

Elderly Persons' Right to Maintenance: A Critical Review of the Existing Legal Regime in Bangladesh and Exploring Potential Ideas from Successful Jurisdictions

Suprobhat Paul*

Abstract: Approximately 8.10% people of Bangladesh are the elderly citizens (over 60 years)¹ and most of them have no sufficient means to afford the basic necessities of life to survive. So, the maintenance of elderly people needs a serious attention both from social and legal perspective. To find legal solution for miserable life of elderly citizens of Bangladesh, this research examines the recent enactment for maintenance of aged parents in Bangladesh. It analyses Hindu and Muslim personal laws along with a comparison with maintenance laws of Singapore, China, and India. It reveals that our maintenance laws are weak in comparison with those of the above-mentioned jurisdictions. On the one hand, it is silent regarding the issues of childless parents and responsibility of the offsprings having no means to support their parents. On the other, it overemphasises the criminalisation of offsprings' failure to maintain their aged parents rather than ensuring proper financial support to the elderly. Therefore, it suggests that legislature should review or reconsider the Act. However, it should be mentioned that only legislative provisions are not enough for the betterment of elderly people, if our social values are not prevalent within the younger. So, the state should take responsibility on its own shoulder to ensure social security for elderly citizens.

Keywords: Ageing problem, elderly person, family law, right to maintenance, and social security.

1. Introduction

To Bangladesh the issue of demographic ageing is relatively new since its demographic transition started recently.² The quite impressive growth rate of the aged people³ juxtaposed with the increasing lifespan of the population leads to a projection that the numbers of elderly people is certain to increase markedly with

* The author is an Assistant Professor at the Department of Law & Justice, Jahangirnagar University. He can be reached at: skpshuvro@juniv.edu.

¹ Aditya Gaur, 'Demographic Transition of Bangladesh' (2019) 8(12) International Journal of Science and Research 666, 669.

² M Nazrul Islam and Dilip C Nath, 'A Future Journey to the Elderly Support in Bangladesh' [2012] Journal of Anthropology 1, 2.

³ Jakir Hossain and Saifur Rahman, 'Ageing in Bangladesh: Issues and Challenges' [2000] Centre for Policy Dialogue, Dialogue held at the Senate building of Rajshahi University on December 22, 1999.

time in Bangladesh.⁴ Scholars opine that such growing numbers of the elderly people may set down several socio-legal concerns, i.e., their status in family, accommodation, food and other living arrangements, health support, social security and overall well-being of the elderly.⁵ To mitigate all these concerns, the first and foremost issue is to ensure the financial support to the aged parents. Unfortunately, the society is witnessing a gradual decrease in this financial support to the elderly over time, and the problem has reached at an alarming situation.

In past, the society and legal system was so structured that the elderly had a great decision-making power in the family. A family was regarded as a unit in ancient Hindu legal system.⁶ At the head of the family was the oldest male person, who had absolute authority over the family members and claimed absolute obedience from them.⁷ In consequence, offsprings were bound to obey the elderly and to contribute and place their resources at the disposal of elders for prudent handling. Such status and roles of the elderly in the family continued as a social norm until the end of nineteenth century. During the last century this system slowly eroded, and the elderly evidenced abuse and neglect from their offsprings as a consequence. Though there are significant number of cases, where offsprings are unable to maintain their aged parents, the number of offsprings unwilling to maintain the aged are certainly not less than the number of indigent offsprings. As a result, most of the elderly, particularly widows, widowers, and the childless parents suffer from some basic human problems, such as, poverty, hunger, malnutrition, senile diseases, absence of proper medical care, exclusion, deprivation of accommodation, etc.

Available literatures in this field mainly tries to find out the causes responsible for discontinuity of long cultural and religious tradition of looking after the elderly,⁸ which created a legitimate expectation that “families and

⁴ Samad Abedin, ‘The Demographic Aspects of Ageing in South Asia with Special Reference to Bangladesh: Trends and Implications’ (1995) Paper presented at the Conference of CMIG, Calcutta.

⁵ Samad Abedin, ‘Social and Health Status of the Aged in Bangladesh: Issues and Challenges’ (1999) Paper presented at a conference arranged by Centre for Policy Dialogue in Rajshahi, 22 May 1999.

⁶ VD Kulshreshtha, *Landmarks in Indian Legal and Constitutional History* (Revised by BM Gandhi, 7th edn, Eastern Book Company 1995) 2-3.

⁷ *ibid*, 3.

⁸ Samad Abedin, *The Elderly: Emerging Issues* (Bangladesh Association of Gerontology 2005); Abedin (n 4 & 5); Islam and Nath (n 2); Hossain and Rahman (n 3); P. Chakrabarti, ‘Perception of Old Age Problem in Rural Nadia’ (1996) 3 *The India Journal of Gerontology* 1; Susan Erb, ‘A Study of Older People’s Livelihoods in Bangladesh’ [2011] *Help Age International* <<https://www.helpage.org/silo/files/a-study-of-older-peoples-livelihoods-in-bangladesh.pdf>> accessed 06 January 2021; Md. Delower Hossain, ‘The Law of Maintenance and its Implementation in Bangladesh: A Comparative Study’ (2006) 1(7) *Rajshahi University Law Journal* 85.

communities will care for their own elderly members.”⁹ Poverty seems to be the single biggest factor that is weakening the traditional norm of caring old parents in the family.¹⁰ Also, the gradual extinction of joint families is a good reason for deteriorating our old eulogistic traditions.¹¹ Since daughters are not expected to directly support their old parents, older parents generally live with their sons within the same house. Therefore, living arrangements of the elderly are co-residence with their earning son.¹² Though the moral duty of each and every child to maintain parents under divine law has been accepted worldwide, “the process of development tends to bring rapid changes in social behaviour and institutions, which might have adverse implications for the care and well-being of the elderly persons.”¹³ Because the protection of parents under divine laws is being violated with the gradual decline in this moral duty and the breaking-up of family bondage, statutory provisions addressing the needs and protection of aged parents are being introduced.

In this perspective, this paper deals with the right to maintenance and support of aged parents under existing statutory and personal laws in Bangladesh. It mainly concentrates on the lacuna of laws and nature of barriers to implement the rights of aged parents in Bangladesh. Also, it seeks to find out the loopholes of existing legal framework in order to realise how this deadlock situation can be removed to ensure maintenance and support for aged parents. To this end, the study undertakes a cross jurisdictional analysis examining the family laws of some selected Asian countries having specific laws on the maintenance and welfare of elderly persons.

2. Elderly people in Bangladesh

Those who are young today in course of time will surely be elderly. Everybody is to be elderly inevitably overcoming the restlessness of time of romanticism of youth one by one, i.e., in the assessment of time everybody is to reach a particular limit. However, there is no specific method to determine the actual number of the elderly people of Bangladesh as there is no particular age limit in respect of definition of old age. In Bangladesh, the elderly people can be defined in four ways. Firstly, the United Nations includes people aged sixty or more into

⁹ Islam and Nath (n 2) 2.

