undergo a lot of problems. They face issues in enjoyment of their basic human rights. Many of elderly persons are homelessness, there is lack of adequate care and at times, the children leave their aged parents absolutely isolated.

According to Census 2011, there are nearly 104 million Senior Citizens in India. In which 53 million are females and the rest 51 million are males. Both the share and size of elderly population is increasing over time due to increasing longevity and improved health care facilities. From 5.6% in 1961 the proportion has increased to 8.6 % in 2011. The data indicate an increase to 14.3 crore in 2021. For males it was marginally lower at 8.2 %, while for females it was 9.0 % where 71% of elderly population resides in rural areas while 29 % is in urban areas.

India has a history and culture of respecting and obeying the elders. It has been observed in various ancient verses and documents that elderly persons particularly the parents are considered equivalent to God. India since its independence has taken efforts to protect the old aged persons. The Constitution mentions about right to life and liberty which includes dignity. In addition to the basic provisions available for each and every person, it also mentions about enactment of provisions for old aged persons under Directive Principles of State Policy.

Statement of Problem

The senior citizens have to undergo a lot of difficulty in this stage of life. It includes economic instability, as they are unable to work, there are physical and physiological problems, also. Due to globalization and modernization the nuclear family system is growing leading to loneliness of old aged persons. The old aged widows also undergo hardship, they face social stigma. In addition, the widows are not given their shares as per the inheritance laws. The basic needs of these old aged persons are not fulfilled by the children or relatives of them. The main question is who is responsible for taking care of elderly. The economic and emotional instability of senior citizens needs to be taken care but the onus should be on whom, on children, relatives or government.

Need and Scope for the study

The Maintenance and Welfare of Parents and Senior Citizens Act is passed with an intention to provide maintenance and welfare of parents and senior citizens. This right is provided under the Constitution of India. But the Constitution of India does not expressly provide for any rights for parents and senior citizens except

as stated in the directive principle. It is an obligation on the State to provide for public assistance in case of old age. This study focuses on the protection of the rights of older persons at the national and state levels. The researcher tries to analyse the provisions and laws for protection and maintenance of senior citizens. It also makes an analysis of existing laws for protection and maintenance of elderly persons.

Objectives of the study

The study tries to analyse the maintenance provisions for the senior citizens in India. To analyse the legislative provisions under Indian laws concerning the maintenance and welfare of parents and senior citizens, with particular reference to the 'Maintenance and Welfare of Parents and elderly Citizens Act, 2007' and relevant personal laws. It further tries to evaluate judicial trends and case laws that interpret the enforcement of maintenance rights for senior citizens and parents.

RESEARCH METHODOLOGY

The research methodology adopted for this research is doctrinal method. It is based on the analysis of statutes, case law, and scholarly literature relating to the maintenance rights of parents and senior citizens in India. It examines the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, relevant personal laws, and constitutional norms through an analytical and interpretative approach. The research relies solely on secondary data derived from legal texts, judgments, government reports, and academic writings, without the use of empirical methods.

LITERATURE REVIEW

Sugan Bhatia: The book examines the conceptual underpinnings of elder law within the Indian Constitution and international instruments, including the Second World Assembly on Aging. It highlights the significance of integrating various legal provisions affecting older adults into a single framework to draw attention to the multifaceted challenges they face. While acknowledging that existing laws adequately address maintenance-related needs, the book underscores the inadequacy of state efforts concerning shelter, healthcare, and protection of life and property. It further emphasizes the need for clearer articulation of laws, policies, and programmes formulated by national and state governments for the welfare of the elderly. Additionally, the text explores the sociocultural context of elder law in India, the causes and responses to elder neglect, the rights-based approach of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, its implementation mechanisms, along with case studies and a social audit of its enforcement.

Neeta Lal: In her piece, she discussed the government's 2007 parents and senior citizens bill, which aims to help mature people live in harmony and with respect.

Dr. Rakesh Kumar Singh: He has discussed constitutional initiatives as well as different legal safeguards under personnel laws, including Christian, Parsi, Muslim, and Hindu law. Additionally, he observed a number of government initiatives aimed at improving the lives of the elderly.

Research Gap

The literature in existence describes about the laws pertaining to maintenance of parents and senior citizens, but it provides little insight into how these laws are really implemented by judges. There isn't a thorough analysis that evaluates the real accessibility and efficacy of maintenance rights by integrating statutory provisions with case-law trends. That gap is filled by this study.

Constitutional Provisions for Senior Citizens

Article 21: States that no person shall be deprived of his or her life and personal freedom except by 'legally defined procedure'. Article 21 guarantees every citizen the right to life and the right to personal freedom. There was a rather expansive definition given to the word 'life'. The word 'personal freedom' has been granted a wide range covering a number of freedoms that define a citizen's personal freedom.

