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SENIOR CITIZENS IN INDIA: A Critical Analysis of the Maintenance and Welfare of Parents & Senior Citizens Act, 2007

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SENIOR CITIZENS IN INDIA: A Critical Analysis of the Maintenance and Welfare of Parents & Senior Citizens Act, 2007

*Santosh Kumar Sharma**

[Abstract: Senior Citizens in India have never been seen from the point of view of a class. They need sympathy, and has to manage their existence, but this has been an age and class which is regarded boundless, considered next to gods. Their decisions had no parallel counters. However, as the factors affecting senior citizens changed, from the joint-family set-up to the unitary one, increasing urban inhabitation, change of working environment, new challenges have arisen for them. They are treated as additional member in our family system. The paper analyses the multiple challenges relating to senior citizens, laws and policies framed by the governments appear to be framed half-heartedly and without going into reality check. However, the courts have played positive role in ensuring the welfare of the senior citizens.]

*‘Towards a society for all ages’
- a society that does not caricature older persons as pensioners,
but sees them as both agents and beneficiaries of development’*

— Kofi Annan

I

Introduction

India is one of the countries having largest youth population in the world.¹ This demographic advantage comes with its share of repercussions and can be seen as one the reasons why the issues of the senior citizens have been observed leisurely of powers that be.² Furthermore, the problem of ageing and senior citizens for long was considered as a problem of the developed countries only.

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¹ World Population Prospects 2019: Highlights, ST/ESA/SER.A/423, (United Nations, 2019).

² First formal Initiative taken by the Government, was the Policy on older person in India in 1999. In 2011, another Policy was framed, with changed nomenclature, used the term ‘senior citizens’ instead of older persons. Though, it was used as draft for further initiatives. Census of 2001 and

The term 'senior citizen', in India, refers to those people who have attained the age of sixty years or above.³ However, the initial approach was not confined, for example, the Policy of 1999⁴, referred to 'older persons'.⁵ For the purpose of this paper, the terms senior citizens, ageing people, aged people etc., have been used interchangeably with reference to the people who have attained the age of sixty years or above.

The respect for elders owes its genesis to the fact of their experience, which undoubtedly are the true and indefeasible teacher of life. Ageing is exerting a major influence on all aspects of social and economic fabric of most of the countries in the world, including India. Prof. Chris Phillipson observes that, 'intensification of ageing has resulted from continuing falls in fertility rate and continuing gain in longevity' of life.⁶

According to the Census, 2011, the elderly population in India is 104 million, out of which 53 million are females and 51 million are males. The share of senior citizens as a percentage of total population has increased from 5.1 in 1950, to 8.6 in 2011, and as the trend suggests, owing to factors such as technological advancements, access to better medical facilities, increasing literacy, etc., there is significant drop in birth rate, while decrease in mortality, entailing increase in number of senior citizens. Geographically, the state of Kerala followed by Tamil Nadu and union territory of Goa has the highest percentage of elderly population: 12.6, 11.2 and 10.04, respectively. The demographic transition may be observed in developed States like Kerala, Tamil Nadu, Maharashtra, Punjab, Himachal Pradesh. While in central and north-eastern States, fertility and mortality rates are relatively high. Against this backdrop, it follows that in the near future, old-age dependency will continue to increase. The paper strives to find the logic behind passing the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. Whether by passing this legislation, the State, has really discharged the obligation, which is attached with the State, for being Welfare State? The paper further analyses the procedural technicalities, which are being faced by the enforcing authorities. and how far these technical hurdles, have been removed by way of interpretation by the courts.

This paper is divided into five parts, including the introduction. Part two discusses constitutional provisions related to senior citizens and tries to locate the status of senior

2011 clearly indicating that in the time to come India will have a considerable rise in senior citizens.

³ Section 2 (h), Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

"senior citizen" means any person being a citizen of India, who has attained the age of sixty years or above."

⁴ National Policy on Older Persons, 1999, Available at: <http://socialjustice.nic.in/writereaddata/UploadFile/National%20Policy%20for%20Older%20Persons%20Year%201999.pdf>.

⁵ The term 'older persons', used in the National Policy on Older Persons, 1999 is wider than the term 'senior citizens' used in the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and National Policy on Senior Citizens, 2011. Available at: <http://socialjustice.nic.in/writereaddata/UploadFile/National%20Policy%20for%20Older%20Persons%20Year%201999.pdf>, and <http://socialjustice.nic.in/writereaddata/UploadFile/dnpsc.pdf>

⁶ Chris Phillipson, AGEING, 1, (2013).

citizens in the Constitution. The chief legislation namely, the Maintenance and Welfare of Parents and Senior citizens Act, 2007⁷ and Rules made thereunder form subject matter of critical analysis in Part-III. Part IV, highlights the judicial approach regarding interpretation of the existing provisions related to senior citizens. Last part of the paper concludes with observations and suggestions.

II

Senior Citizens & the Constitution

The Constitution of India is the supreme law of the land. Every measure of intervention, either through policies or statutes draws its sanctity from the Constitution. Part III and IV of the Constitution constitute the core of Social, Economic and Political justice of the country. The chapter on fundamental rights does not delineate specific right aimed at the senior citizens. Some enabling provisions, however, have been provided for the state to protect particularly vulnerable groups of the society, such as children and women.⁸ Part-IV comprises of Directive Principle of the States Policy (DPSP). These are non-enforceable,⁹ but crucial to governance of the nation. The Constitution Framers foresighted this Part of the Constitution as the touchstone of the welfare and democratic governance. Article 41 postulates qualified concern for 'old age' along with others:¹⁰

'The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.'