¹⁰ Md. Ahsan Kabir, ‘Rights and Care for Elderly People: Bangladesh Perspective’ (2006) 1(6) Rajshahi University Law Journal 71, 84.

¹¹ *ibid.*

¹² AKM Shafiul Islam, *Social Aspects of Ageing in Bangladesh: A Case Study of Rajshahi City* (Rajshahi University Press 2001) 6.

¹³ M Kabir, ‘Demographic and Economic Consequences of Ageing in Bangladesh’ (1999) Paper presented at a Dialogue held at the Senate building of Rajshahi University, 22 December 1999.

the elderly class in Asia and the Pacific region.¹⁴ Secondly, the Bangladeshi government servants retire at 59 years¹⁵ while, the judges of the Supreme Court and the teachers at the Universities retire at the age of 67 and 65 years respectively.¹⁶ In measurement of upper limit of retirement age, people of 65 and more may be regarded as elderly. Thirdly, a government servant is to take preparation before retirement; that's why the persons yet to retire can be considered as elderly from the time of taking preparatory leave for the retirement. Lastly, the expected average span of life for the Bangladeshi is approximately 64 years. In this respect, the individuals reaching the age of 55 years may be called as elderly.¹⁷ The statistics of various censuses indicate that the rate of increasing the elderly people is faster and more than that of total population. In 1951 the number of people of 55 years or above was 6.5% of the total population and in 1991, it increased to 7.2%. As per Bangladesh Demographics Profile 2013, the percentage of people over 55 years is 10.6% that amounts to 17 million approximately. Study reveals that "the numbers of elderly people will increase six-fold by mid-century, creating a large burden on the health system, especially for chronic illnesses."¹⁸

Old age, in fact, is a different social problem concerning development and value. In the cultural environment of Bangladesh, the old age case is a significant chapter. The elderly people of Bangladesh do face various types of problems. Among them, economic problem comes first for which they are to select begging for living. In addition, loneliness and deprivation of family and community make an elderly man's life intolerable. Besides, they have the problems of hygiene, treatment, housing, recreation, security etc. Of course, these problems vary according to socio-economic situation and regional position of the country. Usually, the disadvantaged elderly people face several problems.

One of the chief problems of the elderly people of Bangladesh is financial insolvency, for which they face acute problems at every step of their living. Among them, uncertainty of maintaining the daily living, scarcity of resource, lack of job opportunities and above all, gradual degradation of traditional social support system, etc. are principally responsible for their sufferings. For earning money, they are forced to engage themselves in such employments that are not suitable for their physical ability. Though they are not appropriate to their

¹⁴ Md. Nurul Islam, *Social Action, Social Reform and Social Legislation* (Tasmia Publications 2004) 82.

¹⁵ Public Services Act 2018 (Act No. LVII of 2018) s 43. Under this section, the freedom fighters are entitled to serve the country one year more. Their retirement age is 60.

¹⁶ Constitution of the People's Republic of Bangladesh 1972, art 96; Public University Teachers (Retirement) (Special Provision) Act 2012 (Act No. XXIX of 2012), s 3.

¹⁷ Islam (n 14) 82.

¹⁸ AKM Nurun Nabi, 'Population Challenges for Bangladesh' *The Daily Star* (July 2012) <<https://archive.thedailystar.net/forum/2012/July/population.htm>> accessed 6 February 2021.

physical state at all, for their living there is no other alternative open to them. At such old age, for earning money, they are forced to pull rickshaws and carts, break bricks, excavate earth and other hard labours. Those who are able to labour physically and take pride in living with the earning in such a way, take part in such professions or occupations. Otherwise, for living they are to depend on the mercy of others or select begging. Those who have no support from family or are unable to earn money for living, face extreme insecurity of money. In villages, the elderly people, particularly issueless widows face the worst economic wretchedness, because economic status in villages is comparatively lower than that in towns. Usually, it is noticeable that the elderly people themselves do not take preparation to cope with economic crisis at old age; they become destitute to cope with the daily necessity and do not get scope to think about their future.

In the final stages of old age, immeasurable condition of housing is more fatal. Inadequacy of proper housing facility is more heart-rending for the elderly people than their financial insufficiency. But in rural areas, housing problem is not so much serious matter. An old man can live with his offspring if s/he has no house. The elderly, who have no issue, can take shelter in their near relatives' house. Generally active old women afford their food and housing facility from any of their relatives and neighbour in exchange of their assistance in some domestic works of that family. But in case of an old man, getting such type of family support is harder than that of an old woman. Housing problem for urban aged people is more acute than the rural aged people. In urban society, getting such type of support from relatives is a rare scenario, if such relative is not very near one. Housing problem also exists for the elderly people having both family and property. In most cases, the offspring are not willing to give housing facility in their own house to their old parents. Rather they are more excited to take the possession of their parents' property. The descendants consider their parents burdensome. Even in some cases, it is seen that they have no definite living space in their own house. The old parents have to move from one child's house to another one, even in some not least, they are forced to take shelter to their sons-in-law.

With the gradual increase of age of the elderly, their immune system decreases day by day. As a result, they are attacked by different types of diseases. Some diseases are specially related with the old age people, such as eyesight, hearing power, memory power, digestive power, etc., decrease; blood pressure and cardiovascular diseases attack; and liver and kidneys become weak. That means the insight activity in all parts of their body becomes easily vulnerable. Besides, some mentionable problems are also seen, such as, sciatica, backbone pain, etc. There are some diseases like stroke, anaemia, asthma, paralysis, scurvy, malnutrition, pneumonia, leukaemia, schizophrenia, etc., which attack only the older people. For this reason, in proportion to their

increasing age, the necessity of proper treatment becomes urgent. In most cases, these problems attack the elderly for want of proper nutrition, unhealthy living condition, and unhygienic environment. So, the magnitude of diseases is more for these people. But the medical facilities are very limited for the old aged and the existing facilities are merely urban based, though they are not easily accessible for the disadvantaged section. As a result, the physical condition of the elderly who live in rural areas is more miserable. They have to die earlier and past their last stage of lives in illness condition.

In this transitional period, the main problem for the Bangladeshi elderly people is psychological one. One who is now old has shown their loyalty to the family and their previous generation. So, they can expect the similar loyalty and respect from their next generation. But they do not get so for the change of time and moral turpitude of the young generation. In their youth, they gave all their belongings to the family integration, and they did it in expectation of loyalty and respect from their descendants in their old age. But the practical phenomenon does not go to that way at all. All kinds of deprivation from society and community result in their mental problem. When the level of disappointment goes up to the highest position, some elderly chooses the way of suicide to get rid of all the problems, which is a very heart-rending graph.

