

Maintenance and Welfare of Parents and Senior Citizens Act 2007: A Critical Appraisal

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ABSTRACT

Background: The sociocultural changes associated with globalization and development have weakened the traditional values and family support systems for senior citizens (age 60 years and above). There is an increase in the prevalence of elder abuse and difficulties in getting appropriate care and support. This has mandated legal measures to protect the rights of the senior citizens and provide them care and support by the family and other stakeholders. Consequent to being the signatory for the "Madrid International Plan of Action on Ageing, 2002," several countries, including India, have introduced legislation for the social protection of senior citizens. "The Maintenance and Welfare of Parents and Senior Citizens (MWP) Act, 2007" is an important legislation in India to safeguard the elderly from exploitation and abuse.

Methods: This article critically evaluates the implementation of the MWP Act, 2007, and the related challenges in protecting senior citizens from abuse. The article will also highlight the

proposed amendments in the Act to strengthen the effective implementation of legal protection for senior citizens and ensure their well-being and dignity.

Conclusions: The MWP act is an important legal measure to ensure maintenance and welfare of senior citizens and protect them from abuse and neglect. There is an immediate need to incorporate the necessary amendments so that the act gets more pragmatic value and becomes an important tool for elderly care and protection and reduce vulnerabilities and ensure holistic care with support in various bio-psycho-social domains.

Keywords: Administrative law, elder abuse, geriatric psychiatry, social work and older clients, social work with the elderly

The proportion of senior citizens (age 60 years and above) in India is increasing rapidly due to the increasing life expectancy and decline in the fertility rate. It is projected to increase from 8.6% (10.38 crores) in 2011

to 14.9% (23 crores) in 2036.¹ It is expected to reach around 19% (31.9 crores) in 2050. Therefore, this estimated increase in numbers will significantly impact senior citizens' available resources and support systems. It could overwhelm senior citizens' health and social care systems given this age group's high prevalence of physical and mental health issues. A nationwide survey on the financial status of senior citizens in India conducted by the Agewell Foundation in 2016 reports that while two-thirds of them were going through a financial crisis, four-fifths are dependent on their family (children and other relatives) for their financial needs.^{2,3} Also, in the last four decades, the dependency ratio in the elderly has increased while support mechanisms are reducing.

In its *Situation analysis of the elderly in India report, 2016*, the Government of India has reported that more than 65% of the elderly in India depend on others for

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their daily maintenance. This situation is more precarious in elderly females than males. The dependency ratio ranges from 10.4% in Delhi to 19.6% in Kerala.⁴ The *Longitudinal Ageing Study in India (LASI)* 1st-wave report indicates that the elderly have a high prevalence of frailty, sensory and cognitive impairment, mental health issues, and impairment in functional activities. These issues are also likely to contribute to increased vulnerability for abuse. In this regard, the needs of maintenance and welfare of the elderly become an important priority issue to be addressed.⁵ Therefore, the Maintenance and Welfare of Parents and Senior Citizens (MWP) Act (2007) becomes an important measure to bridge these lacunae to some extent. This article will discuss the provisions of this Act and the related legal and social issues.

Evolution of Legal Measures for Social Protection of Senior Citizens

Global initiatives on aging from the United Nations (UN) such as the Vienna International Plan of Action on Ageing, 1982, United Nations Principles for Older Persons, 1991, and The Madrid International Plan of Action on Ageing, 2002, have advocated the need for legal and policy measures to protect the senior citizens and promote their well-being. India is a signatory for these global initiatives. The Constitution of India has enabled the mandate to enable senior citizens' well-being through Article 41, a directive principle of state policy. The Government of India introduced the national policy on older persons in the year 1999 with the focus on the well-being of older persons to ensure a life with purpose, dignity, and peace. The important areas addressed by this policy, such as financial protection, shelter, health care and nutrition, and welfare, require legal provisions to ensure effective implementation of these measures.⁶⁻⁸

