

THE MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS

- A Comparative legal perspective ◇

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“Our society must make it right and possible for old people not to fear the young or be deserted by them, for the test of a civilization is the way that it cares for its helpless members.”

- Pearl S. Buck

Introduction:

The traditional value system inculcates respect for elders. Elders are considered an intrinsic part of the family. Children turn their elders for advice on every aspect of their life. This also results in senior citizens playing an important role in their families and society. In the current scenario, these values are fast eroding. The breaking up of traditional joint families into nuclear families has resulted not only in the separation of families but also in the severance of family ties. Many senior citizens no longer have the same role in their families as was traditionally played. While it is inevitable in the current scenario that the family unit will remain nuclear, this should not result in the breaking of ties and familial responsibilities. Efforts must be made to retain traditional values in this regard despite modernization of society¹. Everyone has a right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, and housing and medical care and necessary social security and the right to security in the event of unemployment, sickness, disability, widowhood, old-age or other lack of livelihood in circumstances beyond his control.² Article 21 of the Constitution of India also echoes the same. It says, 'no person shall be deprived of his life or personal liberty except according to procedure established by law'. Further, Article 39 (a) of the Constitution of India says, 'the State shall, in particular, direct its policy towards securing (a) that the citizen, men and women equally, have the right to an adequate means of livelihood'. Article 41 of the Indian Constitution enjoins upon the state to make effective provisions for public assistance, within the limits of its economic capacity and development, in cases of unemployment, old-age, sickness and disablement and in other cases of undeserved want. Both the Central and State Governments are empowered under Entry 23 of List III (Concurrent List) to make provisions with regard to social security and social insurance.³

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Both the Central and State Governments are empowered under Entry 23 of List III (Concurrent List) to make provisions with regard to social security and social insurance.⁴ A great anxiety in old age relates to financial insecurity. When the issue is seen in the context, one-third of the population (1993-94) is below the poverty line and about one third are above it but belong to the lower income group, the financial situation of two-thirds of the population of people aged sixty

¹ Context mentioned in the Older persons (maintenance, care and protection Bill) 2005& the standing on social justice& empowerment (2007-08), 14th Lokasabha, 28th report, Para 1.3-1.5.p.8-8.source.http:// www.prsindia.org.
www.google.com/search.

² Universal Declaration of Human Rights,Article25(1)

³ Article 21, 39(a) 41, and Seventh Schedule list-III, of the Constitution of India.

⁴ Article 21, 39(a) 41, and Seventh Schedule list-III, of the Constitution of India.

and above can be said to be fragile.⁵ High costs of bringing up and educating children affects the transfer of a share of income for the elderly.⁶ Due to the shortage of space in dwellings in urban areas and high rents, persons migrating to urban areas prefer to leave their parents in their native place.⁷ These changes have led to a number of senior citizens being left to live alone, with insufficient resources to meet even their most basic requirements of food, clothing, housing and medical care. Lack of social support, breaking up of the joint family system and changing life styles aggravate the health and nutritional problems of the elderly.⁸ Thus, there is need for making provisions to ensure that the basic requirements of senior citizens are met and that they can enjoy their right to live with dignity as is envisaged by Article 21. In this backdrop the Government of India enacted a law on 'The Maintenance and Welfare of Parents and Senior Citizens Act, 2007' with an object of providing effective provisions in this regard.⁹ The United Nations Principles for Older Persons adopted by General Assembly resolution 46/91 of 16 December 1991, appreciating the Contribution that older persons make to their societies, it declares to reaffirm faith in fundamental human rights of persons of different age groups. Further, in pursuance of the International Plan of Action on Ageing, adopted by the World Assembly (General Assembly resolution 37/51) in December 1982, encouraged Governments to incorporate into their national programmes such as;

Independence: Independence of older persons, they should have access to adequate food, water, shelter, clothing and health care through the provision of income, family and community support and self help etc.,

Participation: Participate actively in the formulation and implementation of policies that directly affect their well-being and share their knowledge and skills with younger generations.

