



ROLE OF JUDICIARY TO ENSURE PROTECTION FOR MAINTENANCE RIGHTS OF SENIOR CITIZEN IN INDIA

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Abstract-- Traditionally in India, it has been a part of our culture, for society and the family to take care of senior citizen. Senior citizens are treated as high esteem and are given priority and respect in all matters. Today by due to rapid urbanization and modern living system resulting in the growth of nuclear families although better medical facilities have led to increased longevity, as their children settled down in other cities, many senior citizen parents, who had conventionally enjoyed a place of pride in the family, found themselves living alone.¹ Children being busy with their new lives are unable to visit regularly. Senior citizen have to cope single handedly, which is quite difficult considering their limited earnings. Senior citizen parents who are unable to maintain themselves through their own earnings or our property may apply for maintenance from their adult children. To eliminate the agony and sufferings of these maintenance problems of the senior citizen along with Criminal Procedure Code 1973 Section 125 to 127 of the provisions there is a special legislation called the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 which was enacted by the Parliament. The Act accords prime responsibility for the maintenance of parents on their children, grandchildren or even relative who may possibly inherit the property of a senior citizen. It also calls the State to provide facilities for poor and destitute older.² The State Government is required to set up one or more tribunals in every sub-division. It shall also set up Appellate Tribunals in every district to hear the appeals of Senior citizens against the decision of the Tribunals. The tribunals and Court may also take action on its own or receiving the application may hold an enquiry or order the children/relatives to pay an interim monthly allowance for the maintenance of their parents or senior citizen.

Key Words: Senior Citizen, Maintenance Rights, Role of Judiciary, Case Laws and Protection of Senior Citizen Rights

1. INTRODUCTION

In spite of various laws for the protection of rights of senior citizen, if there is any issue regarding the maintenance, threats and abuse for the senior citizen judiciary plays very important role to upliftment of the welfare rights of the Parent as well as senior citizen. Noble laureate Amartya Sen highlights “freedom” is the essence of rights,³ and J.S. Verma Justice locates it in the ‘dignity’ of human being is the essence of rights.⁴ While interpret both the freedom and dignity concept the senior citizen have all the freedom without any discrimination as they old the family as well as society and my live happy and dignity life until the last bed. He pleads that the human rights agenda for the 21st century, at least for India, should focus on distributive justice, inclusive democracy involving all sections with substantive equality, gender justice, poverty eradication, sustainable development and human resource development. Beside these rulings, the Supreme Court and High court has interpreted various laws in the positive way to ensure protection of the vulnerable section of the society even which includes old age persons.⁵

2. SENIOR CITIZEN POPULATION IN INDIA

In India to the population of aged is significantly growing, the 60 years and above aged group which in 1971 was around 6% crossed 7% in 2001 and 21% by 2081. Today independence India has adopted a policy of

¹https://archive.india.gov.in/spotlight/spotlight_archive.php?id=33 accessed on December 5th 2017 at 10pm.

²<http://www.legalserviceindia.com/article/1170-Rights-Of-Senior-Citizen.html> accessed on December 5th 2017 at 10.10pm

³ Amartya Sen, ‘The Idea of Justice’ published by Penguin Group 2009) Chap 12, Pp. 366-379.

⁴The New Universe of Human Rights, Universal Law Publishing Co.Pvt. Ltd. (New Delhi 2005) reviewed by N.R, NadhavaMenon in the Hindu 5-18-2005,16

⁵ K.C. Joshi on ‘ International Law and Human Rgiths’ Published by Eastern Book Company 3rd Ed., 2016, Pp 546.

development through welfare measures. The expansion of science and technology. Health facilities infrastructure etc, has greatly affected the span of common people.

