

Rights of Elderly Parents and the Parents' Maintenance Act, 2013

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Parents are the dearest ones for children in the earth. There is reciprocity of divine knot between them. Parents' love, affection, caring and sharing for children is unearthly and unreturnable. When asked about the rights of parents upon their child the Prophet Hazrat Muhammad (pbuh) said, "They are your heaven and your hell".¹ Allah commanded all children to show kindness to parents if one of them or both of them reach old age with them (children), and not to say 'fie' and to speak them a gracious word.² Imam As-Sadiq, in elucidating Allah's saying, 'to show kindness to parents' in aforesaid Quranic verse, said, "Showing kindness is that you be a good company for them and that you should not make them ask you for something they need from you even if they are rich".³ Likewise in Hindu scripture there is a story that Bhagavan Visnu said to Sri Markandeya-"They who serve their parents, thinking of their father as the Lord of the Universe, and mother as the holy River Ganga, indeed are my best Bhaktas (votaries)".⁴

Traditionally in Bangladeshi societal setting, family plays a substantial role in supporting and maintaining the elderly people. With societal transformation from *Gemeinschaft*⁵ into *Gesellschaft*⁶ extended families are giving way to nuclear families. The phenomenon is taking place inter alia, due to the change of socio-economic condition, particularly rapid growth of industrialization, urbanization on the one side and globalization on the other. For the sake of life and livelihood children are often required to migrate from one place/country to another leaving their elderly parents in home place/country. In most of the cases, the parents don't feel interested to migrate with their child leaving their home place as in old age people like to live in the home place and are not very comfortable moving around. This two-pronged situation has put children in a dilemma to decide how and to what extent they would discharge their obligation towards the parents. Apart from it, there is a section of children in our society who neglects their elderly parents particularly when they are unable to maintain themselves forgetting how they (parents) brought up them when they were same as their old aged parents.

Global population aging structure has been reshaped in recent decades due to combined effect of declined fertility and increased life expectancy. At present, with the rise in life expectancy in Bangladesh (now average age 72.7 years as per WHO Data, 2018) the number of elderly persons incapable of maintaining themselves is increasing day by day. Currently, around 14 million of the total population constitutes the older people (60 years as per the National Policy on Older Persons, 2013) in the country. Majority of the older people are living in poor health, economic hardship and social insecurity. In this age of modernism, population aging and its social and economic consequences are drawing increased attention from policy makers worldwide. Likewise, Bangladesh is also concerned to face the challenges and secure the proper maintenance of old aged person. To ensure the social security for these forlorn persons the government has launched a number of measures such as- old age allowance, allowance for widow, deserted and destitute woman, retirement pension benefits etc. On the other hand, to bring the rights of elderly people under the umbrella of a legal framework, the government of Bangladesh has framed the National Policy on Older Persons and the Parents' Maintenance Act in 2013 in response to the Madrid international Plan of Action on Aging, 2002.

The Parents' Maintenance Act, 2013 is undoubtedly a laudable step towards consolidating the parents' right to maintenance from their able and capable children. Maintenance as defined in the Act includes food, clothing, medication, shelter and accompaniment.⁷ The Act mandates every

child to ensure maintenance for their parents and in parents' absence, for their grandparents (paternal and maternal).⁸As per section 3(4), the parents or either of them should not be compelled to live in any old age home or elsewhere jointly or separately against their will. The children are enjoined to maintain regular communication with the parents and to manage necessary medication and also to take care of them.⁹If either of the parents or both live separately from children, each child is required to visit either or both regularly.¹⁰ In case of separate living of the parent(s), the children shall give them a reasonable amount of money from their daily or monthly or yearly income.¹¹Any child infringing any provision of sections 3 and 4 of the Act is said to have committed an offence there under. Section 5 prescribes punishment of fine extending to Tk. 1 lac, or in case of failure to pay the said fine, 3-month imprisonment, for default of purveying maintenance to the parent(s) and in their absence, to grandparent(s) as aforesaid. In case of obstruction or non-cooperation from son's wife or daughter's husband or children or any other relatives, such person shall be liable as abettor to the same punishment. Any parents or parent not provided with maintenance by the children can file a written complaint with the court of 1st class judicial magistrate or metropolitan magistrate.¹²The offences under the Act are cognizable, bailable and compoundable.¹³

