

ELDER LAW IN INDIA: WHAT IT MANDATES & DOES NOT and WHY

Dr Mala Kapur Shankardass

**Associate Professor of Sociology, Maitreyi
College, Univ. of Delhi, (South Campus), India**

Regional Representative for Asia of INPEA

**Managing Trustee: Development, Welfare &
Research Foundation**

Email: mkshankardass@gmail.com

MWPSC Act 2007

- **The Maintenance & Welfare of Parents & Senior Citizens Act, 2007 is the 1st elder law in India which brings together various provisions: welfare (shelter), security (health & social), and protection (of life and property).**
- **Provides legal sanctity to the rights of older persons – right to inclusion & entitlement.**
- **Reaches out to those deprived of shelter, maintenance & protection.**

The Act mandates

- **Effective provisions for ensuring financial, emotional and social security to the ‘uncared’ senior citizens by their families. Covers Indian citizens residing outside the country too .**
- **Setting up of Tribunals headed by divisional magistrates, who can take action without any plea from the victims of elder neglect, but made by any other person or NGOs.**

The Maintenance Tribunals

- **Constituted at the district level to dispose the case within 90 days, extension of 30 days. Has the right to order interim maintenance allowance from the children/siblings.**
- **Refusal to comply by the adult child, attracts issuance of warrants for imprisonment and fine.**
- **The law provides for Conciliation Officers.**
- **Have the power of the civil court.**

Mandate to the States

- **Puts obligation on States to provide shelter, health, social security, recreation. But spells out only the minimum to do, 1 OAH in each district.**
- **All the 28 States & 7 Union Territories of must notify the Act, frame rules for the Act, appoint maintenance tribunals. Appoint maintenance officers & appoint Appellate tribunals.**

Responses from the States

- **Only 5 States have taken all the 5 steps.**
- **21 States & all UTs have notified the Act.**
- **The State of Delhi has taken 4 steps, has yet to appoint Appellate Tribunals.**
- **Different States at varying degree of the process of implementation of the Act.**
- **Police departments recognize the need to protect older persons against neglect, abuse & violence.**

The Act does not mandate

- **Seniors to decide on their maintenance & need for services, the maximum entitlement is Rs.10,000/-.**
- **It is the Tribunal which decides the minimum and maximum amount of entitlement for senior citizen and also fixes the range of interest to be paid on delayed payment.**
- **It does not mandate children to provide physical care and emotional support.**
- **Appearance by a legal practitioner is prohibited.**

Mandates States to establish & maintain OAHs, Chap III

- At accessible places, in phased manner, at least 1 in each district to accommodate minimum of 150 Ops who are indigent.**
- Sec 19 outlines governance of OAHs by a set of standards relating to quality of shelter, medicare & recreational means.**
- It does not give response to an indigent OP with shelter, though unwanted by his family. A limitation of the Act.**

Mandates medical support for senior citizens, Chap IV, Sec 20

- **Provision for beds for OPs, separate queues, expansion of facilities for treatment of chronic, terminal & degenerative diseases, expansion of research activities for chronic elderly diseases & ageing, earmarked geriatric facilities in every district hospital provided by geriatricians.**
- **Govt. has operationalized a National Program of Health Care for the Elderly.**

Mandates OAHs & medical support for senior citizens, but

- Provides no guidelines for management of OAHs and provision of services.**
- Puts obligation only on government hospitals or hospitals funded fully or partially by the government. Does not bring private medical care under the obligation.**
- Makes no provision for day care and respite care facilities.**

Mandates protection of life & property, Chap.V, Sec 21-23

- **Envisages publicity, awareness, training for police & judicial officers, effective coordination among concerned Ministries & Depts.**
- **Periodic review of action plans formulated in different States with a view for upgrading the process in line with advances in knowledge.**
- **Should be in the Rules, which currently are limited & doesn't outline obligation of Police depts for periodic analysis of crimes violating the right to protection.**

Concluding comments

- **While the legislation recognizes multiple needs of parents & senior citizens, it responds in a limited and narrow manner to concerns of senior citizens for support and care, overlooking the base of vulnerabilities.**
- **It does not take care of ‘denials’ faced by OPs in family, neighborhood, community as focus only on right to maintenance by children in case unable to support self, and to shelter provisions, health & social care, related to welfare mechanisms of the state.**

The review of Tribunals indicates

- Complaints of neglect, abuse, mental cruelty, denial of food, separation from families, forced confinement, denial of contact with others & access to communications, etc.**
- Legal provisions relating to crimes are dealt under appropriate Criminal laws, but denial to right to life with dignity in under the 2007 Act.**
- Chap VI outlines the nature of offences & procedure for their trial. These are cognizable & bailable & not under the jurisdiction of civil courts.**

Finally, suggestions for amendments

- **To include in the text of the Act phenomena of elder abuse & neglect. The Act does integrate the crime perspective in the body of the text, thus no legal response to the issue of elder abuse & psychosocial neglect. Violence or harm to body and property is addressed through Indian Penal code.**
- **Rules to the Act should include statement of 'Standards' or 'Protocols' for maintenance, care & protection.**
- **To end, more research is needed to evaluate laws & critically review work of Tribunals.**