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## MAINTENANCE RIGHTS OF ELDERLY PARENTS AND NEEDY RELATIVES: A COMPARATIVE STUDY OF ISLAMIC, PAKISTANI AND INDIAN LAW

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### ABSTRACT

It has been imposed as a filial duty upon individuals to provide sustenance and maintenance to their elderly parents and indigent relatives in Islamic law. The issue of non-provision of maintenance and care to elderly parents and needy relatives due to the lack of specific legislation in Pakistan is the main reason for the violation of their religious right to be maintained, cared and well-treated. This is ultimately producing an alarming ratio of every day admissions of elderly parents and relatives in old age homes in cases where they have been deprived or refused provision of maintenance by their liable kin. This time and again compels the state legislature to enact holistic legislation comprehensively addressing this legal issue and obliging the liable kin to adequately maintain their old parents and needy relatives according to their economic condition. This issue cannot be properly comprehended without comparative study in the light of Islamic Law and persuasive legislation in this regard i.e. "Maintenance and Welfare of Parents and Senior Citizens Act, 2007" of India which signifies and protects the necessary fulfillment of maintenance rights of aged parents and needy kin. This may facilitate the Parliament for making exhaustive legislative frameworks in Pakistan to curb the menace of non-maintenance of elderly parents and needy kin by imposing sanctions upon violating individuals. This article can be a source of tremendous guidance for students and even a layman and assists lawmakers in Pakistan in enacting a law in this field soon.

**Keywords:** Maintenance, rights of Parents, Islamic law, Necessity, legislative frameworks.

### Introduction

Islamic law is a complete and absolute code of life where the significance of maintaining family and kin is paramount. Doing good to parents and relatives is emphasized right after Allāh in the Holy Qur'ān in these words "Serve Allah, joint not any partners with Him and do good to parents and relatives"<sup>1</sup>. Allāh used the strongest verbs, nouns, and adjectives in the Holy Qur'ān to place stress on doing best possible treatment to parents and the rationale behind the commandments of Allāh is that when the child was timid, helpless and dependent on parents, at that time, the parents were young, powerful and financially stable. The child enjoyed the shower of parental

<sup>1</sup> Al- Qur'ān, 4:36.

affection and parents too never hesitated to spend money and rendered all their mercy upon their child. With time, when a child enters adulthood, things get reversed, the child becomes powerful and financially sound while the parents become helpless. A child can never repay his parents proportionately as his services to parents cannot equate to the sufferings they encountered during his upbringing but still, he is expected by Islamic law to do Iḥsān and good treatment towards parents in the form of their proper maintenance and care.

As parents are down in energy in their older age, hence, the children must maintain as well as facilitate their parents in the accomplishment of their chores to ensure their well-being. Treating one's parents with honor, affection, and kindness also requires bearing their living costs and expenditure. In Islamic law, good treatment towards relatives is known as *Silah 'Raḥmi*. The Messenger of Allāh (S.A.W) also directed Muslims to keep visiting relatives, probe about their issues and well-being, give them charity, and spend on them if they are poor which is also confirmed by the opinions of Muslim jurists in this regard. Various verses of the Holy Qur'ān along with its detailed interpretation are quite evident that worship of Allāh is interconnected with benevolence to parents, kin, and those who are needy as the Holy Qur'ān in this regard says; "and render to the kinder their due"<sup>2</sup>. Supporting parents and relatives is regarded as an act of goodness and justice. Therefore, the pleasure of Allāh can be earned by treating parents, family, and relatives with kindness and maintaining them adequately which is the greatest of all deeds in the eyes of Allāh.

### **1. Definition of Nafaqah (Maintenance) in Islamic Law**

Maintenance or monetary support is termed "Nafaqah" in Islamic jurisprudence. It is derived from the root word 'Infāq which means spending money for the betterment of family.<sup>3</sup> The relations that are created due to inheritance rights, marriage, and blood have a financial right over the person who is liable to pay them maintenance in order to enjoy the necessities of life which are of vital importance such as food, clothing, and reasonable housing.<sup>4</sup> However, the standard and quality of provision of maintenance varies by the economic status of the provider.

