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Elder Parent Care and Custody

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ABSTRACT

In contemporary society, the elderly, constituting the second most dependent demographic, are regrettably receiving insufficient attention. Despite the presence of protective legislation, instances of elder abuse persist, often unreported. This article examines the alarming trend of neglect and exploitation faced by elderly parents, revealing a concerning lack of prioritization. It emphasizes the growing selfishness among children who, in forgetting their indebtedness to their parents, fail in their duty to provide care. The focus of this article is to underscore the importance of elder parent care and custody, urging heightened awareness, strengthened legal safeguards, and an enhanced societal commitment to uphold the well-being and dignity of our aging population.

Keywords: Society, elderparents, grand parents, rights, law, family law, legal

I. INTRODUCTION

India boasts a rich cultural heritage, placing profound emphasis on relationships, respect for elders, unity, and family ties. Family bonds are considered sacred, with parents esteemed as the roots of a family, even surpassing reverence for deities, as expressed in the Sanskrit verse "Mathru Devo Bhava, Pitru Devo Bhava" from the Taittiriya Upanishad.

Traditionally, children upheld this reverence, providing respect, love, and support to their parents throughout their lives. However, societal changes have introduced elements of selfishness and neglect. Aging, an inevitable aspect of life, renders parents dependent on their children. The decline of joint family systems and the rise of nuclear families have contributed to a waning sense of moral responsibility, particularly among the younger generation, who may view parental care as burdensome.

As parents age, typically beyond sixty, their reliance on others increases, marking the onset of a "second childhood." Studies affirm the heightened emotional, physical, mental, and financial dependency during this phase. It is incumbent upon children to acknowledge their duty to care for aging parents, recognizing the foundational role parents played in their lives. Fostering a renewed commitment to filial responsibility is essential for upholding the sanctity of familial bonds in contemporary society.

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II. THE ISSUE

The contemporary issue of escalating senior citizen harassment is a matter of grave concern. Studies indicate that elder abuse prevalence in India varies between 9.6% to 61.7% across states, potentially underreported. Disturbingly, only one in twenty-four cases is officially documented. Elders endure mental, financial, physical, emotional abuse, neglect, and desertion within their own homes by family members.

Disturbing data from elders' helplines reveals a 251% surge in elder abuse post-lockdown, with reported cases escalating from 229 to 575 between 2021-22 and 2022-23. Sons are identified as primary abusers in 52.19% of cases, often linked to property, financial, or family disputes. Cybercrimes against seniors are also on the rise.

Underreporting is pervasive due to emotional attachment and helplessness, allowing many cases to go unnoticed. Elderly individuals, facing a decline in sociability and an inability to perform daily tasks, struggle through three phases of incapacity. Unfortunately, care facilities for the elderly lack adequate medical and nursing support, making them inaccessible for many.

The field of geriatric care remains underexplored in India, with limited physician knowledge about the functional implications of aging. Existing facilities such as counseling, old age homes, and recreational centers are often unaffordable for the economically disadvantaged elderly. Additionally, the escalating work patterns and loads of individuals make it challenging to care for aging parents, leading to the hiring of caretakers. However, not everyone can afford this, resulting in extreme measures such as desertion, torture, and, in some cases, tragic outcomes like "thalaikoothal" down south.

Addressing this issue requires a multifaceted approach, encompassing legal measures, awareness campaigns, and the development of accessible and affordable elder care services.

Types of problems faced by senior citizens:

Senior citizens in India confront a range of distressing challenges, with emotional abuse emerging as the predominant issue. As individuals age, their emotional resilience diminishes, necessitating heightened care. Regrettably, instances of severe mental abuse have led to tragic outcomes, with some elders unable to withstand the torment.

In addition to emotional abuse, a disturbing rise in physical abuse has been observed. Cases of elders being subjected to pushing, beating, or torture have surfaced, exemplified by a recent incident in Haridwar where couples filed a plea against their children, alleging abuse and assault.

The insidious problem of property abuse further compounds the difficulties faced by elders. Driven by heightened greed for wealth, some children exploit their elderly parents, coercing them emotionally or resorting to physical harm to gain control of properties and assets. A harrowing incident in Bombay, where a daughter-in-law physically abused her father-in-law to secure property, resulted in his tragic demise the following day.

