

A CRITICAL ANALYSIS OF THE MWPSC ACT IN LIGHT OF THE 2019 BILL AND OTHER DECIDED CASES

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Abstract

The Maintenance and Welfare of Parents and Senior Citizens (MWPSA) Act, 2007 is possibly the only welfare legislation governing elderly rights in India. However, the Act attempts to address too many elderly concerns ending up addressing almost nothing. In a way, the Act is a weak legislation, which can hardly provide any respite to the elderly citizens. The shortcomings of the Act have been largely sought to be remedied by the 2019 Bill, which is pending before the Indian Parliament. The paper makes a critical analysis of the MWPSA Act and the 2019 Bill to underscore the (in)effectiveness of the provisions in extending any operative remedy. The paper also dissects a few judgments rendered by the High Courts and the Supreme Court to understand whether the Act has benefitted the hapless elderly individuals. The main premise on which this paper is based is that MWPSA is a weak enactment, which is unable to effectuate elderly rights, especially those relating to maintenance. The paper argues that the MWPSA Act, with or without the prospective amendment, needs to be replaced with a better law, an Elderly Care and Support Law. The paper employs descriptive and analytical methods to testify facts and existing normative frameworks.

Keywords: MWPSA Act, 2019 Bill, Maintenance Tribunals, Appellate Tribunals, Elderly Care and Support Law

I. Introduction

One of the major achievements (although on a lesser scale) during the first decade of the 21st Century was the enactment of the Maintenance and Welfare of Parents and Senior Citizens (MWPSA) Act, 2007.¹ The Act owes its genesis to the deliberations in the Parliament in the early years of the first decade of the 21st century. These deliberations were purportedly triggered by the National Policy on Older Persons (NPOP), 1999. NPOP was arguably the first policy that tried to underscore the

changing social, economic, cultural, infrastructural, medical and legal needs of the elderly population in India. Even state legislatures were considering enacting a welfare legislation to cater to the elderly needs and the state of Himachal Pradesh was perhaps the first one to enact the Himachal Pradesh Maintenance of Parents and Dependents Act (HPMPDA), 2001.² Interestingly, quite a few of the provisions of the MWPSA Act have

¹ Act 56 of 2007.

² Act 19 of 2001.

striking similarity with the provisions of HPMPDA.³

The enactment of the MWPSA Act, 2007 was a welcome move by the Indian Parliament since certain provisions of the Act try to address, at least partly, the issue of elderly maintenance and to an extent the issue of elder abuse. The Act obligates children (not being minors) or relatives or legal heirs to maintain a senior citizen (that may include a parent, who is otherwise not a senior citizen by age) if he/she is unable to maintain himself/herself. Further, the Act obligates the state governments to establish and maintain old-age homes, especially for those aged persons who cannot otherwise afford reasonable accommodation. It is needless to mention here that reasonable accommodation is one of the prerequisites of a dignified life. In *Dr. Ashwani Kumar's case*,⁴ the Apex Court in light of the reasoning laid down in *M/S. Shantistar Builders' case*⁵ had held that reasonable accommodation plays an instrumental role in the development of intellectual, mental and physical faculties of an individual. Apart from addressing the issue of

³ Arguably, the first bill on the said matter was floated in the Himachal Pradesh Legislative Assembly in 1996.

⁴ *Dr. Ashwani Kumar v. Union of India & Ors*, CWP No. 193 of 2016.

⁵ *M/S. Shantistar Builders v. Narayan Khimalal Totame and Ors*, AIR 1990 SC 630.

maintenance, establishment and management of old-age homes for indigent senior citizens, the Act also mandates medical care and support to senior citizens. In *Dr. Ashwani Kumar's case*,⁶ the Apex Court had referred to the judgment in *Vincent Panikurlangara's case*⁷ to hold that health, especially public health, is fundamentally related to the foundational development of individuals as responsible citizens. In addition to the above, the Act tries to address (*albeit* obliquely) the issue of elder abuse. Resultantly, the Act attempts to solve too many elderly concerns ending up solving almost nothing. The 2019 Bill⁸ strives to completely overhaul the MWPSA Act; it endeavours to amend the earlier one and introduces moot concepts such as security and safety of elderly individuals and creation and maintenance of institutions and services that would promote elderly rights.

The purpose of this paper is to critically analyse and assess the functional relevance of the MWPSA Act in light of the 2019 Bill and other decided cases. The first part of the paper

⁶ *Supra* note 4.

⁷ *Vincent Panikurlangara v. Union of India* (1987) 2 SCC 165.

