

## **Navigating the Path to Justice: An Empirical Analysis of Access to Justice for the Elderly through Maintenance Tribunals in Kolkata**

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### ***Abstract***

*Older adults comprise a particularly vulnerable group in the Indian society, who often receive the shorter end of the stick as our society does not have the adequate social security nets for their well-being. Over the years, the gradual erosion of the cultural norm of filial piety has undermined their status in the family, leading to a decline in their physical, mental, and emotional well-being. To ensure that their plight is not further exacerbated by their limited access to legal resources and institutions, the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 was passed with the objective of preserving and upholding their rights and dignity of the elderly and for holding the State accountable for their welfare. Under the Act of 2007, 'Maintenance Tribunals' are established for providing the elderly with necessary support for resolution of disputes in an expeditious, inexpensive and hassle-free manner. The focus of this Article is to assess the efficacy of the Maintenance Tribunal in meeting the critical needs of older adults and to evaluate their role in ensuring access to justice. To conduct this research, an empirical study was undertaken adopting an ethnographic approach at the Maintenance Tribunals established at Kolkata. By analyzing the perspectives and experiences of the functionaries who are involved in the implementation of the law, the study aims to provide valuable insights into the effectiveness of the dispute resolution forum within the broader legal framework, pinpointing specific areas that require improvement for strengthening the efficacy of the legal system and fostering greater accessibility to justice for the elderly.*

**Keywords:** Access to Justice, Elderly persons, Maintenance Tribunals, Role of Law

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## I. Introduction

The Indian society, for as long as it has been in existence, has almost always looked up to our elderly population with reverence, seeking their wisdom, blessings, and advice. Off late, however, a paradigm shift in the perception of senior citizens has been observed, with the elderly being at the receiving end of this changed outlook. Family as a unit has witnessed a radical change in its traditional narrative; the concept of living with and caring for the aged in the family has undergone a sea change. The elderly, once perceived as the nucleus of power in the family and a source of wisdom and inspiration in a traditional joint-family set-up, are now considered to be dispensable liabilities in the new family order. Increasing disconnect between intervening generations due to differences in their respective world views can be mostly accounted for this tectonic shift in the family structure. The gradual erosion of filial piety and the resulting change in the overall perception of the elderly owing to the new family order has been found to be detrimental to the physical, mental, and emotional well-being of the elderly in the family, who are already vulnerable, suffering from a sense of insecurity and a diminishing sense of self-worth owing to declining cognitive and motor functioning and dwindling financial resources in old age. In such a precarious situation, it is undisputed that where there is already a lack of adequate social security nets for the elderly in our society, limited access to laws and legal institutions can make matters worse for them. The value of access to justice cannot be overstated; it serves as a pivotal instrument in shielding the elderly from manifold forms of abuse, exploitation, and discriminatory practices and helps in optimizing the emancipatory potential of the legal machinery of the State in the advancement of human rights of elderly persons. By offering impartial, affordable, efficient, harmonious, and expeditious dispute resolution mechanisms, access to justice not only reinforces the capacity of the elderly to articulate their perspectives and assert their entitlements but also fosters accountability of the State in safeguarding the entitlements and well-being of elderly persons. A welfare State therefore cannot choose to adopt a 'sitting on the fence' approach when it comes to the crucial matter of bridging the gap and enhancing access to justice, especially considering the vulnerable state of older adults in contemporary times. Realizing the necessity to establish and reinforce legal protection, fifteen years back, a comprehensive set of measures were introduced in India with the passing of the Maintenance and Welfare of Parents

and Senior Citizens Act, 2007, (hereinafter referred to as the MWPSA Act). The objective of this legislation is to create a robust framework which ensures that parents and senior citizens receive the necessary support and care in the form of maintenance from children<sup>3</sup> and in certain circumstances, relative(s)<sup>4</sup>, enabling them to maintain a decent standard of living<sup>5</sup>. Most importantly, it envisages the institutionalization of a mechanism for resolution of disputes in a speedy, inexpensive and hassle-free manner through 'Maintenance Tribunals,'<sup>6</sup> established in every sub-division of each district in a State. Assessing the efficacy of this dispute resolution forum in accommodating the critical and felt needs of the elderly and examining the impact of its therapeutic role in empowering them is the central theme of this research article. Concurrently, the article intends to undertake a meticulous examination of the legal framework underpinning the Tribunal's functioning to ascertain its adherence to the indispensable requisites for effective access to justice, encompassing the elements of protection of legal rights, legal awareness, provision of legal assistance, fair resolution of disputes, and enforcement of decisions.

## II. Method

For carrying out the study, an empirical analysis was primarily conducted through the adoption of an ethnographic approach. Qualitative data was collected from the two functional Maintenance Tribunals in the district of Kolkata<sup>7</sup>, West Bengal, with interview and participant observation being the primary tools of data collection. To encompass a broad spectrum of diverse perspectives and experiences on the operational dynamics of the Maintenance Tribunal and to gain insight about the various challenges in implementation of the law, the Presiding Officers and the Maintenance Officers were interviewed through a structured interview schedule having both close and open-ended questions. Prior to the interview, written consent for voluntary participation was obtained, after an explanation was offered about the nature and objectives of the study. Field notes

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<sup>3</sup>The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Sec.2(a)

<sup>4</sup>The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Sec.2(g)

<sup>5</sup>The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Sec.4(2)

<sup>6</sup>The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Sec.7(1).