### **2. The Maintenance Rights of Elderly Parents in Islamic Law**

The provision of sustenance and maintenance to elderly parents is strictly demanded by Islamic law which is quite evident from various verses of the Holy Qur'ān and Sunnah of the Holy Prophet (S.A.W). This has been imposed as a filial duty upon well-to-do individuals to adequately care for and maintain their parents especially when are old under Muslim family laws. Allāh commands a person to adopt of gesture of Iḥsān (moral excellence) with his/her parents especially in their old age, regardless of their religion.<sup>5</sup> As the Holy Qur'ān says:

وَبِالْوَالِدَيْنِ إِحْسَانًا وَذِي الْقُرْبَىٰ

<sup>2</sup> Al- Qur'ān, 17:26.

<sup>3</sup> Abul Fazal Adbul Hafeez, *Al Munjid Arabic to Urdu* (Delhi: Idara Faisal, 2009), 1131.

<sup>4</sup> Ibn Ābidīn, *Radd al-Muḥtār*, Vol 2 (Riyadh: Dār al- Ālam al-Kutub, 2010), 572.

<sup>5</sup> Umar Farooq, *Rights of Parents in Islam* (Lahore: Law Publishing Company, 2015), 2.

“And treat your parents and kin with kindness”<sup>6</sup>

The very first right of the parents upon their children is to make them feel valued and honored. The children are religiously obliged to show gratitude and be kind and gentle towards parents. Kindness and gentleness towards parents also includes act of care, service and maintaining one’s parents. Allāh has enjoined the believers to do so in the following words:

وَقَضَىٰ رَبُّكَ أَلَّا تَعْبُدُوا إِلَّا إِيَّاهُ وَبِالْوَالِدَيْنِ إِحْسَانًا إِمَّا يَبُلُغَنَّ عِنْدَكَ الْكِبَرَ أَحَدُهُمَا أَوْ كِلَاهُمَا فَلَا تَقُلْ لَهُمَا أُفٍّ وَلَا تَنْهَرْهُمَا وَقُلْ لَهُمَا قَوْلًا كَرِيمًا.

“Your Lord has decreed that you worship none but Him and be kind to your parents. If one or both of them attain old age in your life, never say to them even “ugh” nor yell at them but address them in in respectful manner.”<sup>7</sup>

One of the sayings of the Holy Prophet (S.A.W) on this very subject is addressed below:

Abū Hurayrah (R.A) narrates that the Holy Prophet (S.A.W) three times said: ‘Disgraced! Disgraced! Disgraced!’ to the person who finds his parents, or one of them in old age and yet he does not enter paradise.’<sup>8</sup>

Qāḍī ‘Iyāḍ suggests that the above-mentioned ḥadīth reveals that elderly parents are key to paradise for the one who serves them and makes adequate arrangements to fulfill their needs.<sup>9</sup> In the same way, the one who fails to maintain and serve his old parents, it is a symbol of humiliation and disgrace for him and also loses a precious opportunity of earning paradise.<sup>10</sup>

The obligation and significance of spending on parents and relatives is evident in the following words:

يَسْأَلُونَكَ مَاذَا يُنْفِقُونَ قُلْ مَا أَنْفَقْتُمْ مِنْ خَيْرٍ فَلِلْوَالِدَيْنِ وَالْأَقْرَبِينَ وَالْيَتَامَىٰ وَالْمَسْكِينِ وَابْنِ السَّبِيلِ وَمَا تَفْعَلُوا مِنْ خَيْرٍ فَإِنَّ اللَّهَ بِهِ عَلِيمٌ

They ask you what they should spend on charity. Say, “Whatever you spend of good is to be for parents, kindred, orphans, the needy, and the traveler. And whatever you do for good, verily, Allah is well-known of it.”<sup>11</sup>

Muqātil bin Hayyan (R.A.) said that this verse was revealed in connection to voluntary charity (the persons who deserve nafaqah). So, Allāh explained it to the people, by revealing the above verse meaning thereby, thereby spending it on these

<sup>6</sup> Al- Qur’ān, 2:83

<sup>7</sup> Al- Qur’ān, 17:23

<sup>8</sup> Muslim b. al-Ḥajjāj, The Book of Virtue, Good Manners and Joining of the Ties of Relationship (Riyadh: Darussalam, 2007), “Filial Obedience”, Hadith No. 9.

