



## MAINTENANCE AND WELFARE OF SENIOR CITIZENS IN INDIA AND JAPAN:- A COMPARITIVE STUDY

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### **Abstract**

*In 2019, as per the World Health Organization the number of people aged 60 years and older was 1 billion. This will increase to 2.1 billion by 2050. In India, as per Census 2011, population of Senior Citizens is 10.38 Crore. The projected population for 2026 is expected to be 17.32 Crore. These citizens are facing many hardships one of which is nil or inadequate maintenance. The number of Japanese people 65 years or older was 33 million in 2014. But the Japanese Government has dealt with the problems in a very systematic manner. In the present paper, a comparison made with respect to the laws in India and in Japan considering the aspects of maintenance and welfare of Senior Citizens with the help of doctrinal methodology. The comparison shows the difference in the situation of both the countries with respect to the maintenance of Senior Citizens.*

### **Objectives:-**

1. To compare the maintenance and welfare laws in India and Japan.
2. To find out a solution for the increasing neglected aged population in old age homes in India.

**Methods:-** The Researcher has conducted doctrinal research by going through various data already available.

**Results:-** The research undertaken reveals that the Maintenance and Welfare of Parents and Senior Citizens Act 2007 in India, requires a revamp as it puts the entire burden on the family.

**Discussion:-** The Maintenance and Welfare of Parents and Senior Citizens Act 2007 requires amendment.

**Words for Indexing Purpose:-** State Government's Duty, Health and Medical Services, Social Security, Insurance System and Japanese Government and Senior Citizens.

**Keywords:-** State Government's Duty, Health and Medical Services, Social Security, Insurance System and Japanese Government and Senior Citizens.

### 1. INTRODUCTION

“*Maatru Devo Bhava*” (revere your mother as God) and “*Pitro Devo Bhava*” (revere your father as God) is a well-known proverb. Parents are considered as God in India. We may refer the Sri Guru Granth Sahib, “*KAHAY POOT JHAGRAT HA-O SANG BAAP / JIN KAY JANAY BADEERAY TUM HA-O TIN SIO JHAGRAT PAAP / /*” ( O son, why do you argue with your father? It is a sin to argue with the one who fathered you and raised you.). The above words of prudence guide us that we have to treat our parents as God.<sup>1</sup>”

Due to advancements in the medical field the life expectancy of people has been increasing over time. The number and proportion of people aged 60 years and older in the world population is increasing. In 2019, the number of people aged 60 years and older was 1 billion. This number will increase to 1.4 billion by 2030 and 2.1 billion by 2050. This increase is occurring at an unprecedented pace and will accelerate in coming decades, particularly in developing countries. This historically significant change in the global population requires adaptations to the way societies are structured across all sectors. For example, health and social care, transportation, housing and urban planning.

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<sup>1</sup> Cited by Hon'ble Mr. Justice Paramjeet Singh of the Honorable High Court of Punjab and Haryana at Chandigarh in the case of **Ashwinder Singh and another vs. Bhagwant Singh and another**, Regular Civil Appeal No. 186 of 2004.



Working to make the world more age-friendly is an essential and urgent part of our changing demographics.<sup>2</sup>

The increase will be greatest and most rapid in developing countries where the older population is expected to quadruple during the next 50 years. Such a global demographic transformation has profound consequences for every aspect of individual, community, national and international life. Every facet of humanity will evolve: social, economic, political, cultural, psychological and spiritual.<sup>3</sup> The remarkable demographic transition under way will result in the old and the young representing an equal share of the world's population by mid-century.<sup>4</sup> The fastest growing group of the older population is the oldest old, that is, those who are 80 old years or more. In 2000, the oldest old numbered 70 million and their numbers are projected to increase to more than five times till 2050. It is essential to integrate the evolving process of global ageing within the larger process of development. Policies on ageing deserve close examination from the developmental perspective of a broader life course and a society-wide view, taking into account recent global initiatives and the guiding principles set down by major United Nations conferences and summits.<sup>5</sup> Rights of a Senior Citizen for maintenance, welfare and protection are a small part of Human Rights.

As per Census 2011 in India, population of Senior Citizens (people aged 60 years and above) is 10.38 Crore. The projected population of Senior Citizens aged 60+ years of the country for 2026 (as on 01st March) is expected to be 17.32 crore, as per the report of Technical Group on Population Projections constituted by the National Commission on Population.<sup>6</sup> In Japan, According to population projections based on the current fertility rate, individuals over the age of 65 will account for 40% of the population by 2060, and the total population will fall by one-third from 128 million in 2010 to 87 million by 2060.<sup>7</sup>

Recently, India has surpassed China in terms of Population and there is a tremendous stress on the resources, but the same can be considered as an opportunity to levy premium on social security schemes equally on people and the Government and help the Government to provide the best of medical facilities and other welfare facilities to Senior Citizens and in that sense to truly achieve the goals of the Constitutional framers.

In India Senior Citizens held a very high social status and the Hindu Society, Muslim Society and the Catholic Society gave high regard to Senior Citizens. Even the Constitution of India has various safeguards for the protection of senior citizens. But with the change in time, the position of a Senior Citizen in India is no longer the same. Senior Citizens no longer get the respect that they deserve and are not even provided sufficient maintenance for their day to day needs which ultimately pushes them on the road and into begging for their day-to-day survival. Although Section 125 of the Criminal Procedure Code 1973 provides for the maintenance of Parents it does not specify maintenance for senior citizens. The Maintenance and Welfare of Parents and Senior Citizens Act 2007 is a special Act which was passed by the Indian legislature to take special care of the parents and senior citizens.

