

OLD IS GOLD

Critical Analysis: Maintenance and Welfare of Parents and Senior Citizen

Act, 2007

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Introduction

Human resource is an integral component of any country, since the growth and development of a nation is directly proportional to its condition. Earlier GDP of a country was considered as the benchmark of development but now, benchmarks like Happiness Index (Report)¹ and Human Development Index² are employed to judge the development of a country. India ranked 130 among 188 countries in 2016 Human Index Development Report released by UNDP³. It is based on three important dimensions: long and healthy life, access to knowledge and access to a decent standard of living. India ranked 122 out of 155 countries in World Happiness Report 2017⁴.

Thus the entire point of referring to the data above boils down to the fact that a nation can progress and sustain in its true terms if it pays greater attention towards the development of its human resource. Senior Citizens constitute an important part of it for it was they who had given their life and energy to the nation by being a part of the workforce and thus it must be the turn of the nation to protect their rights and interest legally. Moreover, the children should be made responsible about their obligations towards parents who sacrificed a major part of their adulthood in raising them.

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¹ 2017 World Happiness Report <http://worldhappiness.report/overview/>

² Human Development Index, UNDP Human Development Report 2016. <http://hdr.undp.org/en/composite/MPI>

³ Human Development Index, UNDP Human Development Report 2016. <http://hdr.undp.org/en/composite/MPI>

⁴ 2017 World Happiness Report <http://worldhappiness.report/overview/>

The maintenance and welfare of parents and senior citizens bill was passed by the Lok Sabha on 5th December 2007 and by the Rajya Sabha on the 6th December 2007. The act that should have been drafted and passed long before, intended to protect the rights of the senior citizens in India and gave them legal protection in case of atrocities committed against them. The act came as a blessing in the backdrop of increasing crimes that were committed against old citizens by their own children and others. The first issue of ageing was first considered for deliberations at the UN conference in 1948 at Argentina.⁵ The contention that there should be a separate act dealing with the problems of aged citizens of a country was raised in several subsequent world conferences. In 1982 an International plan of Ageing was adopted in the World Assembly of Ageing organised by the UN.⁶ The primary goal was that the countries must implement effective laws that would protect the rights and the interests of the aged population.

In India, there are several acts and provisions that protect the rights of the aged citizens such as article 41 that ensures that the state must provide provisions for right to work to the aged population. However, article 41 is a part of DPSP which are not enforceable by any court of law. Similarly, the government introduced the National Policy for older persons (1991) and other schemes for the maintenance and the protection of the interests of the senior citizens, but these schemes were ineffective in practical operation and implementation. Likewise section 125 of CrPC and the personal laws also provides for the maintenance of the parents and dependents⁷. However, these

5 Rights of Senior Citizens, Need of the Hour. Dr Rakesh Kumar Singh. <http://www.legalserviceindia.com/article/l170-Rights-Of-Senior-Citizen.html>

6 Ibid

7 Ibid

provisions were not sufficient and a separate statute was required for that would address the special problems pertaining to the maintenance and welfare of the senior citizens.

The maintenance and welfare of parents and senior citizens Act, 2007 comprises sections that create obligations for the children and relatives/ legal heir for maintenance and through various mechanisms, provides an opportunity for old citizens to secure legal aid. However it is unfortunate that India contemplated about legislating for the welfare of its senior citizens much later compared to the other countries. Let alone the developed ones, our neighbouring countries have already enacted acts to protect the rights and interests of their old citizens much before India even realised the need and the duty to enact one. For instance our neighbour China has “Law of the People's Republic of China on Protection of the Rights and Interests of the Elderly”⁸ The act came to existence in 1996. Similarly, in Sri Lanka we have The Protection of the Rights of Elders Act (No. 9 of 2000) ⁹.

Though the The maintenance and Welfare of Parents and Senior Citizen Act 2007, sought to shield the senior citizens from every angle, there were certain issues like *dignity* and mental *abandonment* that had been not been looked into.

Moreover there are sections like section 2 (a), 5 (ii) , 9 (ii), 19 and 24 that needs to be critically analysed to accentuate the ambiguities involved with respect to the issues mentioned above.

⁸Law of the People's Republic of China on Protection of the Rights and Interests of the Elderly. China.org.CN 2007 http://www.china.org.cn/government/laws/2007-04/17/content_1207404.htm

⁹Protection Of The Rights Of Elders Act (No. 9 of 2000) Sri Lanka Consolidated Acts. 2000. http://www.commonlii.org/lk/legis/num_act/potroea9o2000392/

The paper seeks to highlight the loopholes and ambiguities involved in the aforesaid sections and also suggest the necessity to incorporate sections that would provide solution for the ambiguities and also address issues of *dignity* and *mental abandonment*. The paper would take into consideration real life scenarios and base its analysis on them and also would refer to relevant case laws.

