

Maintenance and Welfare of Parents and Senior Citizens - A Legal Analysis

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ABSTRACT

In a society elderly people suffer from poverty, loneliness, neglect, abuse and abandonment and they find very difficult to use their resources for their basic needs by which they are unable or unwilling to maintain them. Thus, the problem of widows, widowers and the childless elderly are even inferior and pity condition. The National Policy on Older Persons was announced in January 1999 to reaffirm the commitment to ensure the well-being of the older persons. Thus, the increasing problems of parents and Senior Citizens in India is matter of concern and there is an urgent need to study issues pertaining to Senior citizens, to find out and suggest for more stringent norms, better and modest procedural provisions for the proper implementation of the Act and rules.

Keywords: Maintenance and welfare; Senior citizens; Social and cultural rights; International covenant

INTRODUCTION

Society and its people have increasingly become materialistic. Most elderly suffer from poverty, loneliness, neglect, abuse and abandonment and find it difficult to mobilise resources for their most basic needs as their children are either unable or unwilling to maintain them. It is also noted here that difficulty finds out by widows, widowers and the childless elderly are even worse. In order to address this growing problem, Government of India, the Ageing Division develops and implements programmes and policies for the senior citizens in close collaboration with State Governments, Non-Governmental Organisations and civil society. In pursuance of the understanding at international level, for the benefit of older persons the National Policy was announced in January 1999 to reaffirm the commitment to ensure the well-being of the older persons. Till 2007 there were no special or separate legislation exclusively for Senior Citizens. The Government of India enacted the Maintenance and Welfare of Parents and Senior Citizens Act 2007 (MWP Act). Further it is obligatory for children and heirs to offer maintenance to senior citizens and parents by providing monthly allowance which is simple, speedy and inexpensive mechanism for the protection of life and property of older persons. In exercise of the powers conferred by section 32 of the Maintenance and Welfare of Senior Citizens Act, 2007, the Odisha State Government has made the Orissa Maintenance of Parents and Senior Citizens Rules, 2009. This Odisha Rules provides the detailed procedural provisions for proper implementation of the Act provisions of the Act and Rules also. Though the MWP Act

came into force in 2007 and more than a decade has passed since then, serious efforts have not been made by the Government of India or by the State Governments to ensure that medical facilities for the elderly and geriatric care is made available. The elderly are not aware of their human rights guaranteed not only by the Constitution but also by the provisions MWP Act because in one hand problems of parents and senior citizens are growing day by day, in other hand there are a few reported cases of Supreme Court and High Courts. Further though said Act 2007, Odisha Rules and Welfare Schemes and policies for elderly has given minute details and a good protection of the rights of parents and senior citizens so as to feel better and more secured, still society is witnessing a situation where in most of the parents are not being maintained by their children. Old parents are being neglected by their children and forced to live a meaningless and painful life either in old age home or in their own home. For these problems of Senior Citizens the existing laws and social welfare measures and their implementation in the State of Odisha may not be adequate. Thus, the increasing problems of parents and Senior Citizens in India is matter of concern and there is an urgent need to study issues pertaining to Senior citizens, to find out and suggest for more stringent norms, better and modest procedural provisions for the proper implementation of the Act and rules.

Significance of the Study

The concept of old age is a socially constructed phenomenon—in other words, it is not simply a biological process, but something

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that is given particular meaning depending upon its social and historical context. Throughout the world, a large numbers of older persons face challenges such as discrimination, poverty and abuse that severely restrict their human rights and their contribution to society. Human rights are universal. Thus it applies to all human beings everywhere, irrespective of their sex, age, religious affiliation, disability, sexual orientation and other distinctions. Thus, the human rights of all people, including older persons are protected in the Bill of Rights. Even though it is technically a declaration, the Universal Declaration of Human Right is generally considered customary law, and thus legally binding. The most significance to old age is Article 25(1) of the UDHR that states that everyone has the right to security and a 'standard of living adequate for the health and well-being of himself and his family'. The two Conventions, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Cultural