<sup>9</sup>Abu’l-Faḍl ‘Iyāḍ al-Mālikī, Ikmāl al-Mu’lim bi-Fawā’id Muslim, Vol. 8 (Cairo: Dār al-Wafā li ‘ṭ-Ṭabā’ah wa ‘n-Nashr wa ‘t-Tawzī’, 1998), 14.

<sup>10</sup> Abu’l-Faḍl ‘Iyāḍ al-Mālikī, Ikmāl al-Mu’lim bi-Fawā’id Muslim, Vol. 8 (Cairo: Dār al-Wafā li ‘ṭ-Ṭabā’ah wa ‘n-Nashr wa ‘t-Tawzī’, 1998), 14

<sup>11</sup> Al- Qur’ān, 2:215

categories or areas.<sup>12</sup> Similarly, a ḥadīth reported by Ibn ‘Abbās (R.A.) states that “those who deserve one's generosity the most, are: Your mother, father, sister, brother, the closest and then the farthest (relatives).”<sup>13</sup> Maymūn b. Mahrān (R.A.) once recited this verse and commented, “These are the areas of spending, Allāh did not mention among them the drums, pipe, wooden pictures, or the curtains that cover the walls.”<sup>14</sup> This also removes the doubt about the inclusion of parents as recipients of spending. Another rule of conduct that emerges from this verse is that even the gift given or food served to parents and other near kin, if the intention is to obey Allāh Almighty in doing so, will be included underspending in the way of Allāh and will deserve a reward from Him.<sup>15</sup>

The above-mentioned verse shows the significance of maintaining ties and spending on the parents and relatives which is paramount in Islamic law. This means that it is mandatory under Islamic law to adhere to family ties and relationships show love, and respect, and extend a helping hand to them if they are needy.<sup>16</sup> Hence, tidings of paradise are announced for those Muslims safeguarding their relationship with relatives who show negative behavior and tend to break relations.

### 3. The Maintenance Rights of Needy Relatives in Islamic Law

The significance of maintaining ties and spending wealth on relatives is paramount in Islamic law. The verses of the Qur’ān and prophetic aḥadīth are substantial pieces of evidence of the high intensity of these commandments.

وَأْتِ ذَا الْقُرْبَىٰ حَقَّهُ وَالْمِسْكِينَ وَابْنَ السَّبِيلِ وَلَا تُبَذِّرْ تَبْذِيرًا

"And give to the kindred his due and also to the needy and traveler and do not spend your wealth wastefully."<sup>17</sup>

According to Ibn Mas‘ud (R.A), this verse reveals one’s duty to give due rights of relatives. The least degree to which this could be done is to share with them the graces of good living standards, treating them well and if they are needy, helping them financially and maintaining them adequately by one's capacity is also included therein.<sup>18</sup> From this verse, at least, it is proved that everyone has also been obligated with the fulfillment of the maintenance right of one's relatives. The quantum of such spending is not mentioned herein. But, broad-based mercy and financial generosity for relatives and good social interaction with them are certainly included there.<sup>19</sup>

<sup>12</sup> Abū al-Fiḍā’ ‘Imād ad-Dīn Ismā‘īl ibn ‘Umar ibn Kathīr al-Qurashī al-Damishqī, Tafsir Ibn Kathīr. Vol 1 (Riyadh: Darussalam Publications, 2003), 264.