Growth of Elderly Population of Aged 60+ (Million)

Years	Total aged population		Male		Female	
	No	Percentage	No	Percentage	No	Percentage
1951	19.61	5.43	9.67	5.25	9.94	5.66
1961	24.71	5.63	12.36	5.46	12.35	5.80
1971	32.70	5.97	16.87	5.94	15.83	5.99
1981	43.98	6.42	22.49	6.35	21.49	6.50
1991	55.30	6.55	28.23	6.45	27.07	6.66
2001	77.93	7.70	38.22	7.55	37.71	7.86
2011	104.00	8.06	57.50	8.20	47.50	8.12

Source: census of India 2011

The above table data shows that the senior citizen population has increased from 77 million in 2001 to 104 million in 2011. By 2050 the senior citizen population is likely to increase by three times to reach around 300 million, accounting for 20 percent of the total population of the country. The relatively young India of today will turn into a rapidly greying society in the coming decades. Due to rapid growth of population today the senior citizens find difficult to adjust with their own children because of generation gap and their varying perceptions. The outcome is the seniors have to yield to the wishes of the juniors in the interest of peace in the family. If it does not come about, the lives of the seniors become torturous and they develop feeling that they are unwanted. The contemporary scenario in India does not provide for good community care for the elderly. Thus aged suffers from numerous familial, social, economic, psychological and emotional problems.

3. CONCEPT OF MAINTENANCE

The term maintenance was devised by the Great Sages and Rishis that it was inconceivable if any person more especially a woman, would go altogether unprovided for. The daughter, the wife, the widow, the mother and daughter-in-law and old parents were the beneficiaries, who had the special protection for their right that of maintenance. The term 'Maintenance'⁶ includes provision for food, clothing, residence, education of the children and medical attendance or treatment. The obligation to maintain besides being statutory in nature is also personal in the sense that it arises from the very existence of the relationship between parents and the child. The obligation is absolute in terms and does not depend on the means of the father or the mother.⁷ The law object is to compel man to perform the moral obligations, which he owes to the society in respect of his parents. By providing a simple and speedy but limited relief, the law relating to maintenance seeks to ensure that the neglected senior citizens are not left beggared and destitute on the scrapheap of society and thereby driven to a life of vagrancy, immorality and crime for their subsistence. The inability of senior citizen to maintain themselves could lead to social problems and therefore, it became the concern of the State not to allow such inability to grow into social problems of great magnitude. The term maintenance as defined in sub-clause (i) of clause(b) of Section 3 of the Act,⁸ includes provision for food, clothing, residence, education, medical

⁶ Sec 2(b) of the Maintenance and Welfare of Parents and Senior Citizen Act 2007

⁷ State of Haryana v. Santra(2001) 1 Femi-Jruis Current Cases 31.

⁸Maintenance under the Hindu Adoptions and Maintenance Act, 1956.



attendance and treatment. In the case of *State of Haryana V. Santra*⁹ the court observed the term 'Maintenance' would obviously include provision for food, clothing, residence and education of the children and medical attendance or treatment. The obligation to maintain besides being statutory in nature is also personal in sense that it arises from the very existence of the relationship between Parent and the children's.

4. ROLE OF JUDICIARY TO ENSURE PROTECTION FOR MAINTENANCE RIGHTS OF SENIOR CITIZEN

Dr. Baba Saheb Ambedkar who in course of his speech referred to draft Article 25 corresponding to the present Article 32, in the Constituent Assembly said: "If I was asked to name any particular Article in the Constitution as the most important-an Article without which this Constitution would be nullity – I would not refer to any other Article except this one. It is the very soul of the Constitution and very heart of it and I am glad that the House has realized the importance".¹⁰ During the debates in the Constituent Assembly Alladi Krishna swami Aiyar upheld the unique position of the Supreme Court and remarked: "The future evolution of the Indian Constitution will thus depend to a large extent upon the work of the Supreme Court and the direction given to it by the Court, while its function may be one of interpreting the Constitution...it cannot in the discharge of its duties afford to ignore the social, economic and political tendencies of the time which furnish the necessary background". And these predictions have come true. Any aggrieved person could have direct access to superior Courts for obtaining quick relief against the state for violation of any fundamental right.¹¹