Rights (ICCPR), propose generic protection of cultural, economic, social, civil and political rights. For older persons, essential specific rights in the ICESCR are the work-related rights (Articles 6-7) and the rights to social security (Article 9), to an adequate standard of living (Article 11), to education (Article 13) and to the maximum possible normal of physical and mental health (Article 12). The ICESCR itself does not contain any straight references to older persons. Further, article 5(1) in both the ICESCR and the ICCPR imposes obligations on persons as: Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to take on in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their constraint to a greater extent than is provided for in the present Covenant. Thus, the International Bill of Rights instruments— the UDHR, the ICCPR and the ICESCR make only for the elderly people residing in India (Table 1).

Table 1: Key changes between the Act and Bill.

Parents	Parents include biological, adoptive, and step-parents.	Adds parent-in-laws, and grandparents.
Maintenance	Maintenance includes provision of food, clothing, residence, medical attendance and treatment.	Expands the definition to include the provision of healthcare, safety, and security for parents and senior citizens to lead a life of dignity.
Welfare	Welfare includes provision of food, healthcare, and other amenities necessary for senior citizens.	Expands the definition to include the provision of housing, clothing, safety, and other amenities necessary for the physical and mental well-being of a senior citizen or parent.
Maintenance Orders		
Maintenance amount	Maintenance Tribunals may be constituted by states to decide on the monthly maintenance amount payable to senior citizens by children and relatives. This amount may not exceed Rs 10,000 per month.	The Bill removes the upper limit on the maintenance fee. The Tribunals must consider: (i) standard of living and earnings of the parent or senior citizen, and (ii) the earnings of the children, while deciding the maintenance amount.
	Children and relatives must pay maintenance amount within 30 days of the order of the Tribunal.	Reduces number of days to 15.
Maintenance officer	Parent or senior citizen may be represented by a maintenance officer during Tribunal proceedings.	Maintenance officer will (i) ensure compliance with orders on maintenance payments, and (ii) act as a liaison for parents or senior citizens.
Appeals	Senior citizens or parents can appeal the decision of the Tribunal.	Children and relatives may also appeal decisions of the Tribunal.
Offences and Penalties		
Abandonment of senior citizen or parent	Punishable with imprisonment of up to 3 months, or fine of up to Rs 5,000, or both.	Punishable with imprisonment between three and six months, or a fine of up to Rs 10,000, or both.
Abuse of senior citizen	No provision.	Punishable with imprisonment between three and six months, or fine of up to Rs 10,000, or both.
Protection and welfare of senior citizens		
Care-homes	State governments may set up at least one old age home in every district with a capacity to house 150 senior citizens.	Senior citizen care homes may be set up by the government or private organisations. These homes must be registered with a registration authority set up by the state government. The central government will set minimum standards for these homes, such as infrastructure, and medical facilities.
Homecare services	No provision.	Requirements for institutions providing homecare include: (i) staff must be trained and certified, and (ii) institutions must register with a registration authority set up by the state government.
Healthcare	Provides for facilities such as separate queues and beds for senior citizens in government hospitals.	All hospitals, including private organisations, to provide these facilities for senior citizens.
Police protection	No provision.	Every police station must have at least one officer (not below the rank of Assistant Sub-Inspector) to deal with issues related to parents and senior citizens. State governments must constitute a special police unit for senior citizens in every district. The unit will be headed by a police officer not below the rank of Deputy Superintendent of Police.

Sources: Maintenance and Welfare of Parents and Senior Citizens Act, 2007; Maintenance and Welfare of Parents and Senior Citizens (Amendment) Bill, 2019; PRS.

It is estimated that 8.6% of India's population constitute citizens over the age of 60 years as per the 2011 Census and also further it is projected that to grow to 21% by 2050 [1]. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 was amended from time to time with objective to offer financial safety, benefit and guard for senior citizens. It needed children to supply safeguarding for their parents, and the government to supply old age homes and make certain medical care for senior citizens. Besides, set up by the Administrative Tribunals and Appellate Tribunals to ensure maintenance.