Constitutional Basis

Article 21 of the Constitution of India, 1950 provides that, “No person shall be deprived of his life or personal liberty except according to procedure established by law.”¹⁰ ‘Life’ in Article 21 of the Constitution is not merely the physical act of breathing. It does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to live with human dignity, right to livelihood, right to health, right to pollution free air, etc. Right to life is fundamental to our very existence without which we cannot live as human being and includes all those aspects of life, which go to make a man’s life meaningful, complete, and worth living.¹¹ It is the only article in the Constitution that has received the widest possible interpretation. Under the canopy of Article 21 so many rights have found shelter, growth and nourishment. Thus, the bare necessities, minimum and basic requirements that is essential and unavoidable for a person is the core concept of right to life.

In the case of **Kharak Singh v. State of Uttar Pradesh**¹², the Supreme Court quoted and held that:

¹⁰ Chapter III, Article 21, The Constitution of India, 1950

¹¹ Kharak Singh v. State of Uttar Pradesh 1963 AIR 1295

¹² Kharak Singh v. State of Uttar Pradesh 1963 AIR 1295

By the term “life” as here used something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by amputation of an armour leg or the pulling out of an eye, or the destruction of any other organ of the body through which the soul communicates with the outer world.

In **Sunil Batra v. Delhi Administration**¹³, the Supreme Court reiterated with the approval the above observations and held that the “right to life” included the right to lead a healthy life so as to enjoy all faculties of the human body in their prime conditions. It would even include the right to protection of a person’s tradition, culture, heritage and all that gives meaning to a man’s life. It includes the right to live in peace, to sleep in peace and the right to repose and health.

In **Maneka Gandhi v. Union of India**¹⁴, the Supreme Court gave a new dimension to Art. 21 and held that the right to live the right to live is not merely a physical right but includes within its ambit the right to live with human dignity. Elaborating the same view, the Court in **Francis Coralie v. Union Territory of Delhi**¹⁵, observed that:

“The right to live includes the right to live with human dignity and all that goes along with it, viz., the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading writing and expressing oneself in diverse forms, freely moving about and mixing and mingling with fellow human beings and must include the right to basic

¹³ Sunil Batra v. Delhi Administration 1980 AIR 1579

¹⁴ Maneka Gandhi v. Union of India 1978 AIR 597

¹⁵ Francis Coralie v. Union Territory of Delhi 1981 AIR 746

necessities the basic necessities of life and also the right to carry on functions and activities as constitute the bare minimum expression of human self."

Another broad formulation of the theme of life to dignity is to be found in **Bandhua Mukti Morcha v. Union of India**¹⁶. Characterizing Art. 21 as the heart of fundamental rights, the Court gave it an expanded interpretation. Bhagwati J. observed:

"It is the fundamental right of everyone in this country... to live with human dignity free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State neither the Central Government nor any State Government-has the right to take any action which will deprive a person of the enjoyment of these basic essentials."

Article 41¹⁷ is in the part IV of the Indian Constitution i.e. Directive Principles of State Policy. Article 41 of Directive Principles of State Policy has particular relevance to Old Age Social Security. This article says the State can make effective provision for old age for securing their right to work, to education and to public assistance in the case of their unemployment. Though

¹⁶ Bandhua Mukti Morcha v. Union of India 1992 AIR 38

¹⁷ Chapter IV, Article 41, The Constitution of India, 1950

it is not enforceable in the court of law and the state cannot be compelled by the courts to carry out any directive¹⁸ but as per the mandate of Article 38 the state while making any policy shall take into consideration the directives enshrined in Part IV. Therefore, Directives though have to be implemented by the State, they could do so only subject to limitations imposed by the different provisions of the Constitution with respect of legislative and executive power.¹⁹

Article 309²⁰ of the Constitution stipulates that acts of the appropriate legislature may regulate the requirement and conditions of service of persons appointed to public services in connection with the affairs of Union or of any State. The governments concerned frame rules and regulations from time to time laying conditions of service including retirement/terminal benefits to its employees. This article clearly mentions that recruitment procedure, appointment and service condition rules of Union and States will have to pass through the test of Constitutionality meaning thereby that Union and State legislatures cannot make any rule which is against the fundamental or Constitutional rights of a person.

So if the conditions for compulsory retirement, rules for voluntary retirement or any other service condition which affects the rights of an aged can be challenged and struck down taking the help of this article. Supreme Court has held that if a compulsory retired person has not got proper opportunity to defend and rules of natural justice or requirements of Article 21 have not met with, his compulsory retirement order cannot be said to be valid.²¹

¹⁸ In Re Kerala-Education Bill, 1957, AIR 1958 SC 956.

¹⁹ The State of Madras v. Champakam, AIR 1951 SC 226.