In Japan the welfare provisions for senior citizens date back first to the year 1963, when the Act on Social Welfare for the Elderly was introduced. The Health and Medical Services Act for the Aged also played an important role in terms of long-term care. During the budget compilation at the end of 1989, a Ten-Year Strategy to Promote Health and Welfare for the Aged—known as the “Gold Plan”—was formulated to set up the infrastructure necessary to provide health and welfare services for the elderly by 2000. The long-term care insurance system was also started in the year 2000 and as the

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<sup>2</sup> [https://www.who.int/health-topics/ageing#tab=tab\\_1](https://www.who.int/health-topics/ageing#tab=tab_1), World Health Organization, Ageing. (last visited on 02.03.2023)

<sup>3</sup> United Nations General Assembly, Report of the Second World Assembly on Ageing, held in Madrid from 8 April to 12 April 2002, UN Doc A/CONF.197/9 uploaded on <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N02/397/51/PDF/N0239751.pdf?OpenElement> (last visited on 07.12.2022)

<sup>4</sup> *Ibid*

<sup>5</sup> *Ibid*.

<sup>6</sup> <https://pib.gov.in/PressReleasePage.aspx?PRID=1847436>, Population of Senior Citizens, Ministry of Social Justice and Empowerment, (last visited on 02.03.2023)

<sup>7</sup> [https://en.wikipedia.org/wiki/Aging\\_of\\_Japan](https://en.wikipedia.org/wiki/Aging_of_Japan), Aging of Japan, (last viewed on 02.03.2023)



name indicates, Japan adopted the insurance method for addressing long-term care. In 2016, the government of Japan announced the launch of its Asia Health and Wellbeing Initiative (AHWIN), calling for joint efforts by Japan and its Asian neighbours to work together with the goals of creating a vibrant and healthy society where people can enjoy long and productive lives and contributing to sustainable economic growth in the region.

The Comparison of the laws and systems in the two countries would reveal that Japan is in the forefront of providing security, safety and welfare opportunities to its Senior Citizens. Japan started its course towards protection of the elderly in the year 1963 whereas India started its journey towards protection of the elderly in the year 2007.

## 2. NEED FOR MAINTENANCE OF SENIOR CITIZENS

Although Senior Citizens are a potential human resource, their knowledge is not put to any use. On the contrary many Senior Citizens are thrown out of the house because they are considered to be of no monetary use. These Senior Citizens can be a great resource to the nation and can contribute to the knowledge of the nation but they cannot put their mind to any other use apart from thinking about their day to day survival. If a Senior Citizen is adequately maintained then the Senior Citizen can utilize the available free time to contribute to the nation in the form of writings, opinions etc. Further if the senior citizens are not adequately maintained then they will resort to begging and staying on the streets thereby reducing the chances of the country being a developed country.

## 3. MAINTENANCE AND WELFARE OF SENIOR CITIZENS IN INDIA

The ancient and the holy texts give a special place to the duty of a person to maintain senior citizens. The system of joint family has been in practice in India from times immemorial. The ancient sources of knowledge have given importance to the elders and have treated them with respect and dignity. The head of the family sought advice from their elders on critical aspects and the elder's life experiences and wisdom were important for the family to arrive at a decision. The joint family systems provided a sense of social security to members of the family. However, over time the family dynamics have taken a turn. The role of the senior citizens is no longer similar to that of the traditional families. Families are more comfortable as a nuclear unit and this has resulted into breaking of ties.<sup>8</sup>

In Hindu Society, the duty of maintaining one's family is, clearly laid down in the Dayabhaga Law, Chapter-II, Section XXIII, provides that "The maintenance of the family is an indispensable obligation as Manu positively declares."<sup>9</sup>In earlier days, amongst the Hindus, the obligations of sons to maintain their aged parents, who were not able to maintain themselves out of their own earning and property was not dependent upon their possession of family property rather it was a personal legal obligation enforceable by the sovereign or the state.<sup>10</sup> Further, Kurma Purana (one among the Eighteen Mahapuranas) also states that "... No person can repay his parents even in hundred years for all the troubles that they go through to give birth to him and raise him to adulthood... The son who pleases his parents by his good qualities acquires the fruit of all good virtues... Service to one's parents is the only essence of Dharma and it leads one to Moksha upon death."<sup>11</sup> In Mitakshara family, Karta's responsibility is to maintain all the family members of the family. The responsibility is same in

<sup>8</sup>A Study on the harsh reality of senior citizens and family issues in India, Rhea Mukkatira Biddappa, Legal Desire International Journal on Law, 8:27.

<sup>9</sup>Analysis of Judgments and Laws regarding Maintenance and Welfare of Parents and Senior Citizens, Dr. Seema Totla, International Journal of Creative Research Thoughts (IJCRT), 2021, 9:12, 768-777.

<sup>10</sup>Philosophy of Maintenance and Welfare of Parents and Senior Citizens Act, 2007 in India: An appraisal, International Journal of Advancements in Research and Technology, 2012; 1:4, 1-6.

<sup>11</sup> Right to Property with Responsibility, International Journal of Legal Science and Innovation, S R A Sree, 2020, 2:3, 288-299.