The 1982 World Assembly on Ageing adopted the Vienna International Plan of Action on Ageing (VIPAA). This was the first UN Human Rights tool on ageing. Its recommendations incorporated avoiding the separation of the elderly, making accessible home-based think about for elderly persons; rejecting conventional concepts in government policies and recognising the value of old age. Twenty years later, the Madrid International Plan of Action on Ageing (MIPAA) was adopted as an updated and greatly extended version at the Second World Assembly on Ageing. The plan has a strong focus on Human Rights [2].

Indian society has a long-cherished practice to esteem and guard the elders. In prehistoric time, parents were worshiped as living Gods and Goddesses and placed at a very high position. The Sanskrit phrases like "Matru Devo Bhav" and "Pitru Devo Bhao", reflects the sentiments to one's mother and father (Upanishad). Two of its main goals are: i. the full realisation of fundamental rights and freedoms for older persons; ii. ensuring the full enjoyment of the economic, social and cultural rights and the civil and political rights of older persons and the elimination of all forms of violence and discrimination against older persons.

It also identified three policy directions to guide policy formulation and implementation: i. older persons and development ii. advancing health and well-being into old age iii. ensuring enabling and supportive environments. The MIPAA has since guided domestic policies and international dialogue on the rights of older people [3].

In Indian culture, respect and regard for parents and elders was the most important value that was inculcated and ingrained in the minds of the children. The ancient law giver Manu in his Dharma Sastra ordains that every *grihastha* has to take care of his parents and elders. Brihaspati said, 'A man may give what remains after the food and clothing of family: the giver (who leaves his family naked and unfed) may taste honey at first but afterwards finds it poison'. Kautilya in his 'Arthashastra' has reproved those who neglect their aged parents and has permitted the village elders to punish those sons who failed to provide care for the aged parents [4]. The son was morally bound to take care of his parents. The practice is still prevalent in India in modern days as we find old parents live with their sons. The most common living arrangement found in India for the elderly has always been living with their families. The family looked after the old, including the widows and the bachelors and spinsters supported the members out of work and generally there was a feeling of togetherness in the family providing safety and security to all members [5]. This tradition assured the elderly of the much needed care and support and fulfilled their physical and emotional needs during their advanced years.

Everyone in the family was respectful of the family elder, the patriarch of the family. All decisions regarding the family and its members both economic and social like marriage or acquiring or

disposing of property was taken by the patriarch. All the property of the joint family was owned by all the male members of the family and dealt with by the *Karta*. There was utmost loyalty and deference to the decisions taken by the patriarch in the family unit. The respect and deference was also exhibited hierarchically with regard to age to all the other members of the family [6].

Role of Globalization on Account of Change Life of Old Parents

Industrialisation, urbanisation and globalisation have changed the way of life and the value systems fostered by the traditional societies are witnessing the trend of people migrating from rural to the urban areas resulting in the declining of the joint family system in the urban areas and a skeletal presence of it in the rural areas [7]. In addition to it led to disintegration of the joint family system and hastened the formation of nuclear families. The society and its people have increasingly become materialistic. The increase in the number of women going for work in the present scenario also has an impact on the dynamics of family structure in India. The other dimension of such changes in family has been the change of authority in the households from the elders to the younger generation.