<sup>7</sup>It is to be noted that the district of Kolkata is not further divided into sub-divisions, and the jurisdiction of the Maintenance Tribunals at Kolkata is with respect to the corresponding areas of Kolkata, falling under forty-eight police stations.

were taken during the interview. The Tribunals had been kind enough to grant permission to witness a few proceedings to understand the nature and complexities of the cases dealt with by it. Access to the physical copies of the complaint letters and final order sheet of the Maintenance Tribunal in case of decided matters in the preceding three years was granted for the purpose of reading and document analysis, after a written undertaking was submitted that the original names and addresses of the complainants would not be reproduced elsewhere. Besides conducting the qualitative study, the present research also entails a doctrinal analysis of the provisions set forth in MWPC Act and the West Bengal Maintenance and Welfare of Parents and Senior Citizens Rules, 2008 (hereinafter referred to as WBMWPC Rules), which form the cornerstone of the regulatory framework that governs the functioning of the Tribunal.

### III. Decoding the Dynamics of Maintenance Tribunals: Understanding the Structural Framework, Powers and Functions

To address the concerns of aggrieved parents and senior citizens, the MWPC Act mandates that the States are required to establish Maintenance Tribunals in every sub-division throughout India within six months from the initiation of the Act.<sup>8</sup> The Maintenance Tribunal is a quasi-judicial body, headed by an officer of the rank of Sub-Divisional Officer or higher within a State<sup>9</sup> to adjudicate and decide upon the matters relating to maintenance of parents and senior citizens. In this context, 'maintenance'<sup>10</sup> encompasses the provision of fundamental necessities such as food, clothing, accommodation as well as medical assistance and treatment. Senior citizens (who are sixty years and above of age) and parents (regardless of age) who are incapable of sustaining themselves through their own income or possessions have the right to seek redress from the Maintenance Tribunal by initiating proceedings claiming maintenance from their children, encompassing both son and daughter, married or unmarried or even grandchildren who are not minors.<sup>11</sup> Furthermore, childless senior citizens who are unable to maintain themselves can legally claim means of sustenance from any relative

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<sup>8</sup>*Ibid.*

<sup>9</sup> The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Sec.7(2).

<sup>10</sup> The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Sec.2(b).

<sup>11</sup> The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Sec 4(1).

possessing ample means to support such senior citizen<sup>12</sup>, provided such relative currently possesses the senior citizen's property or is anticipated to inherit it in future.<sup>13</sup>In case of multiple relatives, the determination of the maintenance amount is proportionally based on their respective shares of the inherited property; the higher amount would be paid by the relative inheriting the larger share of the property.<sup>14</sup>The obligation of maintenance of parent/senior citizens extends to ensuring that the claimants receive the standard of care that meets the requirements for leading a 'normal life'.<sup>15</sup>

A parent or a senior citizen can submit an application of maintenance,<sup>16</sup> at that place where they themselves, or their children or relative(s) as the case may be, currently reside or where they last resided. In case of incapability of the parent or senior citizen to do so personally, the application can be made on their behalf by any other person or organization authorized by them.<sup>17</sup> The Maintenance Tribunal may also take cognizance, *suomoto*.<sup>18</sup> It is to be noted that the pre-requisite condition of initiating an application for maintenance is that the said parent or senior citizen must be incapable of sustaining themselves financially through their own income or assets. In case of a parent, who is also entitled to initiate such a claim under the applicable provisions of the Code of Criminal Procedure, 1973<sup>19</sup> in the Court of a Judicial Magistrate, First Class, it is at their discretion to file the application in either of the forums. It is to be noted that the parent cannot seek relief under both laws concurrently.<sup>20</sup>

The application for maintenance can be directed against multiple individuals.<sup>21</sup> If the parent is having two sons, maintenance can be claimed from any of them.<sup>22</sup> If a mother stays with one of her sons, she can claim maintenance from her other

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<sup>12</sup>*Ibid.*

<sup>13</sup>The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Sec 4(4).

<sup>14</sup>*Ibid.*

<sup>15</sup>The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Sec 4(2).

<sup>16</sup>The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Section 5.

<sup>17</sup>The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Sec.5(1)(b).

<sup>18</sup>The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Sec. 5(1)(c).

<sup>19</sup> The Code of Criminal Procedure, 1973, Sec. 125.

<sup>20</sup>The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Sec.12.

<sup>21</sup>The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Sec. 5(5).

