

From Morality to Legal Right: A Comprehensive Analysis on Parent's Alimony

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Abstract

Violation of the rights of parents to reasonable maintenance have become the most common feature of rapidly growing developing countries like Bangladesh. Despite legal framework, parent's rights are ignored in practice which is revealed in real field studies. Real scenario is depicting deplorable situations of the parents which is inculcated in another level of discomfort. Although parliament passed a new piece of legislation in 2013 to make redress for the existing problem regarding parent's maintenance, this Act is suffering from ambiguity regarding definition clauses, reasonable amount of maintenance, detailed procedures about realizing the demand, specific body of rules etc. At present, there are few cases that were brought under the Act. Moreover, most parents are not aware of their legal rights of them. In most cases, parents are left without proper remedy when their legal right is infringed. Lack of proper monitoring, spreading knowledge about this maintenance right, apathy towards this right, vicious practices of children regarding due maintenance towards parents are making deviant lines in the smooth pathway of justice. This article presents a view of how parents in the existing legal framework are projected to vulnerability, the prudent legislative efforts and judicial activism of various jurisdiction of the world and outlines effective recommendations towards mitigating the vulnerabilities. It also depicts the criticisms of current Act and how this maintenance right was shaped in legal reality from morality.

Keywords: Maintenance, legal right, reasonable amount, obligation, morality

1.0 INTRODUCTION

Though the moral wisdom suggests a wide range of obligations towards parents in the arena of South East Asia, the real scenario is depicting the opposite connotation. Now-a-days, the family values are at the verge of extinction rather new trends and principles regarding family values are taking place in the canvas of age old tradition. With the concept of nuclear family, there are many ancillary discomforts shown as by product. Parent's non-maintenance is one of them. At present, aged parents of our country is passing miserable days out of poverty, ignorance of their right and lack of proper care etc. Though Bangladesh Government has unveiled the new Act regarding parent's alimony. Their approach towards making solution is not comprehensive in nature. The approach should be more comprehensive along with sound rules and policies. Enforcement mechanism should be smoother to get intricacy-free social justice. As social justice is one of the mandates of constitutional vision of making exploitation of free society, this research has shown a field study in many age-old homes of the city, comparative approach towards making solution. It can be expected that this will be a good check on the enforcement mechanism regarding parent's maintenance.

1.1 Research approach

The proposed study is comprehensive in nature. The approach epitomized both the qualitative and quantitative features. In order to resort an effective solution, instances were considered from other jurisdictions of the world. Comparative approach towards problem solving is underpinned throughout the studies.

1.2 Sources of Data

Both primary and secondary data has been assimilated in this write-up. The secondary data has been collected from relevant books, journals, articles, research reports, official publications, thesis, dissertations, websites etc. The primary data has been collected from sampling question to various age old home and victims, advocates, litigant peoples and field studies etc.

2.0 DIVINE GUIDELINES

2.1 Rights of parents under Muslim sharia law

Parents are held in reverence in Islam. This can be evident from various authorities from the divine sources. Injunctions from Al-Quran and As-Sunnah show that parents have their right to be treated with kindness and equity by the children. Allah has revealed in the Al-Quran:

“And your Lord has ordained that you worship none but Him, and that you be good to [your] parents; should one or both attain to old age in your life, never say to them ‘fie’ or any word that implies your weariness of them, nor chide them, but [always] speak to them respectfully. And extend to them a wing of humbleness out of compassion, and say: My Lord, bestow your grace upon them, as they raised me and cherished me when I was little. Your Lord knows best what is in your hearts; if you are righteous [He will forgive you your errors]; surely, He is All-forgiving to those who turn to Him again [in true repentance]” [1].

The verse above shows that the duty to be good to one’s parents is among the highest decree next to faith to Allah. Therefore, whatever rights and duties due to the parents, are next to the rights and duties due to Allah. This commandment is not a mere reminder, but it serves as a basis of rights of the parents upon the children. The obligation is commanded in another verse:

“And We have enjoined upon the human being [goodness] towards his [/her] parents; his [/her] mother bore him [/her] through strain over strain, and [devoted her time to the baby until] his weaning [going beyond full dependence on the mother that] may take two years; [hence O human being] be grateful towards Me and towards your parents, [and remember that] with Me is all journeys end. Yet should they pressure you to make you associate with Me what you do not know [or what your mind can not accept as divine], obey them not; but [even then] keep their company in this world’s life with kindness, and follow the path of those who turn towards Me. In the end, unto Me you shall return and thereupon I shall make you [truly] understand all that you were doing [in your previous life]” [2].

