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THE LAW OF TIME: EXPLORING THE NEED OF THE HOUR- Pranav Pai¹**Abstract**

An effective law acts as a bridge between the past and the future, which mends the errors of yesterday while paving the way for a better tomorrow. As John F Kennedy rightly said, “Change is the law of life. And those who look only to the past or present are certain to miss the future.” This precisely applies to the landmark legislation of the *Maintenance and Welfare of Parents and Senior Citizens Act (MWPSA Act), 2007*, which was enacted by the Ministry of Social Justice and Empowerment to protect the well-being of senior citizens and ensure their rights to maintenance within the purview of the law. Serving its purpose for over a decade now, the *MWPSA Act* was instrumental in plugging the leaks of earlier maintenance laws given in *The Code of Criminal Procedure, 1973*, and various personal laws while simultaneously laying down the foundation for future legal enactments pertaining to maintenance for senior citizens in India, which this paper closely examines. This paper also focuses on two enactments that followed the *MWPSA Act* to determine the magnitude and uniformity of its implementation in the country. Lastly, the paper discusses certain loopholes in the *Act* while offering suggestions to better it to actualize its vision of an egalitarian Indian society.

Introduction and Background

Apart from having one of the largest youth populations in the world², India is home to a considerable elderly population of adults above 60 years comprising nearly 104 million

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² UNFPA, ‘Adolescents and Youth’ <[For general queries or to submit your research for publication, kindly email us at \[editorial@ijalr.in\]\(mailto:editorial@ijalr.in\)](https://india.unfpa.org/en/topics/adolescents-and-youth-8#:~:text=India%20has%20its%20largest%20ever,in%20the%20world%20till%202030.> accessed 29 October 2023</p></div><div data-bbox=)

<https://www.ijalr.in/>

people, which is 8.6% of the total population³. Along with traditional Indian society being founded on the principles of “*Matru Devo Bhava, Pitru Devo Bhava*”⁴, other factors such as increased life expectancy, better healthcare facilities, and assistance for senior citizens⁵ have led to substantial growth in the elderly population of the country. However, old age comes with its own set of problems, which contemporarily include increased instances of neglect, violence, abuse, and abandonment of parents and senior citizens by their kin⁶ whom they are dependent on for sustenance. This largely stems from self-centred youth who view maintaining their kith as a “burden”, leading to a decline in joint families and the rise of nuclear families in Indian society⁷. Moreover, while certain personal laws have existed since time immemorial for parents to exercise their right to maintenance⁸, they have remained largely obsolete and inefficient. Finally, there has been no comprehensive legal framework to address the needs and requirements of senior citizens while existing laws have been ambiguous and limited in scope.

Against this backdrop, to protect the welfare, maintenance, and overall physical and mental well-being of elderly citizens, the *Maintenance and Welfare of Parents and Senior Citizens Act*⁹ (MWPSCA Act) was passed in 2007 by the Ministry of Social Justice and Empowerment comprising 7 Chapters and 32 Sections. The Act is an important piece of legislation formulated to cover gaps and ensure uniformity in the various existing personal laws in terms of the maintenance rights of parents while serving as a standardized legal framework for senior citizens and protecting their rights under Article 41 of the Indian Constitution¹⁰. The Act has also inspired several other legislations and social welfare schemes for senior citizens. This paper aims to examine how the MWPSCA Act has filled in gaps in the various personal laws and statutes of the past while being instrumental in setting the base for future legal enactments for maintenance alongside analyzing its merits and shortcomings. The

³ WHO, ‘Ageing and health’ (WHO INT) <<https://www.who.int/india/health-topics/ageing>> accessed 29 October 2023

⁴ Justice Mittal, *Thirteenth Report Of VII State Law Commission On Protection And Eviction From Property Of Senior Citizens* (UPSLC, 2020), ch.1. pg. 4

⁵ Agewell Research & Advocacy Centre, *Changing Needs Of Old People In India With Special Focus On Current Old Age Care & Support Scenario* (2021), pg. 7

⁶ Bharatand Venumadhava, ‘Elder Abuse And Neglect’ (2019) 8 (7) IJSR <https://www.researchgate.net/publication/371608571_Elder_Abuse_and_Neglect> accessed 29 October 2023

⁷ *ibid*

⁸ Keshari, ‘A Study On The Right To Maintenance Under CRPC Versus The Right To Maintenance Under Personal Laws’ (2022) IV (II) IJLLR <<https://www.ijllr.com/post/a-study-on-the-right-to-maintenance-under-crpc-versus-the-right-to-maintenance-under-personal-laws>> accessed 29 October 2023

⁹ Maintenance and Welfare of Parents and Senior Citizens Act 2007 (MWPSCA Act), hereon “the Act”

¹⁰ Indian Constitution, art. 41.

paper will also compare and analyze two enactments that have arisen from the *MWPS Act* to conclude whether it has been successful in its implementation of an egalitarian society.