<sup>22</sup>*Mahendra Kumar v. Gulab Bhai and Anr.* [2001 Cri LJ 2111].

son as well.<sup>23</sup> The children/relative(s) however have the option of impleading other persons having the liability of maintenance.<sup>24</sup>The MWPS Act bars legal practitioners to participate in proceedings before a Maintenance Tribunal<sup>25</sup>; however parents or senior citizens have the option to be represented by Maintenance Officers<sup>26</sup> designated by the respective State Government.<sup>27</sup>

The Maintenance Tribunal bears the legal obligation to conduct hearings with utmost expediency and reach a resolution by completing the proceedings within a stipulated time-frame of 90 days commencing from the date of serving notice to the opposing parties<sup>28</sup> (children/grandchildren/relatives, as applicable). Nevertheless, in exceptional circumstances the Tribunal may exercise its discretion to grant an extension upto 30 days.<sup>29</sup> Additionally, the Tribunal is vested with the authority to allow the provision of interim allowances to the claimant during the ongoing proceedings.<sup>30</sup> Prior to holding an inquiry for determination of the amount of maintenance, both the parties are to be notified and heard.<sup>31</sup>

It is to be noted that the Maintenance Tribunal possesses a distinctive authority that combines the powers of both a civil court and a criminal court. When it comes to ensuring the presence of children or relatives in the Tribunal, it is empowered the authority of a Judicial Magistrate of First Class under the Code of Criminal Procedure, 1973. The evidence is recorded in the presence of the children/relatives, following the prescribed procedure for summons cases,<sup>32</sup> however if it found that the children/relatives are deliberately evading service or absconding from the hearings, the Tribunal can proceed *ex parte*.<sup>33</sup> During its inquiry for gathering evidence under oath, for ensuring the presence of witnesses and for enforcing the submission of documents, material objects, and for other

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<sup>23</sup> D Shanmugham v. Pottiammal [ 1996 Cri LJ 2984]

<sup>24</sup> *Supra* note 20.

<sup>25</sup> The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Sec. 17.

<sup>26</sup> The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Sec.18(1).

<sup>27</sup> The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Sec. 18(2).

<sup>28</sup> The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Sec. 5(4).

<sup>29</sup> *Ibid.*

<sup>30</sup> The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Sec.5(2).

<sup>31</sup> The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Sec.(3).

<sup>32</sup> The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Sec.6(4).

<sup>33</sup> *Ibid.*

essential matters, the Maintenance Tribunal possesses the powers of a civil court.<sup>34</sup> During the enquiry, the Maintenance Tribunal has the option to seek the assistance of individuals possessing specialized knowledge or expertise in relevant matters pertaining to the resolution of the claim of maintenance.<sup>35</sup> Significantly, prior to the hearing, the Maintenance Tribunal can also choose to refer the application to a Conciliation Officer to facilitate a prompt and peaceful resolution of the dispute in question.<sup>36</sup> The Conciliation Officer is obligated to present his findings within a month and if the dispute is resolved amicably the Maintenance Tribunal will issue an order that accurately represents the resolution of the matter.<sup>37</sup> Upon the completion of the enquiry, the Maintenance Tribunal is authorized to issue a maintenance order directing children or relatives to pay a monthly maintenance sum, not exceeding Rs.10,000,<sup>38</sup> for the support of parents or senior citizens who are unable to sustain themselves.<sup>39</sup> The Tribunal is required to ensure that such payment is received by the claimants within 30 days following the issuance of the maintenance order.<sup>40</sup> Such orders can however be modified or revoked in the event of change in circumstances or the discovery of factual errors from proven misrepresentation or mistake and the Tribunal may alter the maintenance allowance accordingly.<sup>41</sup> It is to be acknowledged that an order of maintenance granted by the Maintenance Tribunal carries the same weight<sup>42</sup> as maintenance orders issued under the Code of Criminal Procedure, 1973.<sup>43</sup> A complimentary copy of the maintenance order ought to be provided to the parent or senior citizen which can be enforced in any location against the concerned individual by any Maintenance Tribunal, as long as the identities of the parties and the non-payment of allowances or expenses are verified satisfactorily.<sup>44</sup> In the event of children or relatives refusing or failing to

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<sup>34</sup>The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Sec.8(2).

<sup>35</sup>The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Sec.8(3).

<sup>36</sup>The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Sec. 6(6).

<sup>37</sup>*Ibid.*

<sup>38</sup> The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Sec.9(2).

<sup>39</sup>The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Sec.9(1).

<sup>40</sup>The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Sec.13.

<sup>41</sup>The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Sec.10.

<sup>42</sup>The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Sec.11(2).

<sup>43</sup>The Code of Criminal Procedure, 1973, Sec.128.

<sup>44</sup>*Ibid.*

comply with an order without a valid reason, the Tribunal is authorized to issue a warrant for imposing fines as a penalty for each violation of the order, and in cases where fines remain unpaid even after warrant is enforced, the Tribunal has the power to sentence the defaulter to imprisonment for a period of one month or until the outstanding payment is made.<sup>45</sup> Additionally, the Tribunal may order the payment of simple interest on the principal amount, which can range from a minimum of five percent to a maximum of eighteen percent<sup>46</sup>.

If the parent/senior citizen is not satisfied with the decision of the Tribunal, they can choose to initiate an appeal to the Appellate Tribunal within a span of 60 days from the original order, although the deadline may be extended if a justifiable explanation as to the cause of delay is furnished by the appellant.<sup>47</sup> The Appellate Tribunal is obliged to convey its decision in writing within a month of receiving the appeal,<sup>48</sup> and the decision holds ultimate legal authority, having a binding effect on both parties involved.<sup>49</sup>

It is important to highlight that in addition to awarding maintenance, the Maintenance Tribunal possesses an exclusive authority to nullify agreements pertaining to the transfer of property by gift or other means, initiated by a senior citizen after the enactment of the MWPC Act.<sup>50</sup> This authority comes into effect if the transfer in question was based on the transferee's pledge to fulfill the basic needs and essential requirements of the senior citizen after the transfer. However, if the transferee deliberately breaches his commitment, the Maintenance Tribunal has the authority to view the transfer as being influenced by fraudulent, coercive or undue means, and is empowered to annul such agreement. This provision is in contrast to the law enumerated in the Specific Relief Act, 1963<sup>51</sup> which specifies

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<sup>45</sup> The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Section 5(8).