²⁰ The Constitution of India, 1950 , Part XIV, Article 309

²¹ Union of India v. Reddy, AIR 1990 SC 563

In the Constitution of India, entry 24 in List III of Schedule VII deals with the Welfare of Labour, including conditions of work, provident funds, liability for workmen's compensation, invalidity and Old age pension and maternity benefits. So Union and State both can make separate pension rules and schemes to provide social security and welfare to the aged. Our Constitution also empowers the states under entry 42 to frame the laws, to frame the rules and to make the schemes separately for the aged. Item No. 9 of the State List and Item 20, 23 and 24 of Concurrent List relates to old age pension, social security and social insurance, and economic and social planning.²²

The parameters laid down in the Preamble and the concepts of Welfare State are the guiding principles. The state has to promote the prosperity and well-being of the people. For Security and protection of an effective social order through social justice, economic justice and political justice, the state shall strive to minimize the inequalities in income, endeavour to eliminate inequalities in status and also provide facilities and opportunities.²³ In order to secure these objectives in general, and the directive to public assistance in case of old age as laid down under Article 41, the state through its legislations has so far covered. For example- The Employees State Insurance Act, 1948 and the Employees Provident Fund Act, 1952.

Background

The Maintenance and welfare of parents and senior citizens 2007 protects the rights and interests of the senior citizen to a great extent. The act is divided into VII chapters and 32 sections.

²² Schedule VII of The Constitution of India, 1950

²³ Preamble of The Constitution of India, 1950

The I chapter (preliminary) has 3 sections. The first section defines the act and its extend and application. The second section gives elaborate definitions of various words and terms being used. The Third section provides for the overriding effect.

The II chapter (Maintenance of parents and senior citizens) covers sections from 4 to 18.

Section 4 : provision for maintenance of parents and senior citizens

Section 5: application of maintenance

Section 6: Jurisdiction and procedure

Section 7: Constitution of maintenance tribunal

Section 8: Summary procedure in case of enquiry.

Section 9: Order of maintenance

Section 10: Alteration in Allowance

Section 11: Enforcement of order of maintenance

Section 12 :Option regarding maintenance in certain cases

Section 13: Deposit of maintenance amount

Section 14: Award of interest where any claim is allowed.

Section 15: Constitution of appellate tribunal

Section 16 : Appeals

Section 17 : Right to legal representation

Section 18: Maintenance officer

3. Chapter III (Establishment of old age homes) has only one section 19

Section 19: Establishment of old age homes.

4. Chapter IV (Provision for medical care of senior citizens) also has one section 20

Section 20: Medical support for senior citizens

5. Chapter V (Protection of life and property of senior citizens) has three sections

Section 21: Measures for publicity, awareness, etc, for welfare of senior citizen.

Section 22: Authorities who may be specified for implementing the provisions.

Section 23: Transfer of property to be void in certain circumstances

6. Chapter VI (Offences and procedure for trial) has two chapters

Section 24: Exposure and abandonment of senior citizen

Section 25: Cognisance of offences

7. Chapter VII has 7 sections

Section 27: Jurisdiction of civil courts barred

Section 28: protect of action taken in good faith

Section 29 : Power to remove difficulties

Section 30: Power of central government to give directions

Section 31 : Power of central government to review.

Section 32 : Power of state government to make rules²⁴

Despite the enactment of the act, various cases of atrocities against the senior citizens and parents continue.²⁵

The paper would in detail analyse the section 2, 5, 9, 19,20 and section 24 and bring the loopholes and provisions that have not been inserted and suggest the importance of incorporation of the same.

²⁴ Maintenance and Welfare of Parents and Senior Citizens Act, 2007 pg 7-20 (Swastik Books)

²⁵ Balbir vs presiding officer cum S.D.M of the maintenance and welfare of senior citizen tribunal and ors MANU/PH/1595/2015

Justice Sanjay Kushal Kaul has in a case identified that some “provisions has escaped the attention”²⁶ of the government but however did not refer to the provisions suggested by the paper.

One real life incident have led to contemplation on the issues of dignity, desertion or mental abandonment of parents by the children and the paper would in detail discuss about the probable inclusion of the provisions related to the same.

Critique

Section 2 (a)²⁷ of the act defines maintenance as “maintenance includes” provision for food, clothing, residence, medical attendance and treatment. However it does not talk about dignity. *Dignity* have been defined by many philosophers and thinkers throughout the ages and they have also asserted the legislation of the same.²⁸ However the term in this context means the respect and honour with which parents ought to be treated. Providing the essential amenities like food, clothing and shelter does not guarantee that the parents or the senior citizens would be immune from torture. Torture can also come in the form of humiliation, disrespect and lack of empathy. The mental elements of maintenance have been overlooked. There are many cases where the parents are provided for, yet they are not happy because they are subjected to scorn and humiliation. In order to understand the expectation that parents have from their children, a glimpse of the Indian Culture with respect to raising children is important. In Indian Culture, parents don't abandon their children right after the high school like the developed countries of the world. They not only support the education of

²⁶ Paramjit Kumar Saroya Vs Union of India and another AND Amanpreet & Another Vs The Union of India & Another. MANU/PH/0765/2014

²⁷ Maintenance and Welfare of Parents and Senior Citizens Act, 2007 pg 7 (Swastik Books)

²⁸ Michael Ruses Dignity :Its History and Meaning HUP 2012

their children after school but also provide mental support till a very later age. Therefore it is implied that they should also be given respect and treated with same care as they had treated their children. The loophole in the section lies in the fact that it failed to cover the mental maintenance of the parents and senior citizens which is referred as *dignity*.