Maintenance and Welfare of Parents and Senior Citizens (MWP) Act, 2007

The MWP Act, 2007, was enacted in December 2007 by the Parliament of

India.^{5,6} It consists of 7 chapters and 32 sections. It defines a senior citizen as any Indian citizen aged 60 years or more. The Act addresses issues related to the maintenance of parents and senior citizens, the establishment of old-age homes for indigent senior citizens, provisions for improving health care services for senior citizens, and measures to protect their lives and property. These issues are vital for the dignity and well-being of senior citizens. The important provisions of the Act and the related issues are summarized in the following section.⁹

Maintenance of Parents and Senior Citizens

The traditional family systems in India promote social cohesion and emphasize the importance and value of parents and senior citizens. It is expected that the children will support their parents when they are not able to maintain themselves. However, there has been a provision in the Code of Criminal Procedures, 1973, under section 125 (clause IV) for parents to claim maintenance from their children if required. This section provides relief from neglect. The magistrate may order a person to make monthly allowance for maintenance in a case where any person who has sufficient means neglects or refuses to maintain his/her father or mother who is unable to maintain themselves. It is very rare for parents and senior citizens to use this provision, and it is likely to be a lengthy legal process if they decide to use it.

Social changes such as urbanization, industrialization, and migration have strained families in many ways. This may have contributed to the neglect of the elderly, thus necessitating legal provisions to assist them in securing maintenance support from children.

The MWP Act, 2007, has enabled the provision to secure maintenance support through the tribunal (notified as assistant commissioner/sub-divisional officer of the state) with the powers of a Civil Court under this Act. This Act has simplified the process of seeking maintenance by removing the necessity of a lawyer to represent the case. There is also an option for the complaint to be made by an authorized representative or

organization. The tribunal can also take cognizance of the complaint suo motu. It mandates time-bound resolution of the complaint with the possibility for securing interim relief and appeal to the appellate authority (district magistrate). The Act enabled the possibility of securing maintenance from relatives eligible to inherit the property if they do not have children. There is also a provision for facilitating amicable settlement through the assistance of a conciliation officer.⁷⁻⁹

Issues and Challenges in Availing the Maintenance Support

Financial Limit for Maintenance

The important constraint of this provision is the specification of Rs. 10000 as the maximum amount of maintenance that can be claimed per month. The fixation of a ceiling amount is arbitrary and hinders securing an appropriate maintenance amount for those with higher economic capacity. This will discourage individuals from seeking relief under this provision.¹⁰

Lack of Awareness and Stigma

Many senior citizens do not have awareness about this provision and the MWP Act, 2007, in general. LASI reports that 12% of the elderly are aware of the Act even after a decade of its implementation. The elderly are also likely to hesitate to seek relief even if they have awareness about the Act due to the perceived stigma in complaining formally about their children. Senior citizens with physical or mental incapacity may not get adequate assistance to seek relief through this provision. There are also limitations in access to justice for those living in institutions such as senior citizens homes.^{6,8,11}

Administrative Issues

The responsibility of providing relief of maintenance under this provision lies with the senior executives in the administration with many other competing priorities and responsibilities.

There is a lack of dedicated tribunals with the primary mandate of implementing this Act, unlike the provisions for Mental Health Review Boards under the Mental Health Care Act, 2017. Contrarily, enabling a reliable system for implementation of this Act will have significant economic implications that could become a barrier by itself for effective implementation if adequate budgetary provisions are not allocated by the Government.⁷ Getting justice in cases under MWP Act, 2007, involving children living overseas has additional challenges due to the complexity of completing the tribunal proceedings in this situation. There would be logistic issues in discussions with the children. Also, the amendment bill in 2019 directs that maintenance is calculated based on (a) the standard of living and earnings of the parent or senior citizen and (b) the children's earnings. If the children are abroad, there would be practical issues in terms of them furnishing accurate earnings and difficulties in assessing the standard of living of the elderly often leading to a mismatch. Another important challenge is the ability of the system to ensure timely implementation of the order by the tribunal and the administrative support available for senior citizens if there is a default or refusal to comply with the order for maintenance.^{4,8,11}

