

MAINTENANCE OF ELDERLY PEOPLE:A CRITICAL ANALYSIS OF THE EXISTING LEGALPROVISIONSIN INDIA

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ABSTRACT: *The concern for individual interest in joint family system has given way to nuclear families. Younger generation is moving out of traditional family set up in search of better employment opportunities and individual growth. This results in the aged people being left alone to fend for them. Improved medical care has resulted in longevity. There have been numerous instances of abandonment and ill-treatment to elders becoming a cause for concern. The existing legal set up provides for maintenance of the elderly persons by their younger ones in the families. In this paper the authors have examined the maintenance issues of the elderly persons in the light of current social and legal set up.*

Key Words:

INTRODUCTION

Ageing of human beings has become a major social challenge in the present time. More than one in five of the world's population will be aged 60 or older by 2050.¹ Generation gap, technological advancements, nuclear families, increased longevity, decreased resources in old age and other such issues result in neglect, isolation and insecurity of the older persons. Generally, increased expenses related to health care and increased dependency in the old age are seen as a burden by the younger ones in the family. In this backdrop it becomes pertinent to critically analyse the legal provisions relating to the maintenance of elderly persons in India their application and efficacy in the present social context.

1.1 INTERNATIONAL RESPONSE TO THE PROBLEMS OF THE ELDERLY

The international concern for the elderly is evident from the existing provisions of the Universal Declaration of Human Rights (UDHR) 1948. Article 22 of the UDHR guarantees the right to social security to all. Article 25 of the Declaration makes provision for a guaranteed right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood under circumstance beyond control. Subsequent international initiatives in this regard resulted in holding of a World Conference on ageing in Vienna in 1982.

The plan of action on ageing adopted in this conference focused on social, economic and cultural implications of ageing and related issues. October 1, was subsequently designated as the International Day for older persons by the UN General Assembly.² Another milestone by the General Assembly on December 16, 1991 was the adoption of a set of 18 principles for the older persons.³ This was followed by the second world assembly on ageing in Madrid in the year 2002 wherein the International plan of action on ageing was adopted. The significance of including ageing issues in all development plans was stressed in this assembly.

1.2 LEGAL POSITION IN INDIA ON THE MAINTENANCE OF AGED PERSONS

In India, we have not only statutory laws pertaining to the maintenance of aged but also there are personal laws of different religions that provide for care of elderly people. Provisions regarding maintenance of elderly under these laws are discussed below:

1.2.1 Maintenance of elderly under Personal Laws

1.2.1.1 **The Hindu Adoption and Maintenance Act, 1956** - This Act makes provision for food, clothing, residence, education and medical treatment of the elderly persons.⁴ The maintenance of the aged parents, infants, children and wife is considered to be the pious duty of a person. The obligation to maintain

¹ -S. K. Kapoor, *Human Rights under International Law and Indian Law*, 6thedn, 2014, Central Law Agency, Allahabad, P-195

² -Initially in 1990, October 1 was designated as the 'International day for the elderly' but was later renamed as the 'International day for older persons'.

³ -<https://www.ohchr.org/en/professionalinterest/pages/olderpersons.aspx> visited on August 30, 2018.

⁴ -Section 3(b) HAMA Act, 1956.

aged or infirm parents is a personal obligation arising out of the parent-child relationship. Explanation of Section 20 of HAMA includes a childless stepmother in the expression “parent”. The obligation to maintain one’s aged parents exists during one’s life time.⁵

1.2.1.2 **Muslim Law** - The Privy Council has held that the obligation to maintain poor Parents under Muslim law rests on sons and daughters provided they have means. If some of the children are themselves poor, then the obligation lies on them who are in easy circumstances.⁶ Thus it is not necessary for all children to maintain their parents under Muslim Law. It depends upon their financial capacity. Under the Hanafi Law, the dedicator can provide in the *waqf* deed that during his life time he will be maintained out of the income of the *waqf* property. He can reserve even the whole income for himself for his life. The dedicator may provide that the payment of debts be made out of the income of the *waqf* property.⁷ In *Baqar Ali Khan v. AnjumanAra Begum*⁸, it was held by the Privy Council that a *Shia* can create a *waqf* by will.⁹

1.2.1.3 **The Christian and Parsi Laws** - There is no express provision for maintaining the elderly under the personal laws of Christian and Parsi. However in India the care has been taken by the State to ensure that elderly are maintained by their near and dear ones besides there being provision for maintaining elderly people under personal laws. Thus parents who are in need to be maintained can invoke the powers of court under the provisions of section 125 of the Code of Criminal Procedure, 1973.

