CHAPTER V

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‘Wrinkles should merely indicate where the smiles have been’- Mark Twain¹

The aged as a distinctive group of the world population are entitled to a comfortable and secure environment with their needs addressed. The first legislation in India specifically tailored to the needs of elders, The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 envisages not only protection of aged by the family but through its expansive approach by placing the responsibility for creating the appropriate physical infrastructure and social systems on the Governments to ensure their welfare. This is indeed a progressive legislation that gives legal backing to the moral obligation of the younger generation to provide care and support to their parents and elders.

Globally, the realisation of the strength of the familial bonds to act as a balm to ease the pain and manage the debility caused by the natural process of ageing is steadily being reinforced. There is a conscious effort to foster and nurture the unity of family to ensure an effective support system for the elderly. This elder law built on the traditional Indian custom of family’s responsibility of providing care and support to the aged members among them.

Another distinguishing feature of this legislation is that it provides a process of conciliation among the litigant family members. This is a sensitive approach to address the problems faced by the aged and also envisions to reconcile the problems

¹ Mark Twain, Following the Equator; A Journey around the World (Hartford, American Publishing Co.1897) p-496
in the family. This is a novel provision that has been included to enhance the unity and integrity of the family while also assuring that the rights of the elderly to maintenance is upheld.

This legislation assumes increasing significance with the steady increase of the aged constituent of the population both globally and in India. The world has been slow to respond to this alarming trend of increased presence of the aged in its population. The protection and wellbeing of the elderly has always been the preserve of the family. The family has been the cradle of support for the elderly in all societies of the world. But till the advent of modern medicine and technology which enhanced life span, the family has not been burdened much as both the average life expectancy and the number of people reaching the ripe old age were comparatively less. The situation in India is accentuated by the fact that liberalisation and globalisation have wrought havoc in the joint family system followed in India. The traditional system of extended family acted as a safety net to all the members in its fold especially the elderly. The characteristic of a joint family was that three or more generations lived together and each had its role in addressing the needs of all the members of the family of without any discrimination.

The joint family system was critical to the wellbeing of the elderly in terms of care and security. Those were the times when the elderly were revered in the family. The mutual love and affection in the family helped in fulfilling the emotional needs of the elderly. The joint family system did not give precedence to the earning power of the individual member rather age was considered as a precondition to accord respect. The elderly were also occupied with the responsibility of taking care of the younger members of the family.
But with changing life styles driven by modernisation, all the values of the olden times have started to fade away. For instance, the urbanisation and consequent migration of rural people to the cities did not augur well for the joint family system. The elderly were left alone in the villages to fend for themselves bereft of any care and support. Conversely, even if they were to accompanied their children to the cities, the accommodation was characterised by unsanitary conditions as the urban infrastructure was ill equipped to cater to the influx of people. The other feature of changing social structure is the erosion of importance given for the elders, more so due to their weak financial status. Even the elders with property transfer their assets to their children as they are sentimental about settling their material affairs during their life time. All these add to the feeling of low self esteem among the elderly who are made to feel as though they are a burden to the family which has increasingly become materialistic. With both the male and female members working in a household the traditional support base for the elderly is totally lost. The elderly in most cases bear the brunt of pressures of strained resources.

This scenario is made more poignant with the knowledge that majority of the aged in India are poor and live in rural areas and consequently are deprived of access to basic necessities and means to a decent living. Consequently attention is drawn to the laws to determine the rights accorded to them especially the right to maintenance to provide succour to the beleaguered elders.

It is observed that prior to the enactment of the elder law the personal law codes and the CrPC have provided relief to the aged parents but were not comprehensive enough to deal with all the issues related to the entire elderly population. The personal law that governs Indians in these matters depends on the religion that is practised by the population. The maintenance of Hindu parents is
dealt with in The Hindu Adoption and Maintenance Act 1956. Section 20(3) of the Hindu Adoption and Maintenance Act specifically imposes a legal obligation on the children to maintain their parents in the event of the parents being unable to maintain themselves out of their earnings or property. Under the Muslim Law again there is an obligation imposed upon the children to maintain their indigent parents. The Christians, though do not have a personal law code are dictated by their Holy Book of God, the Bible, to revere the parents and take care of them. So also the Parsis are ordained to live their lives according to good conscience. Apart from these personal laws, Section 125 (d) of the Code of Criminal Procedure accords maintenance to all beleaguered parents irrespective of their religion to claim maintenance under this section from their children.