Career oriented young men and women with a keen sense of independence and individualism have spelt the death knell to the joint family system and have to a great extent caused the marginalization of the elderly. Old parents want to receive something from their children to whom they have devoted their whole life but children are busy to give a beautiful life to their own children. While most elderly are looked after by the children, many suffer from poverty, loneliness, neglect, abuse and abandonment and find it difficult to mobilise resources for their most basic needs as their children are either unable or unwilling to maintain them. While most elderly are looked after by the children, many suffer from poverty, loneliness, neglect, abuse and abandonment and find it difficult to mobilise resources for their most basic needs as their children are either unable or unwilling to maintain them. Problem of widows, widowers and the childless elderly are even worse. marginalisation of the elderly. Old parents want to receive something from their children to whom they have devoted their whole life but children are busy to give a beautiful life to their own children. While most elderly are looked after by the children, many suffer from poverty, loneliness, neglect, abuse and abandonment and find it difficult to mobilise resources for their most basic needs as their children are either unable or unwilling to maintain them. While most elderly are looked after by the children, many suffer from poverty, loneliness, neglect, abuse and abandonment and find it difficult to mobilise resources for their most basic needs as their children are either unable or unwilling to maintain them. Problem of widows, widowers and the childless elderly are even worse.

In order to address this growing problem, Government of India, the Ageing Division in the Social Defence Bureau of the Department of Social Justice and Empowerment develops and implements programmes and policies for the senior citizens in close collaboration with State Governments, Non-Governmental Organisations and civil society. The programmes for senior citizens aim at their welfare and maintenance, especially for indigent senior citizens, by supporting old age homes, day care centres, mobile medicare units, etc. The Division has been implementing a Central Sector Scheme, "Integrated Programme for Older Persons" (IPOP)

since 1992, which was revised in 2008 and new innovative projects were included for the welfare of Senior Citizens. Further in accordance of the sympathetic programmes at international level, the National Policy on Older Persons (NPOP) was announced in January 1999 to reaffirm the commitment to ensure the well-being of the older persons [8]. This policy recognized certain rights of the aged people and further declared Government's responsibility towards providing economic and social security along with healthcare facilities and protection of life and property of the aged people. In spite of the fact that the said policy was declared in 1999, no steps were taken to implement said policy. There was strong and consistent pressure from different NGOS and demand by aged people, senior citizens organizations etc. on the government regarding implementation of the same by appropriate Legislation. Till 2007 there were no special or separate legislation exclusively for Senior Citizens. The Government of India introduced the Maintenance and Welfare of Parents and Senior Citizens Bill 2007 in Lok Sabha on 9th March, 2007. In exercise of the powers conferred by section 32 of the Maintenance and Welfare of Senior Citizens Act, 2007, the Odisha State Government has made the Orissa Maintenance of Parents and Senior Citizens Rules, 2009. This Odisha Rules provides the detailed procedural provisions for proper implementation of the Act provisions of the Act and Rules also.

The enactment of Maintenance and Welfare of Parents and Senior Citizens Act 2007(MWPSC) was a landmark initiative by Government of India to re-affirm the commitment for the welfare of senior citizens of India. It is an enabling legislation that is available to vulnerable older persons and has simple application procedure and the legal formalities to avoid delays. This has been done to minimize the strain on the older persons in getting benefits from this Act. The Act *inter alia* makes maintenance of parents/senior citizens by children/relatives obligatory, through specially constituted tribunals. It also provides for the establishment of old age homes for indigent senior citizens, adequate medical facilities, protection of life and property, revocation of transfer of property by senior citizens in case of negligence by relatives and penal provisions for abandonment of senior citizens.

The Act provides that a senior citizen including parent who is unable to maintain himself from his own earning or out of the property owned by him, shall be entitled to make an application in case of- (i) parent or grand-parent, against one or more of his children not being a minor; (ii) a childless senior citizen, against such of his relative. The obligation of the children or relative, to maintain a senior citizen extends to the needs of such citizen so that senior citizen may lead a normal life. The obligation of the children to maintain his or her parent extends to the needs of such parent either father or mother or both, so that such parent may lead a normal life. Any person being a relative of a senior citizen and having sufficient means shall maintain such senior citizen provided he is in possession of the property of such senior citizen or he would inherit the property of such senior citizen. However, where more than one relatives are entitled to inherit the property of a senior citizen, the maintenance shall be payable by such relative in the proportion in which they would inherit his property [9].