Gradual deterioration of traditional values and customs are the main causes for creating many problems of the elderly people in domestic and social cases. The customs of joint family system, which have been working as a talisman for the elderly since the ancient time, are degrading at present because of the breaking-up of that system. The ever-increasing emergence of nuclear family system has great adverse impact on the safety of the elderly. In nuclear family system, the elderly persons are regarded as extra burden, even by their own family members. Besides, the separate living or staying in the abroad of their offspring always makes the lives of the elderly painful. In this circumstance, the social problem becomes more acute when it is accompanied by above mentioned ones.

3. Right to maintenance as social security of the elderly

Maintenance can be easily defined as a financial support given by one person to another person, who is dependent on the former on any reasonable ground. In general, "Maintenance signifies all those things, which are essential to the support of life,"¹⁹ though in common parlance it is limited to food. It therefore comprehends food, cloths, lodging, toilet requisites, medical attention, and other

¹⁹ DF Mulla, *Principles of Mahomedan Law* (Pak Publishers 1968) 338.

necessaries to life,²⁰ but not merely necessities of life.²¹ Therefore, "maintenance must vary according to the position and status of a person."²² Generally, persons of four categories are entitled to maintenance. Firstly, descendants include minor children, unmarried daughter, married daughter (if she is poor, but moral obligation) and adult son, if he is indigent. Secondly, ascendants include parents and grandparents. The others are collaterals and wife.

Focusing on the idea that the middle-aged group or working generation should repay the old for help they received as dependent children, Wynne defines social security and other arrangements for the support of the elderly as reciprocity system.²³ As Vladimir Rys observes, the terms "Social Security" mainly denotes:

the securing of a financial support to take the place of earnings when they are interrupted by unemployment, sickness or accident, to provide for retirement through age, to provide against loss of support by the death of another person and to meet exceptional expenditures.²⁴

Accordingly, Barua opined that:

the concept of social security can be said to be inherent in the traditional joint family system which has been prevalent in our society since ages. With the growth of industrialisation in the wake of World War I, and under the impact of modern economic forces, the joint family system came to be gradually undermined. So, the modern concept of social security attracts attention of the state authorities,²⁵

Therefore, modern concept of social security generally refers to social insurance, social assistance, family allowance and a variety of social services designated to reduce economic burdens of a family.²⁶ Historically people, however, look to their family members, even the religious groups as well, to meet their need for social security. So, the social security of a person can never be imagined without maintenance or financial support from the relatives. For this reason, maintenance or financial assistance should be provided for those, who, during their old age, are incapable of affording the basic needs (such as food, clothing, housing, medical facility, etc.) because of poverty, unemployment, sickness, or disability. To speak with due deliberation, the amount of maintenance should be enough to meet these needs, and therefore, subject to a comprehensive assessment of social

²⁰ Faiz-Badrudin Tyabji, *A Handbook on Muhammadan Law* (All Pakistan Legal Decisions 1966) 100; Neil BE Baillie, *Digest of Moohummdan Law* (Premier Book House 1965) 441.

²¹ *Aliyar v Pathu* [1988] 2 KER LT 446.

²² *Kesarkoinverb v C.I.T* [1960] AIR (SC) 1343.

²³ Edward A Wynne, *Social Security: A Reciprocity System under Pressure* (Westview Press 1980) 12.

²⁴ Vladimir Rys, 'Comparative Studies of Social Security' (1966) 19(1) Bulletin of ISSA 7, 8.

²⁵ Nayan Barua, *Social Security and Labour Welfare in India* (Ashish Publishing House 1995) 11.

²⁶ Md. Ali Akbar, *Elements of Social Welfare* (College of Social Welfare and Research Centre 1965) 9.

and financial situation of the parties. At last, it can be concluded that the noble objective of social security to ensure standard lifestyle for a person is never possible but with private financial security or sufficient maintenance and support from the relatives.

4. Elderly persons' right to maintenance in Bangladesh

The exploitation and abuse of aged parents within the families and societies are very rampant. Examples of deprivation of aged parents from their wealth and property and their forced labour in their own house are not rare in our society. They are also deprived of due respect from their descendants, whom they made a huge contribution for in their period of ability. The state alone is not responsible party for such ignorance of the rights of aged parents. The family members, the society, and the victim aged parents themselves are responsible for this state of affairs. But Bangladesh did not have any special legislation for the aged parents before 2013 and the absence of such law was a good ground for the endless sufferings of aged parents. However, it should be admitted that our traditional religious laws were very much positive in this regard. But the lack of proper vigilance among the society members including the victims and the state mechanisms, especially the courts of law result in the non-enforcement of the aged parents' rights under the personal laws.

4.1. Right to maintenance under personal laws

The family related issues in Bangladesh are purely determined by the personal laws of the respective individuals. It is undeniable that maintenance is a matter of personal law. In every religion, this matter has been emphasised merely to ensure better lives for those who cannot support themselves. However, the paper concentrates on Hindu and Muslim laws regarding maintenance of aged parents, since most of the people in Bangladesh belong to two major religions, Santana and Islam. It is the limitation of the paper not to cover the Christian and Buddhist laws on this topic, though some populations of these religions also exist in Bangladesh.

4.1.1. Islamic jurisprudence and Muslim law on maintenance of aged parents

The holy Quran (17:23) has ordered the offsprings to be kind to their parents. Following the above verse, it has been accepted without any difference of opinion that it is incumbent upon a Muslim to maintain his parents and grandparents, if they are in necessitous circumstances.²⁷ The difference of religion creates no impediment for providing maintenance to parents. The Quran

²⁷ Muhammad Faiz-ud-din, *A Textbook on Islamic Law* (Shams Publications 2008) 150.

(31: 15) also commands, "make good behaviour with them (parents) in this world." The spirit of this verse is to provide maintenance to the parents even if they are infidels.

Regarding the obedience and maintenance to parents the Prophet Muhammad (peace be on Him) said, "Your father is your middle door. Now it is up to you to protect it or destroy it."²⁸ He also said, "the pleasure of Allah depends on the pleasure of your father and the displeasure of Allah depends on the displeasure of your father."²⁹ He further said "both your father and mother are either your paradise or hell."³⁰ The spirit of these *Hadiths* is that anybody can achieve paradise by providing maintenance and good treatment to his parents. If any Muslim, despite his ability to provide maintenance to his parents, neglects to do so, he then, of course, creates their displeasure, which will lead them to hell. It is, therefore, incumbent upon a son to maintain his parents whatever they are Muslims or not.

Parents have the next position in the right of maintenance after wife and minor children. The liability to provide maintenance to the parents solely rests on the offsprings and no one else shares with the offsprings the obligation of maintaining his parents.³¹ However, there are disagreements among the eminent Muslim Jurists as to the extent of such right of parents and preference of mother to father. They have formulated some principles in this regard. Financially affluent sons and daughters are always bound to maintain their poor parents, whether they are Muslims or not and whether they are able to earn anything for themselves or not. And, the liability of all sons and daughters to provide maintenance to their parents is equal.³² In contrast, when an offspring has both parents, but cannot afford maintenance to either of them, he should take them to live with him so that they may participate in what food he has for himself.

