



JUDICIAL INTERPRETATIONS AND CONSTITUTIONAL IMPLICATIONS OF SECTION 17 OF THE MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS ACT, 2007

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Abstract

Section 17 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (in short 'the Senior Citizens Act') bars lawyers, advocates and legal practitioners from representing parties before Maintenance and Appellate Tribunals. This provision is the subject of wide judicial scrutiny. Several High Courts declared it ultra vires to Section 30 of the Advocates Act, 1961. This article critically examines the constitutional validity of Section 17 of the Senior Citizens Act analyzing landmark judgments, legislative intent and the broader consequences for access to justice for senior citizens.

Keywords:- *Senior citizens, maintenance, Maintenance and Appellate Tribunals, lawyers, advocates, legal practitioners, judgments and Constitution.*

INTRODUCTION:-

The Senior Citizens Act has been enacted to provide maintenance to senior citizens and parents. They can apply to the Maintenance Tribunal to get the maintenance order. If they are aggrieved by such order, they can challenge it before the Appellate Tribunals. However, Section 17 of the Senior Citizens Act does not permit the lawyers, advocates and legal practitioners to represent parties before the Maintenance and Appellate Tribunals. The object of this provision may be to simplify the process and make it more open for senior citizens. However, this restriction has

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faced substantial legal challenges with various High Courts declaring it unconstitutional.

LEGISLATIVE INTENT BEHIND SECTION 17 OF THE SENIOR CITIZENS ACT:-

The lawyers, advocates and legal practitioners representing the parties before various courts have to conduct several cases in a day. On that count, they seek adjournment or the cases are adjourned if they are busy in another court. The applications made under the Senior Citizens Act are to be decided within 90 days. The appeals preferred under the Senior Citizens Act are to be decided within one month. The senior citizens or parents approach the tribunals for maintenance. If they do not get the maintenance within the prescribed period, they will suffer from starvation. Therefore, the lawyers, advocates and legal practitioners should not become hurdles in getting them the maintenance. The main object of Section 17 of the Senior Citizens Act is to create a less official and more accessible situation for senior citizens to seek relief. The intention of the legislature might be to reduce the complications and costs of legal proceedings. It might be also the intention of the legislature to encourage the senior citizens to approach the Tribunals without taking the help of lawyers.

LEGAL REPRESENTATION UNDER THE FAMILY COURTS ACT, 1984:-

- Section 13 of the Family Courts Act, 1984 deals with right to legal representation. The parties to a suit or proceeding before the Family Court are also prohibited to be represented by legal practitioner. But the Family Court can seek assistance of legal expert in the interest of justice. Therefore, the discretion is given to the Family Court to permit or not to permit the parties to be represented by legal practitioner.
- In the case of *Vijaya Vaishnavi Sriram Versus Union of India & Ors.*¹, Madras High Court observed that Section 13 of the Family Court Act does not create an absolute bar and it is open to the party to make an application to the Family Court and the Family Court may grant permission for engagement of a lawyer to defend the case.

LEGAL REPRESENTATION UNDER THE INDUSTRIAL DISPUTES ACT, 1947:-

- Section 36 of the Industrial Disputes Act, 1947 deals with right to legal representation. The parties to a dispute in any conciliation proceedings or in any proceedings before a Court are not permitted to be represented by legal practitioner. But if a party to a dispute wants to be represented by a legal practitioner, he will have to obtain the consent of the other parties to the proceeding and to seek permission of the Court.
- In the case of *Paradip Port Trust, Paradip Versus Their Workmen*², the full bench of the Supreme Court of India dealt with an issue of representation by either of the parties

through a specific lawyer. Therefore, there is no complete bar under the Industrial Disputes Act to legal representation.

