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ANALYZING THE DEVELOPMENT OF MWPC ACT AND THE 2019 AMENDMENT BILL

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Abstract

The welfare of senior citizens is deeply ingrained in Indian social and constitutional consciousness, reflecting traditional ethos and evolving legal frameworks. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 institutionalizes care and respect for elders, converting moral responsibilities into enforceable rights. Unlike conventional social welfare schemes, this Act imposes a legal obligation on children and heirs to maintain their parents and elderly relatives, providing monetary support and protection from neglect, abuse, and dispossession. It also mandates the state to provide infrastructure and institutional care, including old age homes and medical facilities, distributing responsibility between the family and the government. The MWPC Act establishes a streamlined framework through Maintenance Tribunals to expedite claims of senior citizens, simplifying the process and allowing suo motu cognizance and applications by third parties. However, the decentralization has led to discrepancies in implementation and legal interpretation, as seen in controversial state-specific eviction remedies. To address these gaps, the Maintenance and Welfare of Parents and Senior Citizens (Amendment) Bill, 2019, was introduced to strengthen and expand the Act. The Bill proposes defining adoptive and stepchildren as “children” and expanding “maintenance” and “welfare” to include emotional, physical, and mental well-being. It also proposes faster timelines for disposal of maintenance applications, especially for those above 80 years of age. The Amendment emphasizes institutional care, including accredited senior citizens’ care homes and multi-service day-care centers, meeting minimum infrastructural and service standards. It aims to institutionalize police protection for senior citizens by mandating officer designations in every police station and creating dedicated elder welfare units. This paper examines the MWPC Act’s foundational justifications, constitutional underpinnings, and practical challenges, while evaluating the 2019 Amendment Bill’s implications.

Keywords : MWPC Act, Maintenance, Parents And Senior Citizen, Eviction, Welfare

Introduction

Senior Citizens are not only a respected, but a protected class of our society, and there are valid reasons for that. A lot of what is learnt by an individual is gathered from the experiences of our elders and hence it is necessary for that society to care for them, provide for them, and respect them throughout their life. At times,

there are certain situations where this unsaid and respectful act is not obeyed by some, and in their lies, the need to bring out such an Act that mandatorily casts an obligation upon those who are duty bound to protect their elders. By dedicating ourselves to their well-being, we not only provide them with the care they deserve but also discover our own

strength, compassion, and purpose. It is through serving others that we find our true selves and experience the profound joy that comes from making a positive difference in someone else's life.

We are taught, we are brought up to touch the feet of our elders and take their blessings not only on special occasions but also as a sign of respect.²⁷¹ We take pride in serving our elders and taking care of them. This is the tradition, but the new realities are different. Aging has become a global phenomenon with amazing advancement in medical science, with improvement in standards of living. People all over the world are living much longer. Longevity has increased in India also, there are more and more people are living much longer. In 2001 census, it was found that there were 7.6 crore elders in our country, senior citizens who were 60 plus.²⁷² This number is increasing. By 2026, this number will increase to 17.3 crore. At the moment, the number of our senior citizens is 6.9 per cent of our population. In 2026, it is estimated to be more than double this number, that is, 12.4 per cent of our population.²⁷³ But it is also very disturbing and it poses a great challenge before us that the joint family system is withering away, it is disintegrating. The best place where the elderly should live is their home and not the old-age home. They are being taken care of with great respect within the environment of their homes. But with the fading away of the joint family system, they find themselves neglected, marginalized and abandoned.²⁷⁴ This is the sad reality. These new realities have necessitated that this kind of an Act should be brought forward for the protection and welfare of senior citizens. The MWPC Act²⁷⁵ 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 and incidental thereto, be taken into consideration.