Dayabhaga Law on the shoulders of Karta<sup>12</sup>. From this, we can assume that the similar responsibility is on Son or daughter being on position of Karta in Hindu family.<sup>13</sup>

In the Muslim Society, it is mandate of the *Holy Quran* that “...And be humble with them out of mercy and pray, My Lord be merciful to them both as they raised me up when I was young...” Children must show respect, humility and compassion to their parents, they must neither be patronizing nor condescending to them, for God Almighty says: “And be humble with them out of mercy and pray, My Lord be merciful to them both as they raised me up when I was young...” Children must also be grateful to their parents and acknowledge their favours, for God Almighty says: “And we have commanded people to ‘honour’ their parents. Their mothers bore through hardship upon hardship and their weaning takes two years. So be grateful to me and your parents. To Me is the final return” (Quran 31:14)<sup>14</sup>

Under the Catholic Society, although there is no personal law on maintenance, The Holy Bible states as follows:- “Children, obey your parents in the Lord, for this is right. Honour your father and mother, his is the first commandment with a promise, that it may go well with you and that you may live long in the land”...“Listen to your father who gave you life and do not despise your mother when she is old.”<sup>15</sup> Pope Francis has also stated that “*No elderly should be an exile in our families, The elderly is a treasure for our society*”.<sup>16</sup>

### **3.1 Welfare and maintenance of senior citizens: Constitutional safeguards**

The Constitution of India lays down the Fundamental Rights available to the people but does not specifically and particularly lay down the rights for senior citizens and parents in India. The fundamental rights and directive principles of state policies can be resorted to by senior citizens to protect their rights. The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.<sup>17</sup> The said equality which is a fundamental right would bring in its ambit the equal treatment to senior citizens as well. Article 21 of our Constitution provides that No person shall be deprived of his life or personal liberty except according to the procedure established by law<sup>18</sup>. Article 21 of the Constitution of India has also been read to bring into its ambit the protection of rights of senior citizens as well.<sup>19</sup>

### **3.2 Maintenance of Senior Citizens in India: Legal Framework**

In India, the safeguards available for Maintenance for Senior Citizens are to be found in the Criminal Procedure Code 1973, the Maintenance and Welfare of Parents and Senior Citizens Act 2007 and the various policies in force.

#### **3.2.1 Section 125 of the Criminal Procedure Code 1973**

Section 125 of The Criminal Procedure Code 1973 provides a remedy to wives, children and parents to claim maintenance. The provision even empowers the Magistrate to enforce the said Order. The essential factor for grant of maintenance however is that the children against whom the maintenance claim is filed by the parents should have sufficient means to maintain the parents and still neglect or refuses to maintain the parents.

<sup>12</sup>Sir Dinshaw Fardunji Mulla, Mulla Hindu Law 737 (LexisNexis, Noida, 21<sup>st</sup> Edition., 2015).

<sup>13</sup> View of Author

<sup>14</sup>Right to Property with Responsibility, International Journal of Legal Science and Innovation, S R A Sree,2020, 2:3, 288-299.

<sup>15</sup> *Ibid*

<sup>16</sup>A study on the harsh reality of senior citizens and family issues in India, Legal Desire International Journal on Law, 8:27,23-32.

<sup>17</sup> Article 14 of the Constitution of India

Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

<sup>18</sup> *Ibid*.

<sup>19</sup> Article 21 of the Constitution of India:- Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law



### 3.2.2 Integrated Program for Older Persons (IPOP)

The Ministry of Social Justice and Empowerment is implementing a Central Sector Scheme of Integrated Programme for Older Persons (IPOP) since 1992 with the objective of improving the quality of life of senior citizens by providing basic amenities like shelter, food, medical care and entertainment opportunities etc through providing support for capacity building of Government/Non Governmental Organizations/Panchayati Raj Institutions/local bodies etc.<sup>20</sup>

### 3.2.3 The National Policy on Older Persons (NPOP)

The National Policy on Older Persons was announced in January 1999 to reaffirm the commitment of the State to ensure the well-being of the older persons.<sup>21</sup>

### 3.2.4 National Awards: Vayoshreshtha Samman

The Ministry of Social Justice and Empowerment has prepared a new Scheme of National Awards for senior citizens to showcase the Government's concern for senior citizens and its commitment towards senior citizens with the aim of strengthening their legitimate place in the Society.<sup>22</sup>

### 3.2.5 The Maintenance and Welfare of Parents and Senior Citizens Act 2007

Although there were so many religious obligations as well as a constitutional mandate, till 2007 however, there was an absence of a special law exclusively for Senior Citizens; but in 2007, the Government of India passed the Maintenance and Welfare of Parents and Senior Citizens Act 2007. (Hereinafter referred to as "The Act" for the sake of brevity)

**a. Liability to maintain Parents/Senior citizens.** In terms of the Act, Adult children and grandchildren both male and female are responsible for paying maintenance to parents and grandparents<sup>23</sup>. A senior citizen who does not have children or grandchildren can claim maintenance from a relative who either possesses the property of the senior citizen or will inherit the property after the death of the senior citizen.<sup>24</sup> If there are many relatives in line to inherit the property of the senior citizen then all of them are liable to pay to maintenance to the senior citizen in proportion to their share in the inheritance.<sup>25</sup> If the Parent or the Senior Citizen whatever the case may be is not being maintained or is not being maintained adequately, the Parent or the Senior Citizen may move an application for maintenance before the Maintenance Tribunal himself or through any organization.

**b. No age limit for definition of Parent.** Under the Act, a senior citizen is a person who being the citizen of India has attained the age of sixty years or above<sup>26</sup>. The Act includes parents even in case they have not attained the age of sixty years.<sup>27</sup>

<sup>20</sup> Critical Study on Human Rights of Senior Citizen in India with Special Reference to Policies and Programmes, GAP Interdisciplinarity, Dr. R Pahuja, 2019, 3:1, 391-397.

<sup>21</sup> *Ibid*

<sup>22</sup> *Ibid*

<sup>23</sup> Section 2(a) of the Maintenance and Welfare of Parents and Senior Citizens Act 2007 states that children includes son, daughter, grandson and grand-daughter but does not include a minor.

<sup>24</sup> Section 2(g) of the Maintenance and Welfare of Parents and Senior Citizens Act 2007 states that a 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. Section 4(4) of the Maintenance and Welfare of Parents and Senior Citizens Act 2007 specifies that any person being a relative of a senior citizen and having sufficient means shall maintain such senior citizens provided he is in possession of the property of such citizen or he would inherit the property of such senior citizen.