Care: Older persons should benefit from family and community care and protection in accordance with each society system of values and should have access to social and legal services to enhance their autonomy.

Self-fulfilment: Able to pursue opportunities for the full development of their potential and should have access to the educational, cultural, spiritual and recreational resources of the society.

Dignity: older persons should be able to live in dignity and security and be free of exploitation and physical and mental abuse.

The UN Principles for Older Persons 1999, the UN General Assembly to adopt its earlier programmes and implementation measures, declare Year-1999 as International Year of Older Persons and the Member States also extend their support for the theme "A Society for all ages" inspired by the World Summit for social development held in Copenhagen in 1995. The Member States, intergovernmental organizations and international NGO's had embraced the conceptual frame work developed by a programme on ageing to facilitate exploration of a society for all ages, which was built on a four-dimensional frame work, comprising the situations of older persons, lifelong individual development, multigenerational relationships and the interplay between population ageing and development.¹⁰ The Political Declaration of Second World Assembly on Ageing, held in Madrid in 2002 laid down the principles regarding continuity with

⁵ Para 24, National Policy on Older Persons, Ministry of Social Justice and Empowerment, Government of India.

⁶ *ibid*, para. 11

⁷ *ibid*.

⁸ Tenth Five Year Plan 2002-2007, vol. 2, Planning of India.

⁹ Act No. 56 of 2007, received the assent of the President on 29th December and published in the Gazette of India (Extraordinary, part-II, section I) on December 31, 2007.

¹⁰ Report of the Secretary-General, UN General Assembly resolution 54/262 of 25 May 2000, p. 2-5

full realization of human rights and empowerment of empowerment for full and effective participation.¹¹

Until very recently, only a few developing countries had been concerned with ageing as an issue. The aged as a group was not yet perceived as a problem in most developed countries their total number was small. However, this situation is currently changing due to demographic transition result in an unprecedented situation for most of the developing countries. When mortality rate decreases due to improvement in medical science and technology, public health, sanitation and eradication of contagious and other diseases, people at every age get an opportunity to survive to reach old age. In India, the population of senior citizens, aged sixty and above, has increased from 42.5 million in 1981 to 55 million in 1991 and now placed at 70.6 million in the 2001 census. They comprise about 6.9% of the total population.¹² There is greater life expectancy of citizens at birth and life expectancy at age is also increasing.¹³

Ageing may be viewed as a biological process through which an organism is modified from birth to death. It can be divided into primary and secondary ageing. Primary ageing is intrinsic and is related to the biological capabilities of the body. Secondary ageing is brought about by various external factors like disease, nutrition, stress, etc., The primary process is immutable whereas the secondary process can largely be changed.¹⁴ Ageing was not a problem in the earlier days but, the trends have changed due to modernization, disintegration of joint families, and growth of individualism etc., this results in the isolation of the aged from their social, physical and emotional bondage with the family. The elderly suffer all the consequences and indignities resulting from alienation both physical and emotional, loss of status and authority etc., which lead to socio-economic and health related problems. A great anxiety in old age relates to financial insecurity. When the issue is seen in the context, one-third of the population (1993-94) is below the poverty line and about one third are above it but belong to the lower income group, the financial situation of two-thirds of the population of people aged sixty and above can be said to be fragile.¹⁵ High costs of bringing up and educating children affects the transfer of a share of income for the elderly.¹⁶ Due to the shortage of space in dwellings in urban areas and high rents,

¹¹ *The Madrid political declaration contains two sections mentioning human rights, namely;*

Article 5: We reaffirm the commitment to spare no effort to promote democracy, strengthen the rule of law and promote gender equality, as well as to promote and protect human rights and fundamental freedoms, including the right to development. We commit ourselves to eliminating all forms of discrimination, including age discrimination. We also recognize that persons, as they age, should enjoy a life of fulfillment, health, security and active participation in the economic, social, cultural and political life of their societies. We are determined to enhance the recognition of the dignity of older persons and to eliminate all forms of neglect, abuse and violence.