In addition, such parent(s) can bring a civil suit to the Family Court¹⁴ for maintenance against their son or daughter who does not maintain him//her. In a case¹⁵ the Appellate Division held that "Children in easy circumstances under Mohammedan Law are bound to maintain their poor parents, although the latter may be able to earn something for themselves. These poor parents may also file a suit in a family court for maintenance under the Ordinance of 1985 under circumstances enjoined by Mohammedan law." Under Mohammedan Law children in easy circumstances are bound to maintain their poor parents, although the latter may be able to earn something for themselves.¹⁶A son though in straitened circumstances is bound to maintain his mother, if the mother is poor, though she may not be infirm.¹⁷ On the other hand, a son, who, though poor is earning something, is bound to support his poor father who earns nothing.¹⁸Similarly a person is bound to maintain his paternal and maternal grandfathers and grandmothers if they are poor but not otherwise, to the same extent as he is bound to maintain his poor father.¹⁹

The Act has some drawbacks. It is a penal law. It does not directly empower the court to order the children to provide maintenance to their parents. It does not also provide for the maintenance of adoptive or childless parents. The Act does not speak of by whom and how 'reasonable amount of money to be paid by child' is to be determined. It does not also clarify whether the parent(s) would get 'fine money'.

From a survey¹⁶ conducted on the mass people's awareness of the Act, it reveals that 98% people don't know about this law and only 2% is informed thereof. Of the informed ones, 22% was female and 78% male. It indicates that the Act is poorly circulated resulting in its frustrating application. In this survey, it is also seen that there are so many parents who are not interested to file a case against their child in spite of not providing maintenance to them. According to the survey, about 46% parents are interested to file case against their child for not defraying maintenance and on the contrary, 44% parents think that they won't file any case for maintenance because if they do so, then their beloved child will be punished. On the other side, 10% percent parents have no comment regarding this issue. About the monetary fine of one lac taka, 54% parents said that this provision is perfect and 38% parents think that it should be increased while 8% parents think that this amount of fine should be decreased. When asked about the term of imprisonment provided for in this Act 60% of parents thinks that 3 (three) months imprisonment is perfect and 34% of parents thinks that the duration of imprisonment is needed to be increased whereas only 6% of parents says that it is necessary to minimize the duration of punishment.

In fine, it is undeniable that the Act is a timely welfare legislation. But it has failed to bring forth the intended outcome due to its poor circulation among the mass people and the lack of required

rules. Though the government has drafted the Parents' Maintenance Rules, 2017 to give full effect to the Act but it is yet to be finalised. So, we earnestly hope that the newly formed government would take necessary initiatives to reap the contemplated purpose of this much needed social welfare oriented law.

Endnotes

1. Sunan Ibn Majah, H.3662
2. The Glorious Quran, 17:23-24
3. Mishkat al-Anwar, H.854,
4. Naradapurana, 1.5.53
5. Early German sociologist Ferdinand Tönnies introduced the concepts of *Gemeinschaft* and *Gesellschaft* in his book "*Gemeinschaft und Gesellschaft*" in 1887. *Gemeinschaft* is a German word that means 'community'. According to Tönnies, *Gemeinschaft* or community is comprised of personal social ties and in-person interactions that are defined by traditional social rules and result in an overall cooperative social organization. Tönnies believed that these kinds of interactions and social ties were driven by emotions and sentiments, by a sense of moral obligation to others, and were common to rural, peasant, small-scale, homogenous societies. See, Crossman, Ashley "*The Concept of Gemeinschaft and Gesellschaft*" available at <<https://www.thoughtco.com/gemeinschaft-3026337>> accessed on 24 Feb, 2019.
6. *Gesellschaft* is a German word that means society. *Gesellschaft* or society is comprised of impersonal and indirect social ties and interactions that are not necessarily carried out face-to-face (they can be carried out via telegram, telephone, in written form, through a chain of command, etc.). This kind of social organization is common to large-scale, modern, industrial, and cosmopolitan societies. See, *Ibid*.
7. The Parents' Maintenance Act, 2013 [Act No. XLIX of 2013], section 2(b)
8. *Ibid*, sections 3 and 4
9. *Ibid*, section 3(5)
10. *Ibid*, section 3(6)
11. *Ibid*, section 3(7)
12. *Ibid*, section 7
13. *Ibid*, section 6
14. Family Courts established under section 4 of the Family Courts Ordinance, 1985 is exclusively competent to entertain a suit for maintenance instituted by whomever under section 5 of the said Ordinance.
15. *Jamila Khatun v. Rustom Ali* 48 DLR 1996 (AD) 110
16. Hidayatullah, M and Hidayatullah, Arshad, *Mulla's Principles of Mahomedan Law*, 19th Edn. (1990), LexisNexis, New Delhi, section 371(1), p.301
17. *Ibid*, section 371(2)
18. *Ibid*, section 371(3)
19. *Ibid*, section 372
20. The survey was conducted by a group of student-researchers from Britannia University Law Department, Cumilla for the fulfillment of academic requirement of LL.B (Hons) program. In this survey, more than 100 people of both categories of parents and children selected by way of random sampling were interviewed.