⁸ Bill No. 374 of 2019. Arguably, the Bill was introduced on 11th December 2019 in the Lok Sabha during the winter session of the parliament. The Bill was referred to the Standing Committee on 29th December, 2019. A copy of the 2019 Bill is available at http://164.100.47.4/BillsTexts/LSBillTexts/asintroduced/374_2019_LS_Eng.pdf (last visited Apr. 14, 2021).

introduces the topic and the ensuing debate. The second part critically analyses the main provisions of the Act from the point of view of interpretation. The third part revisits the 2019 Bill through a clause-by-clause analysis of the proposed amendment(s). The penultimate part of this paper evaluates the operation of the provisions of the MWPSC Act in light of a few court rulings. The conclusive part winds up the debate by indicating that the elderly care and support jurisprudence must be separated from the maintenance jurisprudence as contemplated under the provisions of the Act.

II. A Critical Analysis of the MWPSC Act

The MWPSC Act strives to promote the maintenance and welfare of parents and senior citizens in conjunction with the provisions of the Indian constitution. It is presumably the only welfare legislation governing the rights of the elderly people in India. Section 1(2) of the Act extends its application even beyond the territory of India and deals with the respective rights and obligations (as contemplated under the Act) of Indian citizens settled abroad. Section 1(3) contemplates that for the Act to come into force, the choice and will of the respective states shall prevail; interestingly, although it is a central enactment, the operation of the law depends on the states. The

interpretation section of the Act, defines critical expressions such as ‘children’, ‘maintenance’, ‘parent’, ‘relative’, ‘senior citizen’, and ‘welfare’. However, the section fails to incorporate the definitions of expressions such as ‘maintenance officer’, ‘old-age homes’, ‘medical care’, ‘abandonment’, etc. In addition, some of the definitions seem inapt; for instance, the definition of ‘children’ does not include adoptive children, step-children, etc. Similarly, the definitions of ‘parent’ and ‘relative’ are narrow; for example, the term parent under Section 2(d) of the Act includes biological father/mother, adoptive father/mother and step-father/step-mother, but does not include grandparents and parent-in-laws. Another glaring flaw in the interpretation section may be found in the expression ‘maintenance’. Section 2(b) of the Act defines maintenance as something that only includes the bare minimum of food, clothing, shelter and medical attendance and treatment. A plain reading of the expression indicates that maintenance does not include safety and security that help elderly persons lead a peaceful and dignified life.

Section 3 of the Act creates an overriding effect of its provisions over other concurrent laws. In a way, the provision underscores the

unique and special nature of the Act. By virtue of Section 4, a parent or senior citizen, who is not able to maintain himself/herself on his/her own, may make an application (in pursuance of Section 5 of the Act) against his/her children or relative(s) if the children or relative(s) fail(s) to discharge their obligations in maintaining such parent or senior citizen. Similarly, a senior citizen may move an application for maintenance against his/her relative, who is in possession of the property or is likely to inherit the property of the senior citizen. Section 4 has to be read in light with Section 12 of the Act that allows a parent or a senior citizen to apply for maintenance under Chapter 9 of the Code of Criminal Procedure (CrPC), 1973 (Act 2 of 1974).⁹ Section 5 of the Act stipulates the procedure of application for maintenance. According to this provision, any parent or senior citizen¹⁰ who seeks maintenance from his/her children/relative may make an application to the Maintenance Tribunal,¹¹ which may grant interim

⁹ Such claims can be made under the relevant provisions of either the MWPSA Act or CrPC. Section 12 of the MWPSA Act makes it optional for a parent or senior citizen to file a maintenance application in any of the forums. Interestingly, Section 12 does not refer to Section 20 of the HAMA.

¹⁰ If such parent or senior citizen is incapable of moving the application, then any other person or even a registered voluntary association may move such application on behalf of such parent or senior citizen.

¹¹ Vide Sec. 7 of the Act, the state governments shall constitute one or more Maintenance Tribunals in each

maintenance while the inquiry¹² to determine the maintenance amount may be ongoing.¹³ Section 5 also makes it mandatory for the Maintenance Tribunals to hear matters as expeditiously as possible and proceedings must be disposed of within four months calculated from the day the notice is served. Section 6 of the Act deals with the territorial jurisdiction of the Maintenance Tribunals, which shall enjoy the position of the First Class Judicial Magistrate while dealing with matters that are heard by them. In addition, Section 6 lays down the procedure that such tribunals may adopt in hearing the matters expeditiously; for example, by virtue of Section 6(4) of the Act, the Maintenance Tribunals can take and record evidence, and can pass *ex parte* orders if necessary. In pursuance of Section 6(5) of the Act, a Director of Social Defence Division, MSJE was appointed¹⁴ as the nodal officer through

sub-division of a district within six months from the date of the commencement of the MWPSA Act. Such Maintenance Tribunals, may also take *suo motu* cognisance of maintenance matters vide Sec. 5(1)(c) of the Act.