<sup>13</sup> Ibid, 265

<sup>14</sup> Ibid, 266

<sup>15</sup> Abū al-Fiḍā’ ‘Imād ad-Dīn Ismā‘īl ibn ‘Umar ibn Kathīr al-Qurashī al-Damishqī, Tafsir Ibn Kathīr. Vol 1 (Riyadh: Darussalam Publications, 2003), 268

<sup>16</sup> Dr. Yasir Qadhi, “The Etiquettes of Dealing with Parents and Elderly,” Paper presented at Our Families: Our Foundation Annual Conference, Montreal, December 9 2011.

<sup>17</sup> Al-Qur’ān, 17:26

<sup>18</sup> Abū al-Fiḍā’ ‘Imād ad-Dīn Ismā‘īl ibn ‘Umar ibn Kathīr al-Qurashī al-Damishqī, Tafsir Ibn Kathīr, Vol 5 (Riyadh: Darussalam Publications, 2003), 444.

<sup>19</sup> ibid

According to Imām Abū Ḥanīfah, financial help and maintenance can be extended to two kinds of relatives under this very injunction; this includes, a relative, in the category of near blood kinship, and the degree of sanguinity precluding marriage.<sup>20</sup> Imām Abū Ḥanīfah further elaborates that a woman or child neither has the wherewithal to eke out an existence nor can earn for it. Similar is the case of a relative, in the category of near-blood kinship, and the degree of sanguinity precluding marriage. If handicapped or blind, not having enough money and property in his or her possession to eke out an existence, their relatives who have the necessary means should help them both.<sup>21</sup> Taking care of the essential expenses of such relatives is a duty enjoined on all of them. If there are several relatives in the same degree of extended means, the expenses will be divided among all of them and the subsistence allowance of the needy will be given in this manner.<sup>22</sup>

The obligation and significance of spending on parents and relatives is also evident in the following verse:

“They ask you what they should spend on charity. Say, “Whatever you spend of good is to be for parents, kindred, orphans, the needy, and the traveler. And whatever you do for good, verily, Allāh is well-known for it.”<sup>23</sup>

In this verse, according to Ibn Abi Hatim, food served or necessary financial assistance provided to the parents, kinsfolk, orphans, needy, and the wayfarer, and the mercy and generosity practiced in the case of kinsfolk was their right.<sup>24</sup> The purpose is to point out that the giver has no reason or occasion to harp on the favor done before or behind them because their right is his duty. The giver is simply doing his duty and not showering favors on anyone.<sup>25</sup>

At another place,

Maymūnah (R.A), the wife of the Prophet (S.A.W), narrates that she had a slave girl and she emancipated her. When the Holy Prophet (S.A.W) was informed, He said, “May Allah give you a reward for it; but if you would have gifted her to your maternal uncles, you would have earned a greater reward.”<sup>26</sup>

‘Allāmah Ibn Baṭṭāl with regard to above mentioned ḥadīth suggests that this narration proves that maintaining ties of kinship is more virtuous than freeing slaves.<sup>27</sup> Qāḍī ‘Iyāḍ quotes from Imam Mālik, who said; “Charity on relatives is more virtuous

<sup>20</sup> ibid

<sup>21</sup> Ibid, 444.

<sup>22</sup> Ibid, 445

<sup>23</sup> Al-Qur’ān, 2:215

<sup>24</sup> Abū al-Fiḍā’ ‘Imād ad-Dīn Ismā’īl ibn ‘Umar ibn Kathīr al-Qurashī al-Damishqī, Tafsir Ibn Kathīr. Vol 1 (Riyadh: Darussalam Publications, 2003), 267.

<sup>25</sup> ibid

<sup>26</sup> Muḥammad ibn Ismā’īl Bukhārī, Birr al-Wālidayn (Tangier: Dār al-Ḥadīth al-Kattāniyyah, 2014), “The Virtue of spending and being charitable to relatives”, Hadith No. 60.