5. CASE LAWS DEVELOPMENT

The rights and protection of the senior citizens is not a new concept it traced out in Dharma in ancient period, it impose duty to son to look after the aged parents. Normally we think about only rights and not duties. According to Hohfield's theory of Legal Right state that, rights and duties are two sides of same coin so every right has a corresponding duty and every duty has corresponding rights in case a person failure to excise their duty towards another person it cause violation of rights. For the interpretation of this theory, under the law the senior citizens have certain rights which are protected, if a person, which includes family members, society and state failure to perform a reasonable care and duty as prudent men in civilized society than the law will attract to resolve such problems. Certain judgment of Supreme Court and High Court lay down standard for it as follows:

5.1 In the case of *Fuzlunbi v. KhaderVali*¹², the Supreme Court held that, "Section 125 of the Criminal Procedure Code is a secular one deliberately designed to protect the destitute women and aged or infirm parents who are victims of neglect in the family. It is rooted in State's responsibility for the welfare of the weaker section of women, children and parents and is not confined to members of one religion or region, but is applicable to the whole community of women-hood."

5.2 In the case *Saristha Devi v. K.D. Sharma*¹³ the court observed that " section 125 of Cr.P.C can be applied irrespective of citizenship and of personal law of the parties. Even if the parties are domiciles of a foreign country but are residing in India. The provision for this section can be availed of by the Parents. As such if the cause of action has taken place in India, evn a foreigner respondent is covered under this Section."

5.3 In the case of *Hanumantrao v. Vijayamala*¹⁴ and *Eknath v. Bhagwanthabai*¹⁵ the Hon'ble Supreme Court observed that, "the brooding presence of the constitution for the weaker section like women, children and aged infirm parents must inform the interpretation, if it has to have social relevance." The various provisions of the laws must receive a compassionate expanse by the court in generous jurisdiction, a broader prospective and appreciation of the facts and their bearing on essential ingredients must govern the ultimate verdict, not chopping little logic or tinkering with the niceties of interpretation and technicalities of law.

⁹ (2001) 1 Femi-Juris Current cases 31

¹⁰ Constituent Assembly Debates, Book No. 1, Tabular Statement And Vol.No. I-Vi, LokSabha Secretariat.

¹¹ Ibid

¹² AIR 1980 SC 1730 : (1980) 4 SCC 125 : 1980 Cri LJ 1249 : 1980 SCC (Cri) 916

¹³ 1991 (2) Crimes 865.

¹⁴ 1986 (2) HLR 263

¹⁵ 1987 (1) HLR 412



5.4 *In the case of Sumitra Devi v. Bhikan Choudhary*¹⁶ the court pointed out that while recording the evidence regarding the order of maintenance the role of the court should not be that of a silent spectator or of a passive agency. When a dispute of this nature is brought before a court, proper questions should be asked to the party and the witnesses when they appear in the court in order to bring in clarity on the points of controversy. Even while evaluating the overall evidence, the court should not be too rigid, dogmatic and technical. On the contrary, the whole approach should be pragmatic, keeping in view the status of the parties and the social environment in which they live.

5.5 *In the case of Seaford Court Estates Ltd. v. Asher*¹⁷ the court pointed out that in case of some ambiguity to order maintenance to concern of aged and infirm parents or senior citizen, the court should remember the observations recorded and judge believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or the other ambiguity, it would certainly save the judges trouble, if the Acts of Parliament were drafted with divine presence and perfect clarity. In the absence of it, when a defect appears, a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament and he must do this, not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief rule¹⁸ it was passed to remedy and then he must supplement life, to the intention of the Legislature.¹⁹

5.6 *In the case of Dr. Mrs. Vijaya Manohar Arbat v. Kashiro Rajaram Sawai and another*²⁰, the Supreme Court pointed out that the daughter is liable to pay maintenance to parents and held that a father claiming maintenance from his married daughter is perfectly maintainable. There can be no doubt that it is the moral obligation of a son or a daughter to maintain his or her parents. It is not desirable that even though a son or a daughter has sufficient means, his or her parents would starve. Apart from any law, the Indian society casts a duty on the children to maintain their parents if they are not in a position to maintain themselves. It is also duty of children to look after their parents when they become old and infirm. The parents will be entitled to claim maintenance against their daughter provided, however, the other conditions as mentioned in the section are fulfilled. Before ordering maintenance in favour of a father or a mother against their married daughter, the court must be

¹⁶ AIR 1985 SC 765 : (1985) 1 SCC 637 : 1985 Cri LJ 528 : 1985 SCC (Cri) 145 : (1985) 1 SCJ 48.