Thus, it is clear that when a child becomes an adult, he or she is expected to provide materials and moral supports towards his parents [3]. The duty also symbolizes the gratitude for all their sacrifices and struggles in nurturing the child. As the parents had brought up their children at the cost of their own comforts and pleasures; provide them with the nourishment and clothing for their sustenance; comfort the child whenever they need them; strive for the child’s materials’ needs, viz, educational, psychological and spiritual necessities. Nevertheless, these are only few of unlimited reasons to demand appreciation and gratefulness to one’s parents.

Prophet Muhammad (s.a.w.) has also emphasized on the children’s duty to care and respect their parents. In a hadith narrated from Abu Hurairah, the Prophet said: “May his nose be rubbed in the dust, may his nose be rubbed in the dust, may his nose be rubbed in the dust.” It was said: ‘Who, O Messenger of Allah?’ He said: “The one whose parents, one or both of them, reach old age during his lifetime and he does not enter Paradise” [4].

In other instances, the Prophet had warned his followers on the severity of disrespecting or disobeying the parents where it is regarded as one of the major sins next to associating Allah with others in faith. It has been reported that the Prophet: “Shall I not narrate to you about the worst of the major sins?” They said: ‘Of course O Messenger of Allah’ He said: “Associating others with Allah and disobeying the parents” [5].

The responsibility to treat parents with kindness is extended even if they are non-believers. The only qualification imposed on a Muslim child is when the parents strive for the child to associate the Oneness of Allah; the child should not obey; but it is not a reason for him to deal with the parents with cruelty and rudeness. This is clearly commanded by Allah in various verses such as: “And We have enjoined on man goodness to his parents, and if they contend with you that you should associate [others] with Me, of which you have no knowledge, do not obey them, to Me is your return, so I will inform you of what you did” [6].

“And when We made a covenant with the children of Israel: You shall not serve any but Allah and [you shall do] good to [your] parents” [7].

“And serve Allah and do not associate anything with Him and be good to the parents” [8].

“Say: Come I will recite what your Lord has forbidden to you, [remember] that you do not associate anything with Him and show kindness to your parents” [9].

In an authentic hadith of the Prophet, Asma' binti Abu Bakr narrated: My mother, while she was a polytheist during the treaty of Quraish, came to me, I asked: O Messenger of Allah! My mother has come to me while she is ill-disposed (to Islam). Should I show her respect? "Yes" He replied: "Show respect to her" [10].

2.2 Rights to Maintenance

Islam imposes upon every child a duty to provide maintenance to their parents. This duty has been clearly expressed when Allah says: "They ask you as to what they should spend. Say: Whatever wealth you spend, it is for the parents and the near of kin and the orphans and the needy and the wayfarer, and whatever good you do, Allah surely knows it" [11].

This verse was revealed on a question raised by 'Amru Ibn Jamuh where he asked the Prophet on how and what should he spend in charity [12]. And the answer given through the verse is very clear that the priority should be given to the parents before others.

According to Al-Qurtubi, based on this verse, a man with means must give priority in spending on voluntary charity for his needy parents until their standard of living achieved at par with the standing of the man in respect of food, clothing and other such things [13]. In another verse Allah has commanded: "And give to the near of kin his due and (to) the needy and the wayfarer and do not squander wastefully" [14].

According to At-Tabari, the term "za al-qurba" in the verse refers to the immediate kin and they are the parents, who have been ordained by Allah to be obeyed and treated with courtesy. The duty of children to maintain parents can also be seen in the hadith narrated from Amr bin Shuaib from his father that his grandfather said: A man came to the Prophet and said: My father is taking all my wealth. He said: "You and your wealth belong to your father". And the Prophet said: "Your children are among the best of your earnings, so eat from your wealth" From this hadith, it is clear that parents are allowed to take a portion of their children's property to maintain themselves or as much as what is a necessity for them.

In another hadith reported by An-Nasa'i, it was narrated by Tariq Al-Muharibi that when he came to al-Madinah, the Messenger of Allah was standing on the Minbar addressing the people and said: "The hand which gives is the upper hand. Start with those for whom you are responsible; your mother, your father, your sister, your brother, then the next closest and the next closest."