<sup>27</sup> Abū ‘I-Ḥasan Ibn Baṭṭāl al-Mālikī, Sharḥ Ṣaḥīḥ al-Bukhārī, Vol.7 (Riyad: Maktabat ar-Rushd, 2003), 111.

than freeing slaves.”<sup>28</sup> Qāḍī ‘Iyāḍ adds that the reason why the Holy Prophet (S.A.W) specified maternal uncles in this ḥadīth is perhaps because they were in need.<sup>29</sup> Thus, the superiority of spending on relatives is when they are in need and there could be occasions wherein it is superior to spend on non-relatives.<sup>30</sup> Shaykh al-Islām, Ibn Taymiyyah states that “supporting a needy relative is more virtuous than freeing slaves”<sup>31</sup>. This means that spending on near relatives is a source of doing virtuous deeds because in this way a person does two appreciable actions i.e. act of charity and maintaining kinship ties.<sup>32</sup> Thus, earning Allāh’s pleasure.

#### **4. Difference of Opinion among Muslim Jurists Regarding Parental Maintenance**

According to Al- Sarakhsī, a well-to-do individual is responsible for maintaining even his/her financially sound parents and among the definition of parents, one’s grandparents are also included. While Imām Abū Ḥanīfah, Imām Mālik, and Imām Shāfi’ī are of the opinion that a person is responsible for spending his/her wealth only to the extent of need of parents. On the other hand, Imām Abū Yūsuf said that even a poor person is obliged to maintain his/her parents at any cost. Whereas, Imām Abū ‘Abdullāh Al-Qurṭubī and Al-Ṭabarī opined that parents are most rightful and deserving of the wealth of the child to be spent on them.

However, the most preferable viewpoint is of Imām Abū Yūsuf that if the income of a person is so meager that he/she can hardly meet his/her own expenses and cannot spend on poor parents’ maintenance, even in that case too, he/she has to include the parents in his/her own expenditure because a person cannot die on half of his belly but poor parents can surely die due to exclusion from spending on him.

#### **5. The Preferential Order for Provision of Maintenance to Relatives**

The Ḥanafī jurists are of the view that if only one individual is financially liable to maintain then he will only provide it, however, if more than one person is financially liable to provide maintenance who belongs to the same class and financial capacity, then all of them will be equally responsible to share the burden of the maintenance of the recipient.<sup>33</sup>

The Shāfi’ī jurists assert that if an individual has a wealthy grandfather and a father is also financially sound then the maintenance of such an individual will solely be paid by the father.

The Ḥanbalī jurists opined that if a child is an orphan, his maintenance liabilities will be held by his legal heirs. Each legal heir will contribute the amount of maintenance allowance in proportion of his share in the legacy of an individual.

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<sup>28</sup> Abu ‘l-Faḍl ‘Iyāḍ al-Mālikī, *Ikmāl al-Mu‘lim bi-Fawā’id Muslim*, Vol. 8 (Cairo: Dār al-Wafā li ‘ṭ-Ṭabā’ah wa ‘n-Nashr wa ‘t-Tawzī’, 1998), 22.

<sup>29</sup> *ibid*

<sup>30</sup> *ibid*

<sup>31</sup> Aḥmad ibn ‘Abd al-Ḥalīm Ibn Taymiyyah, *Majmū’ al-Fatāwa*, Vol.9 (Madīnah: Majma’ al-Malik Fahad li-Ṭabā’aT al-Mushaf ash-Sharīf, 1995), 177.

<sup>32</sup> *ibid*

<sup>33</sup> Ibn ‘Abidīn, *Radd al-Muḥṭār*, Vol 2 (Riyadh: Dār al- Ālam al-Kutub, 2010), 577.