This Act makes it clear and creates a legal obligation for children and other heirs to provide proper maintenance to senior citizens and parents. It clarifies that parents are obliged to be maintained by their children and in no manner, children can shy away from their duty towards their parents. This Act also provides a simple, speedy, and inexpensive mechanism for the protection of life and property of older persons. Laws for the protection of senior citizens are wide in nature, yet they are pretty clear in their object. The main object of the Act is maintenance of parents and senior citizens and to provide for a contingency plan in case parents and senior citizens are left abandoned.²⁷⁶

Origin Of The Act

The Maintenance And Welfare of Parents and Senior Citizens Act aims to promote the maintenance and welfare of parents and senior citizens in accordance with the provisions of the Indian Constitution. It is likely the sole welfare legislation that governs the rights of the elderly in India. Senior citizens are not only an important but a protected class of our society and it would be fair to say that a special legislation has become the need of the hour.

The MWPC owes its genesis to the deliberations in the Parliament in the early years of the first decade of the 21st century. These deliberations were purportedly triggered by the National Policy on Older Persons (NPOP), 1999. NPOP was arguably the first policy that tried to underscore the changing social, economic, cultural, infrastructural, medical and legal needs of the elderly population in India. Even state legislatures were contemplating enacting a welfare legislation to address the needs of the elderly. The state of Himachal Pradesh was perhaps the first to take action and enact the Himachal Pradesh Maintenance of Parents and Dependents Act (HPMPDA), 2001. Interestingly,

²⁷¹ Rajya Sabha Debates (Synopsis)

²⁷² mospi.gov.in

²⁷³ who.int

²⁷⁴ Report On Health & Welfare Of The Elderly 2022

²⁷⁵ The Maintenance And Welfare Of Parents and Senior Citizens Act, 2007

²⁷⁶ Statement Of Objects And Reasons Of MWPC Act

quite a few of the provisions of the MWPSA Act have striking similarity with the provisions of HPMPDA.²⁷⁷

The Constitutional genesis of the Act can be found in Part IV, Directive Principles Of State Policy. Article 41 addresses the Right to Work, Education, and Public Assistance in certain cases, including old age. The main aim of article 41 is to ensure social and economic support to senior citizens who can no longer earn their livelihood, encourages the state to create pension schemes, retirement benefits, and old age homes, imposing a moral obligation on the state to assist the elderly especially those without family or financial means. These are some of the objectives that MWPSA through its provisions and rules seeks to achieve. However, the non-justiciable nature of DPSP is somewhat an obstacle in real realization of this goal. In *Ashwani Kumar v. Union of India*²⁷⁸, the Supreme Court emphasized that senior citizens must be given care and facilities as a constitutional obligation, drawing from Article 41 and Article 21.

Objectives The Act

The MWPSA Act strives to promote the maintenance and welfare of parents and senior citizens in conjunction with the provisions of the Indian constitution. It is presumably the only welfare legislation governing the rights of the elderly people in India. Section 1(2) of the Act extends its application even beyond the territory of India and deals with the respective rights and obligations (as contemplated under the Act) of Indian citizens settled abroad. Section 1(3) contemplates that for the Act to come into force, the choice and will of the respective states shall prevail; interestingly, although it is a central enactment, the operation of the law depends on the states.

The statement of objects and reasons provides a clear understanding of the primary objective of the Act: the establishment of provisions, procedures, and most importantly, remedies

that ensure the maintenance and welfare rights of parents and senior citizens. The central theme of the Act is to create an environment of harmony and peace, from which senior citizens can access swift justice.²⁷⁹ To achieve this, the Act of 2007 enacts various provisions pertaining to maintenance, residence, property rights, old-age homes, medical facilities, and others (which are discussed in detail at a later stage). These provisions not only place a responsibility on the family members of parents and senior citizens but also on the state to fulfill certain fundamental requirements to assist them in achieving a peaceful and comfortable situation so that they can live out their sunset days in the most comfortable way possible.

