

Claim Of Maintenance by Parents and Senior Citizens Under Indian Legal System

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It is believed that God only awarded heaven or hell to man on the basis of his deeds and conduct. Proper care of parents is the highest spiritual, moral, ethical and legal duty of a man. This service is much more than visiting the religious places or conducting and observing other religious practices. We should not forget that the cause for existence of human being on the earth is parents. Human being is the one living organism which required support and protection from the parents and other family members for some period after birth, unlike the other living organism, who have to manage of their own just after birth for their survival. A human infant cannot survive even for a day without the support of the parents or other family members. Thus, it will be proper to say that the parents are substitute for God in the family. Joint family is just like a small village. Every member- children, adults and aged persons are the constituents of such village. Everybody in the family should get his share including decision making regarding the day-to-day business of the family. If it is not, the joint family breaks into so many small families. Most sufferers in such a case are the children and the aged persons. The demolition of the Joint family resulted in withdrawal of the support system in difficult periods during the life. But when the parents become old, the children neglect them, it is the greatest sin on the earth.

INDIAN LEGAL SYSTEM

The legal provisions regarding the protection of aged persons very well exists in Indian society in the form of customs, traditions etc. It is the rich Indian culture that pays regards to elders and takes care of aged parents and other family members. Such customs, traditions and culture are the great sources of law. Thus, law in this regard very well existed and legislature just declares the existing law as command of the sovereign.

Parents are entitled to get maintenance under various laws. Some of them are personal laws and some of them are general. These laws are:

1. The Constitution of India, 1950
2. Section 125 of criminal procedure code, 1973
3. Maintenance and Welfare of parents and senior citizens Act, 2007
4. The domestic violence Act, 2005
5. Personal laws :
 - Section 20 of Hindu adoption and Maintenance Act, 1956
 - Muslim Law
 - Christen and parsi law

In this article we are discussing that whether parents and senior citizens are getting relief under general laws or in their personal laws and if general laws are beneficial for them than which is much easier and meaningful for getting maintenance.

The Constitution of India, 1950

Article 21ⁱⁱ of the Constitution of India confers one of the most significant rights on individuals; right to life and personal liberty. Significantly, the provisions of Article 21 of the Constitution safeguard these rights of people from any insidious encroachments and unreasonable restrictions. In fact, it is settled law, the procedure, which, in any manner, affects the rights to life and/ or personal liberty of an individual must be a 'procedure prescribed by law' and that the same should be "fair, just and reasonable, not fanciful, oppressive or arbitrary" It's an equally incontrovertible fact that the safeguards envisioned under Article 21 of the Constitution are available to all persons. Further, the scope and ambit of the said protection is ever expanding. The Hon'ble Supreme Court in *Ashwani Kumar v. Union of India*ⁱⁱⁱ, while considering the expansive meaning of the provisions of Article 21 of the Constitution, as applicable to the elderly, held, "that the right to life, we acknowledge, 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". This case, specifically recognized the right to dignity and adequate compensation; right to shelter and right to medical care/ assistance, as few of the rights available to the elderly under Article 21 of the Constitution. The Hon'ble Apex Court, specifically recognized the "need to continuously monitor the progress within the implementation of the constitutional mandate to make available to the elderly the right to live with dignity and to supply them with reasonable accommodation, medical facilities and geriatric care."

Thus, taking care of the elderly and making them lead a dignified, secure, meaningful and comfortable life is a duty of all, including the society and the State. The Constitution of India has recognized the duty of the State to care for the elderly by virtue of Article 41. This provision puts an affirmative duty on the State to respond appropriately for the care and welfare of this weaker section of the society. However, one must admit that the legislature has done little to protect the interests of the elderly Though the elderly has been accorded the status of "Senior Citizens", a name that spells respect, a lot needs to be done to make them actually feel senior citizens.

Right of Maintenance under Section 125, Code of Criminal Procedure:

Section 125(1)(d) of the Code of Criminal Procedure says about maintenance of parents which is to be provided by children. The section says that "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 make a monthly allowance for the maintenance of his father or mother, at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct"^{iv}.

Liability to pay maintenance:

According to Section 125 both son and daughters are equally liable to pay maintenance to his or her mother and father. Step mother can also claim maintenance if she is a widow and doesn't have any natural-born sons or daughters. Married daughters are also accountable to pay maintenance to parents if they are dependent on her.

Dr. (Mrs.) Vijaya Manohar Arbat vs Kashi Rao Rajaram Sawai And Anr^v, the supreme court in this famous case clearly express his view that "[section 125\(1\)\(d\)](#) has imposed a liability on both the son and the daughter to maintain their father or mother who is unable to maintain himself or herself."

Adoptive mother can claim maintenance:

In Baban Alias Madhav Dagadu Dange v. ParvatibaiDagadu Dange^{vi} Bombay high court observed that according to the definitions given within the General Clauses Act, the expression "father" includes both natural father as well as adoptive father but the General Clauses Act hasn't defined the expression "mother". But it doesn't means that the expression should be taken in its restrictive sense. Now if expression "father" and "son" is to be tend wider interpretation, there is no valid reason why the expression "mother" shouldn't tend similar wider interpretation so as to include an "adoptive mother" as well.