¹² While conducting such inquiry, the Maintenance Tribunal, which functions as a Civil Court, may follow summary procedures. The Tribunal may also seek the assistance of persons who may otherwise have material knowledge critical to such inquiry. For further details, refer to Sec. 8 of the MWPSA Act.

¹³ In the event a Maintenance Tribunal conducts an inquiry in conjunction with the provisions under Section 5(3) of the Act, it can follow summary procedure.

¹⁴ The appointment was made in pursuance of a Gazette Notification dated 22.06.2011.

whom summons are served to children/relatives (of senior citizens and parents) who are staying outside India. Section 6(6) of the Act empowers the Tribunals to engage (before hearing an application made under Section 5) a Conciliation Officer to amicably settle the disputes between the contending parties.¹⁵

Section 7 of the Act bestows an obligation on the states to constitute one or more than one Maintenance Tribunals in each sub-division within six months from the date of commencement of the MWPC Act. Such Tribunals, which must be presided over by a Sub-divisional Officer (SDO) or an officer above the post of SDO, are required to adjudicate and decide upon the applications filed by virtue of Section 5. However, debatably, only a few states could effectively establish Maintenance Tribunals in each of the respective sub-divisions. Section 9 of the Act allows the Tribunals to pass maintenance orders asking children or relatives to pay a monthly maintenance amount, which shall not exceed Rupees ten thousand, if such children or relatives deliberately refuse to maintain a senior citizen who is otherwise not in a

¹⁵ The Conciliation Officer is supposed to submit his/her findings to the Maintenance Tribunal within one month. If the Conciliation Officer is able to amicably settle the matter between the contending parties, the Tribunal shall pass an order effecting such settlement.

position to maintain himself/herself. Such maintenance amount shall be paid to the senior citizen within a period of 30 days from the date the Tribunals pass such maintenance order(s).¹⁶¹⁷ Such orders may, however, be amenable to cancellation/modification if there is a change in the circumstances or there is evidence of a factual error; the Tribunals may alter the maintenance allowance accordingly.¹⁸

One of the glaring errors inherent in Section 9 (read with Section 13) of the Act is that it does not otherwise include parents. Another shortcoming of the provision is that it does not include any objective parameter such as the earnings of the children or the standard of living of the senior citizen based on which the Tribunals could substantively decide on the amount of maintenance. In addition, prescribing an upper limit of Rupees ten thousand as maintenance fee seems to frustrate the very purpose of the Act; the prescribed limit does not take into cognisance the income of the children. Maintenance orders that are passed by the Tribunals have the same effect

¹⁶ Sec. 13, MWPC Act.

¹⁷ When the Tribunals allow maintenance claims, they may also allow simple interest (of not less than five percent and not more than 18 percent) that may be calculated from the date of filing the maintenance application.

¹⁸ Sec. 10, MWPC Act.

and force as orders passed under Section 128 of the CrPC, 1973.¹⁹

Section 15 of the Act deals with the establishment of at least one Appellate Tribunal in each district. Such Tribunal must be presided over by the District Magistrate (DM) or an officer above the post of DM. As per Section 16 of the Act, any parent or senior citizen who is not satisfied with the decision of a Maintenance Tribunal may prefer an appeal within sixty days from the date of the maintenance order. The time limit of sixty days may, nevertheless, be condoned by the Appellate Tribunal if the petitioner(s) can sufficiently explain the cause of delay in filing the appeal. After hearing both the sides, the Appellate Tribunal may either allow or reject the appeal. The decision rendered by the Appellate Tribunal is final and binding on both the parties. Arguably, Section 16 of the Act is one of the contentious sections because on the one hand it extends the *audi alteram partem* rule to the respondents (children and relatives) while on the other hand it does not allow children and relatives to file appeals before the Appellate Tribunal(s). In addition, the provision does not allow any further appeal to a higher forum, indicating that aggrieved parties may only invoke writs or Special Leave

¹⁹ Sec. 11(2), MWPSA Act.