Delay in Completion of Appeals in Higher Courts

The timely completion of trials in these cases could be affected by the delay due to the pendency of appeals lodged in the High Courts and Supreme Court of India. This delay could be due to the necessity of the mandatory safeguards for all the concerned parties involved in implementing the MWP Act, 2007. Senior citizens with limited resources will have a disadvantage when the case appeals in High Court or Supreme Court. The Legal Services Authorities Act, 1987, provides free legal assistance for senior citizens if there is such a requirement.⁷⁻⁹

Establishment of Old-Age Homes

Chapter III of the MWP Act, 2007, and sections 19 (1) and (2) address the issue related to the need for old-age homes for

indigent senior citizens and a scheme for the management of old-age homes. However, The MWP Act, 2007, has no provision to make the State executive accountable for implementing these provisions, as the Act has used "may" instead of "shall" in the abovementioned sections addressing this issue.⁹ Lack of adequate recognition of the need for residential care under a rights-based perspective and concerns about the economic capacity of Governments to provide such care could have led to leniency.

Various judgments in the Supreme Court of India have upheld the "Right to Shelter" as one of the fundamental rights under Article 21 of the Indian Constitution. Article 25 of the Universal Declaration of Human Rights also emphasizes this aspect. Future revisions of the MWP Act, 2007, require further strengthening of this section.

Private organizations or charitable trusts manage the majority of old-age homes. Some receive the grant-in-aid from the Government of India or the respective state government. There are a very limited number of old-age homes directly managed by the state governments.^{5,7-9}

Challenges and Issues Related to Old-Age Homes

The mandate from the MWP Act, 2007, for the state governments to start at least one old-age home in each District to accommodate 150 indigent senior citizens appears to be a target not realized in majority of the states as reported in the proceedings of the Public Interest Litigation (PIL) *Dr. Ashwani Kumar versus Union of India and others* (Writ petition (C) No.193 of 2016). There is no streamlined mechanism to facilitate easy access to senior citizens requiring admission in an old-age home. There is no standard process for ensuring the quality of care in old-age homes and protecting senior citizens' rights. There is a strong potential for elder abuse in the institutions without a proper mechanism for quality assurance and safety even in settings with much higher resources and oversight processes. This has been highlighted in the recent report by the Royal Commission on Aged Care Quality and Safety in Australia.¹¹

Promoting Medical Care of Senior Citizens

Health care is one of the main concerns for senior citizens because of the high prevalence of physical and mental health conditions. The MWP Act, 2007, has recognized the importance of this aspect and addressed this in Chapter IV. This Act has mandated the provision of an adequate number of beds, separate queues, facilities for managing chronic, terminal, and degenerative conditions, promoting research and improvement of dedicated geriatric health facilities.

National Programme for the Health Care of Elderly

The Ministry of Health and Family Welfare, Government of India, has launched the National Programme for the Health Care of Elderly (NPHCE) in 2010-2011 to promote the medical care of senior citizens. Through this program, 2 national centers for ageing and 20 regional geriatric centers have been sanctioned. This will promote the development of specialized medical experts and tertiary care health facilities for senior citizens. This program also promotes geriatric health care at the district and community level.^{4,12}

LASI

The emphasis on promoting research related to geriatric health care in the MWP Act, 2007, has contributed to the launch of the LASI, a large population-based longitudinal study focused on aging. This study has been modeled on the ongoing Health and Retirement studies in many countries to enable global comparison on the social and health issues. The report from the LASI 1st wave (2017-2018) released recently in 2020 has data from the representative population of 31,464 elderly aged 60 years and above, including 6749 individuals aged 75 years and above from 35 states and union territories across India (except Sikkim). This study has given the data at the national and state level on demography, chronic medical illness, sensory impairment, mental health issues, functional impairment, and other important social issues.⁵