Article 14: We recognize the need to achieve progressively the full realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

Source: Human Rights & Older Persons- Panel Report .Organized by the NGO Committee on Ageing in Geneva during the Commission on Human Rights at the United Nations September, 2003,p.10.www.google.com/search.

¹² Tenth Five Year plan 2002-2007, vol.2, Planning Commission, Government of India. The projected population of senior citizens for the year 2016 is about 11.2 million.

¹³ In the period 1989-93, life expectancy at age sixty was 15 years for males and 16 years for females. Para 1, National Policy on Older Persons, Ministry of Social Justice and Empowerment, Government of India.

¹⁴ Subramanya.G., *Social Problems; with special reference to India*.p.104-105. Sapna book house, Bangalore, Iedition, 2002.

¹⁵ Para 24, National Policy on Older Persons, Ministry of Social Justice and Empowerment, Government of India

¹⁶ Para 11, National Policy on Older Persons, Ministry of Social Justice and Empowerment, Government of India

persons migrating to urban areas prefer to leave their parents in their native place.¹⁷ These changes have led to a number of senior citizens being left to live alone, with insufficient resources to meet even their most basic requirements of food, clothing, housing and medical care. Lack of social support, breaking up of the joint family system and changing life styles aggravate the health and nutritional problems of the elderly.¹⁸ Thus, there is need for can enjoy their right to live with dignity as is making provisions to ensure that the basic requirements of senior citizens are met and that they envisaged by Article 21.

In view of the emerging issues and problems discussed above, it is pertinent to review the existing policies and legal measures taken by the governments to ensure to protect the rights of the senior citizens is to be evaluated. In this regard, an analysis of the existing laws on the protection of the rights senior citizens from the global perspectives reflects the true attempts of the policy maker and law implementing agencies. Across the globe, steps have been taken by various countries such as the United States, Canada, the United Kingdom, New Zealand and Germany to provide social security systems for the elderly and other disadvantaged groups. Such systems ensure that senior citizens are not deprived of their most basic needs when they lack the resources to fulfill them. In India, provisions have been made under legislations such as the Code of Criminal Procedure, 1973 and the Hindu Adoption and Maintenance Act, 1956 to enable aged-parents, with insufficient resources to meet their needs. However, the process under these legislations is cumbersome and time consuming. Some States like the State of Himachal Pradesh have enacted legislations enabling the elderly and other dependants to claim maintenance.

The traditional norms and values of the Indian society laid stress on showing respect and providing care for the aged. The aged members of the family were normally cared for by the family itself. However, in recent times, society is witnessing a gradual but definite withering of the joint family system, as a result of which a large number of parents are not being maintained by their children, as was the normal social practice. Consequently, the elders are now exposed to emotional neglect and to lack of physical and financial support. They are facing a lot of problems in the absence of adequate social security.¹⁹ The Committee has further been informed that with their dwindling financial resources and weakening health, parents are often being perceived as burden, even while living within the family. Many older persons are now living with spouse and without children, while many persons, specially widowed women are forced to spend their twilight years alone. This clearly reveals that ageing has become a major social challenge and financial support, care and treatment are required for the older persons. Unfortunately, the time has come when the moral obligation of children to look after their parents in their old age has to be backed by a legal obligation.²⁰

¹⁷ *ibid.*

¹⁸ Tenth Five Year Plan 2002-2007, Vol. 2, Planning Commission, Government of India.

¹⁹ Standing Committee on Social Justice and Empowerment (2007-2008) (14th Lok Sabha), Ministry of Social Justice and Empowerment, The Maintenance and Welfare of Parents and senior Citizens Bill, 2007, 28th report, page.2 para.1.4 & 1.5, Lok Sabha Secretariat, New Delhi.