<sup>25</sup> Proviso to Section 4(4) of the Maintenance and Welfare of Parents and Senior Citizens Act 2007 states that "Provided that where more than one such 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.

<sup>26</sup> Section 2(h) of the Maintenance and Welfare of Parents and Senior Citizens Act 2007 defines a senior citizen to mean any person being a citizen of India, who has attained the age of sixty years or above.

<sup>27</sup> Section 2(d) of the Maintenance and Welfare of Parents and Senior Citizens Act 2007 defines a parent to mean 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.



**c. Prescribed maintenance amount.** In terms of the Act, the maximum maintenance to be paid is Rs. 10,000/- (Rupees Ten Thousand Only) per month<sup>28</sup> which can carry interest at the rate not less than 5% but not exceeding 18%.<sup>29</sup>

**d. Consequence for non-payment of maintenance.** In case the maintenance amount is not paid even after the order, the defaulting person may have to undergo prison for a month or until the payment of the maintenance amount.<sup>30</sup>

**e. Speedy remedy.** The application has to be decided in 90 days of service of notice on the person against whom the case is filed, with only a further extension of 30 days.

**f. Prescribed duty of the State Governments.** In terms of the Act, every state has to establish old age homes of good standard in every district so that senior citizens and parents can be

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<sup>28</sup> Section 9(2) of the Maintenance and Welfare of Parents and Senior Citizens Act 2007 states that the maximum maintenance allowance which may be ordered by such Tribunal shall be such as may be prescribed by the State Government which shall not exceed ten thousand rupees per month.

<sup>29</sup> Section 14 of the Maintenance and Welfare of Parents and Senior Citizens Act 2007 states about the Award of interest where any claim is allowed.—Where any Tribunal makes an order for maintenance made under this Act, such Tribunal may direct that in addition to the amount of maintenance, simple interest shall also be paid at such rate and from such date not earlier than the date of making the application as may be determined by the Tribunal which shall not be less than five per cent. and not more than eighteen per cent.:

Provided that where any application for maintenance under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) is pending before a Court at the commencement of this Act, then the Court shall allow the withdrawal of such application on the request of the parent and such parent shall be entitled to file an application for maintenance before the Tribunal.

<sup>30</sup> Section 14 of the Maintenance and Welfare of Parents and Senior Citizens Act 2007 talks about the Award of interest where any claim is allowed.—Where any Tribunal makes an order for maintenance made under this Act, such Tribunal may direct that in addition to the amount of maintenance, simple interest shall also be paid at such rate and from such date not earlier than the date of making the application as may be determined by the Tribunal which shall not be less than five per cent. and not more than eighteen per cent.:

Provided that where any application for maintenance under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) is pending before a Court at the commencement of this Act, then the Court shall allow the withdrawal of such application on the request of the parent and such parent shall be entitled to file an application for maintenance before the Tribunal.

Section 125 (3) of the Criminal Procedure Code 1973 states that If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's 4 [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made: Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing. Explanation.—If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.



accommodated.<sup>31</sup>The State Governments have to also give wide publicity through media about the Act so that people are aware about the Act.<sup>32</sup>

#### 3.2.5.1 Other Significant Provisions of the Act, 2007

**a. Cancellation of transfer.** Perhaps the most noteworthy and different provision of the Act which has to be publicised by the State Government is Section 23 of the Act. In terms of Section 23 of the Act, any senior citizen who has after the commencement of the Act transferred his property by gift or any other mode to a transferee on the condition that the transferee would provide basic amenities and needs to the senior citizen and in case the transferee fails to do the same then the senior citizen is free to get the transfer declared as void.<sup>33</sup>

**b. Compulsory conciliation.** Another provision of the Act which sets it apart from the rest of the legislations providing maintenance is the aspect of conciliation.<sup>34</sup> Many a time litigations are a result of egos, anger or resentment. Conciliation is an effective way to deal with such kind of litigations as it helps to resolve issues after listening to parties.

**3.2.5.2 Senior Citizens and their Welfare and Maintenance: Indian Judicial Trend.** The Judiciary in India has been the forerunner in making the rights of Senior Citizens available at their doorsteps. The Honourable Calcutta High Court in the case of *Ali Burhan & Anr. Versus The State of West*

<sup>31</sup> Section 19 of the Maintenance and Welfare of Parents and Senior Citizens Act 2007 talks about the Establishment of old age homes.—

(1) The State Government may establish and maintain such number of oldage homes at accessible places, as it may deem necessary, in a phased manner, beginning with at least one in each district to accommodate in such homes a minimum of one hundred fifty senior citizens who are indigent.

(2)The State Government may, prescribe a scheme for management of old age homes, including the standards and various types of services to be provided by them which are necessary for medical care and means of entertainment to the inhabitants of such homes.

Explanation.—For the purposes of this section, “indigent” means any senior citizen who is not having sufficient means, as determined by the State Government, from time to time, to maintain himself.

<sup>32</sup> Section 21 of the Maintenance and Welfare of Parents and Senior Citizens Act 2007 states the Measures for publicity, awareness, etc., for welfare of senior citizens.—

The State Government shall, take all measures to ensure that—

(i) the provisions of this Act are given wide publicity through public media including the television, radio and the print, at regular intervals;

(ii) the Central Government and State Government Officers, including the police officers and the members of the judicial service, are given periodic sensitization and awareness training on the issues relating to this Act;

(iii) effective co-ordination between the services provided by the concerned Ministries or Departments dealing with law, home affairs, health and welfare, to address the issues relating to the welfare of the senior citizens and periodical review of the same is conducted.