The Prophet has also indicated that a father is not barred from taking what is necessary to fulfill his needs from the children as what has been narrated by Al-Hakam, from Umarah bin Umair, from his mother, from Aishah that the Prophet said: "A man's son is part of his earning, among the purest of his earnings, so you may take from their wealth."

Besides the injunctions in divine revelations, the Islamic jurists have been unanimously agreed that the children are responsible to maintain their destitute parents who have no belongings or any means of support; and the maintenance shall come from the property of the children. However, the jurists have ruled that the duty to maintain shall depend on several conditions and exceptions, related to the situation and capability of the children, with the principal consideration that parents shall be treated with equity and kindness remain unchanged.

Jurists have ruled that maintenance shall be due to parents when they are in need for it from the children. However, it is not required that the parents must be unable to work as the parents are not forced to work and earn their living while the children can maintain them. It is even emphasized that if a child is rich, whether young or adult, he is duty bound to maintain the parents, irrespective of their ability to work or not.

If the child is not really fortunate, but has means of employment and earning, he is obliged to take the parents to live with him and spend on them accordingly or to the extent that the needs of his family and the parents are adequately satisfied.

However, in a situation where the parents have many children the priority to spend or to maintain shall fall on those who are closest to the parents regardless of whether he is one of the inheritors or not. But if there is more than one child of the same social status, they shall bear the responsibility of maintaining the parents equally together.

It is clear that according to Shariah, the duty to maintain parents is not a mere religious decree yet it is also a legal obligation that is imposed on the children. Failure to discharge this duty will amount to a liability that can be taken to a court of law and can be claimed by the parents.

2.3 Rights of Parents under Christian and Parsi Law

The Christians and Parsis have no personal laws providing for maintenance for the parents. Parents who wish to seek maintenance have to apply under provisions of the Pita Matar Voron Poson Ain, 2013.

3.0 UNLOCKING PARENT'S ALIMONY

3.1. Point wise discussion according to Pita Matar Voron Poshon Ain, 2013

Under the Mohammedan Law the children who have ability are bound to maintain their parents. A Hindu son is under a personal obligation to maintain his aged parents. For the poor and helpless parents the Parliament has enacted Pita Matar Voron Poson Ain 2013 to impose legal obligations on the children to maintain their parents and grandparents with penalty and punishment if they fail to do so. The provisions relating to Pita Matar Voron Poson Ain, 2013 are discussed as-

3.2 Exclusive feature of definition

Section 2 of the Act defines different terms used in the Act. According to the section "parents" mean the biological or natural parents of the children and "children" means efficient sons or daughters of the biological parents. The section 2 of the law postulates that "maintenance" means providing food, clothing, residence and medical attendance and giving them company.

3.3 Joint consultation about alimony

Section 3 of the law deals with the maintenance of the parents which envisages that every child shall ensure the maintenance of his or her parents and if there are more than one child alive to the parents, they have to consult each other and shall ensure the maintenance of his or her parents. The section imposes upon the children to live with their parents. In so doing, the children shall secure the medical care and attendance of their parents. It also provides for the people who leave their parents in parents care center or old home. To prevent this practice sub section (4) provides as the children shall never compel their parents to live in parents care or in any other place against their will.

3.4 Extension of maintenance to the grandparents

Section 4 contains provisions regarding the maintenance of grand-parents. The grandparents are entitled to claim maintenance from their grandchildren in absence of their children.

3.5. Penalty clause (space at top of each art. & sub-art.)

Section 5 provides the penalty for not providing maintenance of parents which envisages that if any child transgresses the provisions of sections 3 and 4 of the Act, he shall be liable to pay fine up to 1 lac taka failing to pay which makes him liable to suffer imprisonment up to three months. The section also provides that if spouse of any children or grandchildren or any other relative hampers and induce the children for not providing maintenance to the parents they shall be liable for the same punishment which is one of the exclusive traits of the Act.

3.6 Nature of offence

Section 6 deals with the nature of the offence which further narrates that the offences committed under this Act are cognizable, bailable and compoundable.

4.0 Procedure of launching the demand

Section 7 contains that notwithstanding anything contained in the Cr.P.C (1898) complaint about the offence shall be filed in the First-Class Magistrate Court or Metropolitan Magistrate Court. The Section further adds that no Court shall take cognizance of the offence under the Act except upon a complaint filed by the parents or upon a complaint written by the parents.