Neglect, desertion, and abandonment constitute another formidable challenge for seniors within their own households. Younger family members, eager to explore life unhindered, often view parental care as a hindrance to their freedom, leading them to neglect, desert, or abandon their aging parents. A recent case highlights the distressing abandonment of a mother at an airport by her son who had promised to take her to America.

Financial difficulties exacerbate the plight of senior citizens, even those with considerable financial stability. While some elders possess sufficient resources to sustain themselves, instances of financial exploitation by family members leave them destitute and abandoned. The situation is graver for those lacking independent financial support, as they find themselves stranded on the streets without recourse.

Addressing these issues requires concerted efforts in raising awareness, implementing protective measures, and fostering a societal ethos that prioritizes the well-being and dignity of senior citizens.

III. LAWS EXISTING IN INDIA

CONSTITUTIONAL PROTECTION

Constitutional safeguards for the elderly in India are encapsulated in Article 41 and Article 46 of the Directive Principles. Article 41 delineates the right to work, education, and public assistance, particularly in cases of unemployment, old age, sickness, disablement, and other instances of undeserved want. Article 46 underscores the state's responsibility to promote the educational and economic interests of weaker sections, shielding them from social injustice and exploitation.

Despite their inclusion in the Directive Principles under Chapter IV of the Indian Constitution, these provisions lack enforceability in a court of law, as per Article 37. Nevertheless, the Directive Principles impose positive obligations on the state, guiding legislative action. While not directly justiciable, these principles are deemed fundamental in governance. Unfortunately, there is a notable absence of legislative acts directly addressing the rights and well-being of the elderly, reflecting a gap in the legal framework pertaining to this demographic.

HINDU LAW

Within the Hindu legal framework, the duty of sons to support their elderly parents, incapable of sustaining themselves through personal earnings or property, finds recognition in ancient texts. This obligation transcends the possession of family property, constituting a distinct personal legal responsibility enforceable by the sovereign or the state.

The codified provision governing parental maintenance in Hindu personal law is delineated in Section 20 of the Hindu Adoption and Maintenance Act, 1956. Marking a significant legal milestone, this statute represents the inaugural personal law in India mandating children, irrespective of gender, to provide maintenance for their parents. Notably, the obligation encompasses both sons and daughters, emphasizing gender equality in this regard. Importantly, the entitlement to seek maintenance under this Act is contingent upon the parents' demonstrated financial incapacity to support themselves from any source.

MUSLIM LAW

Under Muslim law, the obligation for children to maintain their elderly parents is recognized. According to authoritative legal perspectives such as Mulla and Tyabji:

- (a) Children in favorable financial circumstances are obligated to support their impoverished parents, even if the parents can earn for themselves.
- (b) A son, even if financially strained, is obliged to maintain his mother if she is in need, irrespective of her physical condition.
- (c) A son, though financially constrained, must support his father if the father has no means of earning, even if the son is earning something himself.

According to Tyabji, Hanafi law stipulates that parents and grandparents in impoverished conditions are entitled to maintenance from their children and grandchildren who possess the means, regardless of the parents' ability to earn a livelihood. Both sons and daughters bear the responsibility to provide for their parents under Muslim law, contingent upon their financial capacity to do so.

CHRISTIAN AND PARSI LAW

For Christians and Parsis, there are no specific personal laws addressing parental maintenance. Parents seeking maintenance recourse are required to apply under the provisions of the Criminal Procedure Code.

UNDER THE CODE OF CRIMINAL PROCEDURE

Historically, prior to 1973, there was no provision for parental maintenance in the Code. The Law Commission expressed reservations about its inclusion, asserting that the Criminal Procedure Code is not the appropriate platform for such matters. The Commission suggested that the adjudication of maintenance disputes among children would be more appropriately handled by civil courts.

However, in 1973, Section 125 of the Code of Criminal Procedure was introduced, marking the first provision for parental maintenance. The parent seeking maintenance must establish that the other party possesses sufficient means and has neglected or refused to support the parent, who is unable to sustain themselves. It is noteworthy that the Code of Criminal Procedure 1973 is a secular law applicable to individuals of all religions and communities. Additionally, the duty to maintain parents extends to daughters, including married daughters, under this provision.