<sup>33</sup> Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act 2007 states that Transfer of property is to be void in certain circumstances.—

(1) Where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails 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 shall at the option of the transferor be declared void by the Tribunal.

(2) Where any senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right.

(3) If, any senior citizen is incapable of enforcing the rights under sub-sections (1) and (2), action may be taken on his behalf by any of the organisation referred to in Explanation to sub-section (1) of section 5.

<sup>34</sup> Section 6 (6) of the Maintenance and Welfare of Parents and Senior Citizens Act 2007 states that The Tribunal before hearing an application under section 5 may, refer the same to a Conciliation Officer and such Conciliation Officer shall submit his findings within one month and if amicable settlement has been arrived at, the Tribunal shall pass an order to that effect.

Explanation.—For the purposes of this sub-section “Conciliation Officer” means any person or representative of an organisation referred to in Explanation to sub-section (1) of section 5 or the Maintenance Officers designated by the State Government under sub-section (1) of section 18 or any other person nominated by the Tribunal for this purpose.



**Bengal & Ors**<sup>35</sup> has observed that a Senior Citizen is entitled to live in peace in his own home and the same is a right which is enshrined and protected under Article 21 of the Constitution of India.

In **Ramapada Basak & Anr vs The State Of West Bengal & Ors**<sup>36</sup> it was held that *“It is now well settled that the children and their spouses living in the senior citizen's house are at best “licensees”. Such licence comes to an end once the senior citizens are not comfortable with their children and their families.*

The Hon'ble Supreme Court in **S. Vanitha Vs. Deputy Commissioner, Bangaluru Urban District and Ors.** reported in 2020 SCC online SC 1023 has held that since both, the Senior Citizens Act, 2007 as also the Domestic Violence Act, 2005 are special legislations, the two must be construed harmoniously and applied suitably by a writ court hearing a plea of the senior citizens that they do not want their children to live with them.

In **Justice Shanti Sarup Diwan, Chief Justice (Retired) & another Vs Union Territory, Chandigarh & others**<sup>37</sup>, while examining the Maintenance and Welfare of Parents and Senior Citizens Act 2007 observed that, *“The Act is not restricted to only providing maintenance but cast an obligation on the persons who inherit the property of their aged relatives to maintain such aged relatives. One of the major aims was to provide for the institutionalization of a suitable mechanism for the protection of 'life and property of older persons'.”*

Moreover, the Honourable Kerela High Court in the case of **Subhashini v/s The District Collector**<sup>38</sup>, has observed as follows:-

*“The Act attempts to provide a dignified existence to the elderly and in drawing the contours of the power conferred under Section 23(1) we have to necessarily be conscious of the inter-play of the rights of the senior citizen and that of the beneficiaries to a transaction; of those acquired on property as regulated by various statutes. The Preamble speaks of the Act as one to provide effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognized under the Constitution. Though not specified it has a reference to Article 21 and 41 of the Constitution of India.*

*Article 41 included in Part IV, 'Directive Principles of State Policy', is an obligation cast on the State and is not enforceable. The Act however, casts an obligation on the persons who are entitled to inherit, to maintain and care for their aged parents/relatives, in the twilight of their life...”*

The Honourable Supreme Court of India in the case of **Ashwani Kumar v. Union of India**,<sup>39</sup> has observed as follows:-

*“ ‘Social justice’ in the Preamble of our Constitution has been given pride of place and for good reason since it is perhaps the most important and significant form of justice.*

*The rights of elderly persons is one such emerging situation that was perhaps not fully foreseen by our Constitution framers. Therefore, while there is a reference to the health and strength of workers, men and women, and the tender age of children in Article 39 of the Constitution and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want in Article 41 of the Constitution, there is no specific reference to the health of the elderly or to their shelter in times of want and indeed to their dignity and sustenance due to their age.”*

### 3.2.5.3 Loopholes of the Act, 2007

Although the act is a novel step forward, it does suffer from many limitations.

<sup>35</sup> Writ Appeal No. 174 of 2021, (High Court of Calcutta) (Unreported) available at <https://indiankanoon.org/doc/171026927/> (last viewed on 08.12.2022)

<sup>36</sup> Writ Appeal No. 10835 of 2021, (High Court of Calcutta) (Unreported) available at <https://indiankanoon.org/doc/9363669/> (last viewed on 08.12.2022)

<sup>37</sup> Letters Patent Appeal No. 1007 of 2013 (High Court of Punjab and Haryana at Chandigarh) available at <https://indiankanoon.org/doc/49020550/> (last viewed on 08.12.2022)

<sup>38</sup> Writ Appeal No. 1460 of 2015 (High Court of Kerala at Ernakulam) available at <https://indiankanoon.org/doc/163884071/> (last viewed on 08.12.2022)

<sup>39</sup> Writ Petition (C) No. 193 of 2016 (Supreme Court of India at New Delhi) available at <https://indiankanoon.org/doc/27374596/> (last viewed on 08.12.2022)