While in the eyes of Shi'ah jurists, the only criteria for determining the preferential order of the persons on whom provision of maintenance to relatives is wājib depends upon the proximity of the relation to the recipient and if more than one relative has the same proximity of nearness then all of them will be equally liable to provide maintenance to the indigent relative irrespective of their genders.<sup>34</sup>

## **6. Critical Analysis of Certain Provisions of "Maintenance and Welfare of Parents and Senior Citizens Act, 2007" of India**

The countries like Pakistan and India belong to the same civilization and are considered to have similar family values, especially with regard to honoring, caring and financially helping the indigent and elderly members of the family such as grandparents, parents, maternal and paternal uncles, and aunts. This is because of two reasons; firstly both the countries (India and Pakistan) share a common tradition of extended family systems and secondly, both 'Islām and Hinduism are the great advocates and preachers of essentially maintaining and caring the aged parents and poor kin. Section 20 of the Hindu Adoption and Maintenance Act, 1956 obliges Hindu individuals to essentially maintain their poor and aged parents.<sup>35</sup> It is also quite evident from Sections 21 and 22 of the Hindu Adoption and Maintenance Act, 1956 which says that poor dependents (relatives) of a well-to-do Hindu individual are legally entitled to be maintained from the income accruing from the property(s) of such person.<sup>36</sup> These dependents include grandparents, parents, minor son, wife, wife's daughter, unmarried daughter, widow of son or grandson, unmarried daughter of son or grandson, and minor son of great-grandson.

### **6.1 The Scope and Definition of "Maintenance" and "Welfare" under the Act**

Section 2 (b) of the "Maintenance and Welfare of Parents and Senior Citizens Act, 2007" extends the scope of "maintenance" by supplying clothing, food, shelter, therapeutic treatment, and attendance to the recipient by the maintainer.<sup>37</sup> While, section 2(k) of the said Act interprets the term "welfare" as rendering health care facilities, access to recreation centers<sup>38</sup> for amusement purposes (access to newspapers, television, gadgets public places, etc.), provision of food, and other facilities necessary for the mental and physical well-being of senior citizens. Section 4(2) of the Act imposes an obligation upon the provider to pay the maintenance allowance which is adequate to fulfill the needs and living cost of the maintenance recipient so that he or she can live a normal dignified life.<sup>39</sup>

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<sup>34</sup> Muḥammad Riḍā al-Muẓaffar, *The Faith of Shi'ah 'Islām* (Qom: Ansariyan Publications, 1989), 86.

<sup>35</sup> The Hindu Adoptions and Maintenance Act (Act No. 78 of 1956), (The Official Gazette of India, Extraordinary Part I, December 21, 1956), s. 20.

<sup>36</sup> *ibid*, s. 21

<sup>37</sup> The Maintenance and Welfare of Parents and Senior Citizens Act (Act No. VVI of 2007), (The Official Gazette of India, Extraordinary Part II, December 31, 2007), s. 2(b).

<sup>38</sup> The Maintenance and Welfare of Parents and Senior Citizens Act (Act No. VVI of 2007), (The Official Gazette of India, Extraordinary Part II, December 31, 2007), , s. 2(k).

<sup>39</sup> *ibid*, s. 4(2).

## 6.2 Conditions for Claiming the Provision of Maintenance

As per Section 4 (1)(i) of the said Act, mandatory requirements for claiming the provision of maintenance from the provider (child or children or grandchild or grandchildren) through the maintenance court is the inability of the aged claimant (parents or grandparents) to make his own earning due to which he is unable to maintain himself or herself.<sup>40</sup> Where any senior citizen is claiming a provision of maintenance from his/her relative(s), the mandatory condition imposed by the law under Section 4 (1)(ii) is the childlessness of such senior citizen along with his poverty.<sup>41</sup> The claimant (parents and senior citizens) must have attained sixty years of age or more than that on the date of filing an application for seeking maintenance allowance as per section 2(h) of the Act.<sup>42</sup>

## 6.3 The Qualifications for the Providers of Maintenance Allowance

1. The provider must be a major and earning individual, irrespective of his gender, and shall be responsible for providing maintenance to his parents or relatives.
2. The scope of the term "child" mentioned in section 2(a) of the said Act includes son, daughter, grandson, and granddaughter.<sup>43</sup>
3. As per Section 4(1)(i) of the Act, the claimant parent(s) must make an application against the provider child who is financially sound and can provide the maintenance to him sufficiently.<sup>44</sup> If there is more than one child, then the one who is more economically strong would provide the maintenance allowance to claimant parents and where two or more children have equal economic status then all of them will be equally liable to provide maintenance to their parents.
4. In the case of a relative's maintenance, the additional qualification for the provider is that he must be a legal heir to such a relative. However, the other condition i.e. financial stability of the provider remains the same. Where there is more than one legal heir of such needy relative who are equally well-to-do, then all of them shall contribute in a proportion of their share in the estate of the claimant relative.