Facilities for Chronic, Terminal, and Degenerative Disorders

Senior citizens have a high prevalence of chronic, terminal, and degenerative disorders such as stroke, dementia, cancer, and renal failure. They require adequate treatment and care facilities, including palliative care and long-term care centers, which should be affordable and accessible with appropriate infrastructure and trained human resources. Some developed countries provide access to these facilities under the health and social care services either as a universal benefit or through means-tested eligibility criteria. The access to hospital-based health care for those with limited economic capacity in India has improved through the Ayushman Bharat Pradhan Mantri Jan Arogya Yojana (PM-JAY). There is an urgent requirement to develop home-based care and support systems to ensure dignity, well-being, and good quality of life for the elderly.^{8,9,12}

Protection of Life and Property

Senior citizens living alone or those with impaired physical or mental capacity have increased vulnerability for physical and financial abuse. Chapter V of the MWP Act, 2007, has addressed this issue.

Section 23 of the MWP Act, 2007, safeguards the interest of senior citizens who transfer their property by setting a precondition that the transferee should always give care and protection to them post-transfer. If the transferee does not provide the necessary support per this condition, the senior citizen can reclaim the property by declaring this transfer null and void by the tribunal. This provision has attracted wide attention, and several cases have been filed under this section. If the transfer of property happened under a sale consideration, this provision does not allow to reclaim the property as per the recent judgment in the High Court of Karnataka.^{3,6,8,9,12}

Role of Police

Rule 20 under this chapter has provided an action plan for the implementation

of this provision by defining the role of the police. This rule has mandated the need for each police station to maintain the list of senior citizens living in that jurisdiction with a specific emphasis on those living alone. It has also mandated regular interaction with senior citizens through social workers or volunteers to enable timely assistance if required. Considering the limitations in the available resources for the police department, the implementation of this provision has remained inadequate.^{6,8,9}

Proposed Amendments Suggested to the MWP Act, 2007

The Cabinet approved an amendment of the MWP Act, 2007, prepared with the inputs from the consultative meetings with the experts and various stakeholders on December 4, 2019. This draft has also been reviewed by the parliamentary committee recently. This committee has agreed with most of the proposed amendments and has suggested a few additional measures to be considered by the government to strengthen this law further. This report has specifically emphasized the importance of addressing mental health issues in senior citizens. It has recommended adding a specific provision in Section 20 to mandate adequate facilities for counseling senior citizens.

The important features of “The Maintenance and welfare of parents and senior citizens (Amendment) Bill, 2019” are summarized as follows:

1. Expansion of the scope of the maintenance and welfare with the emphasis on comprehensive measures to ensure the physical and mental well-being of parents and senior citizens.
2. Inclusion of daughter-in-law and son-in-law under the definition of “Children” in section 2(a) to enable their accountability for the care of senior citizens.
3. Removal of the maximum ceiling of Rs. 10,000 per month as maintenance amount in section 9(2) giving the scope for the tribunal to decide the appropriate maintenance amount in each case depending on the need and resources available.
4. Improvement in the time limit for the disposal of the applications by

the tribunal by considering the date of receipt of the application instead of the date of service of the notice for respondents. Higher priority for the disposal of the applications filed by those aged 80 years and above with further reduced time limit.

5. Enhanced measures for the regulation of institutions (senior citizen care homes and day care centers) and home care services for senior citizens.
6. Extending the provision of appeal to children/relatives as per the principles of natural justice.
7. Improving the access for senior citizens to claim maintenance by including the option of online submission of application to the tribunal.
8. Expansion of the role of maintenance officer to facilitate single-point guidance for senior citizens.
9. Provision for “Nodal officer for senior citizens” in every police station and “Special police units for senior citizens” in each district.
10. Creation of a national helpline for senior citizens with one common number to promote safety and security of senior citizens.