Fundamental rights guaranteed in Part-III of the Constitution do not distinguish between persons belonging to different age groups, and human beings are treated by the Constitution as standing at an equal pedestal throughout their life. However, it is to be borne in mind that the words used in the Constitution must be interpreted in the context. As a corollary it further follows that any policy-decision that the Government takes must find its hue adapted to the needs of various sections of the society. Therefore, though in the larger frame the Constitution does not distinguish between human beings

⁷ hereinafter, the Act.

⁸ Article 15 (2), The Constitution of India, 1950.

⁹ *Supra* note 8, art. 37.

The Constitution of India, provides 'the provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.'

¹⁰ Effective provisions with respect to right to work and right to education but in case of unemployment, old age, sickness and disablement, State shall endeavour to provide public assistance.

of different age group, but their needs are significantly different; just like the right to life of a child would necessarily include the right to education, it might not be true for person of a different age group, especially those who have crossed the age of 40, and more so in the case elderly persons.

From this point of view Article 21 of the Constitution is harbor of human dignity to all but what should be the necessary attributes of life to be dignified at old age will depend upon the legitimate needs of old age. Human dignity is part of life; it is the exactness.¹¹ United Nations Universal Declaration of Human Right 1948¹², recognizes the human dignity as one of the inalienable facets of human right. To protect the human rights, ensuring dignified life to all is the primary duty of the State. Our Courts, chiefly, the Supreme Court has time and again given the widest possible amplitude to the right to life. 'Life without dignity would be like a sound that is not heard.'¹³

The Open-Ended Group on Ageing¹⁴ of the United Nations, in its first session raised the concern that there is general tendency among other class of citizens (and especially those belonging to a younger age group) too look down at the persons belonging to the older age group. It observed that:

'Another central challenge for older persons is living with dignity. The very process of ageing could threaten older people's dignity as they were perceived by others to be inherently less valuable to society. Independence, participation and autonomy were critical components of dignity. In particular, older persons should be perceived as active members of their societies and not only as recipients of social protection.'¹⁵

Union of India and States are boastful about the fact of financial help provided under the National Security Assistance Programme (NSAP) and that such measure are protecting their right to live with dignity. However, in this context, the point is not whether financial assistance is provided to the senior citizens by the Government, but the intent behind such programme; whether it is one in the form of gift to senior citizens by the State, or it is for the full-fledged enjoyment of the right to (dignified) life of the older persons or it is mere subsistence allowance. Unfortunately, in contemporary context a dignified life for the senior citizens has taken a backseat. It must be emphasized that the so-called group of senior citizens today had a crucial role in the nation building

¹¹ *S.V. Mukwanyane*, ECHR, 588, (2002).

O' Regan J., observed. 'The human life without dignity is substantially devoid.'

¹² Article 1, Universal Declaration of Human Rights (UDHR), (UNITED NATIONS, 1948).

'All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.'

¹³ *K.S. Puttaswamy v. Union of India*, (2017) 10 S.C.C. 1.

¹⁴ The Open-Ended Working Group on Ageing was established by the General Assembly by resolution 65/182 on Dec. 21, 2010. The working group will consider the existing international framework of the human rights of older persons and identify possible gaps and how best to address them, including by considering, as appropriate, the feasibility of further instruments and measures. Available at: <https://social.un.org/ageing-working-group/>.

¹⁵ *First Open Ended Working Group on Ageing*, (United Nations, New York, Apr. 18-21, 2011), Available at: <https://undocs.org/A/AC.278/2011/4>, (Last Visited Mar. 02, 2020).

process in the past, and the same would be true for the older generation of the times to come. The younger population that is working incessantly today for the progress of the nation, would become part of elderly population in future. Therefore, the efforts that they put must be recognized and respected, once any human enters the *dependent* phase of life. This raises an important question whether the meagre amount given under the NSAP secures dignified life to the elderly while recognizing the efforts they have given to the country in the past.

This brings us to the judgement of the Supreme Court in the *Francis Coralie* case, where the court recognised right to dignified life in the following words:

‘We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings. Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self.’¹⁶

III

The Policy Statements and The Maintenance and Welfare of Parents and Senior Citizens Act, 2007: Policies and Legislation – A Critical Analysis

a. Policy Statements on Senior Citizens: National Policies of 1999 & 2011

India has been an active member of the deliberations at the international level including the Vienna International Plan of Action on Ageing, 1983. However, at the national level prior to 1999, issues related to senior citizens were not paid due attention. As significant changes in the demography takes place, and as has been projected by the United Nations (UN), it becomes amply clear that senior citizens should be considered a separate class, exclusive and complete, like women and children. This class seeks specific and changed perspective, a perspective which is not based on pity, sympathy or empathy but based on social responses towards what society owes to them. The Government of India framed its first policy for senior citizens titled, ‘National Policy on Older Persons 1999.’ The driving force behind the policy, was Stated¹⁷:

‘The last two decades have witnessed considerable discussion and debate on the impact of demographic transition and of changes in society and economy on the situation of older persons. The United Nations Principles for older persons adopted by the United Nations General Assembly in 1991, the Proclamation of Ageing and the Global targets on Ageing for the Year, 2001 adopted by the General Assembly and various other

¹⁶ *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, A.I.R. 1981 746.