The Supreme law of the land ‘The Constitution of India’ in its provisions of Part III and Part IV caters to the matter of protection of the elderly section of the population. The vigilant Judiciary in India has expanded the scope of the Fundamental rights especially Article 21 of the Constitution to include all the rights which are basic to the decent existence of all the citizens of India. Therefore there is a clear directive in the Constitution to the Executive to extend its full support and cooperation to ensure good governance in the country. And also to make sure that the elderly population are taken care of. To fulfil this mandate of the Constitution and also to fulfil its international obligations as India is a signatory to the International Declaration on Ageing both in Vienna and Madrid; the Indian Parliament enacted the first elder law in India in the form of The Maintenance and Welfare of Parents and Senior Citizens Act 2007.

At the International level laws exist only as soft laws when it concerns the senior citizens. The idea to have a separate instrument guaranteeing basic human
rights to the senior citizens on the lines of the special conventions for women and children is gaining momentum worldwide. The first Assembly on Ageing held in Vienna mainly catered to the developed nations to cope with the phenomenon of greying population. The Madrid Assembly on Ageing dealt more comprehensively on the issues relating to ageing in particular and creating a society suitable for all ages. It also contained directives to the Governments to respond appropriately to the growing segment of ageing population in their respective nations to ensure that the people in the last leg of their lives lead a peaceful and contended life in a safe and secure surrounding. The United Nations declaration regarding the five principles of Independence, Participation, Care, Self-fulfilment and Dignity, to be borne in mind in the governance of a nation have also influenced the making of this first elder law in India.

The analysis of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 reveals that it is a culmination of purposeful effort to address the problems of the ageing population of India. The issues regarding the elderly population have the potential to create a serious crisis in the governance as the demographic trends indicate a steady rise in the numbers of the elderly constituent of the population. With India having the demographic advantage now of being a young nation, the rise in the number of elderly will certainly lead to unenviable situation where both the younger and the older generation vie with each other over preference in policy matters and allocation of resources. The policy makers seized of such an eventuality have sought to address the problem through the enactment of this legislation. The legislation has borrowed the provisions of the personal laws and has built on them to suit the needs of the elderly in the present times as the roots of the right to maintenance runs deep in the personal laws in India.
The Act of 2007 seeks to ensure a protective environment for the elderly in their own families by creating a legal obligation for the children including the grandchildren to take care of their parents.

A highlight is the care that this legislation ensures for the issueless elderly by the relatives who have inherited or are likely to inherit their property through a legal obligation to maintain the senior citizen. It is worth noting that this the first time a legislation has been enacted to safeguard the interest of the entire elderly population whether they are married are not or if they have children or not.

However, in the case of an issueless senior citizen unless without adequate resources there is little scope of the extended family taking care of them as the legal obligation is thrust only on the relative who has or is likely to inherit the property of the aged person. This sends a strong signal that unless a person has enough savings and property there is little hope for care during old age. The present legislation is sadly wanting in this regard, a gap which needs to be addressed.

It is observed that the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 contains a penal provision to punish the children or relative who fail in their duty to take care of the elders. It is noted that this is again a first time that such a penal provision is included for negligence to maintain one’s parents or relative as the case may be. The Act also contains a novel provision by which the transfer of property of the senior citizen induced fraudulently may be set aside.

As an outcome of the analysis of the legislation it is strongly suggested that the family that takes care of either an elderly parent or relative be provided with pecuniary benefits that are commensurate with the financial burden on the family.
The benefits may include incentives that are attractive and support the family in aiding the elderly among it.

The obligation to maintain the parents rests on the children according to the Act of 2007. The definition of a child in Section 2(a) of the Act includes children and grand children. It has been interpreted by the courts as not including son-in-law or daughter-in-law. It is suggested that when both the son and the daughter are beneficiaries of their parents the inclusion of son-in-law and daughter-in-law is not out of place especially when they are enjoying the properties of their in-laws.

The Act does enable the aged parent or senior citizen as the case may be, who is neglected by his family to sue for maintenance. It provides for the constitution of Tribunals to deal exclusively with the matters connected and specified in the Act. It is a positive feature of this legislation that the application for maintenance may also be submitted by an authorised NGO on behalf of the senior citizen including the parent and the Tribunal is also empowered to take suo moto cognizance of the matter. Under Section 16 of the Act, only the aged parent or senior citizen who is aggrieved by the decision of the Tribunal may appeal. This has led to a large number of writ petitions filed in the High Courts’ under Article 226 against the order of the Tribunals as revealed in the analysis. It is suggested that the provision for appeal against the order of the Tribunal may be extended to the aggrieved children or relative also.