## 6.4 The Amount of Maintenance Allowance

Section 9 (2), mandates that the highest maintenance allowance paid to the claimant shall not be more than Rs. 10,000/- (ten thousand rupees only) per month in any case.<sup>45</sup> However, it's up to the discretion of the Maintenance tribunal to evaluate the amount of allowance for the claimant. The court shall evaluate this amount according to the needs of the claimant that could be adequately met to spend an honorable life. Therefore, once the amount of maintenance allowance for the claimant is determined and fixed, the maintenance tribunal shall direct the child/children or the

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<sup>40</sup> Ibid., s.4(1)(i).

<sup>41</sup> Ibid., s. 4(1)(ii).

<sup>42</sup> Ibid., s.2(h)

<sup>43</sup> The Maintenance and Welfare of Parents and Senior Citizens Act (Act No. VVI of 2007), (The Official Gazette of India, Extraordinary Part II, December 31, 2007), s.2 (a).

<sup>44</sup> Ibid., s.4(1)(i)

<sup>45</sup> Ibid, s.9(2)



relative(s) of the claimant to pay a monthly allowance at a rate fixed by the court. The court may pass appropriate directions to the providers from time to time as it deems fit.

### **6.5 Maharaja Nadar v. Matthukani Ammal (2012)**

In a landmark case titled as Maharaja Nadar v. Matthukani Ammal,<sup>46</sup> it was held by the court of law that an individual is personally and legally obliged to maintain his elderly parents along with providing them a peaceful shelter even though whether the parents have any property or not. This means that an individual is bound to maintain his aged parents even if there is no possibility to inherit any sort of property from parents because of their poverty, meaning thereby, the parents have nothing to give as consideration. The court also opined that under Hindu customary law, "Hindu Adoptions and Maintenance Act, 1956" and "Maintenance and Welfare of Parents and Senior Citizens Act, 2007" either denial to maintain parents or their abandonment is a punishable offense. However, an individual is legally bound to maintain his stepmother stepfather, or grandparents only when he is entitled to receive or inherit ancestral property from these relatives otherwise he is not bound to maintain them.

### **7. Customary Practices of Provision of Maintenance and Care to Parents and Indigent Relatives in Pakistani Society**

The changing norms and values of Pakistani society created more of the nuclear family systems where parents and grandparents are considered extra members and additional burdens upon the earning individual. Evicting, abandoning, non-maintaining, disobeying, and dropping aged parents and kin to welfare shelters or old age homes was once considered a moral offence, cringe, and stigma in Pakistani conventional family systems which is now openly practiced by various households without any guilt.<sup>47</sup> In Pakistan, the elderly parents and kin, usually hold a soft heart for even their negligent child and relatives. They do not even curse their ignorant disobedient child and wish good to him even if they suffered mental and physical abuse, ill-treatment and non-provision of maintenance from disobedient child or negligent relative. Parents restrain from informing a police about any untoward incident encountered by them by the hands of their disobedient and less fortunate child, this further strengthens and promotes the ignorance of an individual towards his parents and he easily escapes from his legal and religious obligations. This alarms for a dire need to change the conception of both parents and children on this very subject by the enactment of a single, full-fledged, and comprehensive legislation in Pakistan that holistically addresses and remedies all issues faced by elderly parents and needy relatives.<sup>48</sup> The Parliament of Pakistan can take a persuasive inference in this regard from Indian laws dealing with kin and parental care and maintenance issues. The

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<sup>46</sup> Maharaja Nadar v. Matthukani Ammal, Writ petition No. 1882 of 2012.