If an offspring is unable to maintain both of his parents, mother has the better right, that is, in this case, mother will be preferred over father.³³ Particularly, the right to maintenance of a poor mother cannot be qualified by financial hardness of the son. To simplify, a son, even being in a straitened circumstances himself, is bound to maintain his poor mother, though she may not be infirm.³⁴ Whereas, a poor son, is bound to provide maintenance to his father, only if the father is poor and earns nothing. On this issue, Baillie opined

²⁸ *ibid.*

²⁹ *ibid.*

³⁰ *ibid.*

³¹ Baillie (n 20) 465.

³² BR Verma, *Mohammedan Law* (Delhi Law House 1978) 238.

³³ Baillie (n 20) 466.

³⁴ *ibid.*

that “if the son has wife and minor children, all that he can be compelled to do is to bring his father to live into his family, but he is not obliged to give separate maintenance.”³⁵ In other words, the person of limited income can be compelled to maintain his father if he has any surplus. This difference of opinion raises a question whether a poor father, who is forced to do laborious works to earn and survive, is entitled to maintenance.

Under the *Shia* law, the rights of the two parents are equal. Also, the right of the parents and children are equal. Maintenance must in each case be divided equally. But the parents are preferred to grandparents.³⁶ Parents and offsprings are jointly liable for a person’s maintenance. Thus, if a poor man has both father and a son who are not poor, the liability falls equally upon them.

Also, there are disagreements among different schools as to the extent of the liability of son and daughter to maintain the parents. Specifically, *Shaefi* law is undecided on the question whether the heirs are jointly liable for maintenance or only in proportion to their respective shares. In this perspective, Ameer Ali opines that “the liability should be in proportion to the shares of inheritance.”³⁷ Another opinion is that if there is considerable difference in the means, maintenance is to be provided in proportion to the means. For example, in *Shia* law “the liability is apportioned according to the individual means of the persons who are bound to maintain.”³⁸ However, the proposition that the duty to support should be equally incumbent upon son and daughter seems to be better.

Accordingly, grand-children are bound to maintain their grand-parents to the same extent to which the offsprings are bound to maintain the parents, provided that if a necessitous person has got both grand-parents and grand-children, who are not poor, they will be liable to provide maintenance in proportion of one-sixth and five-sixths.³⁹ But the grand-children of a person would not be liable to maintain if there is a husband, offsprings or parents, who would be under a duty to maintain, even though they may be entitled to inherit. Thus, if a man has a daughter or father and a grandson, the daughter or the father must maintain him. The grandson would not be bound to maintain him even though he is entitled to inherit. But where there are both grand-parents and grand-children, the liability would be of both proportionately to the extent of their shares in inheritance. Thus, if there is a grandfather and a grandson, they must provide maintenance in proportion of one-sixth and five-sixths.⁴⁰

³⁵ *ibid.*

³⁶ *ibid.*, 102-104.

³⁷ Syed Ameer Ali, *Mahommedan Law* (Law Publishing House 1965) 431.

³⁸ Verma (n 32) 239.

³⁹ Baillie (n 20) 466.

⁴⁰ *ibid.*, 468.

According to the *Shaefi* law, maintenance is due from all the descendants together, but they are not equal in all respects. The obligation is on the nearest. If there is equality in the degree of relationship, the obligation is on the persons who will be heirs.⁴¹

However, in Muslim law, the right to maintenance can be curtailed by gift since a Muslim can validly transfer his property in whole by way of gift, but that is not so in case of will. Yet, any amount payable as maintenance under the order of Arbitration Council or Family Court, if not paid in due time, will be recoverable as arrears of land revenue.⁴²

4.1.2. Hindu philosophy and law on maintenance of aged parents

In *Monosonghita/Manusmriti*, also known as the Code of Monu (an important source of Hindu law) Monu has said “the support of the group of persons, who should be maintained, is the approved means of attaining heaven, but hell is the man’s portion if they suffer.”⁴³ Therefore a Hindu should carefully maintain that group of persons. Monu has further said “the aged parents, a virtuous wife and an infant child must be maintained even by doing a hundred of misdeeds.”⁴⁴ So, a Hindu should maintain his/her parents with a view to gaining the spiritual benefits after death. The liability to maintain aged parents is imperative and independent of inherited assets.

The liability of a Hindu to maintain others arises in some cases from the mere relationship between the parties, independently of the possession of the property; while in other cases, it depends altogether on the possession of the property. Thus, the liability of a Hindu to maintain the members of his family is of two kinds, i.e., personal liability and liability dependent on the possession of the property. Among these two forms of liability, to provide maintenance of the aged parents is a personal liability. In *Satyanarayanamurthy v Ram Subbamma* case⁴⁵ it was held that the liability to maintain one’s parents is clear both from *shastric* law and the decided cases. The Madras High Court in *Subbarayana v Subbakka* case⁴⁶ confirmed that a Hindu is under a legal obligation to maintain his aged parents irrespective of that he has inherited any property from father or not.

However, Hindu law makes a clear distinction between a legal and a moral obligation of a person to provide maintenance for certain persons. Where

⁴¹ Verma (n 32) 239.

⁴² Muslim Family Laws Ordinance 1961 (Ordinance No. VIII of 1961), s 3(3).

⁴³ SK Routh, *Elements of Hindu Law* (Comilla Law Book House 2008) 231.

⁴⁴ *ibid.*

⁴⁵ [1964] AAP 105.

⁴⁶ [1885] 8 Mad 236.

it is legal, it is necessarily enforceable against him. Where it is only moral, it cannot be enforced; rather it is a matter between him and his conscience.⁴⁷ Some persons can claim to be maintained on moral grounds, while others have a legal claim to be maintained. The legal obligation exists only in favour of a limited number of his relations, provided that certain conditions, of course, are fulfilled. In *Savitribai v Laximibai* case⁴⁸ it was held that the obligation to maintain these relations is personal in character and arises from the very existence of the relation between the parties. Yet, there is a disagreement as to the right to maintenance of stepmothers from stepchild. The Bombay High Court in *Bai Daya v Natha* case⁴⁹ held that a Hindu is under no personal obligation to maintain his stepmother. It is to be noted that the obligation to maintain the stepmother depends upon the condition that the son has inherited available assets from his father. But the Madras High Court in *Audemma v Varadareddi* case⁵⁰ held that a stepson, if he inherits his father's estate, he is legally bound to maintain her out of the estate, because his father was legally bound to maintain her as his wife.

Apart from the personal liability of a Hindu, Joint family property is liable for the maintenance of every member of the family. So far the family remains joint, the funds of the family are brought to the common chest and dealt with for the maintenance and support of the family according to its needs. The manager is bound to maintain the members of the family, that is, the coparceners and their descendants. So, if the aged parents and offsprings are members of a joint family governed by the *Mitakshara* law, the aged parents are entitled to maintenance out of the joint family property. Even on the death of aged father, aged widow mother cannot be deprived of the maintenance from joint family property, since under the Hindu Women's Right to Property Act 1937, a widow has in the joint family property the same right as her husband himself had.⁵¹

In Hindu law, the right to maintenance is a personal right. The right is so secured that it cannot be transferred nor can be attached.⁵² Whereas, the arrears of maintenance may be so attached or transferred.⁵³ Unlike Muslim law, A Hindu cannot dispose of his entire property by gift or by will so as to defeat the right to maintenance, which a person is entitled to under Hindu law.⁵⁴ If he does so, the donee or devisee must hold the property subject to the right of maintenance and

⁴⁷ SV Gupte, *Hindu Law in British India* (NM Tripathi Private Ltd. 1947) 1058.

