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A CRITICAL ANALYSIS OF PROVISIONS FOR MAINTENANCE OF PARENTS AND SENIOR CITIZENS UNDER THE MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS ACT, 2007

AUTHORED BY - ASSISTANT PROFESSOR NIDHI INDOREY

“Throughout his life, a father provides for his children, sacrificing his comforts and dreams to ensure their well-being. When he becomes old and dependent, it is only fair and just that the son reciprocates this care. However, as time passes and the father ages, the roles reverse, and it becomes the son's duty to care for and support his father in his later years.”¹

Abstract

The traditional socio-cultural system of elder care in India, anchored in the shared family structure where younger generations were expected to support the aged, has undergone a gradual transition toward contemporary nuclear families. This shift has resulted in a large number of senior citizens facing neglect, social isolation, financial insecurity, and emotional distress. Recognizing this pressing need for effective legal protection, the Indian government enacted the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (MWPC Act). This paper critically analyzes the provisions of maintenance for parents and senior citizens under the MWPC Act, highlighting its advancements over limited prior statutes, such as Section 125 of the Criminal Procedure Code, 1973, and existing personal laws. The Act makes it obligatory for adult children and heirs to provide necessary financial support to parents, grandparents, or any senior citizen over sixty who cannot support themselves. Judicial trends affirm that the State's constitutional obligation to guarantee the right to life extends to ensuring dignity, shelter, and health for senior citizens. Despite its beneficial intent, the Act has shortcomings that limit its efficacy e.g. a narrow definition of "Relatives; a fixed maximum maintenance allowance; and an explicit bar on legal representation etc. Addressing these limitations by strengthening central oversight and revising the maximum allowance is essential to fully realize the Act's core objective of ensuring a dignified life for the elderly.

¹ Unneen v. Shoukathali, 2025 SCC OnLine Ker 754 (India) (Edappagath, J.).

INTRODUCTION

Earlier, elder care in India was associated with the shared family system- a socio-cultural group comprising a few generations under one roof, where, by custom, the younger generations were expected to take responsibility for elderly members by means of financial help, emotional support, or daily care. This very bond of relations between families underwent a gradual transition from tradition of blended families to more contemporary nuclear families. Consequently, a large number of senior citizens started to be neglected, socially isolated, and even abandoned. They had to face financial insecurity, health-related adversities and emotional distress without proper family support.

The aforementioned shifting social and economic factors brought about a new set of vulnerabilities for the elderly, thus emphasizing the necessity for a specialized statutory framework that would be responsible for their welfare and dignity. This was already the situation when the Indian government, by enacting the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (MWPSA Act), provided the elderly and aged a structured mechanism through which they could claim and enforce maintenance as the solution to such issues. The Act in question provides rights of parents and senior citizens and sets up an easy, quick procedure to confirm the financial support that is needed by them. Its vital role being a social welfare Act is first of all to provide the right to maintenance and subsequently to thwart the neglect, marginalization, and suffering that the elderly population usually has to endure.

The claim to maintenance can be made by a parent, grandparent, or senior citizen who has crossed the age of sixty. The Act prevail over any provisions to the contrary contained in any other law, and no civil court shall have jurisdiction to entertain any suit or proceeding concerning the enforcement of any right under this Act or grant injunctions relating thereto. The research paper critically analyzes the provisions of maintenance for parents and senior citizens under the MWPSA Act, 2007.

“MAINTENANCE” AND “WELFARE” DEFINED

According to the Act, **maintenance** includes necessities including clothing, food, residence, and any required medical treatment. In turn, **welfare** covers a wider range of support services for senior citizens, including nutritional provisions, healthcare, access to recreational facilities, and other amenities required for a dignified life.