Petitions (SLPs) for any prospective remedy. One of the most notable features of the Act is that it allows competing parties to fight their own cause before the concerned judicial forum and bars legal representation. Parties appearing before the Maintenance Tribunal or the Appellate Tribunal are not required to hire advocates to vouch for their respective matters. While such a provision is supposed to promote expediency and reduce pendency time, it strikes at the root of Section 30(ii) of the Advocates Act.²⁰ In *Paramjit's case*,²¹ a division bench of the Punjab and Haryana High Court had held “there cannot be an absolute bar to the assistance by legal practitioners ... despite the ‘notwithstanding’ clause.” The Court further observed that while the legislature was right in framing the provision, especially while reading it with Section 3 of the Act, post the official notification of Section 30 of the Advocates Act on 15.06.2011, Section 17 would not bar legal practitioners to argue matters on behalf of either the plaintiff or the respondent. Interestingly, despite the perceptive observations of the Punjab and Haryana High Court in the aforementioned case, Section 17

²⁰ According to sec. 30(ii) of the Advocates Act, 1961 (Act 25 of 1961), all advocates who are on roll shall have the entitlement to practise before any tribunal that can take and appreciate evidence.

²¹ *Paramjit Kumar Saroya v. The Union of India & Anr.* (AIR 2014 P&H 121).

has not yet been repealed or struck down as being violative of Section 30(ii) of the Advocates Act.

Section 18 of the Act creates an obligation on the respective state governments to appoint a maintenance officer for every district. The officer must be the District Social Welfare Officer (DSWO) or an officer above the post of DSWO. The maintenance officer is supposed to represent the parent/senior citizen in the respective forum wherein his/her matter is heard.

Section 19 of the Act bestows an obligation on the state government to create and maintain at least one old-age home in each district of the state. Section 19(1) of the Act reads: “The State Government may establish and maintain such number of old-age homes at accessible places, as it may deem necessary, in a phased...” Each of these old-age homes are supposed to accommodate at least 150 elderly men and women who are indigent and are, therefore, unable to afford any stay in any other place. However, the expressions ‘may’ and ‘phased’ in Section 19(1) indicate that such directive lacks force; until now, many districts have not yet established old-age homes, in contravention of Section 19(1) of the Act. Section 19(2) allows the state governments to chalk out schemes for the

overall administration and management of such old-age homes. Apart from the establishment and maintenance of old-age homes, the state governments are also supposed to extend healthcare facilities such as arrangement of separate queues, provision of sufficient beds, establishment of geriatric wards in district hospitals, etc., to senior citizens.²² Furthermore, the state governments are also required to adopt measures to ensure that sufficient publicity of the provisions of the MWPSC Act is done through print and electronic media and that the government officers (at the central and state levels) are sensitised and made aware of the issues that relate to the Act.²³ In order to ensure effective implementation of the Act and to protect the life and property of senior citizens, the state governments may confer extraordinary powers to the respective DMs, who may further nominate an officer to exercise the powers and functions bestowed on them by the respective state governments.²⁴

Vide Section 23(1) of the Act, a senior citizen may dispossess his/her son/relative/legal heir of any property (which was transferred by the senior citizen on the condition that the transferee shall provide the basic physical

²² Sec. 20, MWPSC Act.

²³ Sec. 21, MWPSC Act.

²⁴ Sec. 22, MWPSC Act.

needs and amenities) if he/she fails to provide the said physical needs and amenities. Section 23(1) reads:

“... 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 ...”

The only provision of the MWPSA Act that attempts to address the issue of elder abuse, *albeit* loosely, is section 24, which bestows an obligation on a person, who acts as a caregiver of a senior citizen, to not leave the senior citizen with the intention of abandoning him/her wholly. Such an act of abandonment, if proven, shall be punishable with imprisonment that may extend to three months or with fine that may extend to Rupees five thousands or with both. Therefore, among the five standard categories of elder abuse, viz., psychological abuse, physical abuse, financial

abuse, sexual abuse and neglect, neglect (and in a way, psychological abuse) is addressed through section 24 of the Act. The offences committed under the provisions of the Act are bailable and cognisable, and are summarily triable by magistrates.²⁵ Section 24 of the Act makes abandonment (by the carer/protector) of a senior citizen an offence punishable with imprisonment that may extend to three months or with fine that may extend to Rupees five thousand or with both. Although, *prima facie*, it seems that by obligating children/relatives/legal heirs to maintain the senior citizens/parents, the state has somehow absolved itself from its responsibility of ensuring the overall welfare of the elderly citizens, the Act has been able to create some kind of deterrence against elder abuse.