⁴⁸ [1878] 2 Bom 573.

⁴⁹ [1885] 9 Bom 279.

⁵⁰ [1948] Mad 803.

⁵¹ Hindu Women's Right to Property Act 1937 (Act No. XVIII of 1937) s 3. DF Mulla, *Principles of Hindu Law* (NM Tripathi Private Ltd. 1990) 279-372.

⁵² *Narbadabai v Mahadeo* [1881] 5 Bom 99.

⁵³ *Jogendra v Fulkumari* [1900] 27 Cal 38.

⁵⁴ *Joytara v Ramhari* [1884] 10 Cal 638.

the right can be enforced against it.⁵⁵ The right to maintenance was at one time spoken of as a charge on estate but after the passing of Transfer of Property Act 1882, which has defined a charge that it is not so unless it is fixed and charged on a specific portion of the estate by contract or decree. In *Kuloda Prosad v Jogeshwar* case,⁵⁶ the court held that where the maintenance has been made a charge upon the property and the property is subsequently sold, the purchaser must hold it subject to charge. But debts contracted by a Hindu take precedence over the right to maintenance.⁵⁷

However, no hard and fast rule can be laid down as to the amount to be awarded to a person entitled to maintenance. In determining such amount, the court may take into account various factors. So, every case must be determined based on its own facts. Hence, it shall be in the discretion of the court to determine what amount shall be awarded to the aged and infirm parents and in doing so, the court shall have due regard to the circumstances of the given case. The amount of maintenance to be awarded to the aged parents largely depends on gathering together of all the facts of the situation, the amount of free estate, and the conditions of life in addition to their necessities and rights. However, a reasonable view of circumstance, which may possibly change in the future, should be taken into consideration. So, due regard, of course, must be had to the scale and mode of living. In short, it is out of a great category of circumstances that a sufficient and reasonable induction is to be made by a court of law in arriving at a fixed sum. In determining the amount of maintenance, the court of law can take into consideration the factors, which were approved in various legal decisions. They are the means of the person, who is bound to maintain or the value of the estate which is liable;⁵⁸ the position and status of the person bound to maintain;⁵⁹ the wants and exigencies of a person in the position and rank of the life of the claimants, including not only the ordinary of living but also for religious and other duties of a Hindu;⁶⁰ the past mode of life, and conduct of the claimant;⁶¹ the age, habits, wants, and class of life of the parties;⁶² and the claims of other persons or other members of the family.⁶³ In *Devi Pershad v Gunwanti* case,⁶⁴ it was held that the extent of the property would be material in deciding whether the wants of the claimant could be provided for consistently with justice

⁵⁵ *Becha v Mothina* [1901] 23 All 86.

⁵⁶ [1900] 27 Cal 194.

⁵⁷ *Adhiranee v Shona Malee* [1876] 1 Cal 365.

⁵⁸ *Tagore v Tagore* [1872] 9 Beng. LR 377.

⁵⁹ *Ekradeshwari v Homeshwar* [1929] 56 I.A. 182.

⁶⁰ *Rangubai v Subaji* [1912] 36 Bom 383.

⁶¹ *Surampalli v Surampalli* [1908] 31 Mad 338.

⁶² *Sobhanadramma v Narasimhaswami* [1934] 57 Mad 1003.

⁶³ Gupte (n 47) 1084.

⁶⁴ [1895] 22 Cal 410.

to other members. But the extent of the property is not a criterion of the sufficiency of the maintenance. So, the very amount should be a question of fact.

4.2. Statutory law on maintenance of parents

The religious laws are archaic in character, and therefore, their unwritten form adds with more problems. So, these laws need to be updated through codification, otherwise the end of justice cannot be reached. For that purpose, the House of Nation has enacted the Maintenance of Parents Act 2013 to implement the rights of the aged parents to get maintenance from their descendants. At the earlier stage, several enactments were made to ensure maintenance for both Hindu and Muslim women. Among them, the Hindu Married Women's Right to Separate Maintenance and Residence Act 1946 deals with the maintenance of Hindu women; and the Muslim Family Laws Ordinance 1961 and the Family Court Ordinance 1985 deal with the maintenance of Muslim women. But it is a matter of great regret that the law makers did not concentrate on the maintenance of parents until 2013.

The Maintenance of Parents Act 2013 has made provisions for maintenance of only natural parents excluding adoptive parents and stepparents. Now both son and daughter are equally bound to provide their parents with maintenance,⁶⁵ which includes food, cloths, medical care, housing facility, and giving company. If any parent has more than one child, the offsprings have to ensure their parents' maintenance by mutual discussion.⁶⁶ Even if any parent lives separately from their offsprings, then his/her every child has to regularly provide him/her with a reasonable amount of money from their daily or monthly or annual income.⁶⁷ The Act has also imposed on the offsprings the duty to maintain the paternal grandparents in the absence of their father. Similarly, they have to provide maintenance to the maternal grandparents in the absence of their mother.⁶⁸

The offsprings must also ensure the living of their parents in a same place and they cannot force their parents to live separately as against their (aged parents) willingness. The aged parents cannot be compelled to live in old age homes as well.⁶⁹ Besides, the offsprings are legally bound to take care of health of

⁶⁵ Maintenance of Parents Act 2013 (Act No. XLIX of 2013), s 2(b).

⁶⁶ *ibid*, s 3(2).

⁶⁷ *ibid*, s 3(7).

⁶⁸ *ibid*, s 4.

⁶⁹ *ibid*, s 3(4).

their parents and to provide medical service if necessary.⁷⁰ In case of separate living of the parents, the offsprings must visit them regularly.⁷¹

A person responsible to maintain his/her parents, upon the proof of failure to perform the duties prescribed by the Act of 2013, will be liable to be fined up to one lac taka and in default of which punished with imprisonment, which may extend to three months.⁷² If wife, husband or child of such person prevent him to do so, they will also be liable to be punished for the same offence.⁷³ The offence under this Act has been made cognizable, bailable, and compoundable in nature.⁷⁴ And this offence is within the jurisdiction of first class Judicial Magistrate.⁷⁵ However the court can refer the case to the chairman of Union Council or Mayor of the City Corporation or Pourashova, as the case may be for amicable settlement of the dispute.⁷⁶

Before the enactment of the Maintenance of Parents Act 2013, the issue of maintenance was solely dealt with by the Family Courts established under the Family Court Ordinance 1985. But the Ordinance does not clarify whether the aged parents can file a suit for maintenance in the family courts on the one hand, and on the other, there was a confusion whether the Ordinance be applicable to only Muslims or others as well. However, the supreme court in its several decisions has made it clear now. The High Court Division in *Meher Negar v Mojibur Rahman* case⁷⁷ held that the provisions of this ordinance are applicable not only to the Muslim community but also to other communities constituting the populace of Bangladesh. In *Nirmal Kanti Das v Sreemati Biva Rani* case,⁷⁸ it was confirmed that a person professing any faith has got every right to bring suit for the purpose as contained in section 5 of the ordinance. Therefore, the ordinance has just provided the forum for the enforcement of some of the rights under various personal laws,⁷⁹ in which the poor parents may also file a suit for maintenance from their opulent offsprings.⁸⁰

⁷⁰ *ibid*, s 3(5).