¹⁷ *Supra* note 4, Para 13.

resolutions adopted from time to time are intended to encourage governments to design their own policies and programmes in this regard...'

On implementing the policy, it proposed that 'the policy shall be disseminated widely' and the action plan shall be prepared. Though in reality, Union Government and various State governments announced some schemes in the 'so-called' nature of welfare schemes for the elderly, the promised road map was never prepared by the government. However, the Act,¹⁸ may be considered to be the biggest achievement of 'National Policy on Older Persons, 1999'.

The policy visualizes that the State will extend support for financial security, healthcare, shelter, welfare and other needs of older persons, provide protection against abuse and exploitation, make available opportunities for development of the potential of older persons, seek their participation, and provide services, so that, they can improve the quality of their lives. The policy is based on some broad principles. The Policy recognizes the need for affirmative actions in favour of elderly. It has to be ensured that the rights of older persons are not violated, and they get opportunities and equitable share in developmental activities. It has further been emphasized that different sectors of development, programmes and administrative actions will reflect sensitivity towards older persons living in rural areas. Special attention will be necessary towards older females so that they do not become victim of the triple burden *viz.* – the old age, discrimination exacerbated by gender, and widowhood.

The nomenclature of the policy underwent change, from the use of the term 'older persons' in 1999 to 'senior citizens' in 2011.¹⁹ The Draft Policy of 2011, took into account the developments at International level. The draft policy identified certain areas to be emphasized, *i.e.* the focal areas.

The new Policy was based on several factors including but not limited to demographic explosion among the elderly, the changing economic and social milieu, advancement in medical research, science and technology, and high levels of destitution among the elderly rural poor. The recognition of certain focus areas can be deciphered from the objective statement of the policy:

'In principle the policy values an age integrated society. It will endeavour to strengthen integration between generations, facilitate interaction between the old and the young as well as strengthen bonds between different age groups. It believes in the development of a formal and informal social support system, so that the capacity of the family to take care of senior citizens is strengthened and they continue to live in the family. The policy seeks to reach out in particular to the bulk of senior citizens living in rural areas who are dependent on family bonds and intergenerational understanding and support.'

¹⁸ *Supra* note 3.

¹⁹ *Supra* note 5.

The National Policy on Older Persons, 1999, refers 'older persons' while the National Policy on Senior Citizens, 2011, refers 'senior citizens' instead of older persons.

b. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007

The Act proceeds on the measures existing at the policy level. However, the protections provided in Act are not in consonance with the rapidity of change in the society.²⁰ The aim and objective of the legislation reads '*An Act to provide for more effective provisions*' for the maintenance and welfare of parents and senior citizens guaranteed and recognized under the Constitution, and for matters connected therewith or incidental thereto. Srimati Meira Kumar, Member of Parliament, while speaking in the debate on the Bill highlighted the reverence used to pay to senior citizens in our society, in following:²¹

'Sir, in our culture, in our civilization, in our revered tradition, we are brought up to obey our elders. We are taught, we are brought up to touch the feet of our elders and take their blessings not only on special occasions but also as a matter of routine. We take pride in serving our elders and taking care of them. This is the tradition, but the new realities are different. These new realities have necessitated that this kind of a Bill should be presented before the House for consideration and passing.'

The Act is wide in its application and encompasses the elderly citizens residing both within and outside India. Furthermore, after the enactment of the Jammu & Kashmir Reorganization Act, 2019, the exclusionary clause²² has been amended, thus including the State within the scope of the Act. Entry 58 of the Fifth Schedule of the Reorganization Act has mentioned the Act.²³ Statement of objects and reasons take note of the degrading values of the Indian society which used to lay a stress on the care and affection that the elderly people need today. It clearly states that ageing has become a major social challenge and there is need to give more attention to the care and protection for the older persons. This is a law based on 'filial responsibility.'

The Act is principally welfare legislation. However, as it deals with two class of people; First, parent²⁴, who may or may not be senior citizens, and second, senior citizens²⁵. There is a possibility of the two groups of people aligning congruently. The Act refers to two terms which can be read in conjunction, 'maintenance' and 'welfare'. Maintenance 'includes provision for food, clothing, residence and medical attendance

²⁰ Section 125, Code of Criminal Procedure, 1973.

²¹ Excerpts from the speech of Smt. Meira Kumar, the Minister of Social Justice & Empowerment (as she was then). Available at: <http://loksabhaph.nic.in/Debates/result14.aspx?dbsl=9305>

²² Section 1(2), Jammu & Kashmir Reorganization Act, 2019.

'It extends to the whole of India except the State of Jammu & Kashmir and it applies to the citizens of India outside India.'

²³ *Id*, Entry 58 reads as in sub-section (2) of Section 1, words 'except the State of Jammu & Kashmir' shall be omitted. 'The Fifth Schedule (Sections 95 and 96) 'Central Laws made applicable to the Union Territory of Jammu & Kashmir: and Union Territory of Ladakh.'

²⁴ *Supra* note 3, Section 2(h).

'Senior citizen' means "any person being a citizen of India, who has attained the age of sixty years or above."