4.1 Scope of mediation and arbitration

Section 8 contains provisions regarding the process of arbitration and mediation and provides the scope for the complaint to be disposed of, by compromise between the parties. According to this Section the Court may send the complaint to the local government representatives as concerned Chairman, Member of Union Council or Mayor, Counselor of City Corporation or to any competent person to resolve the complaint by compromise and if they can arrive at any decision it shall be deemed to be the decision of the competent Court.

4.2 Power of rulemaking

Lastly, Section 9 of the Act deals with the rulemaking power of the government which empowers the government to frame rules for the purpose of fulfilling the object of the Act but there are no such rules have been formulated.

4.3 Judicial activism in this arena

Before the enactment of Pita Matar Voron Poson Ain 2013, to say in other way the Maintenance of Parents Act, there was no specific legal framework to bring any legal action for maintenance against the children. But they could initiate lawsuit under section 5(d) of the Family Court Ordinance 1985 for maintenance. It was observed in the case of Jamila Khatun Vs. Rostom Ali reported in 48 DLR (AD) 110 that 'under Mohammedan Law children in easy circumstances are bound to maintain their poor parents, although the later may be able to earn something for themselves. These poor parents may also file a suit in the Family Court for maintenance from their opulent children under the Ordinance of 1985'. But institution of lawsuit by parents for maintenance under the Ordinance against their issues has not been in wide practice as the provision has not been categorically engrafted therein.

Considering all these aspects the Parliament has enacted the Pita Matar Voron Poson Ain, 2013 with the legal obligation on the part of the children to maintain their parents and grandparents with penalty and punishment for failing to do so.

5.0 INTERNATIONAL EFFORTS FOR AGED PERSON

The question of ageing was first debated at the United Nations in 1948 at the initiative of Argentina. The issue was again raised by Malta in 1969. In 1971 the General Assembly asked the Secretary-General to prepare a comprehensive report on the elder people and to suggest guidelines for the National and International action. In 1978, General Assembly decided to hold a World Conference on the ageing peoples. Accordingly, the World Assembly on ageing peoples was held in Vienna from July 26 to August 6, 1982 wherein an International Plan of Action on Ageing was adopted. The overall goal of the Plan was to strengthen the ability of individual countries to deal effectively with the ageing in their population, keeping in mind the special concerns and needs of the elderly people. The Plan attempted to promote understanding of the social, economic and cultural implications of ageing and of related humanitarian and developed issues. The International Plan of Action on Ageing was adopted by the General Assembly in 1982 and the Assembly in subsequent years called on governments to continue to implement its principles and recommendations. The Assembly urged the Secretary-General to continue his efforts to ensure that follow-up action to the Plan is carried out effectively. In 1992, the U.N. General Assembly adopted the proclamation to observe the year 1999 as the International Year of the Older Persons. The U.N. General Assembly has declared "1st October" as the International Day for the Elderly, later rechristened as the International Day of the Older Persons. The U.N. General Assembly on December 16, 1991 adopted 18 principles which are organized into 5 clusters, namely-independence, participation, care, self-fulfillment, and dignity of the older persons. These principles are as follows:

- i. Older Persons should have the opportunity to work and determine when to leave the work force.
- ii. Older Persons should remain integrated in society and participate actively in the formulation of policies which affect their well-being.
- iii. Older Persons should have access to health care to help them maintain the optimum level of physical, mental and emotional well-being.
- iv. Older Persons should be able to pursue opportunities for the full development of their potential and have access to educational, cultural, spiritual and recreational resources of society.
- v. Older Persons should be able to live in dignity and security and should be free from exploitation and mental and physical abuse.

These principles can be formulated in the policy making body of our country.

5.1 Development in other jurisdiction

In our country the specific law relating to parent maintenance is not exhaustive and self-explanatory. So, the development mechanism in other jurisdiction can be persuasive for our Country's legislation. The positive approach of other countries can be taken into account to improve our own legislation. There are some constraints in our legislation which can be cured by following other relating laws as follows:

5.1.1 Position in Malaysia

The Judiciary of Malaysia comprises of a parallel dual legal system as the civil legal system and Syariah legal system. The States' legislation and the Syariah courts have jurisdiction over any matter pertaining to Islamic law and concerning persons professing the religion of Islam. This includes Islamic law relating to maintenance.