The Miscellaneous part (Chapter VII) of the Act contains some distinctive features. For example, Section 27 of the Act confers plenary powers on the Maintenance and Appellate tribunals to adjudicate maintenance-related pleas and bars the jurisdiction of civil courts to hear any matters relating to the provisions of the Act. Section 28 creates a general defence in favour of the officers of the central and state governments if any of their actions undertaken while implementing the provisions of the Act

²⁵ Sec. 25, MWPSA Act.

interferes with the rights of the parents and senior citizens. The Act also allows the central government to periodically review and evaluate the implementation of the Act,²⁶ and to issue directives to the respective state governments to ensure effective execution of the provisions of the Act.²⁷

III. Revisiting the 2019 Bill

Despite the seemingly overwhelming provisions, the MWPC Act has not been of great help to either the parents or the senior citizens. One major reason why the Act has not been able to live up to its standards is that the drafting of the Act is seemingly improper. Many of the terms and expressions that find mention in the Act are not defined or are defined inaptly in the interpretation section of the Act, thereby making them all the more discrete and convoluted. To remove the fetters inherent in the text of the Act, quite a few amendments had been proposed earlier, although such amendments could not be effectuated. In 2019, an Amendment Bill was moved in the Indian Parliament for approval. The 2019 Bill is being discussed presently in the Indian Parliament. The Standing Committee of the Indian Parliament had submitted its observations on the proposed

amendments in January 2021. After thorough scrutiny and evaluation the Standing Committee observed that expanding the expressions such as ‘children’, ‘relative’, ‘parent’, etc., would help not only in reducing legal ambiguities but also in facilitating maintenance claims.²⁸

The proposed Bill attempts to revamp the Act so that the implementation of the provisions of the Act becomes more meaningful and easy. Clause 3 of the Bill tries to redefine certain provisions of the interpretation clause; for example, it includes step-children, children-in-laws, adoptive children, etc., within the definition of children under Section 2(a) of the Act. It also strives to broaden the scope of expressions such as relative and parents.²⁹ Further, it expands the definition of ‘prescribed’ by removing the term ‘state government’ from Section 2(e) of the Act. Last but not the least, the Bill makes an effort to expand the expressions ‘maintenance’ and ‘welfare’. The interpretation section of the Bill

²⁶ Sec. 31, MWPC Act.

²⁷ Sec. 30, MWPC Act.

²⁸ India News, *Expanding children, parent, relative definition will leave no scope for ambiguity: Parliament panel* (January 30, 2021, 2.32 pm) <https://www.hindustantimes.com/india-news/expanding-children-parent-relative-definition-will-leave-no-scope-for-ambiguity-parliament-panel-101611997024305.html> (last visited Apr. 14, 2021).

²⁹ The Bill includes grandparents and parents-in-law within the definition of ‘parents’. Likewise, the Bill incorporates minors (who are represented by their legal guardians) within the definition of ‘relatives’.

also introduces terms such as ‘code’, ‘local body’, ‘maintenance officer’, ‘organization’, ‘senior citizens’ care home’, ‘multi-service day care centre for senior citizens’, etc.

Apart from suggesting sweeping changes in the interpretation clause of the MWPSC Act, the Bill also suggests a few notable modifications in the operative parts of the Act. Clause 4 proposes to substitute Section 4 thereby rendering it easier for senior citizens and parents to file maintenance applications whenever they are not maintained properly by their respective relatives and/or children or are neglected by them. The proposed Section 4 not only creates a shield against neglect, a form of elder abuse, but also underscores that any infringement of the rights of senior citizens and parents to live with dignity would be addressed efficaciously through law. Clause 5 of the Bill attempts to revise the maintenance application procedure by amending Section 5 of the Act;³⁰ it proposes to bring down the time of disposal of maintenance applications to 60 days in case of the oldest-old persons, aged 80 years and above. Clause 6 intends to revamp Section 6 by including the purpose of referring the maintenance proceedings to a

³⁰ As per the 2019 Bill, an application for maintenance may also be filed online.

Conciliation Officer, who shall be nominated by the Maintenance Tribunal.

While minor amendments have been suggested in Sections 7 and 8 of the principal Act, a complete revamp of the provisions has been suggested in Section 9. The Bill removes the upper cap (of Rupees ten thousand) of the maintenance amount and leaves it to the discretion of the Maintenance Tribunal to determine the maintenance fee in view of (a) the senior citizen’s/parent’s standard of living (b) earnings of the children. The Bill also recommends revision in Sections 10, 11, 12³¹ and 13 of the Act. The proposed amendment of Section 16 through Clause 14 of the Bill is distinct in the sense that it allows even relatives and children to file appeals against the decisions of the Maintenance Tribunal(s). Interestingly, the 2019 Bill does not recommend repealing or amending Section 17, which bars legal practitioners to argue matters before the Tribunals on behalf of either the plaintiff or the respondent.³² Clause 15 moots a thorough revision of Section 18 of the Act; as per the Bill, the role of the Maintenance officers is supposed to change because they would not only be obligated to ensure

³¹ The proposed amendment still does not include options regarding maintenance claims under Section 20 of HAMA, 1956.