GOVERNMENTAL PROTECTIONS

The Government of India approved the National Policy for Older Persons on January 13, 1999, to enhance the welfare and empowerment of the elderly. Key measures under this policy include:

1. Establishment of a pension fund for the security of those in the unorganized sector.
2. Construction of old age homes and day care centers in every 34 districts.
3. Creation of resource centers and reemployment bureaus for individuals above 60 years.
4. Concessional rail/air fares, providing a 30% discount in trains and 50% in Indian Airlines for elderly travel.
5. Legislation to ensure compulsory geriatric care in all public hospitals.
6. Formation of the National Council for Older Persons, known as AgeWell Foundation, seeking input from the elderly.
7. Initiatives to sensitize school children to coexist with the elderly, establishment of a 24/7 helpline, and discouraging social ostracism.
8. Promotion of prompt settlement of pension, provident fund, gratuity, etc., to prevent hardships for superannuated individuals.
9. Elder-sensitive taxation policies and prioritization of healthcare needs in the government policy.

10. Tax discounts for the elderly under sections 88B, 88D, and 88DDB of the Income Tax Act.
11. Life Insurance Corporation of India (LIC) schemes for the elderly, including Jeevan Dhara Yojana, Jeevan Akshay Yojana, Senior Citizen Unit Yojana, and Medical Insurance Yojana.
12. Launch of the "Annapurna Yojana" by former Prime Minister A.B. Bajpai, providing 10 kg of food monthly to unattended aged persons.
13. Proposal to allocate 10% of houses constructed under government schemes to older persons in urban and rural lower-income segments on easy loans.

The policy outlines considerations for housing colonies catering to the needs of the elderly, ensuring mobility without physical barriers, ground-floor allocations, and fostering social interaction among older society members. However, despite these efforts, there remains a necessity to impress upon the elderly the importance of adapting to changing circumstances and harmonious coexistence with the younger generation.

A recent ruling by the Madurai Bench of the Madras High Court highlights the broader interpretation of disability benefits under the Persons with Disabilities Act, 1995, extending beyond the seven defined medical conditions. While not directly related to the elderly, these medical conditions align with common symptoms in aging individuals.

The need for a change in approach is emphasized, referencing historical practices of transitioning to the 'Vanpristha' stage after 50 years, dedicating the next 25 years to selfless service to society. Strategic approaches at various policy levels are recommended to harness the vast human resource of senior citizens for socio-economic development, addressing social isolation and enhancing their satisfaction.

Participation should lead to an end to social isolation and an increase in overall life satisfaction, coupled with a comprehensive package of services and a well-designed social security network for senior citizens.

Highlighting the urgency, a pilot survey reveals that 70% of the city's elderly population is undergoing medication, with a significant portion of spending going to waste due to the absence of proper palliative care in the country. The World Health Organization recognizes October 7 as a day to create awareness about the importance of hospice and palliative care.

In conclusion, urgent and careful attention is needed to address the challenges faced by the elderly. There is a call for constitutional amendments to provide special provisions and

protection, acknowledging the changing dynamics of family structures and the loss of respect for the elderly in modern times. The constitutional duty of the state is emphasized to enact legislation for the welfare and extra protection of senior citizens, including palliative care.

THE MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS ACT, 2007

The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, has been effectively implemented in this state since September 29, 2008, providing statutory protection for the Maintenance and Welfare of Parents and Senior Citizens as recognized under the Constitution. The Tamil Nadu Maintenance and Welfare of Parents and Senior Citizens Rules were framed and notified on December 31, 2009.

Key components of the Act include the establishment of Tribunals presided over by Revenue Divisional Officers in each sub-division for the speedy disposal of petitions, aimed at obtaining maintenance amounts from children/legal heirs by senior citizens and parents. District Social Welfare Officers serve as Maintenance Officers and Conciliation Officers, while Appellate Tribunals, chaired by District Collectors, hear appeals against Tribunal decisions.

Salient features of the Act include:

1. Senior citizens or parents unable to maintain themselves are entitled to apply for maintenance from their children/legal heirs under Section 5 of the Act.
2. Applications for monthly allowances must be disposed of within 90 days.
3. Non-compliance with Tribunal orders may result in fines, imprisonment for a term up to one month, or until payment is made by the children or relatives.
4. The maximum maintenance allowance is capped at Rs. 10,000 per month.
5. The Tribunal may order interim maintenance during the proceedings.
6. Persons abandoning senior citizens may face imprisonment for three months, a fine of up to Rs. 5,000, or both.