The Act further provides that if children or relatives neglect or refuse to maintain a senior citizen being unable to maintain himself, the Tribunal may, on being satisfied of such neglect or refusal, order such children or relatives to make a monthly allowance at such monthly rate for the maintenance of such senior citizen, as the

Tribunal may deem fit and to pay the same to such senior citizen as the Tribunal may, from time to time, direct. 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.

The Act under section 19 also provides the provisions for establishment of old age homes. This section states that the State Government may establish and maintain such number of old age homes at accessible places, as it may deem necessary, in a phased manner, beginning with at least one in each district to accommodate in such homes a minimum of one hundred fifty senior citizens who are indigent. The State Government may also 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. In the year 2016-17, the total number of old Age Homes assisted are 396 and out of this the number in Odisha is 43 [10]. The total of 396 old age homes was given grants.

The Act also provides the provisions for medical support for senior citizens. The Act further states that exposure and abandonment of senior citizen is an offence. Elderly can choose to seek maintenance either under this Act (MWPSC) or under the provisions of the Criminal Procedure Code 1973 if applicable but not under both the provisions. Though Government has enacted the Act 2007 and made exposure and abandonment of senior citizen an offence and made punishable with imprisonment of either description for a term which may extend to three months or fine which may extend to five thousand rupees or with both. Children leave such senior citizen in any place with the intention of wholly abandoning such senior citizen. In many cases it is shown that old parents are being neglected by their children and forced to live a meaningless and painful life either in old age home or in their own home. Children are become so practical and they want to live their life without any interfere and parents are only a burden for them. In this way old persons are being neglected by their children and society and forced to live a meaningless and painful life either in old age home or in their own home.

Statement of Research Problem

The Maintenance and Welfare of Senior Citizens Act by its provisions has given a complete new outlook to the whole concept of the protection of the rights of parents and senior citizens as it completely concentrates on the welfare of the senior citizens. This Act has a higher hand over Criminal Procedure Code and the Hindu Adoption and Maintenance Act as it in particular gives attention to minute details which can make the senior citizens feel better and more secured. Further the Odisha State Government has made the Orissa Maintenance of Parents and Senior Citizens Rules, 2009 [11].

In spite of statutory provisions guaranteeing rights and protection of parents and senior citizens under the Maintenance and Welfare of Senior Citizens Act 2007, Odisha Rules 2009 thereto and Welfare Schemes and policies for elderly, still society is witnessing a situation where in most of the parents are not being maintained by their children. Old parents are being neglected by their children and forced to live a meaningless and painful life either in old age home or in their own home. There has been a trend for the fast-moving generation neglecting their parents and treating them with cruelty, even forcing them to part with their property before their

death. They are often abandoned after being deprived of their properties forcibly, thus being victims of neglect and torture.

The problems of Senior Citizens are increasing day by day. Deterioration of health, malnutrition, lack of shelter, fear, depression, senility, isolation, boredom, non-productivity, and financial incapacity are the most common problems that senior citizens all over the world face today [12]. For these problems of Senior Citizens the existing laws and social welfare measures and their implementation in the State of Odisha may not be adequate. Thus, the increasing problems of Senior Citizens in India is matter of concern and such problems should be dealt with firmly by providing, under the said Act, more stringent norms and legal obligations on children to look after their parents in their old age and to prevent growth of destitution in society, and also by suggesting under the said Rules, modest and effective procedures for the better implementation of them particularly in the State of Odisha.

The realization of rights and protections under the said Act is still remained as a dream for millions of parents and senior citizens as they are not aware of the provisions of these Acts and State Rules there to. Therefore, the realization and enforcement of the rights and protections of such persons are still a challenge.