³² Section 17 of the MWPSC Act seemingly interferes with Section 30(ii) of the Advocates Act, 1961.

compliance with maintenance orders but also be asked to function as a liaison officer for senior citizens or parents. Clause 16 of the Bill attempts to amend the title of Chapter III of the principal Act. In conjunction with that, Clause 17 tries to alter Section 19 by replacing the expression ‘old-age homes’ with ‘Senior Citizens’ Care Homes’ and ‘Multi-Service Day-Care Centres’. Such institutions, which must be registered with the respective state governments, may be established by the government, a private or voluntary organisation, a trust, NGO, or a society. However, the central government is supposed to prescribe the minimum standards for these institutions to ensure that the said institutions do not lack infrastructure, food, recreation, medical facilities, etc.

Clause 18 of the 2019 Bill attempts to amend the title of Chapter IV of the principal Act by replacing the expression ‘medical care’ with ‘healthcare’. Clause 19 proposes to substitute Section 20 of the principal Act and strives to ensure that every hospital, including private ones, extend facilities such as provision of dedicated and separate queues, treatment of diseases, especially those that are chronic, terminal and degenerative, establishment of state-of-the-art geriatric care framework, etc., for senior citizens. In addition, it also intends

to extend homecare facilities to senior citizens who are mentally or physically impaired. Clause 20 of the Bill attempts to modify the title of Chapter V of the principal Act by adding the expression ‘other welfare measures’. Clause 21 of the Bill suggests amendments in Section 21 and Clause 22 proposes a new Section (Section 21A), obligating state governments to formulate and implement an all-inclusive action plan. The proposed Section 21A also bestows an obligation on the respective state governments to facilitate coordination between and among stakeholders so that holistic welfare of the senior citizens is promoted.

Clause 23 of the Bill proposes an amendment in Section 22, which strives to revamp the protection system available to senior citizens and parents. Through the prospective insertion of Section 22(2) and 22(3), police protection would be extended to senior citizens and parents, and every police station would be obliged to designate at least one officer (of the rank of Assistant Sub-Inspector or above), the nodal officer, to tackle issues and concerns facing the senior citizens and parents. The projected Section 22(3) obligates state governments to establish special units,³³ which

³³ Such units are also supposed to comprise the nodal officer(s) and two social workers.

shall be headed by a police officer of the rank of Deputy Superintendent of Police or above, in each district to ensure proper coordination of the functions of the police with regard to senior citizens and parents. Clause 24 of the 2019 Bill suggests changes in Section 23 of the principal Act whereas Clause 25 introduces a new section, Section 23A, requiring the central and state governments to provide for welfare measures such as creation of age-friendly and accessible environment, promotion of public facilities, etc., for senior citizens. Section 23A also mandates the establishment and maintenance of a helpline number to facilitate safety and protection of senior citizens. Clause 26 recommends changes in Section 24 of the Act. Under the proposed Section 24, whoever abandons or abuses a senior citizen or parent shall be liable to be punished with imprisonment, which may extend till six months or with fine up to Rupees ten thousand or with both. Clause 27 of the Bill proposes to insert Sections 28A and 28B; Section 28A obligates state governments to furnish details of institutions (registered under the relevant provisions of the Act) on websites and Section 28B requires that the registered institutions must be accredited by a competent body. Clause 28 of the 2019 Bill seeks to amend Section 29 of the principal Act. Clause 29, the last clause of the Bill,

seeks to amend Section 32. The proposed Section 32 would allow the Central government to follow model rules that state governments are supposed to follow *mutatis mutandis*.