Schedule IV: Section 24 OF LIST III OF SCHEDULE VII deals with the 'Welfare of Workers, including Working Conditions, Provident Funds, Responsibility for Job Benefits, Invalidity and Old Age Pensions and Maturity Allowances.

State List and Concurrent List: Item No. 9 of the State List 31 and Item No. 20, 23, 24 of the Concurrent List 32 includes old age pensions, social security and economic and social planning.

Article 38: States the duty that State has responsibility to maintain a social order in favour of the interests of the people. Subclause (1) specifies that the State shall seek to promote the welfare of persons by establishing and preserving a constitutional order under which law, legislative, economic and political ties inform all national institutions as effectively as possible. Subclause (2) notes that the State shall strive, in particular, to minimize disparities in rank, facilities and services, not only between individuals but also between groups of people living in different areas or engaged in different vocations.

Article 41. Right to work, to education and to public assistance in certain cases—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.

The same right was been enforced in the case of Dr. Ashwani Kumar v. Union of India & Ors (writ Petition (C) No. 193 of 2016)

Article 46. The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

Provisions for Maintenance under Personal Laws

Maintenance of a person is considered as a duty under ancient laws. It is based on the rational that a person dependent should be taken care of. In the current scenario we have laws regulating the maintenance right of children, wife and parents. All the personal laws state about maintenance as right.

During the ancient times Hindus followed joint family system, under which it was the obligation of the karta to look after and maintain all the dependents in the family. He was considered as the head of the family and had majority rights and duties towards the family. Karta had the duty to take decisions and was responsible for partition of the family, he also had power to divide the joint family property. Both under the Mitakshara and Dayabhaga system karta had a duty to maintain all the family members.

Under the Hindu Adoption and Maintenance Act, Parents have right to claim maintenance if they do not have means to maintain themselves. Both Son and daughter are responsible to maintain their parents.

Section 20. Maintenance of children and aged parents

(1) Subject to the provisions of this section a Hindu is bound, during his or her life-time, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents.

(2) A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor.

(3) The obligation of a person to maintain his or her aged or infirm parent or a daughter who is unmarried extends in so far as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or other property.

Explanation.—In this section “parent” includes a childless step-mother.

Section 22. Maintenance of dependants

(1) Subject to the provisions of sub-section (2), the heirs of a deceased Hindu are bound to maintain the dependants of the deceased out of the estate inherited by them from the deceased. (2) Where a dependant has not obtained, by testamentary or intestate succession, any share in the estate of a Hindu dying after the commencement of this Act, the dependant 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 takes 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 dependant 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.

Section 23. Amount of maintenance

(1) It shall be in the discretion of the court to determine whether any, and if so what, maintenance shall be awarded under the provisions of this Act, and in doing so the court shall have due regard to the considerations set out in sub-section (2) or sub-section (3), as the case may be, so far as they are applicable.

(2) In determining the amount of maintenance, if any, to be awarded to a wife, children or aged or infirm parents under this Act, regard shall be had to—

(a) the position and status of the parties;
(b) the reasonable wants of the claimant;
(c) if the claimant is living separately, whether the claimant is justified in doing so;
(d) the value of the claimant's property and any income derived from such property, or from the claimant's own earnings or from any other source;

(e) the number of persons entitled to maintenance under this Act.

(3) In determining the amount of maintenance, if any, to be awarded to a dependent under this Act, regard shall be had to—

(a) the net value of the estate of the deceased after providing for the payment of his debts
(b) the provision, if any, made under a will of the deceased in respect of the dependant;
(c) the degree of relationship between the two;
(d) the reasonable wants of the dependant;
(e) the past relations between the dependant and the deceased;
(f) the value of the property of the dependant and any income derived from such property; or from his or her earnings or from any other source;
(g) the number of dependants entitled to maintenance under this Act.

In Muslim law the children are obligated to maintain their parents.

The money paid to someone for whom they are legally accountable in order to cover the cost of their food, clothing, and other necessities is known as "nafah" which means maintenance in its literal meaning

Parents who are not in need but are financially deprived still possess the right to maintenance from their children. If they own enough property, both sons and daughters are required to support their needy parents. Sons and daughters are obligated in the same way, with no differentiation. According to Sunni law, a parent's ability to support themselves does not invalidate their right to maintenance from their legally recognized children.