Judicial Intervention for Effective Implementation of the MWP Act, 2007

The PIL in the Supreme Court of India—Writ Petition No. 193/2016 (*Dr Ashwani Kumar versus Union of India and Others*) has highlighted the need for effective implementation of the MWP Act, 2007, to ensure the fulfillment of the fundamental and statutory rights of senior citizens such as Right to Live with Dignity, Right to Health, and Right to Shelter. This PIL has included the Union of India and all the state governments and union territories as respondents. Through the judgment dated December 13, 2018, the Supreme Court has emphasized the need for continuous and periodic monitoring to ensure effective implementation of MWP Act, 2007, and facilitate the promotion of the well-being of senior citizens.⁷⁻⁹

Role of Legal Services Authority

The Legal Services Authorities Act, 1987, has enabled access for free legal

assistance to the weaker and vulnerable sections of the society, including senior citizens. Through the District Legal Services Authority, there is a well-established mechanism to provide free legal assistance and guidance in promoting access to justice and the government's welfare measures. NALSA (Legal Services to Senior Citizens) Scheme, 2016, is specifically targeted to promote access to legal and welfare measures for senior citizens. The legal services authorities at various levels have promoted awareness about the MWP Act, 2007, and other government welfare schemes for senior citizens through this scheme. Despite the restrictions for the appearance of a lawyer as per this Act, assistance has been provided by Panel Advocates in preparing the draft complaint and representation. Paralegal volunteers have assisted in the representation before the tribunal.^{6-9,12}

Legal and Social Perspectives of Elder Abuse

Elder abuse is one of the major public health problems and is considered a significant violation of human rights. Elder abuse includes various subtypes such as psychological, physical, financial, sexual abuse, and neglect. A recent meta-analysis by Cyrus et al. (2017)¹⁶ suggests the pooled prevalence of elder abuse worldwide be about 10% and 34.3% in population-based studies and third party- or caregiver-reported studies, respectively. The prevalence estimates indicate that one in six senior citizens are likely to be affected by elder abuse. Indian studies have also indicated a significant prevalence of elder abuse. The prevalence studies done by Mehra et al.¹² indicated 41.6% of the elderly reporting of abuse.

In contrast, other recent studies by Panruti et al. and Sathya et al. report a prevalence of 25.6%, with predominant abuse being psychological.^{4,6,12} LASI study indicated the prevalence of elder abuse in the past year as 5%. The prevalence of abuse is likely higher in those with a disability or living in institutional settings. The main perpetrators of elder abuse are sons, daughters, and other family members. Psychological and financial abuses are the most common types of abuse. This needs to

be addressed from both legal and social perspectives.^{5,7-9}

The MWP Act, 2007, is one of the important legal measures to provide relief to senior citizens undergoing abuse. Effective implementation of the provisions of this Act, including the changes proposed in the amendment, will contribute significantly to provide relief for the senior citizens who are victims of elder abuse. However, this Act may not be able to provide relief in many other contexts of elder abuse.

There is a need for a significant strengthening of the social measures to prevent elder abuse and provide assistance and justice for the victims of elder abuse. Senior citizens need awareness guidance to seek redressal if they experience abuse. The awareness promotion needs to focus on the younger generation also to promote intergenerational bonding. The number of cases filed under the MWP Act, 2007, across the country indicates a lack of awareness, limitations, and challenges in accessing justice for senior citizens. Provisions of the Act are also liable to be misused if there are interpersonal conflicts between family caregivers. The ongoing COVID-19 pandemic is likely to have a significant contribution in the increase in the prevalence of elder abuse due to likely social isolation, difficulty in accessing pension, legal and welfare measures, and significant financial strain, and also presents a need for early implementation of the 2019 amendment of the MWP 2007 Act. There is a need for collective and consistent effort from all the stakeholders to minimize elder abuse in the future.