Currently, there is no specific legislation, either at federal or state level, dealing with the issue of maintenance for Muslim parents. However, it can be suggested that the rights of Muslim parents to claim for maintenance is provided in Malaysia. As compared to non-Muslim parents, this right is embodied in the States' legislation on Islamic family laws.

Most of the Islamic Family Law legislation provide the power to the Syariah court to order for payment of maintenance of certain people by another. However, these provisions do not exclusively indicate the beneficiaries are meant for Muslim parents or highlight the duty to maintain rests on the children. For instance, section 60 of the Islamic Family Law (Federal Territory) Act 1984 provides that:

The Court may order any person liable thereto according to Hukum Syarak, to pay maintenance to another person where he is incapacitated, wholly or partially, from earning a livelihood by reason of mental or physical injury or ill-health and the Court is satisfied that having regard to the means of the first-mentioned person it is reasonable so to order.

From the said provision, it could be implied that the right of parents to claim for maintenance from the children is provided by the law. This is due to the fact that parents are considered as parties entitled to maintenance, according to Hukum Syarak as discussed before. However, the flaw in the law is obvious where one can question the definition of the term 'person' used in the provision. Neither the provision nor the States' Islamic Family Law in general provides for specific interpretations of the term 'person' liable or entitled under the provision. Instead, the term 'person' should be defined as according to Hukum Syarak, without any reference in the order of priority. This can lead to confusion and uncertainty as various interpretations can be given to the scope of the term. For instance, one may argue that the person liable should be a Muslim man. In comparison, the States' Islamic Family Law clearly provides for the husband to pay maintenance to the wife or former wife while the father is bound to maintain his children. However, the same reference is not provided for parents.

Moreover, the present provision indicates that the parents will only qualify to claim for maintenance if they are incapacitated from earning a livelihood, either wholly or partially. Their eligibility is further restricted with 'incapacitated' due to injury, mentally or physically or ill-health. Thus, after perusing all these qualifications, it can be inferred that the procedures are bureaucratic and the parents' chances to claim for their maintenance may be difficult. It can also be suggested that the provision is too restrictive and do not embody the spirit of filial duty as articulated by Shariah.

There are only a few reported cases with regard to claims of maintenance by parents against their children. This does not correspond to the figure produced by the authority of the neglected parents thereto.

In the case of *Khalil bin Ahmad v. Kamal bin Khalil* [15], the plaintiff-father claimed for maintenance from the defendant-son a sum of RM36,000 on the basis of RM500 per month alleging that the defendant did not provide for him financial assistance for about 10 years. The plaintiff further claimed another RM2,000 for medical expenses of the plaintiff's wife, ie, the defendant stepmother, who was also responsible for his upbringing. It was held by the Syariah High Court of Negeri Sembilan that the defendant had to pay maintenance on the basis of the Shariah ruling that maintenance of parent is obligatory upon children (son) or grandchildren if they are financially capable. The court held that the defendant had to pay RM200 per month starting from 1998 and to pay RM2000 for medical expenses of the defendant's stepmother.

In another case of *Kassim Bin Othman & Fatimah Binti Salleh v. Raja Suzana Binti Raja Kasim & Zul Azli Bin Hashim* [16], the plaintiffs were the biological parents to the first defendant and parents-in-law to the second defendant. The plaintiff parents had claimed for maintenance from the defendants till they die and that the defendants need to respect and care for their wellbeing. The Syariah High Court in this case had allowed the plaintiff claims based on an agreement made between the parties and ordered the defendants to pay and maintain their plaintiff parents a sum of RM250 per person. The Court highlighted the first defendant's duty to maintain as she is the biological daughter to the plaintiff and she had made a promise to maintain them when the parents agreed to transfer the title of property to her name. The court also held that the same reasons applied to the second defendant irrespective that he was just a son-in-law to the plaintiff.

5.1.2 In Singapore

Singapore is among the pioneers in legislating specific laws to enforce children's obligation to specifically maintain the parents and in general to protect the welfare of the parents. The Maintenance of Parents Act 1995 was enforced since 1st June 1996 till now.

The said legislation is aimed at providing maintenance to any parent who is 60 years old and above, and unable to maintain himself adequately to apply for an order that the children pay him a monthly allowance or any other periodical payment or a lump sum for his maintenance. The provision provides that application for a maintenance order under this Act is made to a special body as Tribunal for the Maintenance of Parents.