Overall, the 2019 Bill endeavours to completely refurbish the MWPSA Act. It attempts to extend the benefits of maintenance and welfare to senior citizens and parents and tries to make sure that institutions and services are established and maintained so that the requirements of the senior citizens and parents are effectively addressed and their overall well-being (physical and mental) is promoted. However, the 2019 Bill fails to address the two critical issues of income insecurity and elder abuse that are related intrinsically to the overall welfare of senior citizens. While there is no provision whatsoever on income security for the elderly in the proposed Act, the provisions on elder abuse are loose and require purposive interpretation, more so because the interpretation section of the proposed Act does not include the definitions of terms such as physical abuse, emotional abuse, etc. Another glaring flaw in the 2019 Bill is that, similar to the principal Act, it fails to draw a distinction line between parents and senior citizens, and the respective remedies that may be available to them. In addition, it seems that some of the

suggested welfare and protection measures such as extension of care-homes and home-care services, promotion of elderly healthcare, extension of police protection, etc., may not be translated into reality because such measures would require active and continuous support from the respective states and other stakeholder organisations. Overall, the Bill needs to be modified further in light of the changing socioeconomic circumstances and the protection needs of the elderly population.

IV. The Decided Cases

Since the only routes to reach out to the higher judiciary are through writs and SLPs, not many cases relating to the MWPSA Act are heard. However, a couple of judgments are discerning, and they provide an inflection point in the entire discourse on elderly rights. Of special mention is the March 15, 2017 judgment of the Delhi High Court in *Sunny Paul's case*³⁴ wherein the Court indicated that senior citizens of India still have some remedy against their own children and/or relatives if they are physically abusive. In the aforementioned *case*,³⁵ the Court had upheld the order of the Maintenance Tribunal to dispossess an abusive son from the property of

³⁴ Sunny Paul & Anr. v. State NCT of Delhi and Ors., 2017 SCC OnLine Del 7451 (India).

³⁵ *Id.*

his parents. The Maintenance Tribunal had passed the order by virtue of Section 23(1) of the Act.

The *ratio decidendi* laid down in *Sunny Paul's case*³⁶ resonated in *Dattatrey Shivaji's case*,³⁷ wherein a single judge of the Bombay High Court held that a senior citizen does have the authority to dispossess and evict his/her ward(s) from a property if they are abusive. The Court further added that the Tribunal's competence to pass eviction orders is in conformity with Section 4 of the Act. Furthermore, the Court relied on the judgment of the Delhi High Court in *Sachin's case*³⁸ to note that it is the prerogative of the elderly parents to allow or not to allow his/her ward(s) to stay with them.

Regrettably, of late, the state High Courts have started taking a contrasting view, especially on the competence of the Maintenance Tribunal to pass orders under section 23(1) of the Act. In some of their recent orders, they have questioned the powers of the Maintenance Tribunal(s) to pass orders of dispossession. For example, in *G. S. Manju's case*,³⁹ a single

³⁶ *Id.*

³⁷ Dattatrey Shivaji Mane v. Lilabai Shivaji Mane & Ors., W.P. NO.10611/2018. (India).

³⁸ Sachin & Anr v. Jhabbu Lal & Anr, RSA 136/2016 (India).

³⁹ G.S. Manju v. K.N. Gopi, 2019 SCC OnLine Ker 5363 (India).

judge of the Kerala High Court held that the dispossession order passed by the Appellate Tribunal was flawed and that there was no need of a written stipulation to prove that the transferee maintained the transferor. The matter was eventually remitted to the Maintenance Tribunal for reconsideration. A similar kind of a reasoning could be found in *Simrat's case*,⁴⁰ wherein a single judge of the Punjab and Haryana High Court had set aside the eviction order of the District Magistrate-cum Maintenance Tribunal, Patiala holding that such Tribunal does not have the power to pass eviction orders under the provisions of the MWPSC Act, the Rules and the Punjab Action Plan, 2014. In another shocking development, a division bench of the Delhi High Court had sought the response of the Delhi government regarding a notification that had *inter alia* amended a rule allowing elderly people to evict their children/relatives/legal heirs from property.⁴¹ Briefly, the recent legal developments indicate that the MWPSC Act is unable to uphold the sanctity of the Maintenance and the Appellate Tribunals and

⁴⁰ *Simrat Randhawa v. State of Punjab & others*, CWP No. 4744 of 2018 (India).

⁴¹ India Legal, *Law Favouring Parents, Senior Citizens may have a Flaw*, (September 11, 2020) <https://www.indialegallive.com/constitutional-law-news/courts-news/law-favouring-parents-sr-citizens-may-have-a-flaw-delhi-hc-wants-aap-govts-response/> (last visited Apr. 14, 2021).

to address (even in part) the issue of elder abuse.