1.2.2 Maintenance under the Code of Criminal Procedure, 1973

Section 125 of the Code of Criminal Procedure, 1973, makes provision for the right of the parents to be maintained by the children irrespective of their religion.¹⁰ Though the section uses the expression ‘his father or mother’, this does not exclude daughters whether married or unmarried it only takes into account the capacity to maintain and refusal to maintain. Thus parents can claim maintenance from daughters including married ones provided they have means to maintain and parents have no sufficient means to maintain them.

1.2.3 Maintenance under the Senior Citizens Act, 2007

The Senior Citizen Act was enacted to make more effective provisions for the maintenance and welfare of parents and Senior Citizens. The Act provides for the rights of the elderly guaranteed and recognized under the Constitution and matters connected therewith or incidental thereto.¹¹ The maintenance and welfare of Parents and Senior citizens Act, 2007 was enacted in December, 2007 to ensure need base maintenance for parents and senior citizens and their welfare. The right is available to the parents, grand-parents and childless senior citizens against their children or relatives. The obligations of children or relatives extend to providing for the needs of such persons so that they may lead ‘a normal life’.¹²

Section 23 of the Act makes provision to the effect that if the senior citizen had, after the commencement of this Act, transferred any of his properties by way of gift or otherwise, the transferee shall provide the transferor, the basic amenities for physical needs. In case of failure of this duty, Section 23 authorizes the Tribunal to declare such transfer as void on the ground that such transfer be deemed to have been made by fraud or coercion or under undue Influence.

Section 24 provides that any person who is entrusted with the care or protection of any senior citizen intentionally abandons a senior citizen shall be liable for punishment of imprisonment of either

5- Paras Diwan, *Family Law*, 8thedn., 2008, Allahabad Law Agency, P- 342.

6- *Kasimv. Sadiq* AIR 1938 PC 169.

7- Aqil Ahmad, *Mohammedan Law* 23rdedn. 2009, Central Law Agency, P-304-305. Waqf means the permanent dedication, by a person professing Islam, of any movable or immovable property for any purpose recognised by the Muslim Law as pious, religious or charitable. Ref. Aqil Ahmad, *Mohammedan Law* 23rdedn. 2009, Central Law Agency, P-296.

8- *Baqar Ali Khan v. AnjumanAra Begum*, 25 All. 236.

9- Ref. Aqil Ahmad, *Mohammedan Law* 23rdedn. 2009, Central Law Agency, P-307.

10- Section 125(1) (d) of the Code says the order for maintenance of wives, children and parents.-If any person having sufficient means neglects or refuses to maintain-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 take a monthly allowance for the maintenance of his....father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may time to time direct.

11- Section 4 of ‘The Maintenance and Welfare of Parents and Senior Citizens Act, 2007’.

12- C.M. Jariwala, ‘The Older People’s law in India: A critical overview, Vol.XLII(2) Indian Bar Review (2015).

description for a term which may extend to three months or fine which may extent to five thousand rupees or with both.¹³

To impose liability on a person who happens to be a relative of the senior citizen on the ground that he will inherit the property of the senior citizen does not seem justified as what if there is no property to inherit. The provision of the Act directing the government to provide medical support to the senior citizens, shall provide beds to senior citizens and such hospital shall be headed by medical officer having experience in Geriatric care found to be ornamental only. Very few hospitals have Geriatric Care and medical experts in India.¹⁴

CONCLUSION

Despite the above legal provisions for the maintenance of elderly their benefits is not evident in urban as well as rural areas in Delhi. Also there is no adequate awareness program which makes the provisions of such Acts known to the general public in rural as well as urban areas. This lack of awareness makes this law ineffective. The implementation of the law related with the maintenance of elderly people needs monitoring. Most of the parents hesitate to approach the tribunals due to social stigma and their physical incapacity to do so due to old age. As of now it seems that the new Act has not made much difference to the lives of senior citizens.

¹³ Section 24 of Maintenance and Welfare of Parents and Senior Citizens' Act, 2007.

¹⁴ Ashwani Kumar Dwivedi, "Efficacy of *The maintenance and welfare of parents and senior citizens Act, 2007: a critical analysis*", *IJSARD* available on <http://ijsard.org/wp-content/uploads/2017/02/By-Ashwani-Kumar-Dwivedi-compilation-volume-3.pdf> (visited on May 3, 2018).