



## Rights of senior citizen in India

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**Abstract:** *During the last century this socio economic and value system has slowly eroded. More and more couples are working full time, families have become smaller and nuclear migration and consumerism has become the order of the day. What if the elderly themselves and their children and specified relatives do not have sufficient means to maintain them? This paper has made an attempt to analyze the legislation on maintenance and Welfare of Parents and Senior Citizens Act 2007 is beneficial to them and what is the role of government for management of old age homes, setting standards and minimum services necessary for medical care and entertainment of the elderly This paper has also explain how this Act make it a legal obligation for children and heirs to provide maintenance to senior citizens and parents, by monthly allowance and also provides simple, speedy and inexpensive mechanism for the protection of life and property of the older persons*

**Key Words:** *Maintenance, Welfare ,and Senior Citizen.*

### Introduction:

Country like India is enriched with traditional and moral value. India being a land of multi lingual and multi religious back ground never one could have thought to see that elderly parents one day could be regarded as unwanted stranger in their own house. But, from a decade or two this unnatural phenomena suddenly appears with such a magnitude that one find himself bewildered how to accept it. Unfortunately this is a real hard fact through which the nation is passing. According to a Non-Governmental Organization (.NGO) namely 'Help Age' there is about 70 million pensioners in India It says "At Help Age India, 30 years ago when we started supporting old age homes, everybody said this was western concept. Today everybody accepts *this not a western concept, this is the reality.*"

### Problems of the Aged:

Problems of the aged either (i) Economic problems, or (ii) Physical and

psychological problems, include health and medical problems, nutritional deficiency, and social maladjustment as well as the problem of elder abuse etc.

### International Aspect:

In 1986 a World Conference on the Ageing was held in Vienna in which an International Plan of Action on Ageing was adopted in the General Assembly. The Plan attempted to promote understanding of the social, economic and cultural implications of ageing and of related humanitarian and developed issues.

In 1992, the U.N.General Assembly adopted the proclamation to observe the year 1999 as he International Year of the Older Persons and has also declared "1st October" as the International Day of the Older Persons.

The U.N.General Assembly on December 16, 1991 adopted 18 principles which are organized into 5 clusters, namely-independence, participation, care, self-fulfillment, and dignity of the older persons.



**National Efforts:**

**(1) Constitutional Protection:**

**Art. 41:** Right to work, to education and to public assistance in certain cases: The State shall, within the limits of 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.

**Art. 46:** Promotion of educational and economic interests of other weaker sections : The State shall promote with special care the educational and economic interests of the weaker sections of the people and shall protect them from social injustice and all forms of exploitation.

**(2) Hindu Adoption and Maintenance Act, 1956 :**

**Sec 20 of the Act** requires Hindu sons and daughters to maintain their elderly parents when parents are unable to maintain themselves.

**(3) Code of Criminal Procedure**

(Chapter IX, Section 125(1) (2)) provides that it is the fundamental and natural duty of a man to maintain his wife, children and parents when they are unable to maintain themselves. It is also essential that the parent establishes that the other party has sufficient means and has neglected or refused to maintain the parent.

**(4) National Policy for elder person:**

The government of India has approved the National Policy for Older Persons on January 13, 1999 in order to accelerate welfare measures and empowering the elderly in ways beneficial for them. Such as

- The Ministry of Justice and Empowerment has announced regarding the setting up of a National Council for Older Person, called age well Foundation. It will seek opinion of aged on measures to make life easier for them.
- The government policy encourages a prompt settlement of pension, provident fund (PF), gratuity, etc. in order to save the superannuated persons from any hardships. It also encourages to make the taxation policies elder sensitive.
- The policy also accords high priority to their health care needs.
- Former Prime Minister A.B.Bajpai was also launch 'Annapurana Yojana' for the benefit of aged persons. Under this yojana unattended aged persons are being given 10 kg food for every month.