The procedure to seek for the maintenance in the Act is rather convenient and equitable to the parents and children. The Tribunal may make a maintenance order if it considers that it is just and equitable that the children should maintain the parent after taking into account several considerations. The parent's application may be dismissed or the quantum of maintenance ordered may be reduced if the Tribunal is satisfied that the parent had abandoned, abused or neglected by the children.

5.1.3 In India

The application for maintenance in India shall be made through a Tribunal, named as Maintenance Tribunal, which has its own procedure in dealing with the application as provided under Section 8 of the Maintenance and welfare of parents and senior citizens Act 2007. The Tribunal shall take all relevant evidence in the presence of the children or relative before deciding upon the claim for maintenance. If the claim is allowed, it will be due in the form of a monthly allowance at such monthly rate that is not exceeding ten thousand rupees per month.

5.1.4 In Algeria

As for Algeria, the law provides that the maintenance of the ascendants is imposed on the descendants and vice versa, according to the possibilities, needs and the degree of relationship in the order of succession. The provision is very general, but concise, where the obligation to maintain the ascendants shall fall on those who are nearer and eligible in the order of succession. As such, the children shall be held responsible to maintain their parents as they are the one who will succeed the parents in inheritance. The law also clearly defines maintenance shall consist of food, clothing, medical care, housing or rent and anything that is deemed necessary in relation to the use and custom. These entitlements shall not only apply to children or wives, but to parents alike.

5.1.5 In Jordan

Whereas in Jordan there are specific provisions that impose the obligation on children to maintain their parents if the parents are poor. The law provides that it is an obligation of the wealthy or rich children, whether male or female; minor or adult, to provide maintenance to their destitute parents even though they are able to work. The provision further imposes that even if the children are poor and they are not able to work, they are still obliged to maintain their poor parents. However, if their means are merely sufficient for themselves or to their immediate family, it is compulsory for the children to nurse the parents together with them and treat them as what they treat their families. These provisions sanction that the children cannot be excused from maintaining their destitute parents, even though they are individually poor. The least that can be done by the children is by taking care of their parents in their own home together with their immediate family.

5.1.6 In Kuwait

In Kuwait, the law clearly provides for protection of maintenance for poor parents, almost similar to what can be seen in the Jordanian Personal Law of 1976. The legislation provides that it is an obligation to children who are financially capable, whether male or female, to provide maintenance to their parents and grandparents who are poor; even if they are different in belief or even if they are able to work. The provision further illustrates that in the event that there are several children; the obligation shall be imposed based on their ease.

From this provision, the law has extended the obligation of the children to maintain not only their biological parents, but also their immediate ascendants, provided that they are poor. The law also explicitly allows non-Muslim parents to claim for their rights of maintenance from their wealthy children even if they are able to work.

6.0 COMPARISON BETWEEN PITA MATAR VORON POSON AIN, 2013 OF BANGLADESH AND THE MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS ACT, 2007 OF INDIA

The Maintenance and Welfare of Parents and Senior Citizens Act 2007 of India and Pita Matar Voron Poson Ain, 2013 of Bangladesh both ensure that the children have to take necessary steps towards their parents and provide them maintenance which indicates food, clothing, residence and medical attendance and treatment and also company which is an especial issue of this Act.

The Act of India and Bangladesh allow aggrieved parents to file cases or make application against their children if they deny to support them. But in practice the Act of 2007 is more actual and constructive than the Act of 2013. The Maintenance and Welfare of Parents and Senior Citizens Act 2007 of India includes step parents and adoptive under the term “parents”. Though in case of the Act of 2013, it only says about the biological parents.

The Act of India states that the application can be made by a parent or if he is incapable, by any other person or organization authorized by him. But there is nothing in the Act of Bangladesh to suggest who is eligible to bring a claim. If, only the parents are entitled to bring complain then the Act fails to realize the physical and financial condition of the parents.

According to section 5(4) of the 2007 Act, an application made by the parents or the senior citizens should be disposed of within ninety days from the date of the service of notice of the application. The 2013 Act makes no such provision.

6.1. Existing criticism of Pita Matar Voron Poson Ain, 2013

Section 2 of this Act, says about “children” means efficient sons or daughters of biological parents. The section does not indicate any clear description about the step or adoptive children. Also, it deals with providing maintenance with food, clothing, residence and medical attendance as well as giving them company, which is a unique feature of the Act. It also presupposes psychological maintenance to the parents should be provided. But in the busy life, sometimes children are not able to give psychological support to their parents.