If the parents are able to support themselves, they are not entitled to maintenance under Shia law. Both parents have an equal right to maintenance, though the parent's right being conferred priority over the grandparents' right. Despite the fact that the son earns money and is poor, he must continue to support his parents by allowing them to live with him and his family; nevertheless, he won't be responsible for paying them separate maintenance. There are different views over how much a child must pay in maintenance to their parents; some believe that the obligation is based on the individual's inheritance, while others believe that it must be based on the child's financial situation.

In the case of *Kasim Ali Khan v Sadiq Ali Khan AIR 1938 PC169: ILR 13 Luck. 494*

It has been held that if one child is poor and another of easy circumstance, the liability to maintain the parents is on the child of easy circumstance.

Another additional feature of the parental right to maintenance is that it remains intact even in the case of the parents' conversion to another religion. Muslim law's fundamental principle of maintenance is that no one has an obligation to support another until both the one requesting maintenance and the one receiving it are in easy circumstances. Maintenance obligations arises from marriage, relationships, and property.

The Muslim male has an obligation to provide for his wife and children, even if he is not wealthy. Their rights are unassailable. Regarding all other individuals who are entitled to maintenance, such as any relative within the prohibited degree, it is contingent upon the financial circumstances of both the claimant and the obliged party and is grounded in the reciprocity principle. As long as the relatives are impoverished and the inheritor is in a favorable situation, those who are eligible to inherit their relatives' property also have an obligation to maintain it.

A parent or senior citizen belonging to Christian religion and Parsi religion does not have any right to maintenance under their personal laws. Even though it mentions about right of maintenance to spouse. The parents are entitled to maintenance not under personal law but under general law that is The Code of Criminal Procedure, 1973.

Maintenance Provision under The Criminal Procedure Laws

Section 125. Order for maintenance of wives, children and parents

(1) If any person having sufficient means neglects or refuses to maintain—

(d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate as such Magistrate thinks fit and to pay the same to such person as the Magistrate may from time to time direct: Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

Section 144 BNSS essentially provides a statutory remedy for parents and senior citizens who are unable to maintain themselves and who seek financial support from their children or relatives legally bound to maintain them. The provision functions as a quasi-criminal, summary, and immediate relief mechanism distinct from the more elaborate civil remedies available under personal laws or the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. Section 144 functions in harmony with that legislation rather than replacing it. Section 144 continues the philosophy of the former Section 125 Cr.P.C. which recognised the duty of children to maintain parents.

Maintenance provisions under Maintenance and Welfare of Parents and Senior Citizens Act 2007

Section 4. Maintenance of parents and senior citizens

(1) A senior citizen including parent who is unable to maintain himself from his own earning or out of the property owned by him, shall be entitled to make an application under section 5 in case of— (i) parent or grand-parent, against one or more of his children not being a minor; (ii) a childless senior citizen, against such of his relative referred to in clause (g) of section 2.

(2) The obligation of the children or relative, as the case may be, to maintain a senior citizen extends to the needs of such citizen so that senior citizen may lead a normal life.

(3) The obligation of the children to maintain his or her parent extends to the needs of such parent either father or mother or both, as the case may be, so that such parent may lead a normal life.

(4) Any person being a relative of a senior citizen and having sufficient means shall maintain such senior citizen provided he is in possession of the property of such citizen or he would inherit the property of such senior citizen: Provided that where more than one relatives are entitled to inherit the property of a senior citizen, the maintenance shall be payable by such relative in the proportion in which they would inherit his property.

Section 9. Order for maintenance

(1) If children or relatives, as the case may be, neglect or refuse to maintain a senior citizen being unable to maintain himself, the Tribunal may, on being satisfied of such neglect or refusal, order such children or relatives to make a monthly allowance at such monthly rate for the maintenance of such senior citizen, as the Tribunal may deem fit and to pay the same to such senior citizen as the Tribunal may, from time to time, direct.

(2) The maximum maintenance allowance which may be ordered by such Tribunal shall be such as may be prescribed by the State Government which shall not exceed ten thousand rupees per month.

Analysis of Legal Framework

The legal framework governing maintenance rights of parents and senior citizens in India is anchored in constitutional mandates, personal law obligations, welfare legislation, and criminal procedural statutes. At the constitutional level, Article 41 of the Directive Principles of State Policy directs the State to make effective provisions for public assistance in cases of old age, thereby providing the normative basis for legislative intervention. Under personal laws, the Hindu Adoption and Maintenance Act, 1956 (Section 20) expressly imposes a duty on children to maintain their aged or infirm parents; Muslim law recognises such obligations through the principles of nafaqah; Christian and Parsi laws provide similar duties through judicial interpretation and statutory guidelines. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, particularly Sections 4–6, institutionalises these responsibilities by enabling parents and senior citizens to claim maintenance through dedicated Tribunals, mandating time-bound adjudication and ensuring both financial and welfare-related support. In the realm of criminal procedure, Section 125 of the Code of Criminal Procedure, 1973 establishes a summary remedy for parents unable to maintain themselves, while its corresponding provision under the Bharatiya Nyaya Sanhita (BNSS), 2023, continues this protective mechanism, reinforcing the enforceability of maintenance through quasi-criminal proceedings. Collectively, these provisions constitute a comprehensive and multi-layered system designed to secure the dignity, welfare, and economic security of ageing individuals in India.