<sup>46</sup> The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Sec.14.

<sup>47</sup> The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Sec.16(1).dg.

<sup>48</sup> The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Sec.16(5)(1).

<sup>49</sup> The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Sec.16(5)(5).

<sup>50</sup> The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Sec.23.

<sup>51</sup> The Specific Relief Act, 1963, Sec.31



that cancellation of a registered instrument (document) can be done only by the institution of a suit on that behalf.

#### **IV. Delving into the Inner Workings of the Maintenance Tribunals at Kolkata: Key Findings from Field Research**

The key findings/outcome yielded from the field research in Kolkata regarding the functioning and limitations of Maintenance Tribunals in addressing the challenges faced by the elderly are discussed below:

##### **A. Multi-natured Disputes: Capacity and Limitations of Maintenance Tribunal in Addressing Complex and Composite Cases**

Based on the analysis of cases collected from the Maintenance Tribunals during our field study, three distinct patterns of petitions filed by parents/senior citizens are observed, viz., petitions seeking maintenance from children/relatives, petitions for the restoration of property conveyed to children/relatives and petitions seeking protection from elder abuse. It was observed that petitions involving cases of elder abuse<sup>52</sup>, followed by petitions seeking for the declaration of transfer of property as void and demanding the subsequent restoration of property were more frequently brought before the Maintenance Tribunal, while the numbers of petitions with the exclusively prayer for monetary assistance were less in number.

##### ***Challenges Experienced in Addressing Instances of Elder Mistreatment and Abuse***

Responding to the question about the challenges they face in dealing with cases of mistreatment and abuse of elderly persons, the Presiding Officers at the very outset acknowledged that most of the petitions that they come across are flooded with grievances against elder abuse, specifically highlighting psychological mistreatment and neglect, which in their opinion has become a pervasive social menace. However, it was interesting to note the assertion of the Presiding officers

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<sup>52</sup>The World Health Organization defines elder abuse as “a single or repeated act or lack of appropriate action occurring within any relationship where there is an expectation of trust, which causes harm or distress to an older person, <https://cnpea.ca/en/resources/reports/327-the-toronto-declaration-for-the-prevention-of-elder-abuse> (last visited June 29, 2023).

who opined that they were not specifically empowered by the MWPSA Act/WBMSA Rules to adjudicate cases relating to elder abuse. It was affirmed that although the Maintenance Tribunal strives to ensure the safety and welfare of older adults by engaging the services of police, the scope of their jurisdiction, as determined by the MWPSA Act, was confined to awarding maintenance (in monetary terms) and declaration of transfer of property as void in certain cases. The excerpts from a hearing witnessed by us in a particular case of a septuagenarian petitioner, demanding the eviction of her son and his spouse on the ground of mistreatment and mental harassment, are narrated below:

*The petitioner, a widow aged about 75 years, contended that her son (who was self-employed) and daughter-in-law (a housewife) were residing in her house, which is her self-acquired property. She contended that ever since the marriage of her son, there has been a constant source of discord and disharmony in the family as the behavior of her son and her daughter-in-law was extremely disrespectful, uncaring, and aggressive. The atrocities of the daughter-in-law kept increasing day by day, and her son paid no heed to her when she complained that she was being mistreated in her own house. Rather he suggested that she should relocate to an old age home now so that both parties can live their life peacefully. On being probed about more details by the Presiding Officer of the Tribunal, the petitioner claimed that the couple gradually began insisting upon transferring the house in their name and when she refused to do so, her son started ill-treating her, while her daughter-in-law went to the extent of threatening her that unless her demands were acceded to, she would arrange to put her mother-in law behind bars by lodging false criminal cases against her.*

*These allegations were out-rightly denied by her son and daughter-in-law, who are the opposite parties in the said case. The petitioner, however, contended that her son and his wife abused her on a daily basis making her life miserable, which has resulted in serious deterioration in her mental and physical health. Considering the above situation, the petitioner prayed for their eviction, so that she can lead a peaceful life in her house with dignity, without being forced to accommodate any person who mentally harasses her. The petitioner had not claimed maintenance as she deposed that she was capable of maintaining her expenses from the 'pension money' that she received, being a retired teacher of a government school in West Bengal.*

*The Presiding officer explained that since she was able to maintain herself, and no 'transfer of property' was effected in the said case, the tribunal cannot promulgate an order of eviction directing any party to leave his/her present place of stay under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. While disposing of the case, which was conceived as more of a 'family dispute' by the Tribunal, the Presiding Officer, however, reprimanded the opposite parties saying that it is their 'duty to respect' and 'take care' of the petitioner and issued a warning that 'strict action' would be taken in case of a second complaint, as they would be under the surveillance of the local police station henceforth. Although the petitioner was assured that she would not be further troubled and harassed by her children, in the event of which she would get the required help and assistance from the local police station, the sense of dissatisfaction and dejection was evident on the face of the petitioner, as the Tribunal expressed its inability to provide for the exclusive relief prayed by her in the present circumstances.*