The December 2018 ruling of the Supreme Court in *Dr. Ashwani Kumar's case*⁴² was one of its kind since the Court (possibly for the first time) had the opportunity to revisit the provisions of the MWPSC Act in terms of their implementation. Regretfully, the Apex Court had noted that the economic budgeting issue (mooted by the state) behind the non-implementation of the provisions of the MWPSC Act cannot stand as a valid defence. Further, it had observed that an elderly person's right to live with dignity is inviolable. A similar view had resonated in *Senior Citizen Welfare Organization's case*,⁴³ wherein the Uttarakhand High Court had observed that senior citizens have the fundamental right to live with dignity and that the state is obliged to create conditions and circumstances to ensure social protection and welfare of senior citizens.

V. Conclusion

The main argument that resonates throughout the paper is that the MWPSC Act, with or

⁴² *Supra* note 4.

⁴³ *Senior Citizen Welfare Organization & Anr. v. State of Uttarakhand & Anr.* (Writ Petition (PIL) No. 52 of 2013) (disposed of on 12 June, 2018). In this case, a Division Bench of the Uttarakhand High Court issued 14 Directives urging the state of Uttarakhand to take appropriate steps to ensure protection of elderly people.

without the prospective amendment, is a weak legislation, which needs to be replaced with a better law. Debatably, one of the main reasons why the MWPSA Act is weak is that the Act attempts to address too many elderly concerns ending up addressing almost nothing. Principally, it tries to (a) extend maintenance facility to parents and senior citizens through a defined process (b) oversee the establishment and management of old-age homes (c) provide medical care and support to senior citizens. Because of its lack of focus, the MWPSA Act has not been able to promote substantive justice and to obligate states to uphold structures and processes facilitating elderly care and support. One significant loophole of the Act is that there is hardly any compliance mechanism; many of the states had devised Rules much late and quite a few of them did not oblige to the mandates under Sections 19 and 20 of the Act. In view of this, the Bombay High Court in *Yogesh Sadhwani's case*,⁴⁴ had directed the Government of Maharashtra to inform the court about the steps it had undertaken to implement the provisions (especially the ones relating to the establishment of Maintenance Tribunals, establishment of old-age homes, extension of medical care, etc.) of the Act. The other major

⁴⁴ *Yogesh Sadhwani v. Commissioner of Police*, 2015 SCC Online Bom 959.

loophole of the Act is that the order for maintenance vide Section 9 of the Act has a maximum ceiling of Rupees ten thousand. Therefore, even though the High Courts in *Subramanya's case*⁴⁵ had allowed maintenance, they could not overstretch the limit because of the statutory limitation. Yet another issue with the Act is with eviction notice(s) passed by Maintenance Tribunals by virtue of Section 23 of the Act. While in a few matters eviction orders passed by the Tribunals were upheld by the court,⁴⁶ in a few others the jurisdiction of the Tribunals to pass such orders was challenged.⁴⁷

While the analyses of the MWPSA Act and the 2019 Bill point to some glaring legislative drafting flaws, including flaws in the interpretation section of the Act, the rulings of the High Courts in *G.S. Manju's case*⁴⁸ and *Simrat Randhawa's case*⁴⁹ indicate the inherent infirmity of the Maintenance Tribunals to decide on eviction matters expeditiously. Further, the ruling in *Dr. Ashwani Kumar's case*,⁵⁰ proves beyond any

⁴⁵ *H. S. Subramanya v. H.S. Lakshmi*, ILR 2014 Kar 4978.

⁴⁶ *Santosh Surendra Patil v. Surendra Narasgopnda Patil*, 2017 SCC Online Bom 3053.

⁴⁷ *Smt. S Vanitha v. The Deputy Commissioner, Bengaluru Urban District & Ors.* Civil Appeal No. 3822 of 2020.

⁴⁸ *Supra* note 39.

⁴⁹ *Supra* note 40.

⁵⁰ *Supra* note 4.

reasonable doubt that neither have the provisions of the Act helped the poor elderly to get the requisite number of old-age homes nor have they helped them receive the desired medical support as contemplated under Section 20 of the Act. In fact, in *Ashwani Kumar's case*⁵¹ the Apex Court had instructed the central government to issue directives to the respective state governments to effectively implement the provisions of the MWPSA Act.

In view of the above findings, it is recommended that the elderly care and support jurisprudence as contemplated mainly under Sections 19 and 20 of the MWPSA Act is separated from the maintenance jurisprudence that runs across the breadth and width of the Act. It is possibly ripe time that the Indian Parliament frames an *Elderly Care and Support Law* for the benefit of the aged population. The MWPSA Act may be left to address maintenance issues (and in a limited way to elder abuse) since both the spirit and the letter of the Act attempt to create an overwhelming maintenance jurisprudence in favour of the elderly population in India.

⁵¹ *Id.*