The problems of Senior Citizens are increasing in recent years, and increasing of such problems is now a matter of concern which are to be dealt with firmly. Thus, the study on maintenance and welfare of parents and senior citizens laws, Rules and social welfare measures framed and made in different jurisdictions, Centre and States has become most urgent need to lay down the more stringent norms of substantive protection, and to prescribe modest and effective procedural provisions for the better implementation of those substantive protection particularly in the State of Odisha. The present study seeks to examine the various dimensions of the problems of Senior Citizens in historical and comparative perspectives; to evaluate maintenance and welfare of parents and senior citizens laws, Rules and social welfare measures in our country dealing with problems of Senior Citizens particularly in the State of Odisha; and to evaluate appropriate guidelines to amend, modify or change of various maintenance and welfare of parents and senior citizens laws and rules to improve their effectiveness for the benefit parents and senior citizens particularly in the State of Odisha. The present study also seeks:

Judicial Response

In *Ashwani Kumar vs. Union of India and others*, [13] the petitioner drew Supreme Court's attention particularly section 19 of the MWP Act which deals with the establishment of old age homes and requires each State Government to establish and maintain at least one old age home in every district in the country with each old age home having accommodation for 150 senior citizens who are indigent.

In a case *Maharaja Nadar v. Matthukani Ammal* [14] a son was under a personal obligation to maintain his aged parents irrespective of his having any property. But he was not bound by any obligation to maintain his step mother, and further also not obligated to maintain his grandparents unless he had received ancestral property. Refusal to maintain was considered an offence under Hindu law and abandoning mother, father, wife or son for no fault of theirs was punishable by the king.

In a landmark judgment between *Dr. Ashwani Kumar v. Union*

of India [15] for the enforcement of the rights of elderly persons under Article 21 of the constitution. He also prayed for the effective implementation of the MWPSC Act, 2007 and the pension schemes are available for the elderly and the amount provided under this scheme could not use by the beneficiaries to meet their basic needs. They issued certain directions to the Union of India and State Governments in this regard which is welcome step.

In a case between *Paramjit Kumar Saroya v. Union of India* and another, there have been a number of cases related to the Act. In earlier, the Punjab and Haryana High Court observed the Act in point and requested the central government to re-examine some provisions of the Act that were vague. The Court also interpreted the Act to say that appeals to the administrative tribunal's verdict may be made by either party, and indifferent the bar on legal representation [16]. This Bill amends the 2007 Act to enlarge the definition of children, relatives and parents, take away the upper limit on the maintenance amount payable to parents by children and relatives, and provide for care-homes and other benefit actions for senior citizens.

In another case a son was under a personal obligation to maintain his aged parents irrespective of his having any property. But in *PiteiBewa v. Laxmidhar Jena* [17] the petitioner filed an application under Section 125 of the Code of Criminal Procedure claiming maintenance. Petitioner is the third wife of the deceased and opposite parties are the sons of the deceased through his second wife. After the death of the deceased as opposite parties neglected the petitioner and her two minor daughters, they filed an application claiming maintenance. The Sessions Judge came to the conclusion that the word 'mother' occurring in clause (d) of Section 125(1) of the Code did not include a step-mother. The High Court set aside the order and interpreting the provisions of the Section 125 of the Code has stated that the word 'mother' occurring in clause (d) of Section 125(1) includes a woman who has the status of a 'step-mother' by reason of her lawful marriage with the father of the person sought to be made liable for maintenance under Section 125. As step-mother is included within the ambit of Section 125(1)(d) of the Code, the petitioner is entitled to be maintained under the said provision.

In *Francis Coralie Mullin v. Administrator, Union Territory of Delhi* [18] this Court acknowledged that the right to life guaranteed by Article 21 of the Constitution includes the right to live with dignity which includes, inter alia, nutrition, clothing and shelter - all of which require some finances.