²⁰ *Ibid*p.2

The Maintenance and Welfare of Parents & Senior Citizens Bill became an Act in Dec.2007 and published in the Gazette of India (extraordinary) on 31st December 2007. This law may be regarded as a boon to the elders and being social welfare legislation for the benefit of senior citizens of the country, it ensures economic and social security to all community irrespective of their religious affiliation. The over all scheme of the Act can be summarized as follows;

The Act imposes an obligation on the persons who inherit the property of their aged relatives to maintain such aged relatives and also proposes to make provisions for setting up old age homes for providing maintenance to the indigent older persons. Further it ensures to provide better medical facilities to the senior citizens and provisions for protection of their life and property.

Key issues and analysis of the scheme of the Act:

The Act contains 32 sections in six chapters. In the preliminary part includes the definitions clause, the core words from the context of the Act are; “Maintenance” (sec: 2(b)) includes provision for food, clothing, residence and medical attendance and treatment. The “welfare” (sec: 2(k) means provision for food, health, care recreation centers and other amenities necessary for the senior citizens. The “Senior Citizen” (sec: 2(h) includes any person being a citizen of India, who has attained the age of sixty years or above. As per sec:2(d) “Parent” means father or mother whether biological, adoptive or step father or step mother, as the case may be , whether or not the father or mother is a senior citizen. Relatives are obliged to provide maintenance to childless senior citizens. It includes any legal heir of the childless senior citizen who is not a minor and is in possession of or would inherit his property after his death.²¹ This Act has overriding effect on the provisions of any other Acts which are inconsistent with the provision of the present Act. It is pertinent to note that the above definitions covered under the present Act is having a wider application than the Cr.P.C. and the other plenary laws relating to maintenance. The central theme and operating part of the act includes in the chapter-II (Sec: 4 to18) deals with the maintenance of parents and senior citizens.

Application for Maintenance: A senior citizen who is unable to maintain himself based on his own earnings or out of the property owned by him, shall have the right to apply to a maintenance tribunal constituted under the Act,²² for a monthly allowance from their child or relative. If he is incapable of filing the application on his own, he may authorise any other person or registered voluntary association to apply on his behalf. The maintenance tribunal may also, on its own, initiate the process for maintenance. Under the act Sec:2(a) 'children' includes, sons, daughters, grandsons and granddaughters and 'relative' as any legal heir of a childless senior citizen who is in possession of or would inherit his property upon death.

Maintenance tribunals: A senior citizen who is unable to maintain himself based on his own earnings or property shall have the right to apply to a maintenance tribunal for a monthly allowance from their child or relative. If he is incapable of filing the application on his own, he may authorise any other person or registered voluntary association to apply on his behalf. The

²¹ Sec: 2 (g)The Maintenance and Welfare of Parents & Senior Citizens Act, 2007

²² *ibid*, sec: sec:7

maintenance tribunal may also, on its own, initiate the process for maintenance.²³ The Tribunal may also take cognizance suo motu. It empowers the Tribunal to make monthly allowance during the pendency of the proceeding. It provides that an application for monthly allowance shall as far as possible be disposed of within ninety days from the date of the service of notice of the application. It also provides that an application for maintenance made against one or more persons and the children or relative may implead the other person liable to maintain, and the death of one of them does not affect the liability of others.²⁴ Section: 6 of the Act provide that an application for maintenance may be made by a senior citizen or parent against any children or relative in any district where the senior citizen or parent resides or where the children or relative resides. It provides that the Tribunal has to issue a process on receipt of an application and the Tribunal will have the powers of a Judicial Magistrate first class for securing the attendance of children or relative. It also provides that the Tribunal may before hearing the application refer the same to a Conciliation Officer for amicable settlement. The State Government may by notification in the Official Gazette constitute one or more Tribunals for each Sub-division and the Tribunal shall be presided over by an officer not below the rank of Sub-Divisional Officer of a State and where two or more Tribunals are constituted for any area, the State Government may, by general or special order, regulate the distribution of business among them. The Tribunal may on being satisfied of such neglect or refusal, order such children or relatives to make a monthly allowance at such monthly rate for the maintenance of such senior citizen and the Tribunal may order the maintenance allowance as may be specified by the State Government by rules but it shall not exceed rupees ten thousand. The Tribunal shall have the powers of a Civil Court. On proof of misrepresentation or mistake of fact or a change in the circumstances of any person, receiving a monthly allowance, the Tribunal may make such alteration, as it thinks fit and the Tribunal may also cancel or vary the order of maintenance in consequence of an order of a Civil Court., and sec: 12 of the Act provides that where a senior citizen or a parent is entitled for maintenance under this Act and also under Chapter IX of the Code of Criminal Procedure, 1973 relating to the maintenance of wives, children and parents or senior citizens will have the option to pursue their claim either under the Code of Criminal Procedure, 1973 or under the provisions of this Act.