Legislation for Social Protection of Senior Citizens—Global Comparisons

Population aging is a global phenomenon. The global initiatives for aging have contributed to developing policies, programs, and legislation to ensure the well-being of senior citizens in many countries. Several countries such as China, Bangladesh, and Singapore have legislations similar to the MWP Act, 2007, that mandates filial responsibility of children to provide maintenance and

support for senior citizens. There are variations in the scope of the laws, mechanisms for implementation, and liabilities if the children do not carry out their responsibilities. Many developed countries such as Australia, United Kingdom, Sweden, and Norway have well-developed systems for the social care of senior citizens with legislations ensuring their rights to receive public-funded services for social care. The social care systems vary across countries.⁶ They may be universal, means-tested, or insurance-based. The extent of proportion of home-based versus institution-based care, regulatory mechanisms, and quality standards also varies across countries.^{3,4,11-13}

Interface with Mental Health Care Act (MHCA), 2017

The MHCA, 2017, considers the role of Nominated Representatives (NRs) who are responsible for making decisions for the patient. The patient can decide the NRs and usually include the close family member such as spouse or children in the case of elderly.^{2,9} However, a potential conflict may arise when the elderly nominates a nonfamily member as NR, as the caregiving role from the closest of kith and kin is only recognized by the MWP Act, 2007. This aspect needs to be anticipated, especially when the NR is a friend or distant relative and the children/grandchildren are hostile/detached with the older person but are legally responsible for the person's welfare as per MWP Act, 2007.¹⁴ A significant proportion of senior citizens living in residential care institutions might have mental health conditions like dementia.¹⁵ There may be challenges for the residential care institutions for senior citizens to meet the standards required for mental health establishments.

There are several practical challenges in the effective implementation of the MWP 2007 Act, including lack of awareness among elderly, need for setting up of maintenance tribunals with regular sittings, and issues with regards to calculating and provision of monthly maintenance. Several cultural and psychosocial aspects like stigma and poor KAP (Knowledge, Attitude, and Practice) on the part of the elderly and their relatives often deter the effective implementation

of the Act. Other issues include death or separation of the elderly from the spouse due to social reasons that would interfere with sustaining monthly maintenance.

The role of the Mental Health Professional (MHP) is quite important and would include the following:

1. MHP should have a good understanding of the MWP 2007 Act and its ramifications in treatment and while invoking the MHCA 2017 Act.
2. MHP can educate family members on the MWP 2007 after early identification of possible neglect of care of the elderly.
3. MHP should also guide the elderly for legal aid and for approaching the help in representing in the maintenance tribunal if the need arises.
4. MHP should also actively liaise with the executive and judiciary and provide inputs and practical solutions when a vulnerable older adult is identified.
5. MHP should also encourage his peers in other specialties to utilize this important provision and participate actively in information dissipation about the MWP 2007 Act in public forums, lectures, panel discussions, etc.

Summary and Conclusion

The sociocultural changes associated with global economic and social development have contributed to the challenges in ensuring optimal care and support for senior citizens. There is a slow change in what social norms are in place for the care of elders: from the traditional approach of relegating it as an exclusive filial responsibility to having legal mechanisms to ensure its availability as state action. Global initiatives for aging have contributed to the development of Indian policy and legal mechanisms in this context. The MWP Act, 2007, mandates the statutory provisions to support the maintenance and welfare of parents and senior citizens. The experiences from

the last decade of implementation of the MWP Act, 2007, have brought out the strengths, limitations, and challenges of this Act. The proposed amendment to this Act addresses many of these challenges and limitations. However, there are many scopes to promote the effective implementation of this Act in the future. There is a need to develop appropriate social care systems for senior citizens to manage the anticipated growth in the population of senior citizens and the care needs in the future.

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