Cracks in Maintenance Rights in Existing Legislature and Personal Laws

An all-pervasive maintenance law that applies to all faiths is found in Section 125 (1)(d) of *The Code of Criminal Procedure*¹¹ (CrPC), 1973, under which a magistrate can order monthly allowance to be paid by an individual to his/her father or mother “who is unable to maintain himself or herself¹².” While the Section applies uniformly and no conflict of law exists between the Code and personal laws, the scope is limited as it applies to *only* parents,¹³ and the meaning of “unable to maintain themselves” is unclear. Moreover, the procedure of a maintenance suit under the Section is time-consuming and expensive¹⁴.

In a country of diverse faiths such as India, various personal laws govern their respective religious affairs. However, about the maintenance of elders, a grey area exists in the application of personal laws in terms of their uniformity and scope. Under Section 20 of the *Hindu Adoption and Maintenance Act, 1956*¹⁵, a Hindu male or female has a duty of maintenance *only* towards their aged or infirm parents (including childless stepmother) if they are unable to maintain themselves¹⁶. Under Muslim law, maintenance is under the concept of *Nafqah*¹⁷, which imposes a responsibility on the husband to maintain his parents and provide them with food, clothing, and lodging only when they have no basic sustenance. Further, under Sharia law, the maintenance of parents is an obligation imposed on the parties, only if they have no means of sustenance or the only means of livelihood is begging¹⁸. Therefore, Hindu and Muslim personal laws provide for the right of maintenance to *only* parents and *only* in ‘extreme’ cases of poverty. Further, the use of ambiguous language does not specify any

¹¹ The Code of Criminal Procedure 1973 (CrPC)

¹² Crpc 1973, s 125 (1)(d).

¹³ Dr. Menon and Dr. Chiney, ‘Critical Evaluation of Maintenance and Welfare of Parents and Senior Citizens Act, 2007’ (2023) II (II) IJLLR <https://www.researchgate.net/publication/374812920_CRITICAL_EVALUATION_OF_MAINTENANCE_AND_WELFARE_OF_PARENTS_AND_SENIOR_CITIZENS_ACT_2007_Introduction> accessed 29 October 2023

¹⁴ The Maintenance and Welfare of Parents and Senior Citizens (Amendment) Bill, 2019

¹⁵ Hindu Adoption and Maintenance Act 1956 (HAMA 1956)

¹⁶ HAMA 1956, s 20.

¹⁷ Mohd. Alam, ‘Maintenance of Muslim Women in Comparison to other Personal and Secular laws in India’ (2022) 6 (3) JPSP, pg. 9857 <<file:///C:/Users/User/Downloads/tabrej+sir.pdf>> accessed 29 October 2023

¹⁸ Prof. Wadje, ‘Maintenance Right of Muslim Wife: Perspective, Issues & Need for Reformation’ (2013) SSRN, pg. 2 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1266018#:~:text=up%20to%20the%20period%20of,after%20the%20period%20of%20Iddat.> accessed 29 October 2023

fixed maintenance or state *when* an individual is considered to have no means of maintaining themselves. Under Christian and Parsi laws, parents do not have a right to maintenance¹⁹ and have to exercise their right under Section 125 (1)(d) of the *CrPC*²⁰.

Due to these pitfalls and variations in the enactments, the elderly and senior citizens are especially vulnerable to cruelty and mistreatment, thus creating an urgent need for a new law to address the gaps and bring about necessary changes.