- a. **Absence of uniformity in the process.** As the burden to implement the Act is on the State Government, there is no uniformity in the process between various states.
- b. **Insufficient maintenance amount.** The upper limit of the maintenance is Rs. 10,000/- (Rupees Ten Thousand Only) per month only even if a person is from a high social background.
- c. **Lack of enforcement.** Further, even though the Act has been in existence for the last 15 years many people are not even aware about the existence of the Act. The Act puts the burden of publication of the provisions of the Act on the State Government but it has failed in its duty.
- d. **Social Stigma.** From times immemorial people in India have always been very secretive about their personal lives and people would rather stay quiet than complain to the authorities because of the fear of shame in the society.
- e. **Confusion in the power of the District Magistrate.** The Act under Section 7 provides for constitution of a Maintenance Tribunal which shall be presided over by an officer not below the rank of Sub-Divisional Officer of a State and Section 15 provides for constitution of an Appellate Tribunal presided over by an officer not below the rank of District Magistrate. Further under Section 22 of the Act, the District Magistrate is conferred with powers and duties for implementation of the Act. The said provisions i.e Section 15 and 22 as such confers on the District Magistrate Appellate Powers as well as implementation powers, which may create total confusion.
- f. **Failure of time bound services in essence.** Although the Act provides for a time bound disposal of the maintenance applications as well as other applications before the Maintenance Tribunal and the Appellate Tribunal, the Act is silent as regards the various petitions which are filed under Article 227 of the Constitution of India before the Hon'ble High Court and Article 136 of the Constitution of India before the Hon'ble Supreme Court.
- g. **Unqualified presiding officers.** The Presiding Officers appointed for the Maintenance Tribunal and the Appellate Tribunal may not have the legal qualifications to decide the matter before them and this may hamper the justice dispensation system.
- h. **Difficulty in repudiating transfers.** Although the Act provides for cancellation of the instrument of gift in case the transferee fails to maintain the transferor even after the transfer of a property, the said cancellation is only if there was an express condition in the document that the transferee would maintain the transferor.
- i. **Shifting of burden on the Family by the State.** Finally, it appears that the Law tries to shift the burden of Article 41 of the Directive Principles of State Policy on others rather than the State. The State by way of the Act is avoiding its responsibility which is cast on it by the Constitution of India.

#### 4. MAINTENANCE AND WELFARE OF SENIOR CITIZENS IN JAPAN

Though issues of senior citizen welfare had existed a long time earlier in Japan, but the burden of looking after senior citizens was cast on the family rather than the Government.

##### 4.1 Social Welfare of Senior Citizen (*Social Welfare for the Elderly Act, 1963*)

In Japan, the first law i.e., the Act on Social Welfare for the Elderly was enacted in the year of 1963. According to the law, older persons in need of assistance were considered “low-income seniors without close family members to support them and “nursing homes” (yoro shisetsu) under the public assistance system were the mode of assistance and welfare to senior citizens.<sup>40</sup>

The Act on Social Welfare for the Elderly continued to support public assistance-based nursing facilities as “nursing homes for the elderly” (yogo rojin hoomu) and also established intensive care homes for the elderly” (tokubetsu yogo rojin hoomu, or “tokuyo”) in response to the need to provide for those elderly people in need of constant care.<sup>41</sup>

<sup>40</sup> <https://www.ahwin.org/japans-welfare-for-the-elderly-past-present-and-future/>; Japan's Welfare for the Elderly—Past, Present, and Future (Last visited on 11.05.2023).

<sup>41</sup> *Ibid*, (At the time this law was enacted, there was only one such intensive care home for the elderly in existence in Japan, and thus this law was in fact the country's first step on the path toward long-term care for the elderly).



#### **4.2 Health and Medical Services**

The Health and Medical Services Act played an important role in terms of long-term care. Not only did this law create a system to share the burden of medical expenses for those aged 70 and up among all of the medical insurance systems, but it also prescribed consistent health and medical services from prevention to rehabilitation. It was owing to this legislation that municipalities started offering medical check-ups for the elderly. With the revision of the act in 1987, health facilities for the aged (*rojin hoken shisetsu*, or *roken*) were established as intermediary facilities to take care of the elderly between being hospitalized and staying at home; these were intended to complement the already existing intensive care home for the elderly (*tokuyo*). A further revision of the act in 1991 introduced the visiting nursing system.<sup>42</sup>

#### **4.3 Gold Plan**

In April 1989, Japan introduced a new consumption tax, which led to the argument that the use of the additional revenue should be used to enhance public welfare. During the budget compilation at the end of 1989, a Ten-Year Strategy to Promote Health and Welfare for the Aged—known as the “Gold Plan”—was formulated to set up the infrastructure necessary to provide health and welfare services for the elderly by 2000. The Gold Plan was ground-breaking in that (1) it was a long-term (10 years) plan rather than the single-year budgeting that had been the norm in the welfare field; (2) it set clear numerical targets (i.e., 100,000 home helpers, 50,000 beds for short stays, 10,000 facilities for day services, 240,000 beds in intensive care homes for the elderly, etc.); and (3) it placed top priority on urgently preparing to provide in-home welfare services.<sup>43</sup>

#### **4.4 Long Term Care Insurance System**

Due to shortfalls in Japan’s health and welfare provisions for the elderly, long-term care insurance system was introduced to protect the interest of the class. The introduction of the long-term care insurance system was in fact a paradigm shift from a system in which seniors received whatever services were approved and assigned by the government to one in which they were able to choose and contract the services themselves. The new system was to be “user-oriented,” and the emphasis was on the fact that seniors could receive integrated health, medical, and welfare services from diverse agents “based on their own choice” rather than being “assigned” by the municipal authorities. Naturally, problems arose in terms of how to handle cases where the user did not have the capacity to make their own decisions. To address that problem, the “adult guardianship system” was introduced at the same time, starting in April 2000. The two systems were considered to be interdependent and essential to the effective provision of welfare for the elderly.<sup>44</sup>

The system adopted the insurance method for addressing long-term care. The system divides individuals over the age 40 into two age groups, (i) age of 65 & over are “primary insured persons,” (ii) between the ages of 40 and 64 as “secondary insured persons.” The premiums paid by those insured persons are to cover half the funding for the system. The ratio of the premiums for the primary and secondary insured persons is determined based on the populations of the two age groups in order to have flexibility to adapt to the aging populace. The remaining half of the benefits is to be provided by the national, prefectural and municipal governments from tax revenues at a ratio of

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<sup>42</sup> *Ibid*

<sup>43</sup> *Ibid*, (In order to pave the way for the implementation of the Gold Plan, in 1990 eight welfare-related acts were amended, including the Act on Social Welfare for the Elderly. The main substance of the revision can be summarized as follows: (1) it provided a clear definition of in-home welfare services in all of the acts and placed priority on in-home welfare services to support independent living by the elderly; (2) it transferred the management of residential facilities from prefectures to local municipalities in order to establish a structure that provides integrated and comprehensive welfare services both in homes and in care facilities; and (3) it required that municipalities formulate health and welfare plans for the elderly to systematically promote health and welfare measures. Through these amendments, plans were established to create a foundation for long-term care at the municipal level throughout the country, and in 1995, building on that, a “New Gold Plan” was introduced that upwardly revised the targets to be achieved by the year 2000.