Step-mother can claim maintenance:

The Hon'ble Supreme Court in Kirtikant D. Vadodaria v. State of Gujarat and Ors.^{vii} held that "*a childless step-mother can claim maintenance from her step-son provided that she is a widow or her husband, if living, is also incapable of supporting and maintaining her*". However the Karnataka High Court in Ulleppa v. Gangabai^{viii} express its view to the judgment pronounced by Supreme Court in Kirtikant D. Vadodaria v. State of Gujarat on 26 april 1996. The court observed that if it is clearly proved that step mother has other modes of maintaining herself she might not be able to get maintenance from her step sons.

Rights of Maintenance under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007:

The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 make an obligation for children and legal heirs to provide maintenance to parents and senior citizens. It allows state govts to establish old age homes in every district. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 ordered State governments to set up maintenance tribunals and appellate tribunals to make a decision on the matters associated with maintenance of the elderly. This Act provides a right to the senior citizens and parents that they can apply to maintenance tribunal seeking for a monthly allowance from their children or legal heirs.

In case of Sunny paul&Anr. Vs state Nct of delhi&ors.^{ix} the court said that "this Act titled Maintenance of Parents and Senior Citizens and the Preamble of the Act describes the same as an Act to provide for more effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognized under the Constitution and for matters connected therewith or incidental thereto."

Definition of Maintenance:

Section 2(b) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 defined maintenance as “*maintenance includes provision for food, clothing, residence and medical attendance and treatment.*”^x The expression “maintenance” in Section 2(b) includes provision for residence and a right to reside can be enforced by a senior citizen, if the property is transferred without making a suitable provision for maintenance.^{xi}

Who can claim maintenance:

Under Maintenance and Welfare of Parents and Senior Citizens Act, 2007 the maintenance can be claimed by parents, grandparents and senior citizens. Before claiming maintenance by the above mentioned people under this Act is that the persons should be incapable to maintain and take care themselves from their own earnings.

- **Parents**

According to section 2(d) of this Act Parents include “father or mother whether they are biological, adoptive or step father or step mother. However it’s pertinent to say here that it is not the condition of the Act that the parents should be senior citizens.”

- **Grand Parents**

According to this Act Grandparents include both maternal and paternal grandparents.

- **Senior citizens**

According to section 2(h) of this Act “Senior citizens include any person being a citizen of India, who has attained the age of sixty years or above.”

Who is liable to pay maintenance:

In case of Parents adult children and in case of grandparents adult grandchildren, either male or female both are liable to pay maintenance to parents and grandparents. If there is a case in which the parents or senior citizens don’t have any children or grandchildren, they will claim maintenance from their relatives. Parents and senior citizens will claim maintenance from relatives but in this the relative must be major and have sufficient means to provide maintenance. Section 2(g) of this Act said that “relative means any legal heir of the childless senior citizen who is not a minor and is in possession of or would inherit his property after his death.” It means that the relative must either possess the property of the oldsters or they are going to inherit the property after the death of senior citizen. In case if there are two or more relative, who are likely to inherit the property of the senior citizen, then maintenance will be paid by relatives in proportion to their inheritance of the property.

Difference about provision and proceeding between “Section 125 of Code of Criminal Procedure and The maintenance and Welfare of Parents and Senior Citizens Act, 2007”

There is a significant difference between the two acts. Some of these differences are as below in the table:

	Maintenance under Section 125 of Code of Criminal Procedure	Maintenance under Maintenance and Welfare of Parents and Senior Citizens Act, 2007
1. Childless parents	There is no provision for maintenance of senior citizen who is without child.	Under this Act, a childless senior citizen can claim maintenance.
2. Power to decide case.	In Cr.P.C, only the Magistrate has the power to decide the case.	In this Act, the power is given to the maintenance tribunal to decide the case.
3. Time limit	Under Cr.P.C, proceedings are time consuming.	there is a specified time limit of 90 days under which the proceedings should be concluded.
4. Participation of Advocates	In the maintenance proceedings under Cr.P.C, an advocate can represent his/her client in proceedings before the magistrate.	In the maintenance proceedings under this Act participation of an advocate is barred.
5. Definition of Parents	Cr.P.C provides a restrictive definition of parents.	The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 act provides for a broad definition.

Maintenance under Domestic violence Act, 2005 :

Domestic abuse of elderly people also classifies as domestic violence. There are many types of domestic violence and the signs of domestic violence are not always obvious, so a lot of abuse against parents goes unreported. But no one deserves to be abused and the law has remedies to prevent abuse, but there is a need to know and be aware of our legal rights. Domestic violence has been defined under section 3 of the said Act.

According to section 3 of the Act “ Domestic violence” includes:

- Physical abuse
- Verbal abuse or emotional abuse
- Economic abuse or financial abuse

“An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act”.^{xii} The court can grant order for monetary relief, and compensation orders, other than this the court have power to grant interim relief.