Deposit of Maintenance amount: Section: 13 of the Act provides that the children or relatives who are required to pay any amount of maintenance ordered by the Tribunal shall deposit the entire amount within thirty days with the Tribunal in such manner as the Tribunal may direct. Sec:14 provides that the Tribunal may direct the payment of interest of not less than five per cent and not more than eighteen per cent in addition to the amount of maintenance. It also provides that where an application for maintenance under Chapter IX of the Code of Criminal Procedure, 1973 is pending before a Court at the commencement of this Act, then such Court shall allow the withdrawal of such application on the request of the parent or senior citizen. Further, the children or relatives who are required to pay any amount of maintenance ordered by the Tribunal shall deposit the entire amount within thirty days with the Tribunal in such manner as the Tribunal may direct.

Appeal from the order of the tribunal: A senior citizen or a parent aggrieved by the decision of the Tribunal has a right to prefer an appeal to the Appellate Tribunal within sixty

²³ *ibid*, Sec: 4(1) and 5(1) (a).

²⁴ *ibid*, Sec: 5(1) (c).

days from the date of the order of the Tribunal.²⁵ The Act also provides for procedure for hearing appeals against the orders of the Tribunal. The Tribunal shall make endeavour to decide the appeal within one month from the date of filing of appeal.²⁶

Bar to Legal representation: Under Sec: 17 of the Act, the legal practitioners shall not participate in any of the proceedings before the Tribunals and Appellate Tribunals. However, the State Government shall designate the District Social Welfare Officer or an Officer not below the rank of a District Social Welfare Officer as Maintenance Officer who shall represent a parent if he so desires before a Tribunal or Appellate Tribunal.

Other provisions for elderly care:

Establishment of older age homes: The State Government may establish and maintain at least one old age home per district with a minimum capacity of 150 senior citizens per home. The state government may also prescribe a scheme for the management of such homes. The scheme shall specify standards and services to be provided including those required for medical care and entertainment of residents of these old age homes.²⁷

Medical support for the senior citizens: The State Government shall ensure that government hospitals and those funded by the government provide beds for all senior citizens as far as possible. It shall ensure separate queues for senior citizens, expand facilities for treatment of diseases and expand research for chronic elderly diseases and aging. Every district hospital shall also earmark facilities for geriatric patients.²⁸

Measures for publicity and awareness: The State Government is responsible for publicizing the provisions, as well as ensuring that government officers undergo periodic sensitizations and awareness training on issues relating to the Act. The district magistrate shall be responsible for implementing the provisions of the Act.²⁹

Declaring Transfer of Property Void: A senior citizen after the commencement of the provisions of this Act, transfers his property by way of gift or otherwise with the condition that the transferee shall provide basic amenities and basic physical needs and such transferee fails or refuses to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and the transfer be declared void by the Tribunal at the option of the senior citizen. It also provides that where any senior citizen has a right to receive maintenance out of an estate or part thereof and such estate or part thereof is transferred, the right may be enforced against the transferee. It further provides

²⁵ Sec: 16(1), The Maintenance and Welfare of Parents & Senior Citizens Act, 2007

²⁶ *ibid.*,sec:16(6)

²⁷ Sec: 17(1&2), The Maintenance and Welfare of Parents & Senior Citizens Act, 2007