<sup>44</sup> *Ibid*



2:1:1. The municipalities serve as the insurers. As a rule, service users are to cover 10 percent of the long-term care services they utilize.<sup>45</sup>

What kind of benefits is given to which users is one of the most important aspects in formulating a social security system. The long-term care insurance system as a rule offers long-term care services to those aged 65 and older who require it, but it stipulates that they must first be screened to receive “certification” of that need. Those wishing to utilize services must first apply to the municipality for screening, which are conducted based on nationally established certification standards. The extent of services that the senior can access is decided based on their “certified” level of need, and for those applying for in-home services, an upper limit is set, above which the user must bear the full cost of the extra services received. A care plan is made for the provision of services, and a new category of workers was created called “certified care managers,” who are trained specialists in creating and managing care plans. Thus, the long-term care insurance system was innovative since as the system shifted from a placement-based system where the use of services was decided by the local government to a system based on user selection of services, and a new process was introduced to determine benefits.<sup>46</sup>

Currently, Japan’s social security budget accounts for more than half of the country’s general expenditures and continues to grow, so finding a way to cover these costs is a major challenge on the domestic political front. From the demographic viewpoint, the overall population in Japan began to decline from 2008 on, while the number of those aged 65 and over is expected to continue to grow until 2042. As more people enter the “oldest-old” age group and the number of those certified to be in need of care increases, the content of medical services required will become more serious and demanding, which will require the establishment of a system that provides seamless medical and long-term care services. To meet such long-term care needs, Japan has put forth a policy objective at the national level of creating an “integrated community care system,” which is being promoted nationwide. This system would allow the elderly—even when they reach the stage where they need more substantial care—to live out their entire lives in their own community by providing for housing, healthcare, long-term care, prevention, and living support in an integrated manner.<sup>47</sup>

#### **4.5 Asia Health and Wellbeing Initiative (ASHWIN)**

In 2016, the government of Japan announced the launch of its Asia Health and Wellbeing Initiative (AHWIN), calling for joint efforts by Japan and its Asian neighbours to work together with the goals of creating a vibrant and healthy society where people can enjoy long and productive lives and contributing to sustainable economic growth in the region. In July 2016, the basic principles of the initiative were decided and a Private Sector Consortium of the Asia Health and Wellbeing Initiative was set up to promote the initiative in the private sector.<sup>48</sup>

Members of the consortium include representatives from the government of Japan and from approximately 400 domestic medical and long-term care organizations and businesses, private companies involved in elderly-related fields, and others. Preparations are underway for sharing Japan’s knowledge and experience in the field of aging with relevant actors in Asia. Discussions to date have focused in particular on (i) introducing technologies related to elder care that can be useful to other Asian countries, (ii) creating a training and education system to accept care workers from Asia, and (iii) supporting the promotion of the Japanese care industry in other Asian countries.<sup>49</sup>

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<sup>45</sup> *Ibid*, (In Japan long-term insurance became a system operated through cost-sharing, where all involved in the system help finance services by paying both a premium and user fees. Moreover, precisely because everyone in Japan pays those premiums and fees, the previous perception that benefits for the elderly were a form of benevolence for the poor was replaced by a strong sense that everyone has the right to use those services. That, in turn, led to a dramatic broadening of the scope of users to include citizens of all economic levels).

<sup>46</sup> *Ibid*

<sup>47</sup> *Ibid*

<sup>48</sup> *Ibid*

<sup>49</sup> *Ibid*



## 5. COMPARISON BETWEEN INDIA AND JAPAN

### 5.1 *Japan in the forefront in care for Senior Citizens*

The Comparison of the laws and systems in the two countries would reveal that Japan is in the forefront of providing security, safety and welfare opportunities to its Senior Citizens. Japan started its course towards protection of the elderly in the year 1963 whereas India started its journey towards protection of the elderly in the year 2007.

The various laws and legislations for the welfare of Senior Citizens in Japan had the occasion to harmonize with each other and now run in unity, whereas in India, though The Maintenance and Welfare of Parents And Senior Citizens Act 2007 has been in force for the last nearly 15 years, the same is still in the initial stages of integration with the other legislations in India.

### 5.2 *Contributory system of welfare*

In Japan, the long-term care insurance system adopted the insurance method for addressing long-term care while dividing the persons in different age groups like 40-64 and 65 above of age as “secondary insured persons” and “primary insured persons,” respectively. The premiums paid by those insured persons are to cover half the funding for the system. The remaining half of the benefits is to be provided by the national, prefectural and municipal governments from tax revenues at a ratio of 2:1:1. The municipalities serve as the insurers. However, in the Indian context however the Government does not seem to bear any of the cost or burden of the premium and the entire premium is borne by the parties.<sup>50</sup>

### 5.3 *Social Security*

The Social Security in Japan seems to be very developed. Whereas the same is not yet developed in India. The scale of social security benefits in Japan reached ¥121.3 trillion in fiscal year (FY) 2018 or 21.5 percent of GDP. The breakdown is about 50 percent for pensions, 30 percent for medical subsidies, and 20 percent for welfare, which includes long-term care for the elderly.<sup>51</sup>

### 5.4 *Shirking off responsibilities by the Government*

Japan has divided its responsibility with its citizens and has shared the burden to welfare of its senior citizens. Under the long-term care insurance system, the insurers are the municipalities and they come up with long-term care plans in three-year cycles, together with the premium to be charged in order to cover the costs of the plan. Since, 50 percent of the funding of the insurance derives from public funds and 50 percent from premiums, each municipality sets its own standards for the premium to be paid by the primary insured persons.<sup>52</sup> In India, the entire burden of welfare of senior citizens is on the children, grand children or persons who are in line to inherit the property of the Senior citizens.