¹⁷ 1949 (3) KB 481

¹⁸ Mischief rule: The Mischief Rule is a certain rule that judges can apply in statutory interpretation in order to discover Parliament's intention. The application of this rule gives the judge more discretion than the literal and the golden rule as it allows him to effectively decide on Parliament's intent. It can be argued that this undermines Parliament's supremacy and is undemocratic as it takes law-making decisions away from the legislature. Legislative intent is determined by examining secondary sources, such as committee reports, treatises, law review articles and corresponding statutes. This rule has often been used to resolve ambiguities in cases in which the literal rule cannot be applied but associated problem is that the fact that this rule helps achieve that the use of this rule is limited due to Parliamentary intent. So according to the author, this modern use of the mischief rule ought to be understood as one of the components of what is characterized as the "modern" method of statutory construction, rather than a stand-alone rule serving (as it formerly had), as an alternative to the methods of construction proposed by the plain meaning rule and the

¹⁹ Intention of Legislature : Legislative intent is the term that the courts have given to their analysis of the historical documents originally generated when the statute in question was under consideration in the Legislature—state or Central. Whenever the interpretation of a legislative enactment becomes an issue in a case, the courts will commonly resort to the Rules of Statutory Construction to determine the proper application of the statutory language to the facts at hand. In applying the Rules of Statutory Construction, the courts of California, as well as those of most other jurisdictions, have routinely held that the "cardinal" principle of statutory construction is that the court must choose that interpretation that most nearly effectuates the purpose of the Legislature. The Court determines the Legislature's intention by examining the problem faced by the Legislature when it considered the bill that enacted the language in question, the public policy issues that the problem raised and the drafting solutions that emerged during legislative consideration of the bill. The evidence that the courts have used to assist them in making this determination has come from the legislative documents that were prepared before, during and sometimes immediately after the bill in question moved through the legislative process.

²⁰ AIR 1987 SC 1100.



satisfied that the daughter has sufficient means of her own independently of the means or income of her husband, and that the father or the mother, as the case may be, is unable to maintain himself or herself.

5.7 *In the case of Vijaya Manohar Arbat v. Kashi Ram Raja Sawai*²¹ their Lordship of the Supreme Court also took into consideration the report of the Joint Committee on the Bill and observed, “It is true that in the first part of the report the word “son” has been used, but in the latter part, the recommendation is that if there are two or more children, the parents may seek the remedy against any two or more of them. If the recommendation of the Joint Committee was that the liability to maintain the parents, unable to maintain themselves, would be on the son only, in that case in the latter portion of the report, the Joint Committee would not have used the word “Children” which admittedly includes sons and daughters. In the court opinion, as we read the report of Joint Committee, it did not place the burden of maintaining the parents only on the son, but recommended that the liability to maintain the parents should be on the sons and the daughters as well. After giving out best consideration, we are the view that Section 125(1)(d) has imposed liability on both, the son and the daughter to maintain himself or herself. Hence the daughter may be married or unmarried; she will be covered by this clause.

5.8 *In the case of Bahuleyan v. Karthiyani*,²² *Raj Kumari v. Yashodaha Devi*²³, and *A. Ahathinamilagai v. Arumughanam*²⁴ the court stated that liability of child to pay maintenance to his parents under this section is distinct from and independent of the liability of the other children in the family. It is not necessary that all the children must be made parties in a claim for maintenance by the parents.