²⁸ *ibid.*, Sec:20

²⁹ *ibid.*,sec:21

that if any senior citizen is incapable of enforcing the rights, action may be taken on his behalf by any of the voluntary association registered under the Societies Registration Act, 1860 or any other law for the time being in force.³⁰

Offences and penalties: Any person who is having care or protection of any senior citizen intentionally abandons a senior citizen shall be liable for punishment of imprisonment up to three months or with fine which may extend to five thousand rupees. The offences under this Act are cognizable and bailable and shall be tried summarily by a Magistrate.³¹ The Act empowers the State Government to make rules to carry out the provisions of the Act.

A comparison on the Laws relating Maintenance and welfare of elders:

The state of Himachal Pradesh enacted a similar law in 2001 namely, The Himachal Pradesh Maintenance of Parents and Dependents Act, 2001, requires adequate maintenance for parents and dependents that are unable to take care of themselves. The Applicants under the Act must be below poverty line, parents and grandparents wife, minor son, unmarried daughter, and widow if all not able to maintain themselves and unable to leading normal life. This enactment exempts the Muslims from the applicability of the Act. Further, the Maintenance Must be 'just and equitable', and the respondent should be able to first provide maintenance for himself, his wife and children. The Tribunal must consider manner in which the applicant spent his savings, and if applicant is justified living separately, then only he is liable under the Act. In the Present Central Act, no such restriction is imposed. The Himachal Pradesh Act Provides the maximum amount for maintenance is Rs.5000/-per month, where as the Central law prescribes maximum limit of Rs.10,000/- per month. This shows the Central Government enactment is more generous and wider application. This may be considered as the General and comprehensive law to protect the elder's rights and also applicable to all persons irrespective of their religion. More over, a senior or a parent is entitled for maintenance under Chapter IX, sec: 125 (1) & (2) of the Criminal Procedure Code, 1973 with out prejudice to the provisions of the said code, applicant can claim maintenance under either of those Acts but not under both. Under Cr. P.C., only an affected parent can file a case for maintenance. However, it was held that, in *Vishwanath Pundalik Charan V. Nirmala*³² where maintenance was already granted by a civil court to the applicant under Hindu Adoption and Maintenance Act 1956, an application under section 125 of Cr.P.C. is not barred. In *Noor Saba Khatoon V. Mohd. Quasim*³³ S.C. held that, a divorced Muslim Women is entitled to claim maintenance for her children till they become major. Further, both under the Muslim personal Law and sec: 125 of Cr.P.C. the obligation of the father was absolute when the children were living with the divorced wife. In *Ramachandra Jois V. Rajeswari*³⁴ held that, sec; 125 of Cr.P.C. not to punish for past but to prevent future vagrancy by compelling those who are capable to support those who are unable to support themselves. In *Pandurang V. Baburao*³⁵ held that, father is entitled to claim maintenance from his child if he is unable to maintain himself. This statutory obligation of a child to maintain his father cannot be defeated by pleading that the

³⁰ *ibid*, sec:23

³¹ *ibid*, sec: 24 and 25.

³² 1992 Cr.L.J.1262 (Bom)

³³ AIR, 1997 SC3280.

³⁴ 2007 (6) Kar.L.J.248.

³⁵ 1980Cr. L. J.256 (Bom)

father had failed to fulfill his parental obligation towards the children during their minority. It was reaffirmed under the existing law, in addition to the parent, his representatives /NGOs authorized by the parents can file application for claiming maintenance. Maintenance award under Cr. P.C. has to go through all the normal channels of appeal as prescribed under the law. However, in the present legislation, only one appeal is allowed before the appellate authority, i.e. District Magistrate. The disposal of the appeal is also time bound. The new legislation also contains a penal provision of imprisonment to the children for a term that can be extended up to a period of three months for neglect and abandonment of their parents. Thus, it is evident from all this that the new legislation provides a mechanism for claiming maintenance in a time bound and cost effective manner and as such, has an advantage over the Section 125 of Cr. P.C. The Maintenance and Welfare of Parents & Senior Citizens Act, 2007 has an overriding effect to the maintenance provided under the personnel laws of any religion and applies to citizen of India residing outside India.