BACKGROUND OF THE ACT

The legislation was proposed as a remedy to the changing demographic and social realities: Having realized that modernization has made it difficult for most of the elderly to cope financially and socially, the Law made it obligatory for children and other heirs, to give necessary financial support and also, the 'maintenance of the aged' was made through enforceable legal mechanisms. The law thus endows the elderly with formal, actionable remedies against neglect and abandonment. It is this legal intervention that also, at the same time, implements the State's obligation under Article 41 of the Constitution which calls for public assistance in cases like old age through the strengthening of the welfare, security, and quality of life of senior citizens. Laws prior to enactment of MWPC Act, 2007

1. Section 125- Code of Criminal Procedure, 1973 (Now Section- 144 Bhartiya Nyay Suraksha Samhita, 2023)

Section 125 of the Criminal Procedure Code, 1973 acknowledges the financial support claims of the parents from their offspring. In this case, a magistrate empowered to order maintenance for parents from any person who has the means to do so when the parents are not in a position to meet even their basic needs. This section creates a right however, it is still quite limited in scope. It does not offer any protection to grandparents or other old dependant people who might be in need the financial support of the younger generation for their survival. Moreover, the procedure provided in Section 125 requires parents apply to court, initiate the formal legal process and then wait for the final decision. For many elderly people, this procedure is very long, technical, and emotionally draining and thus its practical effectiveness is reduced. The provision also does not have any express measures concerning the medical treatment, accommodation, psychological well-being, or safeguards against neglect and abuse of the elderly, thus leaving many facets of their welfare unattended.

A senior citizen can rely on this Act or Chapter IX of the CrPC 1973 to claim their right to maintenance. If the procedure under the Criminal Procedure Code initiated before filing application under this Act, the aggrieved elder may withdraw such proceedings and seek remedy under this Act.

2. Personal Laws

Hindu Law

The Hindu Adoption and Maintenance Act, 1956 Section 20 illustrates the classic dharma

thought that children are in a moral and legal responsibility to their parents. The legal statute acknowledges that parents who are not only old but also physically weak or in some way unable to support themselves from their income or property have a right to claim maintenance from their offspring. Nevertheless, this duty is actually very limited in terms of practical application because the one who claims is required to file a civil suit, a process which is usually very long, formal, and expensive for the elderly. The remedy that is given under this section is mainly limited to financial aid and does not include medical needs, emotional support, or protection from ill-treatment as care aspects that cannot be mentioned explicitly.

Muslim Law

Islamic law emphasizes that children have a moral and religious obligation to provide for their elderly parents. However, Indian Muslim personal law lacks a codified provision expressly granting elderly parents a right to maintenance enforceable through a civil court. Consequently, Muslim elders have to rely on Section 125 of the CrPC to claim maintenance, which is also subject to the previously specified restrictions.

Christian and Parsi Laws

The Indian Divorce Act, 1869, and other personal laws applicable to Christians and Parsis is silent on the issues related to parental maintenance. These laws address maintenance rights of spouse and child related to marital breakdowns but it does not articulate a framework for supporting aged parents.

RELEVANT PROVISIONS

Maintenance of Parents and Senior Citizens (Section- 4)

A senior citizen who have attained the age of sixty years including any parent who cannot support themselves through personal income or assets may seek maintenance. This entitlement extends to:

- **Parents and grandparents:** It is an obligation of adult child to support their elderly parents including biological, adoptive or step mother and father and grandparents.
- **Childless Senior Citizens:** They can claim maintenance from their “relatives” who is of age of majority and will inherit the property of senior citizen as a legal heir.

According to the Act, in order safeguard senior citizens' right to dignified life, any child or relative with adequate financial means is required to provide maintenance. Each heir who shares inheritance rights is responsible for paying maintenance according to their

apportionment.

Maintenance Tribunal

Constitution of Maintenance Tribunal (Section- 7)

Each state government establishes a Maintenance Tribunal in every sub-division, headed by an official of at least Sub- Divisional Officer rank. Maintenance proceedings may be initiated in the district where the senior citizen currently resides or last lived, or in the district where the respondent children or relatives reside.

Powers

In discharging its duties, the Tribunal has the same powers as a First- Class Judicial Magistrate to summon witnesses and secure attendance, and it may conduct hearings under a summary procedure.

For taking and evaluating evidence, it operates with the authority of a Civil Court. The Tribunal may refer parties to a Conciliation Officer who could be a designated Maintenance Officer, a representative of a registered organization, or an individual appointee to consider an amicable agreement before hearing begin. If a settlement is reached, the Tribunal records it as an order.