Development Of Remedies

Chapter Two²⁸⁰ ensures the financial security of senior citizens and parents by holding family members legally accountable, offering a structured process for seeking maintenance, and enforcing compliance through strict penalties. Section 4 ensures that senior citizens, including parents, who cannot support themselves can apply for maintenance. Applications can be made against children or, in the case of childless seniors, against relatives who would inherit their property. Section 5 primarily pertains to the procedure for filing maintenance applications by senior citizens, authorized persons, or even taken up suo motu by the Tribunal. The Tribunal has the authority to order interim maintenance while the case is pending. Furthermore, it has been mandated that the case must be resolved within 90 days, with a possible 30-day extension in exceptional circumstances. These provisions have been meticulously drafted to streamline and expedite the process. Sections 9 and 10 primarily address the order of maintenance and its modification in the event of misrepresentation, mistakes, or changes in circumstances. The state government bears the responsibility of

²⁷⁷ The first bill on the said matter was floated in the Himachal Pradesh Legislative Assembly in 1996.

²⁷⁸ *Ashwani Kumar v. Union of India* (2019) 2 SCC 636

²⁷⁹ Rajya Sabha Debates, Thursday, December 6, 2007

²⁸⁰ Chapter Two Of The Maintenance And Welfare Of Parents And Senior Citizens Act, 2007

determining the monthly allowance, subject to the constraint that it shall not exceed ₹10,000/-.

Finally, Sections 11 and 13 of the Act outline the procedure for enforcing such orders. Maintenance orders are legally binding and enforceable, similar to a criminal court order. The maintenance amount must be deposited within 30 days of the Tribunal's order. If the person ordered to pay maintenance fails to comply, the Tribunal can issue a warrant and impose imprisonment for up to one month. Further, the Act provides for section 23, under which the transfers of a property can be declared void on conditions of non-maintenance of parents and senior citizens by their children. As it has been previously mentioned that law shall be implemented by the states, in furtherance of that section 32 has authorised the state government to formulate such rules to carry out the purposes of the act.

It would be prudent to note, that while the act does not provide a remedy for eviction of children from their homes owned by parents/senior citizens, some of the states have interpreted the meaning of section 23 coupled with section 32 to introduce a remedy of eviction. According to them, an application can be made by a parent or a senior citizen for evicting their children from the property on account of non-maintenance. There have been various judgements that either support the initiative taken by states or oppose the stand taken by the states of introducing an alien and draconian remedy of eviction.

In *Justice Shanti Swarup Dewan (Retd.) & ANR. v. UT Of Chandigarh & Ors.*²⁸¹, wherein the remedy of eviction took birth. The present case is quite unique in nature, a retired High Court Judge seeking justice from its own colleagues when the state had failed to protect a senior citizen. The important facts of the case are to be perused and it is understood that the retired judge (senior citizen) had bought another property for their son which was later sold by

the son. Thereafter the relations between the parties became sour and the son continued to reside in the same household as his father (senior citizen). Subject to the alleged ill-treatment, the senior citizen approached the Punjab and Haryana High Court to file a Civil Writ Petition under Articles 226 and 227 of the Constitution, seeking relief of eviction. This action was warranted as the state of Punjab had failed to formulate any rules or action plan to protect the life and property of senior citizens. It is crucial to recognize that the situation in the aforementioned case was a unique, it warranted such drastic measures. The Hon'ble High Court, after carefully examining the circumstances, determined that the children of the senior citizen residing in the property should move out. This specific relief was tailored to address the unique challenges presented in the above mentioned case, as has been clearly elucidated in paragraph 41 of the judgment. It would be important to note that no such principle of eviction was established, nor did the court intend to apply this specific relief as a blanket measure in other cases.

In *Aarshya Gulati(Through: Next Friend Mrs. Divya Gulati) & Ors.. v. Government Of NCT Of Delhi & Ors.*²⁸², the validity of the Delhi Rules was challenged. The High Court Of Delhi upheld the constitutional validity of The Delhi rules, 2009. The Delhi Rules were implemented relatively early and have undergone significant amendments with the sole purpose of becoming stricter and expanding their scope to encompass a wide range of rights. It was the 2016 amendment that had introduced the remedy of eviction into the rules and through the amendment of 2017, the scope and powers to enforce the provision of eviction was grossly widened.