Important Provisions: Plugging the Leaks

One of the key provisions of the *Act* was the widening of its scope in maintenance rights to parents *and* senior citizens, including grandparents, defined as persons above the age of 60 years in Section 2 (h)²¹. In the landmark case of *Ramesh v. Ishwar Devi and Ors*²², the Court held that the purpose of the *Act* was to be a lifeline to uphold the dignity and respect of a senior citizen. Moreover, even childless senior citizens could collect maintenance from their relatives as defined in 2 (g)²³. The *Act* also laid down the meaning of the “needs” of senior citizens in Section 4 (2)²⁴ to the standard of being able to live a normal life whereas previously there was no fixed definition of what constituted “basic sustenance.” Senior citizens and parents could exercise their right to maintenance if they could not maintain themselves from their earnings and property under Section 4 (1)²⁵ and their children or relatives refused or neglected maintenance under Section 9 (1)²⁶, thus defining the meaning of being “unable to maintain themselves.” Further, Section 2 (b)²⁷ defined maintenance to include food, clothing, residence, medical assistance, and treatment while Section 9 (2)²⁸ stipulated an amount of Rs. 10,000 to be the maximum maintenance payable to senior citizens. Finally, the *Act* also established special Maintenance Tribunals under Section 7²⁹ and

¹⁹ Shah, ‘Comparative study of Laws of Maintenance in Hindu, Muslim, Christian and Parsi Personal Laws in India’ (goforthelaw) <<http://www.goforthelaw.com/articles/fromlawstu/article65.htm>> accessed 29 October 2023

²⁰ Reddy and Reddy Law Firm, ‘Provisions Related To Rights And Benefits Of Senior Citizens In India’ (RAR) <<https://www.reddyandreddy.org/provisions-related-to-rights-and-benefits-of-senior-citizens-in-india/>> accessed 29 October 2023

²¹ MWPSA Act, s 2 (h).

²² *Ramesh v. Ishwar Devi and Ors* (2021) 4 ICC 576

²³ MWPSA Act, s 2 (g).

²⁴ MWPSA Act, s 4 (2).

²⁵ MWPSA Act, s 4 (1).

²⁶ MWPSA Act, s 9 (1).

²⁷ MWPSA Act, s 2 (b).

²⁸ MWPSA Act, s 9 (2).

²⁹ MWPSA Act, s 7.

laid down punitive punishment for the “abandonment of senior citizens” in Section 24³⁰, thus ensuring efficient application of the Act and justice to the aged.

Paving the Way for the Future

The *MWPSC Act* has ushered in the framing of new senior citizen enactments about maintenance rights in our country, both at the state and national levels. One such legal policy is *The National Policy of Senior Citizens 2011*³¹, which targets mainstream senior citizens, including older women, and extends even to those above the age of 80 years owing to changing demographics. The policy explicitly refers to the *MWPSC Act* in its “Focus”, wherein it urges states to set up Maintenance Tribunals and implement the principles of the *Act* to ensure an “age-integrated society”.

Additionally, the *Act* is being implemented by States and Union Territories in stages by passing their own promulgated State Rules³². While most states have enacted their respective Rules based on the *Act*, some, like Himachal Pradesh have not and the law remains substantially variable.

Examining Variation in the State Rules

In 2009, the states of Kerala and Gujarat passed the *Kerala Rules*³³ and *Gujarat Rules*³⁴ respectively. While the year of enactment remains the same in both states, there are notable differences. Firstly, the *Kerala Rules* is a more detailed and comprehensive framework containing 22 Sections and appended Maintenance Forms A to J whereas the *Gujarat Rules* contain only 10 Sections with only a single appended Maintenance Form – I. Another difference is the quantum of maintenance, where in the *Kerala Rules*, Section 14³⁵ prescribes maximum maintenance of Rs. 10,000 per month whereas Section 5³⁶ of the *Gujarat Rules* sets a current rate of Rs. 5,000 per month for maintenance allowance. In pursuance of Section 6 (5)³⁷ of the *MWPSC Act*, Section 4 (3)³⁸ of the *Gujarat Rules* deals with the issuance of summons to relatives and children residing outside India; however, such a clause is absent in

³⁰ *MWPSC Act*, s 24.

³¹ National Policy of Senior Citizens 2011

³² *ibid* pg. 1

³³ The Kerala Maintenance and Welfare of Parents and Senior Citizens Rules 2009

³⁴ The Gujarat Maintenance and Welfare of Parents and Senior Citizens Rules 2009

³⁵ *Kerala Rules*, s 14.

³⁶ *Gujarat Rules*, s 5.

³⁷ *MWPSC Act*, s 6 (5).

³⁸ *Gujarat Rules*, s 4 (3).

the Kerala Rules. Finally, the magnitude of implementation in the respective States is reflected in the social awareness levels of the elderly towards the provisions of the *MWPS Act*, with Kerala³⁹ being at 19.4% and Gujarat being at only 12.4%⁴⁰.