²⁵ *Id*.

and treatment'²⁶ and 'Welfare' 'means provisions for food, health care, recreation centres and other amenities necessary for the senior citizens.'²⁷ The definition or the provisions of the Act do not distinguish between applicability of the two terms disjoint to parents or senior citizens, but the scheme of the Act amply clarifies that the two terms should be read jointly and as applicable to both the groups of people envisaged. It means parents and senior citizens both classes may be same or two different but when it comes to meet the objectives of this Act, they must be construed as forming a whole.²⁸ For entitlement of maintenance under the Act, it is not necessary that parents must be senior citizens, meaning thereby parents need not have attained the threshold age of 60 years or more. Parents and senior citizens are two classes complete and exclusive in themselves. This is the reason section 4 of the Act provides entitlement to both to get maintenance.²⁹

On further analysis, it is discernible that maintenance has narrower scope of inclusivity *vis-a-vis* welfare. The scope of 'maintenance' includes within its ambit food, clothing residence, medical attendance and treatment. The same shall be considered while deciding maintenance allowance irrespective of gender of parent. But if, an application is filed by senior citizens against relative who would probably inherit that property the maintenance order shall be considered from the point of view of 'welfare' which 'means provisions for food, health care, recreation centres, and other amenities necessary for the senior citizens'. This approach seems to be discriminatory. It appears that maintenance has been defined from the point of view of subsistence for normal life and not including within its frame 'dignified life', while 'welfare' contains the perspective of life which is more than merely 'normal life' and identifies the aspects of well-being as a whole.

²⁶ *Id.*, Section 2(b).

²⁷ *Id.*, Section 2(k).

²⁸ *Id.*,

However, under chapters 3, 4, 5 from sections 19 to 23 are only available to senior citizens, not for parents, if they have not attained the age of 60 years.

²⁹ *Id.*

Section 4 reads as 'Maintenance of Parents and Senior Citizens:

1. A senior citizen including parent who is unable to maintain himself from his own earning or property owned by him, shall be entitled to make an application under section 5 in case of - i. parent or grand-parent, against one or more of his children not being a minor ii. a childless senior citizen, against such of his relative referred to in clause (g) of section 2.
2. The obligation of the children or relative, as the case may be, to maintain a senior citizen extends to the needs of such citizen so that senior citizen may lead a normal life.
3. The obligation of the children to maintain his or her parent extends to the needs of such parent either father or mother or both, as the case may be, so that such parent may lead a normal life.
4. Any person being a relative of a senior citizen and having sufficient means shall maintain such senior citizen provided he is in possession of the property of such senior citizen or he would inherit the property of such senior citizen: Provided that where more than one relatives are entitled to inherit the property of a senior citizen, the maintenance shall be payable by such relative in the proportion in which they would inherit his property.'

Defining the two terms distinctively may have two connotations but whenever there is question of maintenance or welfare of life and survival of parents and senior citizens, both definitions must be seen from a cumulative perspective whereby life includes conducive conditions for a normal life inclusive of dignity. The term normal life should be considered as containing within its scope dignified life while deciding maintenance or passing order for welfare measures. In case of *Dr. Ashwani Kumar v. Union of India*,³⁰ Supreme Court opines:

‘We accept that the right to life provided for in Article 21 of the Constitution must be given an expansive meaning. The right to life, we acknowledge, encompasses several rights but for the time being we are concerned with three important constitutional rights, each one of them being basic and fundamental. These rights articulated by the petitioner are the right to live with dignity, the right to shelter and the right to health. The State is obligated to ensure that these fundamental rights are not only protected but are enforced and made available to all citizens.’

Children includes ‘son, daughter, grandson and grand-daughter but does not include a minor.’³¹ ‘Relative means ‘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.’³² Both words should be seen together to decipher the exact position of maintenance of parents and senior citizens. The purpose of providing definition of ‘children’ is basically to cover the matters of maintenance of parents. Children are primarily the respondents in cases of application for maintenance before the Tribunal under section 4. ‘Parents’ and ‘senior citizens’ both are eligible to file an application for maintenance in case of their inability to maintain themselves. Senior citizens, who do not have any child, have also been extended protection but the process and measures differ. This definition is of prime concern to make the Act successful because application for maintenance or welfare by parents or senior citizens respectively can only be filed when there is a respondent associated with the applicant. Though, in its actual implementation, in order to meet the objective of the statute, there have been instances where sons and daughters in law have been called for maintaining the parents and senior citizens. However, the definition of children and relatives should include the sons or daughters in law and therefore, changes in the provisions of the law is needed.³³ This change is exacerbated by the fact that there are parents and senior citizens who do not have any child within the statutory sense of the term but require maintenance and welfare. Furthermore, an expansive meaning of the term would help ensure that no parent or senior citizen is left out of the umbrella of the welfare.

Application for maintenance mentioned under section 4 may be filed by a senior citizen or a parent as the case may be; or if he or she is incapable, by any other person or organization authorized by him or her; or if the facts come to the knowledge of the

³⁰ The observations made by the Court while passing interim directions, in WP (C) No. 193 of 2016.

³¹ *Supra* note 3, Section 2(a).

³² *Id.*, Section 2(g).