⁷¹ *ibid*, s 3(6).

⁷² *ibid*, s 5(1).

⁷³ *ibid*, s 5(2).

⁷⁴ *ibid*, s 6.

⁷⁵ *ibid*, s 7.

⁷⁶ *ibid*, s 8.

⁷⁷ [1995] 47 DLR 18.

⁷⁸ [1995] 47 DLR 514.

⁷⁹ *Pochon Rissi Das v Khuku Rani Dasi* [1998] 50 DLR 47.

⁸⁰ *Jamila Khatun v Rustom Ali* [1996] 48 DLR 110.

5. Provision for maintenance and welfare of elderly persons in other jurisdictions

The topic of the elderly supports and maintenance was not an issue for discussion in most of the developing countries so long ago. Because a small proportion of population survived beyond middle age, those few were solidly entrenched into the family support system.⁸¹ The changing age structure of population due to demographic ageing requires the change in legal systems as per the demands of old population of the countries. Consequently, various legal systems across the world have responded to the challenge of the time to a varying extent and at varying speed giving recognition of the right to maintenance of aged parents and imposing corresponding legal duty on the descendants.

At the first United Nations World Assembly on Ageing in 1982, some consideration was given to human rights issues.⁸² However, no official United Nations document, except a Draft United Nations Declarations on the Rights of Older Persons, has ever identified and specified what rights the elderly have and why they are important. As per article 2 of the Draft, “states shall take effective measures to protect older persons from all forms of exploitation, abuse and marginalisation.” The older persons have the right to adequate food, water, shelter, clothing, and health care. So, the states shall take measures to ensure the provision of an adequate income, family and community support, and opportunities for older persons to exercise financial independence and care for themselves in the same capacity as other adults.

Despite the existence of the Universal Declaration of Human Rights, older people are not recognised explicitly under the international human rights laws that legally oblige governments to realise the rights of all people. So, a UN Convention on the Rights of Older Persons is necessary to ensure that older persons realise their rights. In absence of a law universal in character, it is necessary to depend on the domestic laws of some countries for better analysis and understanding of the issue. That’s why the paper draws a comparative analytical sketch of the extraordinary legal development regarding the elderly’s right to maintenance at domestic level, focusing on Singapore, China, and India. The reasons behind the selection of these countries are availability of data essential for the research and their recent initiatives to enforce the right to maintenance of elderly persons through adopting new enactment. By critically evaluating the ongoing jurisprudential trend from a cross-country perspective,

⁸¹ Islam and Nath (n 2) 3.

⁸² Robert N Butler, ‘Declaration of the Rights of Older Persons’ (2002) 42(2) *The Gerontologist* 152, 153.

the study unfolds the nature and extent of the right in these jurisdictions, which in turn may appreciate our laws (both personal and statutory).

5.1. Singapore

To ensure that the aged can in fact continue to rely upon the family and will not be abandoned by their offsprings, the Singapore Parliament passed the Maintenance of Parents Act 1995. Under the Act, an elderly person unable to maintain himself adequately, may apply to the Tribunal for an order that one or more of his offsprings pay him a monthly allowance or any other periodical payment or a lump sum for his maintenance.⁸³ A parent, whose total or expected income and other financial resources are inadequate to provide him/her with basic amenities and basic physical needs including (but not limited to) shelter, food, medical costs, and clothing, will be considered as unable one.⁸⁴ Though only the persons above 60 years of age have been considered as the elderly under this law,⁸⁵ a person below the specified age may get such maintenance if the Tribunal is satisfied that he is suffering from infirmity of mind or body which prevents him from maintaining or makes it difficult for him to maintain himself or that there is any other special reason.⁸⁶

Where an applicant is unable to make an application for maintenance order (whether by reason of physical or mental infirmity or for any other reason), such application may be made on his behalf by any member of his family, any person in whose care he resides or any other person whom the applicant has authorised to make such application.⁸⁷ Even if that parent resides in care of an old-age home or an organisation, an approved person of that home or organisation may also apply to the Tribunal for a similar order for the purpose of defraying the costs and expenses of maintaining the parent.⁸⁸ Besides, the law has made provision for the appointment of adequate number of Commissioner, Deputy Commissioners, and Assistant Commissioners to make an application for maintenance on behalf of an applicant and represent such applicant in any proceedings or appeal.⁸⁹ Apart from the legal proceedings, the Commissioners also help parents to organise mediation sessions with their offsprings, to help them reach an agreement on the amount of maintenance or level of support to be given to parents, and to assist parents in exploring other non-legal options such as community resources.

⁸³ Maintenance of Parent Act 1995, s 3(1).

⁸⁴ *ibid*, s 3(4).

⁸⁵ *ibid*.

⁸⁶ *ibid*, s 3(5).

⁸⁷ *ibid*, s 11.

⁸⁸ *ibid*, s 3(2).

⁸⁹ *ibid*, s 12(2).

The Act, in lieu of mentioning any specific amount of money to be prescribed in the maintenance order, has empowered the Tribunal to determine the amount of maintenance in the light of the circumstances of the given cases. Hence the Tribunal should make an objective assessment of the facts of a case before fixing the figure of money to be provided as maintenance to an applicant. To be specific, the Tribunal shall have regard to all the circumstances of the case (i.e., financial needs of the applicant taking into account reasonable expenses for housing and medical costs, earning capacity and other financial resources of the applicant and the respondent as well, any physical or mental disability of the applicant, expenses incurred by the respondent in supporting his spouse or children, and financial or other contributions and provisions made by the respondent for the maintenance of the applicant), but not limited to them.⁹⁰

5.2. China

Amid the nation's rapid development, China's traditionally revered elderly, are now a forgotten section of population, and therefore, their stories of abandonment and mistreatment are not uncommon.⁹¹ In response to that, the government of China enacted a law called Protection of the Rights and Interests of Elderly People Act 1996, having nine clauses that lay out the duties of children (both son and daughter) and their obligation to tend to the spiritual needs of the elderly. Along with the legal obligation to provide maintenance for the elderly, they are also bound to care for and look after them.⁹² The elderly suffering from illnesses must be provided with medical expenses and nursing care by the supporters.⁹³ The spouses of the supporters are also under the obligation to provide for the elderly. Such obligations of the supporters have been made absolute irrespective of inheriting the property of the elderly. Even if the children give up their right of inheritance, they cannot refuse to perform their duties of providing maintenance for the elderly on that ground.⁹⁴ Neither sons nor daughters cannot seize the houses owned or rent by the elderly. Rather, they can be compelled to properly arrange for the housing of the elderly and refrained from compelling the latter to move to inferior houses.⁹⁵ Moreover, the supporters cannot ask the elderly to do any work beyond their ability. However, the sons and daughters may conclude an agreement between themselves on their duty to

⁹⁰ *ibid*, s 5(2).