Similarly, **section 5(ii)**²⁹ states that a childless senior citizen who is unable to maintain himself from his earning can claim for maintenance against a relative who is in possession of or would inherit the property after his death. However the question that arises as to who would a childless senior citizen claim for maintenance to, when he does not have any property to be inherited. There have been legal cases under this section, but the issue under discussion has not been raised.³⁰ A situation may arise that a senior citizen is childless and at the same have lost all his property and there is also no legal heir. Then in that situation who would take the responsibility. It is implicitly assumed that in those cases NGOs or old age homes would intervene but the point that there is no provision for special situation in the act.

Section 9 (2)³¹ states that 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”. A situation may arise where an affluent person transfers all his property to his son or daughter or to his legal heir and the children also provide maintenance but limit the amount to Rs 10000. Though in a case like this, there cannot be any legal cause of action but at the same time, the amount of money would not justify the lifestyle of the senior citizen in question.

²⁹ Maintenance and Welfare of Parents and Senior Citizens Act, 2007 pg 9 (Swastik Books)

³⁰ H.S Subramanya Vs H.S Lakhsmi MANU/KA/1937/2014

³¹ Maintenance and Welfare of Parents and Senior Citizens Act, 2007 pg 12 (Swastik Books)

Section 1932 states that the “ State Government may, prescribe a scheme for management of old age homes, including the standards and various types of services to be provided by them which are necessary for medical care and means of entertainment to the inhabitants of such homes”. The word “may” does not create any statutory obligation on the part of the states.

Section 20 provides provisions for the medical care of senior citizens. However it ensures that the provision of medical care should be provided by the State Government hospitals or by hospitals fully or partially by the State. Private hospitals should also be included to play the role of social legislation. In this manner more facilities can be availed by the senior citizens.

Section 2433 says: “ whoever having the care or protection of senior senior, leaves such senior citizen with the intention of wholly abandoning such senior citizen, shall be punishable with imprisonment of either description for a term which may extend to three months or fine which may extent to five thousand rupees or with both.”

However it fails to entail the concept of *mental abandonment or desertion*. It is an urban problem where most of the parents living in the metros feel mentally abandoned due to the fact of being subjected to neglect by their children. Most of the children after migrating to different places especially abroad find it difficult or become reluctant to communicate with their parents on a regular basis. This create mental isolation for the parents and it also results in various ailments such as heart attacks and strokes.

The concept of mental cruelty³⁴ in case of divorce is accepted, a similar concept of mental abandonment should also be acknowledged. The analogy is drawn to emphasize the importance of the mental element in determining abandonment.

³² Maintenance and Welfare of Parents and Senior Citizens Act, 2007 pg 15 (Swastik Books)

³³ Maintenance and Welfare of Parents and Senior Citizens Act, 2007 pg 18 (Swastik Books)

³⁴ Naveen Kohli VS Neelu Kohli Manu/SC/1837/2006

Conclusion

The Maintenance and Welfare of Parents and Senior Citizens Act 2007, by all reasonable doubt have brought a significant change and improvement in the lives of senior citizens and parents. However implementation of certain provisions would make the act more compact in terms of providing greater security to senior citizen and aged parents. In India where the rate of crimes against the senior citizens are increasing and they are becoming the object of ridicule and exploitation, stringent provisions should be incorporated that would impute greater liability on the children and the legal heirs. However, it should also be considered that the provisions should be such that the children are also protected and any undue advantage taken by the parents under the shield of this act are prevented.

Suggestions

0. The clause of dignity if incorporated in **section 2** would serve as a protection against verbal harassment and abuses.
1. In **section 5**, if the situation discussed above is considered and a separate clause is inserted, the protection would also extend to those senior citizens who have either no property or legal heir
2. The state can intervene and take the responsibilities of those people. In **Section 9(2)** instead of setting a maximum limit, the amount should be based on the situation and circumstances of the case
3. In **section 19**, The government should make it mandatory for the states to set up at least one new old age home every year in every district.
4. The concept of mental abandonment should also be incorporated in **section 24** and it should be left to the Judiciary to interpret as per the facts and circumstances of the case.