In *Simrat Randhawa v. State Of Punjab And Ors.*²⁸³, the High Court Of Punjab And Haryana in para 126(v) stated that "*The stand of the Union*

²⁸¹ *Justice Shanti Swarup Dewan (Retd.) & ANR. v. UT Of Chandigarh & Ors*2013:PHHC:075447-DB

²⁸² *Aarshya Gulati(Through: Next Friend Mrs. Divya Gulati) & Ors.. v. Government Of NCT Of Delhi & Ors.*DHC W.P.(C) 347/2018, CM Nos. 1417/2018, 36104/2018 & 40805/2018

²⁸³ *Simrat Randhawa v. State Of Punjab And Ors.*2020 SCC OnLine P&H 4394

of India is accepted as the correct legal position that power of eviction was not visualized, intended or enacted in the Parent Act by Parliament nor can be entrusted to the Maintenance Tribunal.”

Again, The Hon'ble Supreme Court in *S. Vanitha v. Deputy Commissioner, Bengaluru Urban District and Others*.²⁸⁴ held that the provisions of MWPC do not have overriding effect over the Provisions of PWDVA and both legislations have to be harmoniously construed. There is a real threat that Senior Citizens (in laws) are misusing the Rules to oust their daughter in laws and/or grandchildren, in collusion with their sons, which is against the very purpose and objects of MWPC as well as PWDVA²⁸⁵.

2019 Amendment Bill

In 2019, an Amendment Bill²⁸⁶ was moved in the Indian Parliament for approval. The 2019 Bill is being discussed presently in the Indian Parliament. The Standing Committee of the Indian Parliament had submitted its observations on the proposed amendments in January 2021. After thorough scrutiny and evaluation the Standing Committee observed that expanding the expressions such as 'children', 'relative', 'parent', etc., would help not only in reducing legal ambiguities but also in facilitating maintenance claims.²⁸⁷

The proposed Bill attempts to revamp the Act so that the implementation of the provisions of the Act becomes more meaningful and easy. Clause 3 of the Bill tries to redefine certain provisions of the interpretation clause; for example, it includes step-children, children-in-laws, adoptive children, etc., within the definition of children under Section 2(a) of the Act. It also strives to broaden the scope of expressions such as relative and parents. Further, it expands

the definition of 'prescribed' by removing the term 'state government' from Section 2(e) of the Act. Last but not the least, the Bill makes an effort to expand the expressions 'maintenance' and 'welfare'. The interpretation section of the Bill also introduces terms such as 'code', 'local body', 'maintenance officer', 'organization', 'senior citizens care home', 'multi-service day care centre for senior citizens', etc.

Apart from suggesting comprehensive changes in the interpretation clause of the MWPC Act, the Bill also suggests a few modifications in the functional parts of the Act. Clause 4 proposes to substitute Section 4 thereby rendering it easier for senior citizens and parents to file maintenance applications whenever they are not maintained properly by their respective relatives and/or children. The proposed Section not only creates a shield against neglect, but also underlines that any infringement of the rights of senior citizens and parents to live with dignity would be addressed strictly and directly through legislation. Clause 5 of the Bill attempts to revise the maintenance application procedure by amending Section 5 of the Act;²⁸⁸ it proposes to bring down the time of disposal of maintenance applications to 60 days in case of the oldest-old persons which would be aged 80 years and above. Clause 6 intends to revamp Section 6 by including the purpose of referring the maintenance proceedings to a Conciliation Officer, who shall be nominated by the Maintenance Tribunal.