Deeming Provision for Property Transfers (Section 23)

A transfer may be considered vitiated by fraud, coercion, or undue influence if a senior citizen transfers property with the conditions that the person receiving it will provide basic care and amenities and the beneficiary fails or refuses to comply. The Tribunal has power to declare transfer as void at the request of transferor. Furthermore, if a senior citizen's maintenance right is attached to a property that has been transferred to a beneficiary, they may use that right against him if the transfer was gratuitous or the beneficiary was informed of it.

PROCEDURE FOR CLAIMING MAINTENANCE

Application for maintenance (Section- 5)

An application for maintenance under Section 5 may be filed directly by a senior citizen or parent who is unable to support themselves, if they lack the capacity to do so, any other person or an authorized organization such as a voluntary association registered under the Societies Registration Act, 1860 can initiate the process on their behalf.

The Maintenance Tribunal under the Act can not merely act on the grounds of a formal petition

but can also take up the case on its own when an application or information regarding the neglect of an old person comes to its notice. While the inquiry is in progress, the Tribunal has the power to provide interim maintenance, thereby ensuring that the parent or old person get monthly payment enough to cover basic living needs while awaiting the final order.

The law also sets strict deadline for such case's resolution. The Tribunal will need to finish the procedure and make the ruling within ninety days from the day notice is given. Up to thirty more days might be allowed but only if the Tribunal documents particular and strong reasons for the delay. This time-limited structure is set to avoid extended court battles and to provide quick relief for the elderly who are often in dire need of help.

Determination of Maintenance:

When the Tribunal obtains an application, it will issue a notice, allow parties to be heard, and convene an inquiry to establish the maintenance amount. A monthly payment may be ordered by the Tribunal if children or relatives fail to provide for a senior citizen who is incapable of providing for himself.

Order for Maintenance (Section 9)

When the Tribunal is satisfied that children or relatives have willfully neglected or refused to provide for a senior citizen's upkeep, it may order payment of a monthly maintenance which cannot exceed ten thousand per month. In the event that the facts and circumstances significantly change, the Tribunal may alter the amount of maintenance.

Enforcement of Maintenance Orders (Sections 11 & 13)

A copy of the maintenance order must be given to the senior citizen shortly once it is issued. Those ordered to pay must remit the full amount within thirty days of the order, if the children or relatives make default in payment without any valid reason, the Tribunal may issue a warrant to recover the remaining sum and, if necessary, sentence up to one month's imprisonment or until payment is made. Such orders carry the same authority as those under Chapter IX of the Criminal Procedure Code, 1973, and are executed accordingly. The Tribunal also has power to impose interest ranging from 5% to 18% on the maintenance, calculated from the date of application.

Appeals (Sections 15 & 16)

A parent has sixty days to file an appeal with the Appellate Tribunal for their district if they are aggrieved with the Tribunal's findings. A District Magistrate or other higher-ranking official presides over the Appellate Tribunal. The Appellate Tribunal's orders will be regarded as final and enforceable.

JUDICIAL TRENDS

Dr. Ashwani Kumar vs Union of India²

Court affirms that Article 21 of the Constitution of India which guarantees the right to life must be interpreted in a broad and inclusive manner. The Court recognizes that this right is not confined to mere physical survival but includes several integral and fundamental rights. Specifically, in this case, the Court emphasizes three core components of Article 21:

- The right to live with dignity
- The right to shelter
- The right to health.

The Court holds that it is the constitutional obligation of the State not only to protect these rights but also to ensure their active enforcement and accessibility for all citizens, particularly for vulnerable groups like senior citizens.

Ranjana Rajkumar Makharia Versus Mayadevi Subhkaran Makharia and Others³

Section 23 allows for a transfer of property to be declared void, but only under specific conditions. Only when all these conditions are satisfied can the matter be brought before the tribunal established under Section 7. The tribunal may then declare the transfer void under the deeming clause of Section 23, on the basis that it was affected by fraud, coercion, or undue influence, thereby making it voidable at the discretion of the transferor. Such a declaration may also result in an order for the recovery of the property or the removal of the transferee.

Firstly, the transfer must be made by a senior citizen, either as a gift or through some other means.

Secondly, the transfer must contain a condition requiring the recipient (transferee) to meet the fundamental needs or physical requirements of the senior citizen.

Thirdly, the transferee must have failed or refused to fulfill these obligations.