**Governmental concessions and facilities:**

The government of India provides various concessions and facilities to its senior citizens.<sup>1</sup>

- 1. Travel:** Concessional rail/air fares for travel within and between cities, i.e., 30% discount in train and 50% in Indian Airlines<sup>1</sup>.
- 2. Income Tax Benefit:** According to Sec. 88-B, 88-D and 88-DDB of Income Tax Act there are discount in tax for the elderly persons.
- 3. LIC:** Life Insurance Corporation of India (LIC) has also been providing

<sup>1</sup> "Concessions and Facilities given to Senior Citizens." Ministry of Social Justice and Empowerment, Government of India. Accessed October 2011., <http://socialjustice.nic.in>



several scheme for the benefit of aged persons, i.e., Jeevan Dhara Yojana, Jeevan Akshay Yojana, Senior Citizen Unit Yojana, Medical Insurance Yojana.

**4. Banking:** The Indian government gives high rates of interest to its senior citizens on certain savings plans which are run by the post offices and other private banks.

**5. Housing** The Indian government provides housing facilities such as retirement homes and recreational or educational centers. These centers provide older persons with opportunities to spend their free time doing various activities. Most recreational centers have fitness clubs, yoga centers, parks, spiritual sessions, picnics, food fests for the health and entertainment of senior citizens. Some old age homes also have libraries other activities such as music classes, arts and crafts, quizzes and indoor games. These activities help to spiritually uplift seniors and can contribute to overall health improvements and mental stability.<sup>2</sup>

**Difficulties faced by older persons<sup>3</sup>:**

**1. Health and care:** Physical and mental health care availability and community and social care aspects of life for the elderly are key concerns. Nutritional problems are also a concern.

**2. Income and housing:** Access to employment opportunities, transportation, housing and income are key concerns. Inhumane living conditions are also a concern.

**3. Social networks and customs:** Poor social interaction with family and friends, poor social networks, and those without families are some difficulties faced by some senior citizens. Social customs based upon elder neglect, which

the elderly may internalize as beliefs are topics of concern. Losing the will to live from a lack of social support is another issue.

**4. Additional concerns:** Educational access and opportunities, the potential for leisure pursuits, consumer protections and having access to information are also key concerns.

The Indian Parliament felt that the elderly and senior citizens of the country required care and attention and also protection of their life and liberty. It further felt that the young generation was failing in its duty to take adequate care of its elderly citizens, including parents, relatives or other members of the society.

To eliminate the agony and sufferings of this vulnerable section of society, the Parliament enacted a law Maintenance and Welfare of Parents and Senior Citizens Act, 2007 in Dec 2007, whereby state governments were required to constitute maintenance tribunal within six weeks of enforcement of the Act

The Act, which aims to protect the rights of senior citizens and has provisions like 3-month jail to children who abandon their parents, has been implemented by only 11 states so far, but some have still not form the Tribunals to address and implement the Act. The states that have come on board to implement the Act are Nagaland, Karnataka, Jharkhand, Andhra Pradesh, Rajasthan, Assam, Kerala, Tripura, Madhya Pradesh, Delhi and Orissa.

**The major benefits in the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 include:**



- Statutory Right to claim Maintenance conferred on Parents and Senior Citizens.
- Childless Senior Citizens with legal heirs to their property can also claim maintenance. Transfer of property (after commencement of this Act), by gift or otherwise, can be declared void if legal heirs to senior citizen's property refuse to provide for maintenance of the senior citizen (Section 23).
- Monthly maintenance up to Rs.10,000/-
- Punishment of Rs.5000/- or jail for three months or both for not paying the monthly allowance by children's or relative.
- Application for maintenance can be filed in any district where the senior citizen or parent resides or where the children or relative resides.
- Separate Tribunals constituted for hearing cases under the new Act.
- 90days time bound proceedings make the justice delivery system speedy.
- Inexpensive procedure with no cost of hiring a lawyer.
- Conciliation proceedings given due recognition to maintain amicability in relationships.
- Access medical facility and give protection of life and property,
- Establishment of old age homes in every districts etc.