The limited capacity of the Tribunal in adjudicating cases of elder abuse was however lamented as a drawback of the law, as they unanimously agreed that the plight of the elderly suffering from abuse- often remains unaddressed. Upon reviewing the case records, it was observed that in many such cases where the remedy sought was relief from abuse, rather than monetary assistance, cases were dismissed labelling them as 'family disputes', citing that the Maintenance Tribunal is an inappropriate forum for adjudication of such matters. In cases where the petitioners (complainants of abuse) were women, they were directed to seek the assistance of 'Protection Officers'<sup>53</sup> designated under the provisions of the Protection of Women from Domestic Violence Act, 2005, while men were often left without recourse for justice. This finding assumes great significance, especially in the absence of a specific law in India catering to the needs of the abused elderly, and raises a host of questions that needs to be addressed to facilitate access to justice for older adults. Besides, the notion that maintenance is restricted to merely fulfilling the economic needs of the elderly is a narrow and misconstrued interpretation taken by the Maintenance Tribunals and is problematic on several grounds, adversely affecting the rights of older adults.

### ***Problems Encountered in Handling Cases on the Restoration of Property***

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<sup>53</sup>The Protection of Women from Domestic Violence Act, 2005, Sec. 2(n).

It was deciphered from the field study that one of the most frequently reported complaints coming to the Tribunals were those whereby senior citizens sought eviction of children/relatives and demanded the restoration of property. These complaints were grounded on the claim that their property had been transferred on the condition that the recipient would provide for their basic needs and essential amenities, but the condition was subsequently violated by the transferee deliberately.<sup>54</sup>

While this provision empowers officials to pass orders in favour of senior citizens, declaring a registered document involving the transfer of property to be null and void if the conditions incorporated in the document are defied, it was noted that in terms of implementation of this provision, the Maintenance Tribunals find themselves perplexed while dealing with such cases.

First, confusion arises over the expression 'on condition' occurring in Section 23(1)<sup>55</sup> of the said Act. If the condition subsequent did not form part of the recital in the deed of transfer, the concerned officials showed reluctance in declaring such a document to be void, merely because the 'condition' is not incorporated in the document. Needless to say that this is evidently injuring the interest of the affected senior citizens, and thereby avowedly against the government's intent. Secondly, even if the condition subsequent is explicitly mentioned in the transfer deed, the transfer is rendered void only when there is concrete evidence of a visible breach. It is crucial to acknowledge that emotional well-being is a fundamental aspect of basic amenities. For instance, providing a house to a senior citizen for residence has no significance if the living conditions are not conducive to their safety, well-being, and dignity. Unfortunately, mental abuse and neglect, which often lack in tangible evidence or visible indications, go unnoticed and are not acknowledged by Maintenance Tribunals. As a result, the conveyance of

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<sup>54</sup> *Supra* note 53

<sup>55</sup>Section 23(1) of The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 provides, *Where any senior citizen who, after the commencement of this Act, has by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal.*

property is not deemed invalid as there is insufficient proof to establish the violation of the express condition relating to the provision of basic amenities.

Another veritable problem as appearing from the field survey is that in cases where the transfer has been declared as 'void', eviction of children/relatives is difficult solely based on such declaration. Indeed, the eviction of a person from an immovable property is not a matter of joke or fun. The Code of Civil Procedure, 1908 contains exhaustive provisions outlining procedures for evicting a person from an immovable property. Even a trespasser cannot be dispossessed otherwise than in due course of law. The MWPC Act or the WBMWPC Rules do not shed light on how the transferees are to be evicted after the document is rendered void. It was found in the absence of specific guidelines, the concerned officials are hesitant or rather reluctant to ensure eviction apprehending, and not unjustly, that such actions (in the absence of any specific provision on that behalf) are very likely to cause a severe breach of peace, ultimately leading to law and order problem and social unrest. It was highlighted that this is an area where incorporating certain provisions in the law becomes imperative to remove ambiguity and things would be made easy for the concerned officials to perform the job backed by clear-cut legal provisions to support them.

### ***Monetary Cap in Award of Maintenance***

With regard to cases purely relating to maintenance claimed from children/relatives, the key informants gave the feedback that the upper ceiling of Rs 10,000 per month which is fixed by the MWPC Act is relatively low and needs to be revised. The award of maintenance should meet the needs of parents/senior citizens which must be assessed employing a uniform, scientific methodology and should be proportionate to the paying capacity of children.

It was disclosed that maintenance is mostly claimed from children, although in a few cases, grandchildren were roped in. However, the case of claiming maintenance from relative(s) who has inherited /would be inheriting property was non-existent. This observation indicates the lack of awareness regarding the provisions of the Act whose benefits can be availed by senior citizens who are unmarried or do not have offspring. It was reported that the situation is critical for parents/senior citizens claiming maintenance from their married daughters who are unemployed and typically dependent on their husbands.