Section 3(7) of Pita Matar Voron Poson Ain 2013 does not define the reasonable amount and the nature of the reasonable amount. Section 5 of the Act deals with penalty clause but the punishment is not proportionate with the offence. As it is evident from criminological approach that the severe punishment sometime helps to prevent crime, so the punishment provided in the Act should be more severe.

Section 6 of the Act says that offences under the Act are cognizable and compoundable. So, there is a scope of applying Alternative Dispute Resolution (ADR). But the methods of ADR mechanism are not expressed in this Act.

Section 9 of this Act empowers the Government to frame rules for reaching the goals of this Act. There is an ambiguity and inadequacy of this Act as no rule is drafted yet.

6.2 Data Collection Techniques and analysis

The data is collected from some renowned age-old home of Dhaka city by sampling questions forwarded to the resident of these age-old homes. The research conducted by authors in Child and Old Age Care [18], Apon Nibash Old Home [19] and Probashi Nibash O Probin Hospital [20], information found about many indexes such as awareness of maintenance right, amount of maintenance, psychological support, medical support and demand of maintenance etc. It is found that only 40% of residents of an age-old home know about the right of maintenance and 90% of them do not demand about their required maintenance from their capable children. Only 20% of them get medical support on their illness. The monthly ratio of 40% parents regarding maintenance dwindle around from six thousand taka to three thousand taka. 60% parents do not get any maintenance. Only 50% of parents get company of their children once in a month. Their psychological condition is found at the lower level of frustration and depression. This is the horizontal view of present situation of the aged parents more or less which is a very concerning issue.

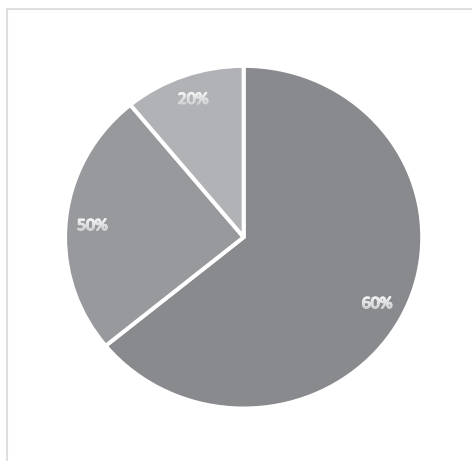


Fig.1: Comparison of aged parents

Fig. 1: Here the blue portion of the pie represented the unpaid maintenance group of the aged parents. Orange portion represents the group who get the company of children once in a month and the remaining portion represents the group who gets medical supports.

7.0 RECOMMENDATIONS

7.1 Transparency in definition

Transparent definition of children should be brought for proper implication of the current Act. Whether the definition includes step or adoptive child is to be cleared so that demand of maintenance can be realized with proper certainty.

7.2 Reasonable amount

There is no indication in the current Act about how reasonable amount will be determined. The determining factor of reasonable amount should be incorporated. Otherwise it will bring unnecessary complexity. The financial status of the children and parents, physical condition of the parents, age of the parents etc. should be included as determining factor of reasonable amount.

7.3 Proportionate Punishment

As parent's maintenance is a right related with their existence, more punishment should be engrafted so that the person liable will not think to escape his or her liability and responsibility to them. Punishment should be in lined with the gravity of offence. Sometimes sanctions play a great role in realizing the reasonable demand.

7.4. Specific Procedure

As we all know that "Ubi Jus Ibi Remedium", a right without remedy is not a right at all. So specific procedures with elaborate description should be enrooted in the body of the Act. So that remedy of the given right can be realized within reasonable time with reasonable certainty.

7.5 Psychological Assistance

The government should adopt necessary steps to establish Psychological center for aged parents. As aged parents suffer from various psychological trauma. This type of counseling center can help for the betterment of their being.

8.0 8.0 CONCLUSION

Despite having some lacunas in the Act, we should appreciate the government for enacting such type of remedial and beneficial statute, which will be a basis for securing the maintenance of parents. The researchers strongly believe that more sound and pragmatic policies towards parent's maintenance will pave the way of justice in realizing the actual demand. This is also perceived that a comprehensive Act will actuate the field-level practice of giving alimony to parents with proper integrity. It can also be presumed that by proper implication of these policies, the constitutional mandates of social justice can be reached soundly.

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