Viewed from another angle, the act of filing an appeal can be perceived as the manifestation of shirking the legal duty cast on the children. It is suggested that a clause for a penal amount to be levied may be included in cases where the Appellate Tribunal finds the appeal baseless and only as delaying tactic employed by the children refusing to fulfil their legal obligation towards their parents. This provision
would go a long way in deterring frivolous filing of appeal by the children or relative as the case may be. Therefore, it is suggested that Section 16 of the Act may be suitably amended to enable the children also to appeal under the Act with a proviso containing the punitive clause.

Keeping in view of the advanced age of the parties, it has been accordingly reasoned in the Act of 2007 that the enquiry to be held by the Tribunal would be of summary procedure and the endeavour would be to deliver justice swiftly and without delay to the senior citizens including the parents. It is indeed a noble provision meant to fulfil the obligation of the State to extend appropriate access of justice to all the members of the nation.

The analysis reveals that filed by the senior citizens including the parents often involve the issue of ownership of property. It is a fact that there is a lot of pressure on the elderly to settle their properties during their life time. It is not uncommon that these transfer deeds do not generally contain the clause that the beneficiaries should in turn take care of them as required under Section 23 of the Act of 2007 to render such transfers of property void. Even in cases where such transfers are not carried out, the children wilfully occupy the property of their parents and cause hindrance and hardship to the aged in freely enjoying their property. Opinion among the High Courts has been varied over the jurisdiction of Tribunals to order eviction of such persons occupying the property of the senior citizens including the parents. While some have ordered eviction or upheld the order of eviction of the Tribunals, others have maintained that such an order of eviction is outside the jurisdiction of the Tribunals.

The responsibility of protecting the life and property of the senior citizens including parents entrusted with the respective State Governments under Chapter V
of the Act. Under Section 22(2) of the Act the State Government is empowered to
draft an action plan for ensuring the safety of life and property of the senior citizens
in their respective States. It is suggested that the Act be amended to empower the
Tribunals to order eviction in cases where the ownership of the property is
indisputably with the senior citizens. The objective of the Act is to enable the senior
citizens to lead their life with dignity and honour. Only to further this aim the
proceedings under this Act are prescribed to be summary in nature. Concurrent to
such a reasoning, the justice can be done swiftly and effectively through the
Tribunals if they are empowered to order accordingly without the senior citizens
having to take the usual recourse of civil proceedings which are likely to prolong
well beyond their lifetime. The need for clarity and uniformity of action under
Section 22 and Section 23 of the Act is clearly evidenced through the analysis of the
act. In many cases the question of ownership of property has proven to be a
tricky question of law and the help of legal practitioners to highlight on the legal
issues involved is warranted. It is suggested that an advocate panel be drawn out to
assist the parties and the Tribunal to deliberate and decide on the tricky questions of
law especially in property disputes involving senior citizens. Also, the maintenance
officer to be appointed by the State Government empowered by the Act to represent
the parties if they so desire, could be of more help to the parties if the individual is a
legal expert.

It is also suggested that more focussed and intensive awareness campaigns
need to be undertaken targeting the elderly regarding the provisions of the Act. More
importantly senior citizens including parents must be dissuaded from transferring the
property during their lifetime.
The analysis as also revealed that a major glitch in the effective implementation of the Act is the delay in deciding of the cases filed before the Tribunal. Section 5(4) of the Act endeavours that that an application filed under Section 5(2) shall be disposed within ninety days. But in reality we find through the analysis that many aggrieved senior citizens have been forced to file writ petitions seeking directions from the High Courts for early disposal of cases. It is observed that such delays totally defeat the purpose of the Act.

The other extreme of executive excesses where the Tribunal has not followed the procedure laid down in the Act and basic principles of natural justice have not been followed have also been brought forth in the analysis. This raises serious concerns regarding the choice of the members of the executive like the Revenue Divisional Officer as the presiding officer of the tribunal. The argument against the deployment of executive members as presiding officers gains ground in light of the fact that the Tribunal has been entrusted with the powers of civil and criminal court in different circumstances as highlighted in the analysis.