(4) PERSONAL LAWS:

- **Rights of maintenance under Hindu Adoption and Maintenance Act, 1956:**

The Hindu Adoption and Maintenance Act, 1956 was the first personal law in India, which bring a liability on the children to maintain their parents. The liability to maintain parents is not only to sons, but the daughters have an equal liability to take care and maintain their parents. It is clear that parents who are unable to maintain themselves financially from any source, are entitled to take maintenance allowance under this act.

Section 20 of Hindu Adoption and Maintenance Act, 1956 says that “a Hindu is bound, during his or her life time to maintain his or her aged infirm parents”. (children include legitimate as well as illegitimate). The definition of ‘children’ under Hindu Adoption and Maintenance Act, 1956 doesn’t include grandson and granddaughter. The liability to take care of parents is personal and isn’t hooked in to the possession of property (as in the case of proceedings under “Maintenance and Welfare of Parents and Senior Citizens Act”) and this obligation also come to an end with the death of the person liable to maintain.

- **Rights of maintenance under Muslim Law:**

In Muslim law, if the youngsters have a right to be maintained by their parents, they also have a duty to provide maintenance to their parents. Under Muslim law every person’s maintenance should be tend from his own property whether he is a minor or major. It’s a general rule that the right of maintenance is available only to the necessitous persons who are poor and cannot seek their maintenance. The exceptions to this general rule provides that in certain case the persons who are not needy are also entitled to maintenance ,also the parents and grandparents are entitled to maintenance whether they are needy or not, but provided that they are poor then only they can claim the maintenance. The children are liable to maintain their parents if they are economically sound and the parents are poor. In other words, only those parents who are in need are entitled to urge maintenance from their children. Under Islamic law, son is not bound to maintain his step mother.

- **Christian and Parsi Law**

The Christians and Parsis haven’t any personal laws providing for maintenance for the parents. Parents who are needy and want maintenance from their younger ones have to apply under provisions of the Crpc or Maintenance and Welfare of Parents and Senior Citizens Act.

CONCLUSION:

Only making provisions for maintenance of parents and senior citizens are not sufficient because Children do abuse of parents at the psychological level, it’s far more common although hidden. Shah, Veeton and Vasi (1995)^{xiii} report that it happens in varying ways such as: “getting used and taken for granted, brought without consideration, being used as additional domestic help, discarded from the family’s functions, being made the focus of cruel jokes of youngsters, and not being acknowledged or appreciated for contributions made in household

chores. Labeling senior family members as insane, in order to gain control of their financial assets, is not an uncommon practice. Most estimates of abuse are based on media reports, which are largely confined to incidences in urban areas”.

"The aged and elderly persons are not having fear of death, but are having afraid of life". It's the actual fact of every aged person's life. In modern time relatives and family members treat them as a burden. But still in tribal societies the elder persons respected lot than other societies.

Other than this major problem is the elderly faces is that when the technicalities of legal procedure enter into a house, love, affection or bonding between the two generations fades away. Until the entire mindset of ours is modified no law can change the scenario.

Though there are many laws and govt. policies made for the protection of rights of senior citizens and parents but nothing much are achieved thus far. As we all know that our Indian society is mixed with culture and emotion. it's really very difficult for folks to tug their children to the doors of court or tribunal and in most of cases they forgive them and sacrifice their rights. Due to this, next generation doesn't need to face the right lesson.

Recently there are end numbers of cases where parents and senior citizens are boycotted by their own families and are in need of even basic needs of life. Many senior citizens have forced to go away their own homes and seek shelter in adulthood homes. In sight of such adversaries, legislature had formulated the law Maintenance and welfare of oldsters and senior citizens Act, 2007 and therefore the judiciary has also in recent times passed verdicts which in future strengthen their rights and position in society.

As a conclusion it can be said that, ageing of population is a international issue that needs to be addressed from a human rights based approach. Elderly must be able to enjoy their rights fully with equal conditions, without suffering from age discrimination, without being victims of abandonment, mistreatment or violence. This betterment can be reached by all of us, with the help of state governments, society, families and older persons also have to participate in developing a new culture.

ENDNOTES:

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ⁱⁱ No person shall be deprived of his life or personal liberty except according to procedure established by law.

ⁱⁱⁱ (2019)2scc 636

^{iv} Sec 125(1)(d) Criminal Procedure Code 1973

^v 1987 AIR 1100, 1987 SCR (2) 331

^{vi} (1978)80 BOMLR 305

^{vii}(1978) 80 BOMLR305

^{viii} 2003(5) KarLJ 227

^{ix} 2017 SCC Online Del 7451

^x Section 2(b) of Maintenance and welfare of parents and senior citizens Act 2007

^{xi}Smt.S.Vanitha vs the deputy commissioner Bengluru Urban District &ors. (civil appeal no. 3822 of 2020)

^{xii} Section 12, Domestic violence Act 2005

^{xiii}1995 elder abuse in India, journal