Another revelation uncovers the fact that not a single case of maintenance was registered against children/relatives by parents/senior citizens residing in old age homes, despite there being no legal restrictions against entertaining such cases.

### **B. Infrastructure Bottlenecks and Workforce Scarcity**

The research findings have brought to light that the Maintenance Tribunals at Kolkata basically function as a single-member entity, presided over by a civil servant, who assumes the herculean task of functioning as a one-man army. It is to be noted that such an officer is entrusted with an array of additional administrative responsibilities in the district administration, thereby making it difficult for him to devote his undivided attention to the intricacies of the tribunal. There are no specific and dedicated staff exclusively assigned for the Tribunal. The existing staff members were also found to be insufficiently trained regarding their assigned roles and responsibilities in the Tribunal.

Besides, it was observed that the infrastructure of the tribunal was inadequate to effectively cater to the unique requirements of the elderly population. The proceedings were held in the respective chambers of the Presiding officers which were not necessarily located on the ground floor and the absence of conveniently located lifts, wheelchair accessibility, a designated waiting area with restroom and other age- friendly facilities, etc was noticed.

### **C. Maintenance Officers and Conciliation Officers**

So far as Kolkata is concerned, Maintenance Officers were appointed in both Tribunals. It was noted that for the rest of the subdivisions in different districts of West Bengal, except Kolkata, in case there is no Maintenance Officer appointed, the District Programme Officer, Integrated Child Development Service (DPO, ICDS) under the Directorate of Social Welfare is supposed to act as the Maintenance Officer. Findings highlight that in one of the tribunals in Kolkata, the Maintenance Officer was the sole authority entrusted with the dual function of conducting an inquiry as well as representation of the senior citizens in those matters. While in the other tribunal taken up for the study, the services of various officers like the Block Development Officer(BDO), Block Relief Officer (BRO), Block Welfare Officer (BWO), Child Development Project Officer(CDPO),

Deputy Magistrate and Deputy Collector(DMDC) was utilized to conduct an inquiry. In certain cases, the involvement of police in the process of inquiry was also observed, which the Presiding Officers claimed to be non-satisfactory. Noteworthy feature is that all these officials, especially those working at the block level, were already overburdened with a plethora of responsibilities and lacked exclusive training and expertise in the specific subject matter.

An interesting finding revealed from the field study is that in none of the Tribunals, there were designated conciliation officers. The MWSPSC Act states that in the event of the conciliation officer's unavailability, the Maintenance Officer can act in a dual capacity; however, the WBMWSPSC Rules recommend that the conciliation officer may be an eminent social worker having expertise in gerontology or the representative of any Non-Government Organization working for the causes of elderly. It was understood that an informal arrangement of conciliation however existed in practice, where the conciliation process was attempted or facilitated by the Presiding Officer of the Tribunal in appropriate cases. As to the question of why conciliation officers were not appointed yet, the key informants could not give a satisfactory reply.

#### **D. Constraints in adhering to the stipulated 90-day period for disposal of cases**

As to the question of whether the expeditious disposal of cases within the stipulated 90-day period is feasible or not, it was stated by the key informants that despite their utmost efforts, disposal of cases within 90 days of receipt of the application has become a challenging task, owing to the dearth of adequate infrastructure and insufficiency of staff. The task of securing the attendance of children/relatives who deliberately evade appearance before the Tribunal was another factor cited for causing an inevitable delay. An observation made in this context is the reluctance of the Maintenance Tribunals in deciding cases ex-parte, except in exceptional circumstances. When probed further, the key informants expressed that the rationale behind this cautious approach was to safeguard the rights of children/relatives, who, they believed, are already prejudiced for not having the right of appeal in appellate tribunals in the event of an adverse verdict.

#### **E. Enforcement of Orders**

When questioned regarding the existing mechanisms for supervising the enforcement of verdicts by the Maintenance Tribunal, the key informants

acknowledged that the Tribunal is devoid of adequate mechanisms for overseeing the implementation of verdicts. It was asserted that this deficiency stems from the Tribunal's understaffing. Presently the Tribunals require the petitioners to re-approach them in cases of non-compliance with the orders by the other party. Although the MWPSC Act prescribes penalties for non-compliance with orders, it was noted that not a single case of non-compliance was reported.

#### **F. The Conundrum of Legal Representation**

The MWPSC Act categorically prohibits the engagement of lawyers in representing parties in proceedings before the Maintenance Tribunal to expedite the process for dispute resolution with minimal costs. However, on a perusal of the case records, the involvement of lawyers was evident as most of the applications and supporting documents were drafted by lawyers. It was mentioned that there is an inherent inclination on the part of both parties to engage the services of a lawyer, even after an explanation is provided to them about the non-requirement of adherence to any formal procedure in the hearing. The exclusion of lawyers was held to be justified by the key informants on the ground that lawyers mislead senior citizens with a tendency to prolong litigation for their vested interests. However, an intriguing aspect was pointed out by one of the Presiding Officers who opined that in certain cases, the absence of legal representation in hearings made it challenging for senior citizens to effectively articulate their thoughts and perspectives, and this indirectly impedes the expeditious dissolution of the dispute. In this context it is to be noted that although the Maintenance officer is obligated to represent parents/senior citizens upon request, it was informed that it is extremely challenging for a single Maintenance Officer, when confronted with several cases, to deliver effective services to all.