It is suggested that retired judges of High Courts may be appointed to head the Tribunals as they would be better equipped to handle the pertinent issues more effectively and efficiently and also unlike their executive counterparts they would not be burdened with their other routine responsibilities. Their legal expertise would definitely come in handy to deal with complex problems of law while dealing with property issues involving senior citizens.

The object of the legislation is to ensure the welfare of the senior citizens and the State government is obligated under the Act to set up old age homes to provide shelter, care and security especially to the indigent elderly. The Act further specifies that standards to be met by these institutions be set by the respective State
Governments. It is worth noting that the use of clause ‘may’ instead of ‘should’ when it comes to the provision of old age homes, medical treatment and facilities is not a forceful enough provision to ensure the welfare of senior citizens to be taken care of by the State. Also there is no standardisation of procedure till date either to set up old age homes or to run old age homes in India. This has led to a lot of private players making a lucrative business option at the cost of helpless elders.

Though the title of the Act is Maintenance and Welfare of Parents and Senior Citizens the analysis reveals that the thrust has been on the right to maintenance. The welfare quotient is dealt with a non mandatory clause with regard to the executive commitment to ensure the welfare of the senior citizens. Also, the family is not mandated to ensure the welfare of the parent or senior citizen.

Moreover, it is observed that the problem of abuse of the elderly has not been addressed by any provision of the Act. The prevalence of elder abuse in India is assuming monstrous proportion and needs to be dealt with effectively. It is suggested that the first elder law should include provisions that would act as a deterrent to the shameful practice of abuse of those who are venerable but weak. Again the elder law does not touch upon the violation of human rights of the aged by the children or relatives. It is recommended to include appropriate provisions for safeguarding the human rights of the aged as the title speaks of welfare of senior citizens along with maintenance.

As an instrument to ensure that the right of maintenance of the elderly is upheld, this legislation has indeed fulfilled its objective of empowering the elderly parents with the right of maintenance. The emphasis of this Act is both on maintenance and welfare of the senior citizens. Therefore the State Governments are directed to provide adequate medical facilities to the senior citizens. The setting up
of old age homes to cater to the needs of indigent elderly population is also envisaged in the Act. Considering these factors, this legislation is indeed a first step in the direction of ensuring the elderly to live a life of dignity and honour in the twilight of their lives. It is also submitted that there is ample scope for improvement of this legislation to make it more effective in achieving its objective. The following recommendations are made on the basis of analysis made in this research to make suitable amendments in the legislation which would go a long way in truly addressing the concerns and serving the needs of the elderly in India.

5.2 RECOMMENDATIONS FOR THE AMENDMENT OF THE ACT OF 2007

1) The definition of children under Section 2(a) should be expanded to include the son-in-law and daughter-in-law as the case may be.

2) The Tribunal set up under the Act should be presided only by a legal professional preferably a retired judge to deliver justice effectively and swiftly as they would be better equipped for the job.

3) The maintenance amount of ₹10,000/- has to be at least doubled considering the inflationary costs and subsequent rise in the cost of living. It is recommended a clause for revision of the amount periodically be inserted. It is also recommended that separate cost to be provided to meet the medical expenses of the elderly litigants.

4) It is suggested that under Section 16 the children should be allowed to file an appeal in the Appellate Tribunal on the basis of principles of natural justice. It is strongly recommended that the children be penalised for filing frivolous
appeal with the intention of delaying and denying the senior citizens of the rightful maintenance and an appropriate provision inserted in the Act.

5) The ambiguity with regard to the limitation period for execution of the order of the Tribunal, as evident in proviso to Section 5(8) and Section 11(2) needs to be resolved.

6) Under Section 17 the bar to representation of legal practitioner is suggested to be removed by an amendment of the Act to assist the Court and parties to arrive at right decisions especially regarding tricky questions of ownership of property. It is suggested that a panel of legal personnel be appointed for every tribunal to assist the Court in the process.

7) The Maintenance Officer to be appointed under Section 18 of the Act should also be mandated to be a legal personnel to assist better the parties in the suit.

8) The provision regarding the power of the Tribunal to order eviction from the property of the senior citizens must be suitably amended empowering all the Tribunals with such power without relegating the responsibility to the State Government to include it in their rules. So Sections 22 and 23 of the Act have to be appropriately amended to vest the power of protecting the life and property of the senior citizen with the Tribunal in the first place. The Tribunal may direct the police force of the respective States to carry out its order.