³³ *Balbir Kaur v. Presiding officer Cum SDM*. (2015) S.C.C. Online P&H, 260.

tribunal it may take *suo motu* cognizance of the fact. In respect of the jurisdiction where such an application may be filed, section 6 provides that the application may be filed where he or she resides or last resided or where the defendant i.e. children or relative as the case may be, reside. The term 'organization' has been explained in section 5 which means any voluntary association registered under the Societies Registration Act, 1860, or any other law for the time being in force. This is the duty of State Government to constitute the tribunal for each sub-division, which shall be presided over by an officer not below the rank of Sub-divisional officer of a state. It is mandatory upon the State that such tribunal must be constituted within a period of six months from the date of the commencement of this Act.³⁴

Section 23 is one of the most important provisions of the Act with respect to senior citizens. It is framed keeping in mind the protection of life and property of senior citizens. Clause (1) of section 23 lays down following conditions for transfer of property by senior citizens:

- i. Transfer of property must be after the commencement of the Act.
- ii. Transfer may be by way of gift or otherwise.
- iii. Transfer must be subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor.

Regarding the abovementioned conditions some points need elaboration. First, the crucial point that transfer of property in any particular case shall be decided by the notification date of the concerned State. Second, there must be transfer of property. This transfer of property may be by way of gift or otherwise. This term 'otherwise' is very wide.

The question which therefore, arises is what other transfers of property may be included in this term otherwise. In order to understand this, a comparative analysis of different means or nature of transfer with that of gift must be made out. Instead of an elaborate discussion on this aspect, which is outside the scope of this paper, suffice is to say that whatever the nature of transfer of property is, if the other two statutory conditions are fulfilled, this term otherwise should not be taken as restraint to give effect to this section. This provision is intended to give effect to the presumption that results either in fraud, undue influence or coercion. Once, there is scope of any such presumption, it shall

³⁴ *Supra* note 3, Section 7.

Provides for the Constitution of Maintenance Tribunal. It reads as,

1. The State Government shall within a period of six months from the date of the commencement of this Act, by notification in the Official Gazette, constitute for each Sub-division one or more Tribunals as may be specified in the notification for the purpose of adjudicating and deciding upon the order for maintenance under section 5.
2. The Tribunal shall be presided over by an officer not below the rank of Sub-Divisional Officer of a State.
3. 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.

provide option to the transferor to approach the tribunal for a declaration of the transfer as void. It must be considered carefully that this section does not make the transfer void per se, but only by the intervention of the tribunal.

Another pertinent aspect of this provision is that it is only applicable to senior citizens not to parents. What is the basis of this difference? If, same thing happens with parents, who are not senior citizens, what are the remedies available to them? It appears from the reading of other provisions of the Act that parents do not lose their rights available to them under respective personal laws. If, parents are transferring by way of will or gift or otherwise, provisions of the concerned law shall be applicable accordingly. The definition of property makes it clear that it includes ancestral as well as self-acquired property. Respective succession laws would have application in case of parents. But once the same parents come within the category of senior citizens, the provision under this law would also be applicable to them.

Establishment of Old-age Homes is one of foundational objectives of the Act.³⁵ Section 19 of the Act embodies this objective. The Act prescribes a statutory responsibility on States to establish and maintain Old-age Homes it may deem necessary. Though concern has been raised that it would not be easy for any State in India to construct or identify building to be used as Old-age Homes at once and therefore States are permitted to take action in this regard in a phased manner. While deciding the number of Old-age Homes, the statute provides for one in every district. It means in every State there shall be at least as many old-age homes as there are districts. It may also be understood that phrase 'deem necessary' denotes not less than 'one in each district' and if the need be more such old-age homes may be established.

The Act also mandates that all the States shall have senior citizens' specific facilities for their treatment.³⁶ Parents who are not senior citizens are excluded from this section. Every hospital should have specific department for senior citizens. Most of the private hospitals of repute have a separate department of geriatrics. The mere establishment of department of geriatrics would not resolve the issues of senior citizens. Such departments must be equipped with necessary space, beds, seating arrangements, queuing, and other facilities. The State must make better provisions for healthcare facilities owing to the projection on population estimates that suggest surge in the same with the advent of time.

³⁵ *Supra* note 3. The Statement of Objects and Reasons reads as: "And the Bill, therefore, proposes to provide for (d) setting-up of Oldage Homes in every district" (Emphasis supplied).

³⁶ *Id.* Section 20 of the Act reads as, 'The State Government shall ensure that:

1. The Government hospitals or hospitals funded fully or partially by the Government shall provide beds for all senior citizens as far as possible; 2. separate queues be arranged for senior citizens; 3. facility for treatment of chronic, terminal and degenerative diseases is expanded for senior citizens; 4. research activities for chronic elderly diseases and ageing is expanded; 5. there are earmarked facilities for geriatric patients in every district hospital duly headed by a medical officer with experience in geriatric care.'

IV

Judicial approach in identifying and protecting Rights of Senior Citizens

As has been stated in the preceding paragraphs, the issues related to senior-citizens was considered the issues related to developed countries only and the surge in the population of the older persons in India is a recent phenomenon. As per the threshold norm of 60 years their existence was not significant one. This is one of the prime reasons that there have been very limited number of judicial pronouncements related to senior citizens. The Constitution of India does not contain any provision related to senior citizen except for passing reference under Article 41. It was resonated by the Supreme Court, while issuing certain directions in writ petition (Civil) filed by Dr. Ashwani Kumar. The petitioner sought the intervention by the Court to enforce the rights of elderly persons under Article 32. Petitioner submitted that despite the changes brought in every sphere of life over the quarter of the past century the Governments in India have continued with the provisioning of meager financial assistance to the old-age persons. The court has passed certain interim directions on the following issues, prayed by the petitioner:

1. Pension for the elderly.
2. Shelter for the elderly.
3. Geriatric care and medical facilities for the elderly.
4. Effective implementation of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007