⁹¹ Michelle Flor Cruz, 'China Enacts Law Requiring Adult Children to Visit Their Elderly Parents, But Can It Be Enforced?' *The International Business Times* (2 January 2013) <<https://www.ibtimes.com/china-enacts-law-requiring-adult-children-visit-their-elderly-parents-can-it-be-1329639>> accessed 6 February 2021.

⁹² Protection of the Rights and Interests of Elderly People Act 1996, art 10.

⁹³ *ibid*, art 12.

⁹⁴ *ibid*, art 15.

⁹⁵ *ibid*, art 13.

provide maintenance for the elderly, subject to approval by the latter.⁹⁶ In that case, neighbourhood committees, villagers' committees or the organisations of the supporters, as the case may be, may supervise the fulfilment of the agreement. When the elderly has disputes with their family members over their support, or over housing or property, they may ask the organisations where their family members are employed, the neighbourhood committees or the villagers' committees to mediate.⁹⁷ They may also bring a civil lawsuit for maintenance and criminal case if any of his family members steal, defraud, seize, extort or deliberately damage the property of the elderly.⁹⁸

Besides the legal obligation of the children, the State has established old-age insurance system to ensure pensions and other material benefits for the elderly.⁹⁹ The local governments are responsible for making the arrangements of financial relief, food, clothing, housing, medical care, and burial expenses for the elderly, who are unable to work and have no sources of income.¹⁰⁰ Different medical insurance systems have been established to provide the elderly with appropriate aid for medical expenses.¹⁰¹ Besides, private medical institutions are encouraged to provide free treatment of elderly patients. Above all, to meet the needs of the elderly, service facilities and networks for the daily life, cultural and sports activities, nursing, and rehabilitation of the elderly are being gradually installed and established.

5.3. India

"There has been a steady rise in the population of older persons in India, because of an appreciable increase in the life expectancy."¹⁰² But the increasing numbers of elders are not being maintained by their children, as was the normal and traditional social practice. Consequently, they are now exposed to emotional neglect, lack of physical and financial support, and social insecurity.¹⁰³ To force the children to maintain their parents so that this vulnerable section of society can get rid of old age sufferings, Indian Parliament passed an enactment for welfare of the Parents and Senior Citizens under the title of The Maintenance and Welfare of Parents and Senior Citizens Act 2007.

⁹⁶ *ibid*, art 17.

⁹⁷ *ibid*, art 45.

⁹⁸ *ibid*.

⁹⁹ *ibid*, art 20.

¹⁰⁰ *ibid*, art 23.

¹⁰¹ *ibid*, art 26.

¹⁰² Runa Mehta Thakur, 'Philosophy of Maintenance and Welfare of Parents and Senior Citizens Act, 2007 in India: An Appraisal' (2012) 1(4) *International Journal of Advancements in Research and Technology* 1.

¹⁰³ *ibid*.

A senior citizen including parent, who is unable to maintain himself from his own earning or out of the property owned by him, is entitled to get maintenance from one or more of his children not being a minor. The Act has defined parent as “father or mother whether biological, adoptive or stepfather or stepmother, as the case may be, whether or not the father or the mother is a senior citizen.”¹⁰⁴ So, it is clear to say that an adoptive parent can claim maintenance from his/her adopted child under the Act. Similarly, a stepfather or stepmother is entitled to get maintenance from his/her stepchild. Moreover, the definition of children ‘including son, daughter, grandson and grand-daughter’ has signified two phenomena.¹⁰⁵ Firstly, both son and daughter are equally responsible to provide their aged parents with proper maintenance. Secondly, grandparents can claim maintenance from their grandchildren under this Act. In case of a childless senior citizen, the application can be made against his/her relatives,¹⁰⁶ who is in possession of or would inherit his property after his death.¹⁰⁷ The obligation of the children or relative, as the case may be, to maintain a senior citizen extends to the needs of such citizen so that senior citizen may lead a normal life.

The unique character of this Act is borne by the provisions for application for maintenance. Under section 5 of the Act, an application for maintenance of an incapable parent or senior citizen can be made by any other person or organisation authorised by him. Moreover, the Tribunal may take cognizance *suo motu* as well. In case of neglect or refusal to maintain a parent or senior citizen by children or relatives the Tribunal may order the latter to make a monthly allowance for the maintenance of the former.¹⁰⁸ For every breach of the order, the amount due can be levied by a warrant of the court and in the manner provided for levying fines.¹⁰⁹

Apart from this legislation, there are two separate enactments which deal with the maintenance of parents. They are the Code of Criminal Procedure (CrPC) 1973, and the Hindu Adoptions and Maintenance Act 1956. Under the CrPC, persons having sufficient means can be ordered by the court to make a monthly allowance for the maintenance of such father or mother, if the court is satisfied that he neglects or refuses to maintain his impoverished parents.¹¹⁰ Giving a plain meaning to the provisions, the Bombay High Court held that:

¹⁰⁴ Maintenance and Welfare of Parents and Senior Citizens Act 2007 (Act No. LVI of 2007), s 2(d).

¹⁰⁵ *ibid*, s 2(a).

¹⁰⁶ *ibid*, s 4.

¹⁰⁷ *ibid*, s 2(g).

¹⁰⁸ *ibid*, s 9(1).

¹⁰⁹ *ibid*, s 5(8).

¹¹⁰ Code of Criminal Procedure 1973 (Act No. II of 1974), s 125.

two circumstances which have to be gone into for the purpose of deciding a claim under the section 125 appear to be that the father and mother must be unable to maintain himself or herself and secondly, the person against whom an order is sought must have sufficient means to maintain the father and mother and yet neglects or refuse to maintain them.¹¹¹

However, “the obligation to maintain an aged and infirm parent is not subject to the fulfilment of parents’ obligation to maintain and bring up the children during the childhood of the children.”¹¹² By several case laws, this provision has been so developed that it has a wider application now. The Supreme Court of India has made daughters and sons, married or unmarried, equally responsible to maintain their parents.¹¹³ Besides, recognising the Hindu philosophy of adoption, courts permit adoptive parents to claim maintenance from their adopted child.¹¹⁴ Similarly “a childless step-mother may claim maintenance from her step son provided she is widow or her husband, if living, is incapable of supporting and maintaining her.”¹¹⁵ The Karnataka High Court, in *Siddanna Kamballi and others v Gangabai* case,¹¹⁶ reasoned that “to grant maintenance to such helpless stepmothers would be a motherly act and in consonance with the social object of providing maintenance to the destitute widow of the community.”¹¹⁷

The Hindu Adoptions and Maintenance Act 1956 is applicable to the Hindu community only, whereas the previous laws are equally applicable to all, irrespective of their religious faith and religious persuasions. Under this Act, every Hindu son or daughter, during his or her lifetime, is under obligation to maintain his or her aged and infirm parent. This obligation extends in so far as the parent is unable to maintain himself or herself out of his or her own earnings.¹¹⁸ But there is no absolute test for determining whether the parent is aged or infirm. It totally depends on the facts and circumstances of the case.