Case Laws and Analysis

The judicial discourse on the maintenance and protection of parents and senior citizens in India demonstrates a consistent trend toward strengthening their dignity, safety, and autonomy. In *Dattatreya Shivaji Mane v. State of Maharashtra* (2008), the Court affirmed that parents may lawfully evict abusive children, recognising such protection as essential to their peaceful living. This moral dimension of filial responsibility was further emphasised in *Justice S. Rangarajan v. Union of India*, where the Court underscored that children owe both legal and ethical duties toward the care of their ageing parents. Institutional support for the elderly was reinforced in *Ashwani Kumar v. Union of India* (2018), wherein the Supreme Court mandated the establishment of old age homes in every district, thereby directing the State to ensure comprehensive welfare mechanisms. More recent decisions interpret the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 with greater precision: the Madras High Court in *Karuppan v. District Magistrate-cum-District Collector & Others* (2025) clarified that only the senior citizen who transferred the property may seek cancellation under Section 23(1); the Bombay High Court in *Vijay Ugale v. Kesarabai* (2025) reiterated that parents cannot be forced to cohabit with abusive children to claim maintenance or protection; and the Mumbai Tribunal in *Hutokshi Farokh Patel v. Percy Farokh Patel* (2025) ordered eviction of harassing occupants, thereby recognising mental and physical mistreatment as grounds for protective intervention. Collectively, these judgments illustrate the judiciary's evolving commitment to safeguarding the rights, dignity, and well-being of senior citizens in India.

CONCLUSION & SUGGESTION:

The right to maintenance was not considered vital during the ancient times as there existed joint family system, under which the parents and old aged persons were taken care by the earning members of the family. It is slowly the decrease in the joint family system which has resulted into the issue of neglect of elderly. The right of maintenance is an utmost necessary right which every person who is dependent needs. Parents and senior citizens being one of the deprived and neglected groups of the society need some special protection by law, so they can enjoy their basic human rights along with dignity in the society. As per the analysis of the laws made above it is observed that provisions for maintenance and welfare are available under the constitution, personal and general laws. Yet, there is urgent need for amendments as in the coming decade the number of elderly is going to increase which shall be then the major group in the society. Neglect towards the majority of population would lead to slow development of the country. India being a party to various international conventions is obliged to follow the principles for old aged persons.

Therefore, it is suggested that following measures should be taken to protect the rights of elderly

1. To amend the maintenance provisions under the maintenance and welfare of parents and senior citizens act, 2007.
2. Old age homes should be established in every district and regular reports should be sent to the government about the same.
3. Penalisation of persons who disobey the orders of tribunals and courts with respect to maintenance orders.
4. Sensitization programs should be conducted for old age persons to know their rights, for adults and the same should be taught to children in schools as value education.

REFERENCES:

1. Article 21,38 The Constitution of India
2. B.R.Verma, Commentaries on Mohammedan Law 12th Edn (Law Publishers (India) Pvt.Ltd 2013)
3. Bharatiya Nyaya Sanhita (BNSS)
4. Dr. Rakesh Kumar Singh, Rights of Senior Citizens; Need of the Hour (February, 2008)
5. <https://legislative.gov.in/constitution-of-india/>

6. https://nhrc.nic.in/sites/default/files/NHRC_AR_EN_2017-2018.pdf
7. https://nhrc.nic.in/sites/default/files/Project%20Report%20on%20the%20Rights%20of%20the%20Elderly_NUALS.pdf
8. J.C. Batra, "Rights for the Aged", in Pravin Parekh (ed.), Human Rights Year Book 1, (Universal Law Publishing co. in, New Delhi 2010), p. 87
9. Neeta Lal, India's Senior Citizens Condition (July 2007)
10. Sugan Bhatia, Elder Law in India (Sonali Publications, New Delhi, 1st edn., 2012)
11. The Hindu Adoptions and Maintenance Act, 1956
12. The Maintenance and Welfare Of Parents And Senior Citizens Act, 2007
13. Universal declaration of human rights. United Nations. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>