The latest revision in Considering the pathetic position of rights of senior citizens has been in the guidelines issued by the Court on 13th of December, 2018, as under: ³⁷

1. The Union of India will obtain necessary information from all the State Governments and the Union Territories about the number of old age homes in each district of the country and file a Status Report in this regard.
2. The Union of India will also obtain from all the State Governments the medical facilities and geriatric care facilities that are available to senior citizens in each district and file a Status Report in this regard.
3. On the basis of the information gathered by the Union of India as detailed in the Status Reports, a plan of action should be prepared for giving publicity to the provisions of the Act and making senior citizens aware of the provisions of the said Act, and the constitutional and statutory rights of senior citizens.
4. Section 30 of the Act enables the Government of India to issue appropriate directions to the State Governments to carry out and execute the provisions of the Act. The Central Government must exercise its power in this regard and issue appropriate directions to the State Governments for the effective implementation of the provisions of the Act. Alongside this, the Central Government must, in terms of Section 31 of the Act, conduct a review for the

³⁷ *Ashwani Kumar v. Union of India*, (2019) 2 S.C.C. 653.

purposes of monitoring the progress in implementation of the Act by the State Governments.

5. Some of the schemes referred to hereinabove are comparatively dated. It is high time that the Government of India has a relook at these schemes and perhaps overhaul them with a view to bring about convergence and avoid multiplicity. In particular, the Government of India and the State Governments must revisit the grant of pension to the elderly so that it is more realistic. Of course, this would depend upon the availability of finances and the economic capacity of the Government of India and the State Governments.

This is one of its kind observations, where the Apex Court has looked into the status of the welfare measures being implemented by the respective State Government along with the Policies run by the Central Government. Most of the available cases have been decided in appeal against the matters decided by the tribunals established under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

In *Justice Shanti Sarup Dewan case*³⁸ the High Court of Punjab & Haryana, found itself in a dilemma, as the issues involved related to the impugned property should have been decided by the Competent Civil Courts but the same had failed to decide the matter. When the matter came before the High Court the Constitutional aspirations sought to be achieved by Article 226 and 227 impelled the High Court to decide the issues. The octogenarian petitioner was eventually the former Chief Justice of the Court, living in Chandigarh along with his septuagenarian wife. Two crucial questions were to be replied by the court:³⁹

‘Firstly, whether any direction in the given facts and circumstances of the case can be given to protect the rights of the appellants under the said Act? Secondly, Whether the writ petition could be maintained for the said purpose especially in the alleged absence of so-called failure of Union Territory Administration in complying with its obligations under the said Act?’

The court said the senior citizens cannot be left helpless due to technicalities of the law. The Court issued directions to the Union territory to frame the appropriate rules and implement them to effectuate the provisions of the Act. It was ordered by the Court that the son, who was the respondent, had to vacate the premises, however he would be at liberty to contest the issues related to the property in appropriate court. The case is an eye-opener in the context of welfare of senior citizens because merely imposing certain obligations does not operationalize the law until and unless the rules framed thereof are in consonance with other provisions of the law. It is trite mentioning here that the older population is rendered helpless in light of such decisions and therefore, if the courts of the country cannot protect the rights of the older persons, what other remedy is left with these persons.

³⁸ *Justice Shanti Sarup Dewan v. Union Territory, Chandigarh*, (2013) S.C.C. Online P&H 20369.

³⁹ *Id.* Para 27.

In another case⁴⁰ Sanjay Kisan Kaul, the Chief Justice observed:

‘The matter is not so simple as the Statement of objects and reasons States, but on the other hand, there are certain provisions which are bound to give rise to more complex legal issues where rights in immovable properties are sought to be negated on pleas such as fraud, coercion and undue influence. In fact, even presumptions are sought to be drawn by introducing a deeming provision in certain situation.’⁴¹

The High Court of Kerala⁴² has held that the Tribunal is not the authority to decide the issue of succession and inheritance and consequently, any such order based on such observation to vacate the premises would not sustain in law. Herein the Court was called upon to decide the jurisdictional scope of the Tribunal established under the Act; the mother and daughter were fighting over a piece of property, wherein the mother claimed exclusive right over impugned property while daughter claimed to be co-owner of the said property. Dispossessed from property by daughter and the son-in-law, mother wanted to evict them from the property so she could repossess the same. Mother contested that she had been evicted by her daughter and son-in-law, and they have used different preventive methods to disallow her entry into the property. The daughter relied upon the succession law applicable to them and because the property was ancestral in nature, she had co-rights of possession. The Maintenance Tribunal ordered the eviction of the daughter and the son-in-law, and provision of maintenance for the mother. Daughter and her husband did not comply with the order, and mother reached to the first appellate authority, wherein the order was reiterated and against which the matter was appealed before the Single Bench of Kerala High Court. The court observed that in the given circumstances, the couple could be ousted from possession, though entitled to inherit the property on death of the mother. If however, only the actual possession is considered, it will grossly violate the provisions and the objective of the Act. Aggrieved by the observation, the couple filed the appeal before the Division Bench of the Hon’ble High Court.

The Punjab and Haryana High Court in case of *Balbair Kaur v. Presiding officer Cum SDM*⁴³, two questions were posed before the Hon’ble Court:

‘Whether an application under Section 22 of the Act is maintainable by the parents-in-law against a daughter-in-law? If the answer to question No.1 is that application is maintainable and further, the same is allowed, whether the remedy of appeal against the order of the Tribunal be available to such an aggrieved daughter-in-law under Section 16 of the Act or not?’