#### **G. The Detrimental Impact of Non-Genuine Cases**

An interesting finding from the field research is that the Maintenance Tribunals are vexed with the problem of dealing with a plethora of fabricated cases. The key informants have pointed out how parents/senior citizens are often manipulated by ambitious children who, prompted by sibling rivalry, use and misuse the forum for settling a score with siblings. There is also a concerning trend of parties resorting to this tribunal for the swift resolution of property disputes as they find this forum a convenient, less costly, and less cumbersome alternative to the traditional judicial system. The potential of exploiting this forum for perpetuating



harassment and victimization of the daughter-in-law was not ruled out, and quite a few cases were discussed where the intervention of the Tribunal was sought with the ulterior motive to evict the daughter-in-law from the matrimonial house or for pressuring her to withdraw complaints of domestic violence.

One of the Presiding Officers noted how instances of fake cases foster contempt and disregard for the elderly and fuel ageist attitudes toward them. Further the negative impact of spurious complaints on hampering the interests of genuine petitioners in their quest for justice was deliberated upon. It was observed that by increasing the workload and diverting the attention and resources of the already overburdened limited manpower on false and frivolous cases, the resolution of legitimate disputes takes a backseat. This not only impedes access to justice for senior citizens but also erodes public trust in the credibility and integrity of the forum and the justice delivery system as a whole, in the long run.

#### **H. Additional Observations**

Other notable empirical insights that emerged from the study are that none of the Maintenance Tribunals had initiated a suo-moto case. The number of cases was few in number where interim maintenance was provided during the pendency of the case before the Tribunals. There was only one instance where, for a senior citizen who did not have a safe habitat to reside in, the arrangement of shelter was made in a State-run old age home while the proceedings were ongoing in the Tribunals.

#### **V. Concluding Insights: Overcoming Challenges and Charting the Way Forward for Enhanced Effectiveness**

The observation of the operations and proceedings of Maintenance Tribunals in Kolkata has provided valuable insights into the challenges and limitations faced by the Tribunals in facilitating meaningful access to justice and calls for a more comprehensive and inclusive approach and targeted improvements in the law to ensure effective dispute resolution and access to justice for older adults in India.

One key finding is the limited capacity of Maintenance Tribunals in addressing cases of elder abuse as a result of which the plight of the older adults often goes unheard. This requires clarifying the jurisdiction and role of the tribunals in dealing with such cases to provide necessary protection and relief to vulnerable

senior citizens. In our opinion, the contention that the Maintenance Tribunal completely lacks the capacity to adjudicate cases of elder abuse is flawed. Maintenance is a broader concept encompassing a wide range of assistance, other than mere financial support, for preserving the overall well-being and dignity of the elderly and thereby empowering them to lead a dignified life. Elder abuse on the other hand is fundamentally opposed to the concept of maintenance as it undermines the health, well-being, dignity, and rights of older adults. Therefore, provision for maintenance is intrinsically linked with safeguarding the elderly against abuse for unless there is a guarantee of protection against abuse, all other services and opportunities to lead a good quality of life are likely to become meaningless. The Maintenance Tribunals are therefore required to interpret laws broadly and in a harmonious manner. We believe as the Maintenance Tribunals are manned exclusively by administrative personnel rather than judicial officers, there is an inherent limitation in their ability to navigate intricate legal nuances which hinders the broad interpretation of laws. To address this constraint, upon consideration of the challenges faced in the interpretation and application of the law due to the lack of legal proficiency among Presiding Officers, it was opined in *M. Venugopal v. The District Magistrate cum District Collector*,<sup>56</sup> that entrusting the task of adjudication to individuals with a background in law is more prudent for the optimal performance of the Maintenance Tribunal in achieving the intended objective of the MWPSA Act. In our opinion, while the addition of a legal member is a favorable option rather than the complete overhaul of the Tribunal, we further propose the introduction of comprehensive training programs designed to equip tribunal members with the requisite legal expertise and understanding for bolstering their competence to engage in an expansive interpretation of laws and act judiciously. It is hoped that the implementation of all-encompassing training and sensitization programs would be instrumental in optimizing the operational efficacy of the adjudicating system. However, clarity on the powers and jurisdiction of the Maintenance Tribunals in addressing cases of elder abuse is envisaged, which can be achieved either by amending the MWPSA Act or by the issuance of appropriate guidelines to the Maintenance Tribunals by the State Government in this context. Additionally, a comprehensive road map that ensures the safety and security of senior citizens by safeguarding

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<sup>56</sup> (Madras): 2014(5) CTC 162; 2015(1) DMC 202; 2015(3) Civil LJ 45; 2014(59) R.C.R.(Civil) 5; 2014(2) C.W.C.

their lives and possessions, as envisioned in the MWPC Act, needs to be framed and implemented by all State Governments,<sup>57</sup> as this could serve as an effective strategy in preventing physical, mental, sexual and financial abuse of senior citizens. The case of *Manmohan Singh v. Union Territory, Chandigarh (P&H)*<sup>58</sup> underscored the dire necessity of proactive steps by the respective State Governments in framing comprehensive rules and procedure for establishing a robust enforcement mechanism for securing and preserving the lives and assets of senior citizens. Effective coordination between the district administration and the Maintenance Tribunal is crucial for a cohesive and effective response in addressing elder abuse, both in domestic spaces as well as in institutional settings. However, on a perusal of the WBMWPC Rules, 2008, it came to our attention that they were bereft of explicit guidelines for the district administration on safeguarding the person and property of senior citizens. To address this critical void, a revision of the normative framework of the WBMWPC Rules by incorporating specific provisions in this context is strongly recommended.