In *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan* [19] this Court observed to and followed *Chameli Singh*. It is significantly important that, position was complete to our obligations under international law, including the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights. The petitioners powerfully relied upon our international obligations and submitted that separately from the law emphasized by this Court in several judgements, should admiration and accept international obligations with regard to the right to protection. Article 19(1)(e) accords right to house and decision in any part of India as a fundamental right. Right to life has been guaranteed as a basic human right under Article 21 of the Constitution of India. Article 25(1) of the Universal Declaration of Human Rights declares that everyone has the right to a average of living, plenty for the health and wellbeing of himself and his family; it includes food, clothing, housing, medical care and necessary social services. Article 11(1) of the International

Covenant on Economic, Social and Cultural Rights lays down that State parties to the Covenant recognise that everyone has the right to standard of living for himself and his family including food, clothing, and housing and to the constant improvement of existing conditions.

The submission of the petitioner and the learned Amicus is that though more than 300 old age homes have been established in different parts of the country, the requirement is of many more considering the large population of indigent elderly. It was submitted that some homes are in a dilapidated condition, without adequate facilities including geriatric care. In other words, in several instances, the law laid down in Section 19 of the MWP Act is being complied with only in letter and certainly not in spirit. Further Court's attention was also drawn to Section 20 of the MWP Act which provides for medical support for senior citizens. Government hospitals or hospitals funded fully or partially by the State Government are mandated to provide beds for all senior citizens, as far as possible. Facilities for geriatric patients are also required to be earmarked by this Section of the MWP Act.

Function of Voluntary Organization

It is pointed out that Section 21 of the MWP Act requires the State Governments to give publicity to the provisions of the said Act through all modes of public media. There is also a mandate for effective coordination between various ministries and departments of the State Government to address the issues relating to the welfare of the elderly and more importantly, a periodic review is required to be conducted. The submission of the petitioner is that there is hardly any publicity given to the provisions of the MWP Act and despite efforts by several organisations such as Help-Age India, the rights of the elderly to shelter and medical facilities as well as geriatric care remains only a pipe dream. It is submitted that the Government of India must come out with a workable plan to give publicity to the provisions of the MWP Act so that the elderly can live the remainder of their life with dignity.

Thus the petition raises significant issues relating to the recognition and enforcement of the fundamental rights of the elderly. The Supreme Court has stated this is perhaps the first such petition on the subject and interestingly, the submissions of the petitioner are based entirely on Article 21 of the Constitution and other supporting constitutional provisions.

The Court has stated that the right to life provided for in Article 21 of the Constitution must be given an expansive meaning. The right to life encompasses several rights but for the time being we are concerned with three important constitutional rights, each one of them being basic and fundamental. These rights articulated by the petitioner are the right to live with dignity, the right to shelter and the right to health. The State is obligated to ensure that these fundamental rights are not only protected but are enforced and made available to all citizens.

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The petitioner has raised, alternatively, an equally significant issue namely that even if the constitutional rights are not enforceable due to difficulties in 'economic budgeting' even then the law enacted by Parliament in the form of the MWP Act mandates the protection and enforcement of the rights of elderly persons. Parliament was fully aware of the financial impact of the law. Considerations of 'economic budgeting' by the State both at the level of the Government of India and at the level of the State Governments must have been taken into account while enacting the legislation. Therefore, there cannot be any excuse of lack of finances either by the Government of India or by the State Governments in strictly implementing the provisions the MWP Act. In short, if not the constitutional then at least the statutory rights of elderly persons must be recognised and implemented. One solution proffered was that this Court should issue a continuing *mandamus* so that there is effective implementation of the constitutional rights of the elderly and the provisions of the MWP Act.

The Supreme Court has in agreement with the consensus views that emerged during the course of discussions and submissions and are of opinion that a set of directions issued by this Court will not fulfill the constitutional mandate or the mandate of the MWP Act. There is a need to continuously monitor the progress in the implementation of the constitutional mandate to make available to the elderly the right to live with dignity and to provide them with reasonable accommodation, medical facilities and geriatric care. While this may take some time, the only available solution is a continuing *mandamus* which is a well-recognised practice and procedure adopted by this Court in several cases to ensure that the rights of the people are respected, recognized and enforced and that social justice as postulated by the Preamble in the Constitution is given meaning and teeth.