² 2019 ALL SCR 155

³ 2020 SCC OnLine Bom 2017

Namdeo and Another *Versus* State of Maharashtra and Others⁴

The order of eviction was filed by the Tribunal against son and daughter in law who has illegally and forcibly taken possession of residential house constructed by parents from their self earning following the allegations physically assault. One of the most important questions that came up was if the Tribunal had gone beyond its authority by implicitly treating an application made under Section 5 of the Act as if it were an eviction case.

The High Court made it clear that giving the direction of eviction in such a case is not only lawful but also necessary for the parents' physical well-being, emotional security, and safety in general. The Court also pointed out that the provisions of Section 4 and 23 of the 2007 Act are different and distinct rights. Thus, the request for maintenance under Section 4 is not a prerequisite for the issuance of the eviction order under Section 23. The Tribunal can, in other words, resort to Section 23 just on the basis of grounds for eviction even if no maintenance claim is filed.

Urmila Dixit vs Sunil Sharan Dixit⁵

The appeal was preferred by the mother against her son under Section- 23 to cancel the gift deed executed by her on account of love and affection and a condition that he will take care of her till the end of life and if he failed to do so the deed will be taken back. The undertaking stands unfulfilled and the condition of ensuring wellbeing was not complied by the respondent. The apex court upheld the beneficial nature of legislation disregarding it's strict interpretation by stating that tribunal can order also transfer of possession of property to fulfil object of Act.

Dilip Marmat vs Collector⁶

The appellant, who is the respondent's son-in-law, was living on the respondent's property as a permissive occupier following the death of his wife, the respondent's daughter, in an accident. The appellant claimed he could not be evicted from the house, arguing: He does not fall under the definition of "children" or "relative" as per Sections 2(a) and 2(g) of the Act, 2007. The Honorable High Court held that Section 23 of the Act must be interpreted broadly to include not just formal transfers of property, but also permissive occupations such as allowing a relative to reside in the property. If a senior citizen need the property and the person in charge fails to care for the senior citizen or creates a nuisance, the Tribunal has the authority to declare the

⁴ 2022 SCC OnLine Bom 914

⁵ 2025 INSC 20

⁶ 2025:MPHC-JBP:3991

occupation void and compel eviction.

SUGGESTIONS

- 1. Expanding the scope of definition of "Relatives":** As per Section 4(4), such a relative must have sufficient means and be in possession of or entitled to inherit the senior citizen's property. This limited definition significantly narrows the scope of responsibility, creating a legal gap where even well-off relatives may not be obligated to provide support if they have no claim to the senior citizen's property.
- 2. Revising the Fixed Maximum Maintenance Allowance:** A significant shortcoming is the provision is fixed upper limit, while providing a baseline, can be insufficient to ensure a "normal life" as intended by the Act for parents or senior citizens, especially in urban areas with high living costs or for those requiring extensive medical care. It may not adequately cover expenses in all aspects.
- 3. Allowing Legal Representation:** The Act explicitly bar representation of legal practitioner while the intent might be to simplify proceedings but this can be a significant disadvantage for individuals who are uneducated or unable to effectively articulate their case, particularly when facing more knowledgeable respondents. While Maintenance Officers are designated to represent parents if desired, their role may not fully compensate for the absence of professional legal counsel in complex matters.
- 4. Strengthening Central Oversight and Uniformity in Implementation:** The actual effectiveness and uniform application of the Act is completely reliant on the actions and rules prescribed by individual State Governments.

The maximum maintenance allowance is determined as "such as may be prescribed by the State Government". This allows for potential variations and even lower prescribed limits across different states. State Governments are responsible for key implementation aspects, including constituting Maintenance Tribunals and Appellate Tribunals, designating Maintenance Officers, establishing and maintaining old age homes, and ensuring medical support for senior citizens.

CONCLUSION

The MWPC Act turns the moral obligation of care into a legally enforceable right but still needs legislative intervention to make it fully effective. The steps such as broadening the definition of "Relatives," changing the maximum allowance for maintenance, and increasing

supervision from the Central authority for uniformity in the implementation of the law are all very essential to solve the problem of legal gaps. The Act will only be through the mentioned reforms that the MWPC law will achieve its goal of the elderly population receiving the dignity, security, and care accorded to them in their sunset years, thus meeting the underlying requirement that a son must reciprocate the care and sacrifices that a father has given during his whole life.