There are only a few minor amendments have suggested in Sections 7 and 8 of the principal Act, although a complete overhaul of the provisions of Section 9 has been suggested. The Bill removes the upper cap (₹10,000) of the maintenance amount and leaves it to the complete discretion of the Maintenance Tribunal to determine the maintenance fee in view of, the senior citizen's/parent's standard of living as well as the earnings of the children. The Bill also recommends alteration in Sections 10, 11,

²⁸⁴ *S. Vanitha v. Deputy Commissioner, Bengaluru Urban District and Others* 2020 SCC Online SC 1023

²⁸⁵ The Protection of Women from Domestic Violence Act, 2005

²⁸⁶ Maintenance And Welfare Of Parents And Senior Citizens (Amendment) Bill, 2019

²⁸⁷ India News, Expanding children, parent, relative definition will leave no scope for ambiguity: Parliament panel

<https://www.hts.com/india-news/expanding-children-parent-relative-definition-will-leave-no-scope-for-ambiguity-parliament-panel-101611997024305.html> (last visited Jan. 11, 2025).

²⁸⁸ As per the 2019 Amendment Bill, an application for maintenance may also be filed online.

12 and 13 of the Act.²⁸⁹ The proposed Revision of Section 16 through Clause 14 of the Bill is distinct in the sense that it allows even relatives and children to file appeals against the orders of the Maintenance Tribunal(s). It is interesting to note that the 2019 Bill does not recommend repealing or amending Section 17, which bars lawyers or legal practitioners to argue cases before the Tribunals on behalf of either the plaintiff or the respondent.²⁹⁰

Clause 17 tries to alter Section 19 by replacing the expression old-age homes with 'Senior Citizens' Care Homes' and 'Multi-Service Day-Care Centre. Such institutions, which must be registered with the respective state governments, may be established by the government, a private or voluntary organization, a trust, NGO, or a society. However, the central government is supposed to prescribe the minimum standards for these institutions to ensure that the said institutions do not lack infrastructure, food, recreation, medical facilities, etc.

Clause 23 of the Bill proposes an amendment in Section 22, which strives to overhaul the protection system available to senior citizens and parents. Through the prospective insertion of Section 22(2) and 22(3), police protection would be extended to senior citizens and parents, and every police station would be obligated to designate at least one officer, to tackle issues and concerns facing the senior citizens and parents. The projected Section 22(3) makes it mandatory for the state governments to establish special units²⁹¹, which shall be headed by a police officer of the rank of Deputy Superintendent of Police or above, in each district to ensure proper functioning and coordination of the functions that are to be disposed by the police with regard to senior citizens and parents.

Clause 24 of the 2019 Bill suggests changes in Section 23 of the principal Act whereas Clause 25 introduces a completely new section, Section 23A which requires the central and state governments to provide for welfare measures such as creation of age- friendly and accessible environment and etc., for senior citizens. Section 23A also mandates the establishment and maintenance of a helpline number to facilitate protect protection and safety of parents and senior citizens. Clause 26 recommends alteration in Section 24 of the Act. Under the proposed Section 24, whoever abandons or abuses a senior citizen or parent shall be liable to be punished with imprisonment, which may extend till six months or with fine up to ₹10,000 or with both.

Clause 27 of the Bill proposes to insert Sections 28A and 28B; Section 28A obligates state governments to furnish details of institutions (registered under the relevant provisions of the Act) on websites and Section 28B requires that the registered institutions must be accredited by a competent body. Clause 28 of the 2019 Bill seeks to amend Section 29 of the principal Act. Clause 29, the last clause of the Bill, seeks to amend Section 32. The proposed Section 32 would allow the Central government to follow model rules that state governments are supposed to follow *mutatis mutandis*.

It is interesting to note, that for the first time the central government has shown their intent in taking cognizance of the fact that there is a variation of remedies available to parents and senior citizens across the nation.²⁹² It is the opinion of the author that, by forming model rules for state governments to follow, the union has showed the need for uniformity as well as their intention to rectify the challenges and issues faced due to interpretation differences.

In summary, the 2019 Bill proposes a comprehensive overhaul of the MWPSA Act. Its primary objectives are to extend the benefits of

²⁸⁹ The proposed amendment bill, still does not include any options regarding remedies available under HAMA, 1956.