Scope for Improvement

While the *MWPS Act* has added to the legal jurisprudence of the country by acting as a connecting link between the existing legal framework of statutes and personal laws and the State rules that followed it, there remain some lacunae that need to be addressed. One of the key benefits of the *Act* was that it was able to bring about uniformity in the maintenance rights of senior citizens irrespective of their faiths and acted as a blanket legislation for the entire country. However, with each state passing its own Maintenance Rules in pursuance of the *Act*, the uniformity of the contents and implementation of the *Act* is somewhat a grey area again. Per the analysis of Kerala and Gujarat, it is evident that Kerala has been better in implementing the principles of the *Act* with a more detailed and beneficial framework. Meanwhile, Himachal Pradesh still follows *The Himachal Pradesh Maintenance of Parents And Dependants Act, 2001*⁴¹ which applies only to parents and dependants (only grandparents), without specifying any age of seniority. Therefore, there is a need to ensure that the *Act* is evenly applied throughout the country while increasing social awareness among the elderly on the right to maintenance.

While the *Act* has made great strides in penning fixed definitions of terms not properly defined in previous enactments, its language is considerably rigid and narrow⁴². For example, the definition of maintenance in Section 2 (b) is very basic and does not address safety, security, or any resources needed for a peaceful life. Another example is that the *Act* does not explicitly deal with “unmarried senior citizens”, “children” in Section 2 (a)⁴³ does not include daughters-in-law and sons-in-law, and grandparents and parents-in-law are excluded from the definition of “parent” in Section 2(d)⁴⁴. Finally, owing to the language of the *Act* and its implementation being dependent on bureaucracy, there are considerable delays in

³⁹ Social Justice Department, ‘Implementation of Maintenance and Welfare of Parents and Senior Citizens Act 2007’ (GOV. OF KER.) <https://sjd.kerala.gov.in/scheme-info.php?scheme_id=MTYyc1Y4dXFSl3Z5> accessed 29 October 2023

⁴⁰ IIFPS & UNPF, ‘India Ageing Report 2023 Caring for Our Elders: Institutional Responses’ (UNPF, ND, 2023)

⁴¹ The Himachal Pradesh Maintenance of Parents and Dependants Act 2001

⁴² Banerjee, ‘A Critical Analysis of The MWPS Act in Light of The 2019 Bill And Other Decided Cases’ (2020) VI (I) NUJS <<https://www.nujs.edu/wp-content/uploads/2022/12/File-102.pdf>> accessed 29 October 2023

⁴³ MWPS Act, s 2 (a).

⁴⁴ MWPS Act, s 2 (d).

maintenance cases, the opening of shelter homes, and ultimately, an endless postponement of justice.

Suggestions

For the effective implementation of any law, awareness is a prerequisite. Considering the extremely low levels of awareness about the *Act* and its provisions, the state governments should undertake more social awareness programs and schemes for senior citizens to exercise their rights⁴⁵. In terms of the irregularity and variation in implementation, state governments must submit monthly or annual reports on the maintenance cases dealt with while assessing areas of improvement so that all states can operate on an equal footing. The language of the *Act* must also be modified through Amendments⁴⁶ to include wider definitions and to increase the amount of maintenance allowance so that the target audience can get easier access to remedies.

Conclusion: Is the *MWPSC Act* a success?

The *MWPSC Act* is a watershed moment in the legal jurisprudence of our country and is a law in time as it has repaired enactments of the past while founding enactments for the future. The *Act* has been crucial in bringing the maintenance rights of senior citizens to the forefront and making considerable progress from the previous archaic maintenance laws. Since its enactment nearly a decade ago, the *Act* has been serving the elderly and needy, with states undertaking active participation. While it has achieved significant success in attempting to bring about an egalitarian society, the *Act* still suffers from a lack of proper implementation and loopholes in its language, which can derail the tracks of justice for the elderly. Therefore, reforms are the need of the hour to make the prospect of an egalitarian society a universal reality.

⁴⁵ Raj and Galhotra, 'The Maintenance and Welfare of Parents and Senior Citizens Act, 2007- Helping the conditions of the elderly in India' (2019) 5 (2) IJCFM <https://www.researchgate.net/publication/338045292_The_Maintenance_and_Welfare_of_Parents_and_Senior_Citizens_Act_2007-_Helping_the_conditions_of_the_elderly_in_India> accessed 29 October 2023

⁴⁶ad. 33