JUDICIAL SCRUTINY OF SECTION 17 OF THE SENIOR CITIZENS ACT:-

- **Kerala High Court Judgment-** In *Adv KG Suresh v. Union of India (2021)*,³ the Kerala High Court declared Section 17 of the Senior Citizens Act as ultra vires to Section 30 of the Advocates Act, 1961. The High Court held that the prohibition on legal representation infringes upon the fundamental rights of advocates to practice their profession, as guaranteed under Article 19(1)(g) of the Constitution. The Court emphasized that the Advocates Act, being a later legislation, prevails over the provisions of the Senior Citizens Act in case of a conflict.
- **Delhi High Court Judgment-** The Delhi High Court in *Tarun Saxena V/S. Union of India (2021)*⁴ reiterated the unconstitutionality of Section 17 of the Senior Citizens Act. The Court observed that the restriction on legal representation before Tribunals is arbitrary and violates the principles of natural justice. It further noted that the presence of legal practitioners ensures a fair and just adjudication process, which is essential for the effective implementation of the Act.
- **Karnataka High Court Judgment-** In 2023, the Karnataka High Court also declared in *K. Srinivas Ganiga, S/o. Late Bacha Ganiga V/S. Union of India Department of Law and Parliamentary Affairs Represented by its Cabinet Secretary*⁵ that Section 17 of the Senior Citizens Act as ultra vires to Section 30 of the Advocates Act. The Court emphasized that the right to legal representation is a fundamental right and cannot be curtailed by a subordinate legislation. It highlighted that the Tribunals, being quasi-judicial bodies, require the presence of legal practitioners to ensure the proper application of law and justice.
- **Punjab & Haryana High Court Judgment-** In 2014, Punjab and Haryana High Court in the case of *Paramjit Kumar Saroya V/S. Union of India*⁶ ruled that there cannot be an absolute bar on legal practitioners assisting the parties before the Maintenance and Appellate Tribunals under Section 17 of the Senior Citizens Act.

CONSTITUTIONAL IMPLICATIONS:-

Section 30 of the Advocates Act, 1961 deals with right of advocates to practise. It specifies that every advocate is entitled as of right to practise throughout India in all Courts including any tribunal or before any other authority. Article 19(1)(g) of the Constitution provides the right to

practice any profession. Article 21 of the Constitution deals with the protection of life and personal liberty. The prohibition of representation under Section 17 of the Senior Citizens Act raises important constitutional issues. It violates the fundamental rights of lawyers, advocates and legal practitioners under Article 19(1)(g) of the Constitution and the right to access to justice under Article 21 of the Constitution. The judiciary has constantly held that access to legal representation is a crucial factor of a fair trial and cannot be illogically restricted.

PRACTICAL PROBLEMS:-

Though Section 17 of the Senior Citizens Act bars lawyers, advocates and legal practitioners from representing parties before Maintenance and Appellate Tribunals, but the parties are laymen. They do not have knowledge of law and various judicial precedents. They are not conversant with the legal procedure. If they are not represented by legal practitioners, the smooth functioning of the tribunals will not be possible. Though Section 18 of the Senior Citizens Act provides that the senior citizens or parents can be represented by the District Social Welfare Officer during the proceedings, but what about the adverse parties. Who will represent them. The presiding officer of the Maintenance Tribunal should not be below the rank of Sub-Divisional Officer. The rank of the District Social Welfare Officer is above the rank of Sub-Divisional Officer. On that count, the District Social Welfare Officer may feel awkward to appear before the officer of below rank.

COMPARATIVE ANALYSIS:-

Internationally, many legislations recognize the importance of legal representation in ensuring justice. The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems emphasize the right to legal assistance as a fundamental human right. Similarly, the European Court of Human Rights has held that the right to legal representation is essential for a fair trial.

RECOMMENDATIONS:-

In light of the judicial pronouncements, constitutional implications and practical problems, the legislature must re-consider Section 17 of the Senior Citizens Act. It is no doubt true that Section 17 of the Senior Citizens Act must be amended to allow the lawyers, advocates and legal practitioners to represent parties before the Tribunals. But there should not be a single adjournment on their part in conducting the cases. Additionally, the Tribunals should be equipped with para-legal volunteers to assist the senior citizens in pursuing the legal process without the need for legal representation. The lawyers, advocates and legal practitioners should not adopt dilatory tactics to delay the disposal of the maintenance proceedings. This will ensure

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that the rights of senior citizens are adequately protected and that they receive fair representation in legal matters.

CONCLUSION:-

Section 17 of the Senior Citizens Act has been subjected to rigorous judicial scrutiny. It has also been declared unconstitutional by several High Courts. The prohibition on legal representation undermines the fundamental rights of lawyers, advocates and legal practitioners and the right to access to justice for senior citizens. The legislature must amend the provision to align with constitutional principles and ensure that the welfare of senior citizens is effectively safeguarded. The prevailing legal view is that parties including senior citizens are entitled to legal representation in proceedings under the Senior Citizens Act.

REFERENCES:-

The Advocates Act, 1961

The Maintenance and Welfare of Parents and Senior Citizens Act, 2007

The Constitution of India

United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems

European Court of Human Rights Case Law

¹ 2025 SCC OnLine Mad 1509

² AIR 1977 36 <https://indiankanoon.org/doc/554556/>

³ <https://www.shadesofknife.in/wp-content/uploads/2021/07/Adv-KG-Suresh-Vs-UOI-and-Ors-on-30-Mar-2021.pdf>

⁴ AIRONLINE 2021 DEL 561 <https://indiankanoon.org/doc/86693117/>

⁵ <https://indiankanoon.org/doc/156628230/>

⁶ <https://indiankanoon.org/doc/156882703/>