5.9 *In the case of AkhamBodi Singh v. AkhamBiradharwaraja Singh*²⁵ the court held that joining of all sons and daughters was not necessary parties to claim maintenance by the parents and senior citizen. In the fact of case son was pleaded that parents had their source of income as father was running rice mill. Certificate was issued by Inspector of Factories and Boilers that mill was not running. Mother was not cross-examined despite the fact that she herself appeared before court for the cross-examination on request made by the respondent. Order refusing maintenance was passed ignoring certificate issued by Inspector of Factories and Boilers and without recording statement of mother as required under C.P.C Order 14 Rule 2(1)(e)²⁶ it was liable to be set aside. Parents were held entitled to maintenance at Rs. 800 each. And also the court pointed out that “Now fairly well settled that so far as the applications under Section 125 of the Cr.P.C is concerned, the parents are at part with the wife and children.”

5.10 *In the case of Selvan Singh v. Nagamani*²⁷ the court stated to claim maintenance by the parents “Burden was certainly on the claimant. Mere right to property could not be reckoned as synonymous with “ability to maintain himself” as understood in section 125 Cr.P.C. The children have not specifically pointed out father having any specific item of property and deriving income. A petitioner was man of sufficient means. Then parents had choice to proceed against one or all his children to claim maintenance.” The court further held that sons were willing to maintain father provided he resumes his residence along with them. No defence was available to children in claim by parent under 125 of Cr.P.C. Non-joining of some other children was certainly not a sufficient reason to hold that the petitioners were not liable to pay maintenance to the claimant or that the

²¹ AIR 1987 SC 1100 : (1987) 2 SCC 278 : 1987 SCC (Cri) 354 : 1987 Cri LJ 977: 1987(1) HLR 445 (SC).

²² 1978 Ker LT 73

²³ 1978 Cri Cri LJ

²⁴ 1988 Cri LJ 6

²⁵ 2006 Cri LJ 3366 : II (2006) DMC 523

²⁶ **order 14 rule 2 of cpc. : Court to pronounce judgment on all issues :** (1) Notwithstanding that a case may be disposed of on preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues. (2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to- (a) the jurisdiction of the Court, or (b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.

²⁷I (2007) DMC 206.



claimant was not a person unable to maintain himself. Further the court stated that immoral or moral behaviour of the father also, even it is assumed to be true, unless that circumstance indicates his affluence and his ability to maintain himself was no defence in a claim for maintenance by the father under Section 125 of Cr.P.C. The Provisions of Section 125 Cr.P.C do not recognize such a defence at all. The court ordered the quantum of maintenance directed to be paid to father at the rate of Rs. 350/- and Rs. 250/- per mensem respectively was found to be absolutely reasonable, modest and fair.

5.11 *In the case of Santi Seetharamayya v. Shanti Yegna Narayana Murthy*²⁸ in this case the court pointed out the object of the Legislature have given parents the right to claim maintenance from their earning children if the parents are unable to maintain themselves. It appears that, considering the problems of old and infirm parents, who have no money to maintain themselves in their old age, the Legislature = have given them the right to claim maintenance from their earning children if the parents are unable to maintain themselves. There is no denying the fact that a poor mother or father, who is ailing and infirm, in her or his old age, is unable to take a long journey without the aid of an escort and that too without sufficient money. Therefore, there appears to be no earthly reason as to why the benefit given the wives should not be provided to old parents and eligible children. If the legislature does not consider it fit to enlarge the benefit under Section 126 of Cr.P.C., as it has done in the case of wife, to initiate, proceedings at the place where they reside, it would be father impossible for them to ever get any amount of maintenance and their right to claim maintenance would remain as a dead letter in the statutory book. Right to claim maintenance has been given to them as a piece of social legislation. In order to prevent starvation and vagrancy as also to prevent them from forced living in infirmaries, the legislature in its wisdom should make suitable amendment in Section 126(1)(b) of Cr.P.C., by adding the words “or”, to enable parents and eligible children, legitimate or illegitimate, to initiate proceedings under 125 of Cr.P.C in the place where they reside.