IV. SOME REMARKABLE LANDMARK JUDGEMENTS FOR ELDERLY IN INDIA

Due to a rise in instances of Elderly Abuse in India, the Indian Judiciary has undertaken significant measures to protect the rights of senior citizens by directing State Governments to implement various schemes for the benefit of older and infirm parents. The judiciary has played a crucial role in safeguarding the rights of older parents who are deprived of maintenance.

Some notable initiatives by the Indian Judiciary include:

Santosh Surendra Patil Vs. Surendra Narasgopnda Patil:

In this case, the Court emphasized the legal responsibility to care for parents and directed the State Government to act as guardians of senior citizens and age-old infirm parents.

Sunny Paul & Anr. Vs State Nct of Delhi & Ors.:

The Delhi High Court ruled that children who abuse their parents while residing with them can be evicted from the property. The court affirmed that parents, as legal property owners, have the right to evict abusive adult children.

Kirtikant D. Vadodaria Vs. State of Gujarat:

The Supreme Court opined that old and infirm parents are entitled to maintenance under the Hindu Adoption and Maintenance Act, 1956, from their daughter in the same manner as from a son.

Vijaya Manohar Arbat Vs. Kashi Rao Rajaram Sawai and Anr.:

The Supreme Court rightly observed that a self-sufficient married daughter is obligated to provide maintenance to a father or mother without any son. Additionally, the stepmother is equally entitled to maintenance as the father.

Jharkhand Senior Citizen Advocates Service Sansthan and Another Vs. State of Jharkhand:

The High Court of Jharkhand directed the state to set up Old Age Homes in each district promptly and arrange separate queues in hospitals, among other measures, to facilitate ease for elderly people during medical treatment.

V. CHALLENGES AND ISSUES IN SENIOR CITIZEN CARE LEGISLATION

The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, has faced challenges in implementation, as reported in the Dr. Ashwani Kumar versus Union of India and others PIL. The lack of a streamlined mechanism for admission to old-age homes poses accessibility issues. Quality assurance and protection of senior citizens' rights are areas of concern, with potential for elder abuse. The National Programme for the Health Care of Elderly (NPHCE) and the Longitudinal Aging Study in India (LASI) aim to address healthcare needs and promote research.

Proposed Amendments and Legal Perspectives

The proposed amendments to the Act aim to expand its scope, include daughter-in-law and son-in-law, and remove the maximum maintenance amount. The Legal Services Authority supports

senior citizens with free legal assistance. Addressing elder abuse, the Act emphasizes protection of life and property, involving the police. Global comparisons highlight variations in legislation for senior citizen welfare.

Interface with Mental Health Care Act

Consideration of Nominated Representatives (NRs) in the Mental Health Care Act, 2017, may conflict with the MWP Act, 2007, regarding caregiving roles. Challenges in mental health care for seniors in residential institutions are noted.

Role of Mental Health Professionals

Mental Health Professionals play a crucial role in understanding and applying the MWP Act, educating families, guiding seniors for legal aid, and liaising with authorities.

Sociocultural changes pose challenges in senior citizen care. The MWP Act, 2007, addresses maintenance and welfare but faces limitations. Proposed amendments and global comparisons offer improvements. Mental Health Professionals play a vital role, and effective implementation requires collective efforts and awareness promotion. The evolving socio cultural landscape demands ongoing adaptation to ensure optimal care for senior citizens.

VI. CONCLUSION

In conclusion, the neglect and exploitation of elderly parents in contemporary society demand urgent attention and comprehensive solutions. The alarming rise in elder abuse, coupled with a lack of prioritization and societal awareness, underscores the pressing need for a renewed commitment to elder parent care and custody. Existing legal frameworks, such as the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, while commendable, face challenges in implementation and require amendments to address emerging issues effectively. It is imperative to foster a societal ethos that values and upholds the well-being and dignity of senior citizens. The multifaceted approach, encompassing legal measures, awareness campaigns, and accessible elder care services, is crucial for mitigating the challenges faced by the elderly and ensuring their rightful place in a compassionate and supportive society.