Thus, there is a huge gap between the law and its implementation and even though the MWP Act came into force in 2007 and more than a decade has passed since then, serious efforts have not been made by the Government of India or by the State Governments to ensure that medical facilities for the elderly and geriatric care is made available. The elderly are not aware of their human rights guaranteed not only by the Constitution but also by the provisions MWP Act because in one hand problems of parents and senior citizens are growing day by day, in other hand there are a few reported cases of Supreme Court and High Courts. Preliminary research does not show any reported cases of Orissa High Court.

The problems of Senior Citizens are increasing every day. Deteriorating health, malnutrition, lack of shelter, fear, depression, senility, isolation, boredom, non-productivity, and financial incapacity are the most common problems that senior citizens all over the world face today.

CONCLUSION

Most elderly suffer from poverty, loneliness, neglect, abuse and abandonment and find it difficult to mobilise resources for their most basic needs as their children are either unable or unwilling to maintain them. Although, the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 is a step forward in the right direction for the protection of the dignity and honour of the elderly in India. There are enough schemes and policies for the senior citizens but most of them are not aware of the existing schemes and policies for them and the procedure to avail such benefits but many of these are not implemented properly. The newspapers highlight

the regional, national and international instances of neglect of parents and senior citizens as per their gravity and magnitude yet in such a way that the information falls short of complete disclosure. The objective is to trace the origin and development of Right to Maintenance accorded to the elderly people in the legal principles and legal framework from ancient times to the present day. The purpose of better understanding of the interpretation of legal rights of the elderly to find out effective measures and stringent principles taken in this regards so as to implement the same in our jurisdiction. International treaties, Conventions, government reports, academic journals, newspapers plays vital role in this regard. This study also helps the juristic opinions, the precedents, the statutory schemes, legislations, and the national policy of India specifically and various jurisdiction in the world, in general. The various laws are enacted in India including personal laws, the international conventions organised to address the issues related to the elderly globally and also the relevant judgments of various High Courts of the States and the Supreme Court of India. The existing legislations relating to rights of Senior Citizens and find and suggest ways for a comprehensive piece of legislation at national level is the outcome. To provide for more effective provisions for the maintenance and welfare of the senior citizens guaranteed and recognised under the Constitution and for matters connected therewith or incidental thereto. The maximum maintenance allowance which may be ordered by maintenance Tribunal shall be such as may be prescribed by the State Government which shall not exceed Rs. 10,000/- per month. Such maximum limit of Rs. 10,000/- appears to be unjust, because prices of things are going on the rise day by day. The elders are now exposed to emotional neglect and to lack of physical and financial support; they are facing a lot of problems in the absence of adequate social security. It also further ensures that the children perform their moral obligation towards their parents and to eliminate the agony and sufferings of this vulnerable section of society, legislation for the welfare of the Parents and Senior Citizens in pursuance of the provisions of Article 41 read with Entry 23 of the Concurrent List (Schedule VIII) of the Constitution of India has been enacted. One of the main concerns of them is retaining independence, freedom of movement and the ability to participate fully in social world. A grand-parent or a parent irrespective of age can claim maintenance from one or more of his children. State government shall establish old age homes, at least one in each district to accommodate indigent senior citizens Thus, there should be no such limitation and it should be decided by the Tribunal keeping in view over all circumstances of the case e.g. status of the parties and problems faced by the parents, grandparents as a senior citizen etc. Article 18 of the Indian constitution, states that to provide home based services to the elderly to support the family to take care. The Social Security system of India to revise for strengthened support In a significant change Amendment Bill, 2019 was passed with the objective of upper limit of Rs.10,000/- as maintenance amount

which was awarded by the Tribunal under this Act. Under Section 2(b) the right to 'maintenance' and 'to lead a life of dignity' was incorporated under s 3(i)(b) of the Bill for the maintenance. Article 21 of the constitution of India the Right to Life for wellbeing of a person.

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