5.12 *In the case of Gagabai Satnami v. Chetram Satnami*²⁹ the court stated regarding territorial jurisdiction is the Parents may file application for grant of maintenance under Section 125 of Cr.P.C in court in whose local jurisdiction person from whom maintenance is claimed lives. There was no irregularity in order passed by Sessions Judge as order passed by Session Judge was well founded.

5.13 *In the case of Chitti Prasad Rao v. Chitti Asiripolamma*³⁰ the court stated that, interim maintenance can also be awarded to the mother against her sons against whom the petition is filed and who have means to pay but neglected her to maintain.

5.14 *In the case of Mohd. Ahmad Khan v. Shah Bano Begum*³¹ the court observed the secular maintenance provision of Section 125 of Cr.P.C, “though behind these provisions is that the conflict in the home, the neglect of the young and helpless women should be viewed as matters of community concern and not as private brawls or tragedies to be left in the Courts to the fortuitous justice of the ordinary adversary procedure. Certainly the prime devoir and obligation is this regard, no welfare state can afford to blacken. This chapter has been enacted in order to provide a quick and summary remedy to a class of persons who are unable to maintain themselves. Therefore, the religion professed by the neglected wife, child or aged and infirm parents will not make any difference. These provisions which are essentially of a prophylactic nature, cut across the barriers of religion. True, these provisions do not supplant the personal law of the parties, but it is equally true that the religion professed by the parties or of personal law by which they are governed, cannot have any repercussion on the applicability of such laws. The liability imposed by Section 125 is an edict of law and morality and cannot be clubbed with religion.”

5.15 *In the case of Umar Hayat Khan v. Mohboobunnissa*³² the court stated that, Sub-section (1) of Section 125 confers legal right on weaker sections of the society. That right appears to be uncontrolled and unrestricted by any personal law. This section over-rules the personal law if there is any conflict between the two. The

²⁸(2000) 1 Femi-Juris Current Cases 69.

²⁹II (2006) DMC 245.

³⁰ 1993 (1) Crimes 1075

³¹ AIR 1985 SC 945 : (1985) 2 SCC 556 : 1985 Cri LJ 875 : 1985 SCC (Cri) 245

³² 1976 Cri LJ 395



Criminal Procedure Code is a law of the land and not of any community. The legislative Will is supreme in this land and is controlled only by the Constitution.

5.16 In the case of *Lalit Bohra v. Saurmai Nath*³³ the court stated that, A right to maintenance, dependent on the personal law of the individual is a right capable of being enforced and properly forms the subject matter of a civil suit. But the right under this section providing for maintenance of wives, children and parents is a distinct right. It is an independent right of the wives and children to have urgent relief. This right is neither alternate nor in conflict with other remedies available to the parties under their personal law.

5.17 In the case of *Kirthikant D. Vadodaria v. State of Gujarat and another*³⁴ the Supreme Court held that a childless step-mother may claim maintenance from her step-son provided she is widow or her husband, if living, is also incapable of supporting and maintaining her.

5.18 In the case of *Smt. Kuldip Kuar v. Surinder Singh and another*³⁵ and *Pradeep Kumar Bhowmick v. Smt. Minu Bhowmick*³⁶ the court held that “ if a person commits default of payment regarding maintenance order, said person can be put into jail but remaining in jail said person cannot be absolved from his liability.” Hence the children are not easily escape from liability to maintain from infirm parent and senior citizen.

5. CONCLUSION

All the senior citizen rights welfare provisions are of beneficiary in nature. Therefore, the approach of the court in interpretation these provisions must be benevolent and justice-oriented. The order must be passed keeping in view of principles of equity, justice and good conscience. The humane considerations must dominate the scene. The duty of the Court while enforcing these provisions is much heavier. The Courts need not make just a negative approach, rather it must be positive and affirmative action.

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³³ 1977 Cri LJ 1675

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³⁶ 1985, Cri LJ 1802