**COMPARATIVE ANALYSIS OF EXISTING LAWS:**

Difference between Section 125 of CrPC and Maintenance and Welfare of Parents and Senior Citizens Act, 2007:

Basis of Difference	Section 125 of Code of Criminal Procedure, 1973	Maintenance and Welfare of Parents and Senior Citizens Act, 2007
Senior Citizens included	<i>Sec 125 CrPC</i> is silent on maintenance of Senior Citizens. It only provides for maintenance of parents. Which means elderly people who are childless and who despite having heirs to their property cannot seek refuge or remedy in CrPC.	<b>Whereas</b> Section 4(1) of <i>Maintenance and Welfare of Parents and Senior Citizens Act</i> clearly stipulates that senior citizens can claim maintenance from legal heirs of their property
2.Application for maintenance	Only the aggrieved parent can file a case under <i>Sec 125 CrPC</i> .	<b>Whereas</b> Section 5(1) of <i>Maintenance and Welfare of Parents and Senior Citizens Act</i> says that the application for maintenance can be filed



		by the senior citizen or parent or an organization authorized by him or the Tribunal may also take cognizance <i>suo motu</i> , which means that the Tribunal can initiate the case on its own.
<b>3.Maintenance Tribunal</b>	Only a Magistrate of first class can give an order for maintenance under <i>Sec 125 CrPC</i> .	<b>Whereas</b> Section 7 of <i>Act</i> stipulates constitution of a Maintenance Tribunal, headed by a Sub-Divisional Officer (Sub-Divisional Magistrate) to decide the case.
<b>4.Representation by Advocate</b>	Lawyers / Advocates may represent their clients under <i>Sec 125 of CrPC</i> .	Section 17 of <i>Act</i> explicitly says that legal practitioners shall not represent any party to a proceeding in the Tribunal or Appellate Tribunal.
<b>5. Jurisdiction</b>	Application by the father or the mother claiming maintenance under <i>Sec 125 CrPC</i> has to be filed where the person from whom maintenance is claimed lives.	<b>Whereas</b> Section 6(1) of <i>Act</i> provides that an application for maintenance may be made by a senior citizen or parent against any children or relative in any district where the senior citizen or parent resides or where the children or relative resides.
<b>6.Time bound</b>	Proceedings under <i>Sec 125 of CrPC</i> are not time bound	Section 5(4) of <i>Maintenance and Welfare of Parents and Senior Citizens Act</i> specifically says that within 90 days from the date of the service of notice of the application, the matter has to be disposed of by the Tribunal.
<b>7AppellateTribunal for appeals</b>	Any appeal against order of maintenance under this section.	<b>Whereas</b> Section 15 of <i>Act</i> provides for a separate Tribunal for Appeals. The Appellate Tribunal would be headed by an officer not below the rank of District



		Magistrate.
<b>8.Order on Appeals is time bound</b>	proceedings under <i>Sec 125 of CrPC</i> are not time bound bound	Section 16(6) of <i>Act</i> says that the Appellate Tribunal shall make all efforts to pronounce its order in writing within 30 days of the receipt of an appeal.
<b>9.Provision for Conciliation</b>	<i>Sec 125 of CrPC</i> is silent on conciliation.	Section 6(6) of <i>Maintenance and Welfare of Parents and Senior Citizens Act</i> creates an option for the Tribunal, before hearing an application, to refer the matter to a Conciliation Officer. Report of Conciliation Officer must be submitted to the Tribunal within 30 days. If an amicable settlement is reached then the Tribunal shall order accordingly.
<b>10.Comprehensive Legislation</b>	<i>Sec 125 of CrPC</i> is silent on welfare measures, and is confined to provision for maintenance of parents	<i>This Act</i> is a comprehensive and specific law providing for both maintenance and welfare of parents and senior citizens. It has a broader scope and goes beyond the realm of parent-child relationship..