### 5.5 *Health Care facilities*

The Health Care facilities of a country decide the type of care that its citizens will receive. Though the technology in India is ever developing, Japan is forefront in the world with respect to technological advances. The technological advances help in providing better health care facilities to senior citizens. The Health and Medical Services Act for the Aged also played an important role in terms of long-term care. Not only did this law create a system to share the burden of medical expenses for those aged 70 and up among all of the medical insurance systems, but it also prescribed consistent health and medical services from prevention to rehabilitation. It was owing to this legislation that municipalities started offering medical check-ups for the elderly.<sup>53</sup>

### 5.6 *Budget Allocation for Senior Citizens*

During the budget compilation at the end of 1989, a Ten-Year Strategy to Promote Health and Welfare for the Aged—known as the “Gold Plan”—was formulated to set up the infrastructure necessary to provide health and welfare services for the elderly by 2000 in Japan. Currently, Japan’s social

<sup>50</sup> <https://www.ahwin.org/japans-welfare-for-the-elderly-past-present-and-future/>, Japan’s Welfare for the Elderly—Past, Present, and Future, (last visited on 11.05.2023).

<sup>51</sup> *Ibid.*

<sup>52</sup> *Ibid.*

<sup>53</sup> *Ibid.*



security budget accounts for more than half of the country's general expenditures and continues to grow, so finding a way to cover these costs is a major challenge on the domestic political front. From the demographic viewpoint, the overall population in Japan began to decline from 2008 on, while the number of those aged 65 and over is expected to continue to grow until 2042. As more people enter the "oldest-old" age group and the number of those certified to be in need of care increases, the content of medical services required will become more serious and demanding, which will require the establishment of a system that provides seamless medical and long-term care services. To meet such long-term care needs, Japan has put forth a policy objective at the national level of creating an "integrated community care system," which is being promoted nationwide. This system would allow the elderly—even when they reach the stage where they need more substantial care—to live out their entire lives in their own community by providing for housing, healthcare, long-term care, prevention, and living support in an integrated manner.<sup>54</sup> But there has never been any such budget assistance/allocation for Senior Citizens in India. Although in India ever in every budget session, Senior Citizens get special tax exemptions and tax benefits, there is usually no separate budget allocation for welfare of Senior Citizens.

## 6. CONCLUSION AND SUGGESTIONS

The increasing population in the old age homes/Vrudhashrams in India would show that the percentage of senior citizens who are thrown out of their homes has been increasing in the recent times. It is believed that Japan has become a developed country because it has invested in its human resources. Also, Japan has divided its responsibility with its citizens and has shared the burden of welfare of its senior citizens. This is one thing which the Indian Government can learn from its Japanese Counterpart.

India being the most populated country in the world has ample of human resources. India has also various natural resources which are not present in the rest of the World. The human resources and the natural resources which are existing in India can make it one of the most developed country in the World and Japan can help India in reaching this goal by way of the ASHWIN. It has also been found that the Act has been introduced by the Government to shift the burden of welfare of Senior Citizens on the family of the Senior Citizen and the Government has shirked away its responsibility towards its citizens.

It is submitted that over time the welfare system for senior citizens in India may grow in the positive direction but the Act will obviously need some changes. Social Security should be introduced in India and the data already collected via the Aadhaar System should be utilized to develop schemes taking into consideration the number of senior citizens in each state in India. Although various rural and other insurance schemes are already in place in India, they can be remodelled and integrated into the Maintenance and Welfare of Parents and Senior Citizens Act 2007 so as to sufficiently cater to the needs of the senior population.

The Asia Health and Wellbeing Initiative (AHWIN), which calls for a joint effort by Japan and its Asian neighbours to work together for creating a vibrant and healthy society is a novel concept. Japan has many year's worth of experience in welfare activities of senior citizens and thus it can be an important resource for India to develop new ideas and its facilities in that regard. Countries can no longer develop and evolve in isolation and joint contribution and discussions are required for effective growth and development of various countries. India and Japan share more or less the same religious lines and same demographic situations being in the same continent and this gives the countries an added advantage to set everything right.

The Maintenance of the Senior Citizens in India, requires a revamp. The laws in India puts the entire burden on the family and many a times, the family may not be equipped to provide for the maintenance. Further many a times senior citizens may not want to reside in an Old age home because of their self respect, The Law therefore requires sufficient amendment so as to bring in its fold a system for providing maintenance to senior citizens who do not have a family or whose family

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<sup>54</sup> *Ibid.*



is unable to provide maintenance to them. It would be apt to conclude by quoting Thomas Jefferson who very well understood that law was ever evolving and ever growing and he stated thus:-

*“I am not an advocate for frequent changes in laws and Constitutions. But laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths discovered and manners and opinions change, with the change of circumstances, institutions must advance also to keep pace with the times. We might as well require a man to wear still the coat which fitted him when a boy as civilized society to remain ever under the regimen of their barbarous ancestors.”<sup>55</sup>*

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