Secondly, the necessity to address the challenges pertaining to the effective enforcement of the provision for the restoration of property is evident. In cases of transfer of property by senior citizens, the fact that there is no requirement to explicitly mention in the deed of transfer about the obligation of children/relatives to care needs to be clarified to avoid confusion.<sup>59</sup> It is also found that the application of this provision to seek eviction of children/relatives owing to ill treatment<sup>60</sup> is limited to situations where there is actual transfer of property and tangible evidence of a breached condition. In cases where there has been no actual transfer, there is no recourse for elder abuse. Similarly, the restoration of property is not feasible in cases of mental abuse or neglect, where visible signs to support such claims are absent. Besides, even in cases where the transfer is declared void, the restoration of the property through evicting the trespasser solely on the basis of such declaration, without initiating a suit in a civil court is rarely feasible. As legal frameworks are missing to accommodate these nuances, necessary

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<sup>57</sup>The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Sec22(2).

<sup>58</sup>[2016(1) R.C.R.(Civil) 838].

<sup>59</sup>*Radhamani v. State of Kerala (Kerala)* [2016(161) AIC 624].

<sup>60</sup>*Sunny Paul v. State NCT of Delhi (Delhi)* [2017(2) R.C.R.(Civil) 404].

amendments in law and clear guidelines to Maintenance Tribunals are required for the effective implementation of the provision.

Further, it is crucial to reconsider the existing cap on maintenance that can be paid under the MWPC Act, which is deemed insufficient. The revised amount needs to be equitable and rational, aligning with the accepted standards of living for older adults.

With regard to the challenges of workforce shortages, it has been noted that allocating all pivotal roles to a single entity needlessly overburdens the concerned official impeding his efficiency, while the practice of randomly assigning tasks to disparate officials who are ill-equipped in the subject matter and are already overwhelmed with excessive workload unfolds an equally perilous scenario. In the given circumstances, the compelling requirement to amplify staff equipped with comprehensive and rigorous training is emphasized to ensure the expeditious execution of tasks for the smooth functioning of the Tribunal and timely disposal of cases. The present moment also calls for the augmentation of existing infrastructure, to impact the ability of older adults to access dispute resolution forums. Age-friendliness of the Maintenance Tribunals can be enhanced through the implementation of pro-active steps catering to the distinct needs of the elderly like the strategic location of the Tribunal on the ground floor for unfettered accessibility, equipped with other amenities like conveniently located waiting areas, restrooms, wheelchair access, drinking water and other facilities ensuring their optimal ease and convenience. The introduction of parallel facilities for online filing of petitions and a paradigm shift in the record-keeping practices through the digitization of records with each petitioner being assigned a distinct case ID number, ensuring a more streamlined follow-up process is also recommended.

It has been observed that alternative dispute resolution methods such as conciliation and mediation have been underutilized and the MWPC Act and WBMWPC Rules currently lack consistency in the provision for the appointment of conciliation officers. A consistent and unified approach to resolve this discrepancy is suggested to make the best use of restorative justice solutions, which is apparently more effective in such cases rather than resorting to a criminalized approach. Another intriguing question that came up to our attention is regarding the implication of the total exclusion of lawyers. The concern that the exclusion of lawyers can potentially result in the denial of legal assistance for

senior citizens is not unwarranted, considering the workload constraints of the Maintenance Officer who serves as the sole authority to represent senior citizens on their request. Besides, as older adults often face difficulty in navigating the legal system and articulating their legal needs, the importance of legal assistance as an element of access to justice cannot be underestimated. In our opinion, alternative solutions like leveraging the resources of legal aid clinics of law schools could be explored in this context, which can also play an instrumental role in the dissemination of legal awareness amongst older adults about their rights. Further considering the reported increase in the instances of non-genuine cases as brought to light by the key informants, we advocate for the imposition of stringent measures to thwart the exploitation of the provisions outlined in the MWPSA Act for personal or vested interests. Given the significance of preserving the sanctity and credibility of the dispute resolution forum, the implementation of this measure becomes crucial. Last but not the least, the necessity of having a robust system to effectively monitor the progress and implementation of orders is strongly emphasized, so that the cases of non-compliances are effectively followed-up and intended outcomes are achieved without any further delay.

For an effective justice delivery system, it is envisioned that reforms within the normative framework and enhancements in the capacity of adjudicatory bodies to deliver equitable remedies catering to the specific needs of disadvantaged groups are imperative. The existing gaps in the capacities of both rights holders and duty bearers to effectively assert their rights and fulfil their obligations respectively must be bridged by law and the justice system must yield enforceable outcomes promptly and without excessive costs. Ultimately, by extending the provision of access to justice to all members of the society, we promote equality, fairness, and the protection of fundamental rights of all and lay the foundation for a just and harmonious social fabric, which leaves no one behind .