#### Judicial endeavour<sup>4</sup>

Judiciary can play a pivotal role to put the paper rules into action. What is needed is that the judges need to be sensitized to the growing menace of which the parents have become victims. To sensitize judges, judicial officers, senior government officials and non-governmental organizations on implementing this law, the National Legal Services Authority conducted national seminar<sup>5</sup>. On this day, Chief Justice of India K.G Balakrishnan said that there should be proper guidelines to govern private old-age homes to ensure

„right benefits“ for the elderly and prevent any exploitation. Further he added while talking about moneymaking practices adopted by some homes meant for parents of NRIs, “The Jammu and Kashmir High Court recently talked about having guidelines for health clinics...(similarly) it's high time to have guidelines for private oldage homes so that the elderly get the right benefits”.

***In Premlata Singh vs. State of Orissa and others***<sup>6</sup>.Orissa High Court held that Mother is one who gives birth to and nurtures the new born. We call her mother because of her mothering and



creative qualities. All created beings are inter-dependent and sustain one another with actions. The whole reaction is kept in motion when a harmonious relationship between one another is maintained. Social order is preserved through selfless and constant action. But here is a mother who has knocked the doors of justice for sustenance.

In a landmark judgment<sup>7</sup> the Bombay High Court has held that pension is a vital aspect of social security and that the right to receive it constitutes a right to life under the Constitution. Delayed pensionary payments place a pensioner in a position of uncertainty and dependence which impinges on the quality of life under Article 21, and the right to dignified existence of the aged

**Conclusion:** Though this Acts provides provisions for a better position for the parents and elderly, there are some criticisms also. It is alleged that, this Act is not easy to implement, there is no obligation casts on the state government to establish old age homes, there is no provisions for old age pensions, definitions provided are confusing etc. Also, because finding credible, willing and able persons and NGOs for inclusion in the Tribunal is quite a task, the practicality of setting up the Tribunal itself becomes a challenge<sup>8</sup>.

It is the responsibility of the Central as well as State government for the proper implementation of the, *Maintenance and Welfare of Parents and Senior Citizens Act 2007* by which the welfare measure and rights of senior citizen can be assured

**Suggestions:**

1. State Governments should make provisions for setting up Help line,

Counseling Centres etc. for senior citizen.

2. This Act should be implemented in all the States.
3. The local government should make serious effort to make Tribunal and redress the problems of the elderly people.
4. Provision should be made for the finance budget for programmes.
5. The Act needs more publicity to achieve its real purpose.

**End Notes and references :**

<sup>1</sup>"ConcessionRules."[IndianRailways](http://www.indianrail.gov.in/conc.rules)India Governmentwebsite).AccessedOctober2011.[www.indianrail.gov.in/conc.rules](http://www.indianrail.gov.in/conc.rules).

<sup>2</sup> "Benefits Given to Senior Citizens in India." Gits4u.com. Ganapati Information Technology Services. Accessed October 2011.

<sup>3</sup> April 2011.) "Agewell Study on Human Rights of Older Persons in India." United Nations: Department of Economic and Social Affairs (DESA) - Economic and Social Council (ECOSOC). Accessed October 2011.

<sup>4</sup> International Journal of Advancements in Research & Technology ISSN 2278-7763Volume 1, Issue4,September-2012

<sup>5</sup> <http://www.seniorsworldchronicle.com/india-judiciarysensitisedon-lawfor.html>

<sup>6</sup> AIR 2009 (NOC) 3024(ORI.)

<sup>7</sup> Manager, Solapur Municipal Corporation and ors. Vs. Devidas Mahadev Potdar and ors. 2009 (3) AIR Bom R498

<sup>8</sup> [www.socialjustice.nic.in](http://www.socialjustice.nic.in)