

# Safeguarding Property Rights of Senior Citizens: Analyses of Legislative And Judicial Trends

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**Abstract:** Family is the main pillar of strength in shouldering responsibility of aged persons. Where we aim to provide dignified life to all segments of society, it is quite disheartening to find that in reality in many families the elderly are perceived as an increasing burden in the household. Marginalization, isolation and insecurity are felt by the older persons and they become alienated from their own families. They are neglected and ill-treated by those whom they have given crucial period of their life. Through this article, I have tried to analyze the laws applicable to senior citizens for security and safety of their assets and to safeguard their health. Consequently India being signatory to the “Madrid International Plan of Action on Ageing, 2002,” has introduced “The Maintenance and Welfare of Parents and Senior Citizens(MWP) Act, 2007” which is an important legislation to safeguard the elderly from exploitation and abuse in India. No doubt there are adequate laws to protect their lives as well as to provide them financial, economic and physical security but lack of awareness and weak implementation of laws has resulted in lack of effective institutional grievance redressal mechanisms

**Keywords:** Senior citizen, Welfare, Maintenance, Parents, Legal Framework.

## Introduction

To safeguard the interests of senior citizens and parents, number of policies are framed by the government at national, state and district level to make them economically independent and to protect their properties and other assets. For maintenance and welfare of parents and senior citizens, Article 21 and 41 of the Constitution of India guarantees right to every citizen to lead a dignified life. Article 41 of the Indian Constitution, is one of the Directive Principles of State Policy which imposes obligation on the State to maintain and care senior citizens. However, the right of a senior citizen to exclusively reside in his own house must be viewed from the prism of Article 21 of the Constitution of India. Constitution Bench of the Supreme Court in *Navtej Singh Johar vs. Union Of India*<sup>1</sup> has considered inclusiveness of minority, the LGBT community in the society so as to uphold their individual dignity; unaffected by their sexual orientation. Similarly considering the vulnerability of aged persons, special enactment was introduced in 2007 to ensure their care and welfare and to provide them dignified life. However due to weak implementation and lack of awareness this class of the society is at risk of great vulnerability due to their aging problems. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 is enacted as a beneficial legislation to address elder abuse by recognising that the ageing had become a major social challenge and casts an obligation on the persons who inherit the property of their aged relatives to maintain such old relatives.

## Safeguarding Property Rights of Senior citizens

Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 protects the property of the parents whereby the gifts of property is made by the parents and senior citizens but at later stage the children do not provides basic amenities to them, such gift deed can be cancelled, at the option of the parent/senior citizen<sup>2</sup>. This section corresponds to section 19 of Indian Contract Act<sup>3</sup> and section 31<sup>4</sup> and 126<sup>5</sup> of Transfer of Property Act.

<sup>1</sup> [2018 (10) SCC

<sup>2</sup> 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.”

<sup>3</sup> Section 19-Voidability of agreements without free consent-when consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

<sup>4</sup>Section 31- Condition that transfer shall cease to have effect in case specified uncertain event happens or does not happen.—Subject to the provisions of section 12, on a transfer of property an interest therein may be created with the condition superadded that it shall cease to exist in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

<sup>5</sup> Section 126-When gift may be suspended or revoked.—The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor it shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part at the mere will of the donor is void wholly or in part, as the case may be.

Section 23 is interpreted from time to time by judiciary in various judgments in the light of section 31 and 126 of Transfer of Property Act -whether a gift or transfer deed needs to include an express condition in this regard or it is implicit in the section itself. The Court, in several decisions, has observed that the provisions of the Act must be interpreted liberally to benefit senior citizens. In *Shabad Khairi & Anr.v. State & Ors*<sup>6</sup> the Division Bench of the Court has observed that “beneficial legislation in a welfare State demands a liberal interpretation wide enough to achieve the legislative purpose and be responsive to some urgent social demand in a welfare state.”

In *Sunita Bhasin v State of NCT of Delhi*<sup>7</sup>, court held that section 23 is to be read liberally keeping in view the object and scope of the Act and any gift of property executed out of love and affection would require in implicit form to provide basic amenities and physical needs of the donor and express stipulation that the gift deed has been made on an understanding that the transferee would look after the basic needs of the donor is not necessary and same was retreated in *Sumesh Anand v. Vinod Anand*<sup>8</sup>.

However in *Subhashini v District Collector*<sup>9</sup>, Kerala high court took strict view and held that in case of absence of an explicit condition to provide basic amenities and physical needs in gift deed, transfer of property by way of gift by the senior to son or daughter is void to invoke revocation of gift deed under section 23(1). The Calcutta High Court also opined in *Almas Sk.Bewa v. Felujan*<sup>10</sup> that though the property was gifted out of love and affection, the gift deed if did not have an explicit condition seeking basic amenities and physical needs to be provided by the transferee, such transfer cannot be revoked.

In 2020, in case of *S. Vanitha v Deputy Collector*<sup>11</sup>, Supreme Court held that a Maintenance Tribunal has the authority to order an eviction of the donee if it is necessary to protect and maintain a senior citizen or parent.

In *Shweta Shetty v State of Maharashtra*<sup>12</sup>, the appellant made demands to receive "her share" in her father's property as daughter but her father aged 94 was being continuously harassed and mistreated by Shweta who caused physical distress to the father. In view of the above, Mr Shetty(father) wanted to evict Shweta. The Bombay High Court held that the appellant has no rights in the property since her father was alive. It was also held that she had been harassing him so she could rightfully be removed from his house, and this does not amount to an eviction.

Hence taking the latest Supreme court and High court judgments into consideration it can be concluded that Section 23 of The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 specifically provides that where the property has been gifted by the parent on the understanding that the transferee child/legal heir shall provide him maintenance and basic amenities, any failure on the part of the child to honour such promise made, amounts to fraud. Such promise may be express or implied and may be inferred from the circumstances surrounding the transaction. The agreement to transfer the property by such elderly person shall be deemed to have been obtained by fraud and as such is voidable at the option of the aggrieved parent/senior citizen in such cases. It is further observed the provisions of The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 override the provisions of any other law in force in India. After coming into force Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Section 23 shall prevail and transfer of property by gift made by the senior citizen, becomes voidable at the option of the transferee. However, if the property has been transferred before The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 came into force, the parents claim to get the property back from their children shall be weighed on different footing.

## Conclusion

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Traditional values and family support systems for senior citizens have been weakened as a result of socio-cultural changes associated with globalisation and development (age 60 years and above). The Senior Citizens Act primarily aims to provide the elderly with maintenance rights, it also provides for certain property-related rights, including the right to reclaim transferred property and to remove or evict their children or relatives from their property. Although the Senior citizen Act is an important legislative measure to ensure maintenance and welfare of senior citizens and protect them from neglect and abuse, it is still a long way from ensuring that the benefits of this legislation transpires to all senior citizens across the country especially among senior citizens who lack awareness and education in this respect. However, there are numerous ways through which elder abuse can be curbed and there are number of ways to encourage the effective implementation of this Act in the future. There is a need to develop appropriate social care systems for senior citizens in order to manage the expected growth and to provide them safe and secured environment in the future.

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<sup>6</sup> LPA No.783/2017

<sup>7</sup> W.P.(C) 13139/2018

<sup>8</sup> 2016 (1) RCR (Civil) 278

<sup>9</sup> (2020) 4 KLJ 204

<sup>10</sup> 2019 SCC OnLine Cal 5417

<sup>11</sup> 2020 SCC OnLine SC 1023

<sup>12</sup> 2022) 1 Mah LJ 279