⁴⁰ *Paramjit Kumar Saroya v. The Union of India*, (2014) S.C.C. Online P&H 10864.

⁴¹ This is one of the most observable concerns, because whenever there has been issue regarding failure of giving maintenance or usurping property, the eviction orders in such cases have invoked the law relating to succession by inheritance.

⁴² *Janardhanan v. Maniyamma*, 2017 S.C.C. Online Ker 16387.

⁴³ *Balbair Kaur v. Presiding officer Cum SDM*, (2015) S.C.C. Online P&H 260.

The Court replied both of the questions in the affirmative by referring to the objectives of the Act. The Court broadened the meaning of 'children'⁴⁴ to include daughter-in-law and thus further affirmed that she has a right of appeal under Section 16 of the Act. The High Court has further clarified in the above case 'that in exercise of Section 22 of the Act, which takes care of the protection of life and property of a senior citizen has been conferred *irrespective of the fact, whether the person who threatens the life and property of such senior citizen is related to the senior citizen or not.*' Herein the respondents 2 and 3 parents aged about 70 years were once Indian citizens. Respondent 3 served in the Indian Army and left the service in 1969. Both husband and wife settled in United State of America (U.S.A.) and got the citizenship there. Here the impugned house in Chandigarh was in possession of daughter in law. When both the old age persons planned to return India, they were ousted from the house and harassed. The daughter in law filed a case under the Domestic Violence Act, 2005⁴⁵, and in counter suit aged parents brought the matter before the District Magistrate under section 21 of the Act. The petitioner challenged the proceedings under the Act on the ground that the 2005 Act could not be overshadowed the provisions of the Act. Invoking the rules applicable in the Territory of Chandigarh, the concerned District Magistrate issued the eviction order against the petition, who filed the present appeal and raised following substantial issues;

1. Jurisdiction under the Act can be invoked only by 'Senior Citizens'. Respondents No. 2 and 3 are U.S.A. Citizens. As they are not 'Citizens of India', they are not 'senior citizens' within the meaning of the term in Section 2 (h) of the Act.
2. An order under the provisions of the Act cannot be passed to render the order passed under the 2005 Act nugatory. The provisions of the Act cannot be used at cross purposes with the 2005 Act and to annihilate the rights flowing therefrom.
3. Under the Act and the 2009 Rules eviction order can be sought only against son, daughter or legal heirs and not against the daughter-in-law.
4. There is concealment of material facts/documents in the application filed by respondent No. 2 and 3 under the Act which dis-entitles them from seeking any relief. They did not disclose that they were U.S.A. Citizens, and that had filed CWP No.9021 of 2015 seeking similar relief and also the fact that status quo orders had been earlier passed in favour of the petitioner under Section 12 of the 2005 Act."

Regarding the first issue, the court observed; Citizenship can be obtained or renounced but parentship cannot be renounced, once a parent, always a parent. This is true even in the cases of adoption where even though parentship is not natural but conferred by law, it shall remain true for the child for all times to come. This spirit has been maintained in the Act. In the case before the court, the respondents 2 & 3 had left the country a long

⁴⁴ *Supra* note 3, Section 2(a). 'Children', includes son, daughter, grandson and grand-daughter but does not include a minor.

⁴⁵ Hereinafter, 2005 Act.

time ago and were granted the citizenship of U.S.A. On such acquisition, they ceased to be citizen of India.⁴⁶ However, this change in citizenship does not watershed their relationship with children in India and their status of parenthood.⁴⁷ Section 2(d) clarifies that there is no need to be senior citizen under the Act to avail the benefit in terms of maintenance to parents from their children.

Regarding the second question, whether the provisions of one special Act (here means the Act) can override the provisions of another special Act (here means 2005 Act), the court observed that conferring a special or overriding effect is completely the prerogative of the legislature, and in doing so the legislature must keep intact the legislative intent behind the two legislation. Though, both statutes have been passed to take care of specific concerns, the Act, vide section 3⁴⁸ has an overriding effect. This overriding effect has been conferred keeping in mind the aim and objective sought to be achieved by the legislation.

The Second contention can obviously be understood in the abovementioned context, where the 2005 Act has not been subsided as was argued by daughter-in-law but the concerns and needs of parents or senior citizens have been taken more seriously. Therefore, the counter file by the respondent is not in suppression of 2005 Act.

To implement the Act, the Rules of 2009, as required by section 32 of the Act, have been framed which empowers the States to formulate the rules. The question in such case is related to Rule (3)(1) which is postulated under the rules of 2009 and it provides the procedure for eviction from property of senior citizens, and an order must be passed under S. 22 for such order to effectuate. The second question deals with the issue whether eviction order may be passed only against, son, daughter or legal heirs and not against daughter-in-law (the Petitioner), under the impugned rule. In this context reference has been made to Rule(3)(1)(iv)⁴⁹ according to which the argument is without merit because no doubt that the procedure provided under the impugned rules expressly seek the order of eviction is to be passed against son, daughter or legal heir but it does not mean that if, anybody else is in unauthorized occupation, then the senior citizens should be left to bear with such occupancy. The primary concern in this fiasco

⁴⁶ *Supra* note 8, Article 9. 'No person shall be a citizen of India by virtue of article 5, or be deemed to be a citizen of India by virtue of article 6 or article 8, if he has voluntarily acquired the citizenship of any foreign State.'