9) More intensive awareness campaigns involving schools and colleges apart from mass media campaigns to be undertaken to educate the people about the Act.
10) Sensitisation programmes to the elderly along with awareness campaigns alone will bring success intended by the legislation as the Indian parents are hesitant to sue their children and also more importantly, children in schools right from kindergarten must be taught value education especially to respect and revere the aged.

11) It is suggested that the right of elderly to the care of the family must be reinforced and the family must be made to maintain the parents or the elderly relatives in their own homes and not just provide them with maintenance amount.

As the objective is to cater to the welfare of the senior citizens the Government is also obligated to make provisions with regard to infrastructure and other procedural matters to be elderly friendly. Inspite of the recommendations made in both the World Assembly on Ageing it is found that there exists a lacuna in the realm of executive action in the implementation of the recommendations of these International instruments of which India is a signatory. The following recommendations are made with respective executive action as it is mandated in the Act of 2007 that the Government is responsible to cater to the welfare needs of the elderly. They are also intended to further the goal of the Act of 2007 and also to improve the quality of life of elders in India.

5.3 RECOMMENDATIONS TO THE GOVERNMENT

1) It is strongly recommended that a law be enacted to regulate the working of old age homes across India to curb the unethical practice of fleecing the elderly in the garb of providing services to them.
2) It is recommended that the compulsory retirement age limit of 58 or 60 for people from services must be increased.

3) The families taking care of the elders in their homes must be encouraged with incentives in order to reduce the burden of families. These may include preference given to such a family in refilling gas cylinders, free transport for the family, medical insurance at subsidised rates, basic provisions for the family at subsidised rates at the PDS outlets, medicines at subsidised rates and in case of requirement of nurses for the care of the elderly, the services to be organised through government agencies again at nominal rates and even a waiver of entrance fee to State owned parks and State sponsored fairs may be included apart from tax benefits.

4) There must be a directive to all the Government servants irrespective of their cadre to treat the senior citizens with utmost respect. Those found failing must be penalised.

5) All Government offices must be directed to deal with problems concerning the senior citizens quickly and within a fixed time frame. Strict rules to be laid so that the tardiness with respect to the working and procedure is avoided. The concerned personnel and the supervisors must be held liable for proven delay in dealing with matters concerning the senior citizens.

6) The police force must be sensitised regarding the treatment of senior citizens. Though the police force is mandated under the Act to maintain a record of senior citizens staying alone and visit them regularly to find out their wellbeing, this rule is rarely adhered to by the force. The Government must
issue directives and ensure the police strictly follow the action plan of the Act of 2007.

7) It is recommended a special task force be created in the police to deal exclusively with matters concerning the senior citizens. This would help the police force to react immediately at the time of crisis to come to the rescue of senior citizens. And also in normal times any complaints by the senior citizens of acts of public nuisance or private complaints must be addressed promptly and effectively so as to assure the senior citizens of the commitment of protection of the governance.

8) The Government must make provision for priority of access to medical facilities for all senior citizens in all Government hospitals and primary healthcare centres. The cleanliness and the ambience of the Government hospitals must be augmented. The hospital staff and the doctors must be sensitised in dealing with senior citizens. Any deficiency of service must be made a liable offence. And wide publicity of the rights of the patients to proper and prompt medical attention, clean environment, clean toilets must be made. The public must be encouraged to assert their rights and prompt and strict action has to be taken on any complaint of the patients especially senior citizens.

9) The old age pension needs to be enhanced to cater to the needs of the indigent elderly population.

10) The mandatory services to be accorded to the elderly must include the public distribution system delivering the goods at the houses of the elderly, the
banks extending home services to the elderly and collection of taxes and other bills to be made at the houses of the elderly.

11) The para-medical services must be made available at nominal charges by the Government to all families where the elderly needs special care.

12) In the interest of creating an environment that will allow the elders to lead an independent life, design of physical infrastructure has to be inherently old age friendly. This should also become an integral part of design of public buildings, open spaces, public transport, and roads that are people friendly with adequate pavements. The elements for these are on paper in policies and need to be implemented.

13) These measures if extended in all sincerity and commitment will ensure the realisation of the objectives of all the international conferences on the issues of ageing and guarantee the fulfilment of the mandate of the Constitution and the Act of 2007 with regard to all the senior citizens of India living their lives with dignity and honour.