6. Legislative drawbacks in Bangladesh

The evaluation of the provisions regarding the maintenance of aged parents in Singapore, China, India, and Bangladesh in foregoing sections finds some considerable differences between the laws of Bangladesh and those of other countries. Such differences identify a few grey areas in the Maintenance of

¹¹¹ *Pandurang Bhaurao Dabhade v Baburao Dabhade and others* [1980] 82 BomLR 116.

¹¹² *ibid.*

¹¹³ *Mrs. Vijaya Manohar Arbat v Kashirao Rajaram and Another* [1987] AIR SC 1100; *Mst. Areefa Beevi v Dr. K. M. Sahib* [1983] CriLJ 412.

¹¹⁴ *Madhav Dagadudange v Parvatibai Dagadu Dange* [1978] CriLJ 1436.

¹¹⁵ *Kirtikant D. Vadodaria v State of Gujarat and Another* [1996] 4 SC 479.

¹¹⁶ [2003] CriLJ 2566.

¹¹⁷ *ibid.*

¹¹⁸ Hindu Adoptions and Maintenance Act 1956 (Act No. LXXVIII of 1956), s 20.

Parents Act 2013. The areas should be worked upon so that the Act can safeguard the rights of the elderly to the optimum level.

Firstly, the Act does not make it entirely clear about how the children unable to afford to pay for their parents will be dealt with. If the son is also poverty-stricken, how can he maintain his parents and grandparents? How would the Tribunal adjudicate such disputes? In this situation, the indigent son has no option than to go behind bars. Then, what benefit can such imprisonment of offsprings bring for the destitute parents. In contrast, the dependents on the accused offspring may also be deprived of the maintenance rights. Moreover, delay in the legal proceedings, since this matter will be dealt with by regular criminal courts, will frustrate the noble purpose of this Act.

Secondly, the Act has prescribed fine or imprisonment for the children upon the proof of failure to provide their parents with maintenance. Whereas the order for financial allowance, which could serve the interests of aged parents best, is totally ignored by the law makers. In Singapore, China, and India, the order for monthly allowance has been considered the first and foremost remedy as it can bring desired outcomes and satisfy the objective of law. Though India has also criminalised the failure to provide aged parents with proper financial support, but that remedy is resorted as secondary way to realise the primary relief.

Thirdly, no provision has been made in this Act for the maintenance of stepparents, though the step-children are bound to maintain them under the personal laws. Also, the Act does not address the needs of the childless and indigent aged parents. Notwithstanding the adoption is valid under the traditional Hindu law in Bangladesh, the Act did not include the adoptive parents in the definitions of 'Father' and 'Mother'.

Fourthly, the Act provides that the children have the obligation to provide their parents with a reasonable amount of money from their monthly or annual income. But the Act does neither indicate any standard to determine the reasonable amount of money nor prescribe the minimum amount of maintenance.

Lastly, the big issue is that parents often feel ashamed and become discouraged under various social pressures to take their children to the court for obtaining maintenance or allowance from them. Obviously, their sentiment to their children will prevent them to approach to the court. Moreover, the fear of sentencing their children in default will also weaken them emotionally to do so.

7. Options on the table for legislative reform

After considering whole practical situation and keeping in mind public and social concern for ensuring maintenance and social security of aged parents some

reforms should be made to existing laws. In this regard, Government should first make provisions for setting up supporting organisations, Counselling Centres etc., to serve the psychological and emotional needs of the elderly people, who often spend their twilight years lonely, in a state of negligence and deprivation.

Secondly, Provisions should be made for financial security of childless people by taking measures like group insurance and old age pension at the early age. Or, government should set up sufficient number of old age homes. Otherwise, many of issueless parents will be forced either to beg or to die of starvation and uncared for.

Thirdly, the definitions of 'Father' and 'Mother' should be enlarged to include stepparents and adoptive parents so far as the respective personal laws recognise their rights. So, the definition of Parents may be substituted by the word 'Lawful Parents'.

Fourthly, Provisions should be made for recompensing the victim parents by creating charge on the estates of their respective children or from the money paid as fine by the respective convicted children. In that case the amount of fine needs to be practical so as to meet the needs of the parents. The provision for order of monthly allowance to indigent parents could be better alternative to sending the children into the jails. Whereas, the local government institutions should be activated to take responsibility of the elderly persons, whose children are also in need of money. The enhancement and transparency of social safety nets, i.e., old age allowance, widow allowance, etc., can work as well.

Fifthly, to ensure speedy trial, a separate and special tribunal compared to regular criminal courts should be given the jurisdiction to try the cases brought under this Act. In this regard, the Family Courts established under the Family Court Ordinance 1985 may be vested with this jurisdiction.

Finally, the Act needs more publicity to achieve its real purpose. People are to be sensitised about the agonies of the elderly citizens of our country. Specially, attempts should be made to sensitise the children to support and live with the elderly. Hence, including the ageing problem in the syllabus of school and college will be fruitful to encourage future generation to support their aged parents. Moreover, if public-private partnership is encouraged by engaging NGOs, community organisations, and corporate sectors for this program, it will become cost free and easier for the government to work on it.

8. Conclusion

In Bangladesh, innumerable aged parents are leading an inhuman life, even having one or more well-earned and well-off children. At the end of the day, when all efforts of parents get failed and they have to face a painful experience that their own children are abusing them, they actually do not have anything to

do other than accepting this harsh reality. When a stranger does anything wrong with an elderly person, they may easily accept it. But when their own children start doing injustice with them breaking the expectation of trust, love, and respect, they only remain silent and want to hide it. But this practice should be changed. When someone's moral values completely break down and cause injustice, they should be punished accordingly. No injustice should be allowed to be taken place at any cost, especially towards the elder people who have no one beside them to help. Since a parent can be compelled by law to maintain his/her children and a husband can be forced to support his wife, a child should also be compelled to maintain and support his/her parents.

No doubt, there is lack of adequate social security for the elderly people. Keeping in view the growing problems of the elders, the legislators should earnestly endeavour to come forth with effective reforms for better solution of the problem. Mere change in law is not enough to ensure welfare of the helpless aged people unless the Judiciary plays a pivotal role to put the paper rules into action. What is essential is that the judges also need to be sensitised to the growing menace of which the parents have become victims.