⁴⁷ *Supra* note 3, Section 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 the mother is a senior citizen.

⁴⁸ *Id.*, Section 3. The Act to have overriding effect, 'The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act, or in any instrument having effect by virtue of any enactment other than this Act.'

⁴⁹ Rule (3)(1)(iv) reads as 'If the District Magistrate is of opinion that any son or daughter or legal heir of a senior citizen/parents are in unauthorized occupation of any property as defined in the Maintenance and Welfare of parents and Senior citizens Act, 2007 and that they should be evicted, the District Magistrate-cum-Estate Officer shall issue in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause as to why an order of eviction should not be issued against them/him/her.'

is to give relief to the senior citizen, who are in need of such relief, and the order maybe against any person including their children or their partners.

The Kerala High Court observed that the children today are forgetting the fact that they are the future senior citizens. The Tribunal cancelled the gift deed on the count of failure and neglect by the petitioner which was upheld by the appellate tribunal. Against such order the petitioner had challenged the cancellation of gift deed in exercise of power conferred under section 23 of the Act?⁵⁰ Taking into consideration section 23 it is very clear that transfer which has taken place by way of gift or otherwise, the transferee is bound to provide basic facilities, which should not only be limited to the extent of animal existence but ensure human dignity, to the transferor. In case of failure, the said transfer shall be presumed to be made by coercion or fraud.

In another case before the Delhi High Court was, the issue was 'whether under the 2007 Act, only maintenance is remedy or eviction order be passed in case of abuse of parents?'⁵¹ Both the sons had challenged the eviction order maintained by the Appellate Tribunal. Both the sons had physically assaulted their parents and one of them was a severe alcoholic. Both sons were disowned and disinherited from the property. The Maintenance Tribunal ordered them to vacate the premises. The concerned SHO was directed to execute the order ensuring the safety of the elderly parents. The Court speaking through Justice Manmohan, held the eviction order may be passed in order to give effect to the objectives of the Act.

Thus, as far as the stance of the courts in cases related to the Statute are concerned it has reiterated and upheld the primacy of rights of the elderly over any other aspect. Furthermore, the courts have also given an expansive meaning to the terms used in the legislation to meet the objectives of the Act as also to ensure that the voice of the elderly does not go unheard. As a corollary to the protection of the rights, the courts have further given the provisions of the 2007 Act as having overriding effect vis.-a-vis. any other legislation of the land. Thus, in implementing the provisions of this law, the courts have strictly adhered to the welfare approach of the Indian State and conferred the rights thereof.

V

Conclusion

In sum and substance, going through the existing framework, I find that Constitution does not contain distinctive provisions to deal with the issues of senior citizens. The olden times were different when joint families were the vogue and elderly could be easily taken care of. However, with the advent of the society the times are changing and

⁵⁰ *N.D. Vanamala v. State of Kerala*, WP No. 54488/2017, (Decided on Nov. 14, 2018 by kerala High Court).

⁵¹ *Sunny Paul v. NCT Delhi*, (2017) S.C.C. Online Del 7451.

this is so for the elderly as well. Even after being the member of Vienna and Madrid Plan of Action for Ageing People, the powers that be in India have not paid much attention to the issues faced by the elderly. Policy Statements appear to be toothless tiger, and the implementation at the ground level is far from the *ought*. The State further considers the establishment of authorities and the establishments under the Act, not as a duty but a liability. Pensions to senior citizens appear to be decided by the Government from the lens of a burden and not as repayment of what is owed to the contributions they have made to the development of the society. It is the need of the hour that senior citizens should not be considered a burden but an asset and their experience should be better channelized to benefit the society writ large. In the analysis given credit must be given to the judiciary for reading between the lines of the statutes to secure benefits to the elderly. This has helped in ensuring benefits to the elderly in certain States but such beneficence is not uniform across the nation. Systemic issues remain at the forefront, and the gaps have not been filled sufficiently. From the judgements, it is clear that the tendency to detest or oust children who do not take care of their parents is increasing. However, the proclivity of the Government is not in sync with the activism of the courts leading to serious issues faced by the elderly.

The role of State, that too a welfare State is exacerbated in this milieu. The question that the policy-makers need to delve upon is whether leaving the senior citizens, who are not capacitated to take care of themselves, is the righteous welfare approach of the State. Economic constraints might not be the only and the constant problem that the senior citizens face, but it is their physical incapacity to take care of themselves which is one of the prime of concerns. It is the duty of the State not only to protect the human dignity but to facilitate it by taking positive steps in that direction. No exact definition of human dignity exists. It refers to the intrinsic value of every human being, which is to be respected. It cannot be taken away.

Though, the tribunals and the courts have been trying to fill the gap by way of interpretation but courts are not the legislatures. That is why the issues of senior citizens, mostly thus far have emerged in few States, Like Punjab, Kerala, Tamil Nadu, Delhi. Comparatively in poorer States like Uttar Pradesh, Bihar, West Bengal, Madhya Pradesh, Rajasthan and Odisha, the Government must take necessary steps to create awareness about the rights available to the senior citizens. There should be constant policy revision after every five-years, existing provisions in the concerned laws must be amended accordingly and the terms 'welfare' and 'maintenance' require to be amended in consonance with needs of a dignified life. If taken care properly instead of the burden (that they are considered today), the elderly would turn out to be the biggest asset for any country, and especially India.