²⁹⁰ It can be argued that Section 17 of MWPSA Act, interferes with Advocates Act, 1961

²⁹¹ These units are to include nodal officers and two special social workers

²⁹² It is a breakthrough step for the development of the law that the union has decided to come out and address the situation directly, by formulating model rules, a lot of confusion regarding interpretation and application can be eliminated by the act itself

maintenance and welfare to senior citizens and parents, ensuring that institutions and services are established and maintained to effectively address the needs of this vulnerable population. The Bill aims to promote their overall well-being, encompassing both physical and mental health.

However, the Bill falls short in addressing two critical issues that intrinsically impact the welfare of senior citizens: income insecurity and elder abuse²⁹³. Notably, the proposed Act lacks any provision specifically addressing income security for the elderly. Furthermore, the provisions on elder abuse are inadequate and require purposive interpretation due to the absence of definitions for terms such as physical and emotional abuse within the interpretation section of the Act. This approach has further ramifications such as widening the scope of the section and bringing in a host of other remedies/solutions, that don't exist or were never intended to exist in the first place.

Additionally, some of the suggested welfare and protection measures, such as extending care homes and home care services, promoting elderly healthcare, and extending police protection, may not be effectively implemented without active and continuous support from states and other relevant stakeholders.

Recent Development

The Supreme in *Samtola Devi V. State Of Uttar Pradesh & Ors.*²⁹⁴ Court has very recently taken cognizance of the fact that the remedy of eviction is being misused and has become somewhat of an unreasonable and unnecessary measure. In its recent judgment, the court underscored that the remedy of eviction is not explicitly enshrined in the Act but is a judicial interpretation. Furthermore, the court emphasized that the remedy of eviction should not be sought as a matter of right but only granted in exceptionally dire circumstances. Additionally, the court clarified

that the tribunal's role is limited to maintenance proceedings and not eviction proceedings.

Conclusion

Caring for our elderly is a fundamental responsibility in our lives. Whether driven by genuine affection and respect or compelled by legal obligations, this task is ultimately bound to happen. The sole ethical quandary that demands resolution pertains to the perception of caring for our elders as a "task" rather than a "duty" or "privilege." The author posits that there must be a sense of fulfillment derived from nurturing those who not only brought us into existence but also molded our current selves. The new societal perception is different, and due to that the government had been forced to introduce the MWPC Act to make sure that the elderly are taken care of and are not left merciful at the hands of their own children. The 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 and incidental thereto, be taken into consideration.

A balanced approach to justice cannot be said to be completely effective without a collaborative effort of not just the authorities framing laws, but also an efficient and paramount role of courts, tribunals, judges and lawyers. Not just these, but police, care-homes and other organizations role also become pertinent in the overall successful realization of the rights of parents and senior citizens. The provisions of MWPC Act look beautiful and beneficial at the first glance. However, the reality is quite different. Most of the provisions are geared towards providing maintenance to parents and senior citizens, this includes such provisions that casts and obligation on the children and those who are responsible for taking care of senior citizens and parents. Another maintenance aspect is the establishment of old age homes, that are mandatorily set up by the state. These provisions are very strongly worded, and this

²⁹³ The act does not address mental problems and elder abuse directly, thereby rendering it a weak legislation.

²⁹⁴ *Samtola Devi V. State Of Uttar Pradesh & Ors* 2025 INSC 404

serve quite noble purpose, but their enforcement suffers a serious lag. A lot of the times, senior citizens face difficulties in enforcing such remedies due to uncooperative bureaucrats, or corruption or mismanagement and misinterpretation of the existing legal framework. Not only the wording of the laws needs amendment, but it is a duty of the authorities that are responsible for framing such laws, the tribunals and the courts to make sure that a balanced approach is adopted to incorporate the needs of not only parents and senior citizens, but also of those who are considered as vulnerable sections of society. There is no question that the law is supported by constitutional framework, but the irregularities and inconsistencies within the Act and the rules formulated thereunder, cannot be ignored.

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