Some other countries have enacted laws related to the protection and security of the elderly.³⁶ The legal measures undertaken by the some of the Countries of the World are summarized as follows; In U.S.A., Older Americans Act of 1965 Creates the Administration on ageing within the Department of Health, Education and Welfare; authorizes grants to States for community planning, services for elderly, and research and training in the field of ageing. In Canada (Saskatchewan & Manitoba): Parents Maintenance Act, 1978 & 1993 respectively, mandates children to pay maintenance to dependent parents up to \$20 per week. In South Africa: Older Persons Act no 13 of 1996, Provides strict controls for registered old-age facilities; makes abuse of the elderly a criminal offence; creates social and cultural community-based services for elderly. Sri Lanka: Protection of the Rights of Elders Act, 2000 establishes National Older Persons Council; requires children to provide care for their parents and makes provisions for parents to obtain maintenance from children; it requires State to provide appropriate residential facilities to destitute elderly without children. China: Law of the People's Republic of China on Protection of the Rights and Interests of the Elderly, 1996 places responsibility on families to care for elderly; establishes a state-based old-age insurance system, increases legal protection of elderly with speedy court procedure.³⁷

National initiatives and Governmental Schemes for the welfare of senior citizens: To ensure social security and financial independence for the old age groups, the Central and State Governments have various socio-economic development programmes. In India; the existing schemes for old age pension include the Employees' Provident Fund and the New Pension Scheme, which cover roughly 13% of the working population (10% as government servants and 3% from the formal private sector). In addition to this, the National Old Age Pension Scheme provides for destitute persons of 65 years and above. In U.K. Old Age Pensions Act, 1908 & National Insurance Act, 1946 provides pension to Citizens over 65 years of age, a Contributory state pension for all, based on National Insurance payment record, paid to men at 65 years & women at 60 years, people aged 80+ receive non-contributory pension. It covers 36% of population aged 65 -74 years, and 43% of population aged 75-84. Similarly in U.S.A. The Social Security Act, 1935 & Federal Insurance Contributions Act (FICA), 1939 covers the Citizens over age 65 years, plus disabled, but not intended to be used as full retirement plan, but in addition to

³⁶ India Together; Legislative brief on the Parents & senior citizen's Bill- 06july 2007.p.4-6.Available at; www.google.com/search www.indiatogether.org.

³⁷ *ibid*,p6 &7.

pensions and savings, etc., it reaches the 163 million people working and pay Social Security taxes & 49 million people receive monthly payments. In Singapore the Central Provident Fund Ordinance, 1955 covers all working citizens (employers and self-employed) to save for retirement and the target age to begin withdrawals is 62 covering healthcare, home Compulsory comprehensive social security savings plan (monthly contributions by working Singaporeans and employers) that covers retirement, ownership, family protection, and asset enhancement. It benefits about 3.12 million (in Jan- March, 2007) or roughly 70% of population.³⁸ Under the Constitution of India, Directive Principles of State policy, Article 41: “The State shall, within the limits of its economic capacity and development, make effective provision for the... old age, sickness and disablement, and in other cases of undeserved want.” In this regard, the States have undertaken various social welfare schemes to provide financial security are as follows;

The Ministry of Social Justice & Empowerment is the nodal agency responsible for welfare of the Senior Citizens. It has announced the National Policy on Older Persons which seeks to assure older persons that their concerns are national concerns and they will not live unprotected, ignored and marginalized. The National Policy aims to strengthen their legitimate place in the society and to help older people to live the last phase of their life with purpose, dignity and peace. The National Policy on Older Persons inter alia visualizes support for financial security, health care and nutrition, shelter, emphasis upon education, training and information needs, provision of appropriate concessions, rebates and discounts etc. to Senior Citizens and special attention to protect and strengthen their legal rights such as to safeguard their life and property. The National Policy on Older Persons confers the status of senior citizen to a person who has attained the age of 60 years. The Ministry has also written to all the Ministries/State Governments concerned for adopting a uniform age of 60 years for conferring the status of senior citizen to a person and for extending facilities/concessions to them. The Scheme of Assistance to Panchayath Raj Institutions/Voluntary Organizations/Self Help Groups for Construction of Old Age Homes/multi-service centers for older persons. Under this Scheme, one time construction grant for old age homes/multi-service centre is provided. An Integrated Programme for Older Persons has been formulated by revising the earlier scheme of “Assistance to Voluntary Organizations for Programmes relating to the Welfare of the Aged”. Under this Scheme, financial assistance up to 90% of the project cost is provided to NGOs for establishing and maintaining old age homes, day care centers, and mobile Medicare units and to provide non-institutional services to older persons. Under the National Old Age Pension Scheme, (under taken by the Ministry of Rural Development) Central Assistance of Rs. 75/- p.m. is granted to destitute older persons above 65 years. This Scheme has been transferred to the State Plan w.e.f. 2002-03. Under the Annapurna Scheme, free food grains (wheat or rice) up to 10 kg. Per month are provided to destitute older persons 65 years or above who are otherwise eligible for old age pension but are not receiving it. The Ministry of Finance; under Section 88 of Finance Act, 1992, provides income tax rebate of upto Rs. 15,000 or actual tax whichever is less to senior citizens who have attained the age of 65 years at any time during the relevant previous year. Senior Citizens are excluded from “One by Six” scheme for filing the Income Tax Return under proviso Section 139(1). For Senior Citizen, the deduction in respect of medical insurance premia is upto Rs. 15,000/- under Section: 80(D). The RBI has permitted higher rates of interest on saving schemes of Senior Citizens (persons having the age of 65 years and above). Indian Railways provide 30% concession in all classes and trains including Rajdhani/ Shatabadi trains for both males and females aged 60 years and above. Indian Railways also have the facility

³⁸ *ibid*, 32.p.7&8.

of separate counters for Senior Citizens for purchase/booking/cancellation of tickets. State Road Transport Corporation and Civil Aviation Departments also extends Special travel concession to the elders.³⁹

Conclusion:

The Maintenance and Welfare of Parents and Senior Citizens Act aims to create an enabling mechanism for the older persons to claim need-based maintenance from their children. It is an established fact that family is the most desired environment for senior citizens and parents to lead a life of security, care and dignity. Keeping in view of this fact and to ensure that the children perform its moral obligation towards their parents, the present Act imposes legal obligation to look after the aged in their last span of the life. The State also owes duty to provide all possible security in the protection of elder persons. All actions related to its implementation of the initiatives of the Act are intended to be taken only by the State Governments, and the establishment of old age homes for senior citizens who are indigent, in every district of the State, are one of the objectives of the Act. The Act is yet to be executed by the States by passing a separate rule in the State Assembly. The effective implementation of the said legislation it depends on the legislative will of the state. The Himachal Pradesh Government has already created a precedent and it is the first State in the Country which set a noble idea of enacting a law on the Maintenance and Welfare of Parents and Senior Citizens. The present Act in chapter-III & IV provides a statutory obligation on the States to establishment of old age homes and provision for medical care of senior citizen. However, the State alone cannot provide all the services needed by the older persons. Private sector agencies cater to a rather small segment of the population. The National Policy recognised the NGO sector as a very important institutional mechanism to provide user-friendly affordable services to complement the endeavours of the state in this direction. There is a need to create awareness and to develop programmes to promote family-values, sensitise the young on the necessity and desirability of intergenerational bonding and continuity and the desirability of meeting filial obligations. Values of sharing and caring need to be reinforced.

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³⁹ National Institute of Social Defence, Ministry of Social Justice and Empowerment, Government of India. Available at; [http://www.google.com/senior's health aarogya.com/](http://www.google.com/senior's%20health%20aarogya.com/) National initiatives on care for elderly.