<sup>47</sup> Asghar Zaidi, Silvia Stefanoni and Hasnain Khalil, *Moving from the Margins: Promoting and Protecting the Rights of Older persons in Pakistan* (Islamabad: British Council Islamabad, 2019), 22.

<sup>48</sup> *Ibid.*

effective implementation of promulgated legislation acts as another challenge for the state that needs to be wisely tackled.

According to the details reported by Edhi Foundation, operating as a social welfare organization in Pakistan since 1951, approximately six lac elderly parents and grandparents are refused to be maintained and cared for by their children and grandchildren respectively.<sup>49</sup> Thousands of such elderly people are admitted to the Edhi Foundation annually who are either abandoned by their loved ones or evicted from their homes.<sup>50</sup> These elderly parents and kin spend the rest of their lives at the mercy of the donations and charities given by overseas Pakistanis, philanthropists, and charitable organizations even in the presence of their well-to-do children and relatives.<sup>51</sup> There are plenty of examples of issueless, divorced, or widowed senior citizens in Pakistan who are dropped in old age homes like Chippa Foundation, Binte-Fatima Old Home, or Edhi Foundation by their blood relatives considering them as additional financial constraints.<sup>52</sup>

### **Conclusion**

A well-bonded family acts as a basic unit of a well-structured and civilized society. The filial support and care, where every member is acquainted with his obligations and rights towards another family member, tends to establish a harmonious atmosphere that ultimately results in the progress and prosperity of any nation. The changing circumstances, the emergence of various ethnic diversities, and mixed cultural values should never become a barrier in giving respect, care, well-treatment, and financial service to one's parents and needy relatives because this is what the fundamental principles of 'Islām are all about which provides an ultimate manner for spending a life with excellence. The parents and kin should never be subjected to encounter suffering in their old age when they become financially and physically dependent upon others because they are the ones who affectionately and generously extended a helping hand towards their children in their childhood. Hence, they deserve to be cared for, prioritized, valued, respected, and supported rather than facing impoverishment and hardships in their retired life. The rising number of admissions of elderly people in old age homes, kin, parental eviction, and non-maintenance cases provides clear proof that Pakistani individuals begin to forget their traditional family values and tend to evade their religious duty of maintaining and caring for their old parents and indigent relatives that needs to be curbed by enactment of comprehensive legislation in Pakistan along with its effective implementation to obtain desired objectives.

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<sup>49</sup> Sibtain Naqvi, "Society: Old and Abandoned," Dawn, March 8, 2020, National-South.

<sup>50</sup> Ibid.

<sup>51</sup> Sibtain Naqvi, "Society: Old and Abandoned," Dawn, March 8, 2020, National-South.

<sup>52</sup> Staff Reporter, "No Regrets about Living at Edhi Home," Dawn, October 22, 2011, Metro.

## Recommendations

The following suggestions can add more value to this issue if it is adequately addressed and translated into law by the Parliament of Pakistan.

1. The Parliament of Pakistan should show more activeness in establishing a legal right of Parents and indigent relatives to the provision of maintenance by their well-to-do children and kin by the way of legislating a law in this perspective immediately.
2. The pro bono legal services through designated state lawyers should be provided to elderly parents and needy relatives for drafting a maintenance application and presenting this in a maintenance tribunal.
3. The maintenance suits of elderly parents and needy relatives should be tried summarily in a speedy manner with a convenient procedure.
4. The maintenance tribunal should evaluate the amount of maintenance allowance for the parents and relatives while considering the economic status and living standard of the liable individual.
5. If an individual is financially unstable and could not maintain his parents, then the state should take responsibility of such parents (like a welfare state) by providing them an adequate sum of money on the account of maintenance allowance.
6. The social rights activists, NGOs, public figures and influential personalities in Pakistan can play a vital part in creating public awareness in this perspective which can compel the Parliament to make reforms and laws in this area.
7. Since, negligence in fulfilling the rights of parents and relatives comes from the lack of proper training of the children from the beginning of their education. One should be aware of his religious duties and Islamic teachings regarding it from his childhood. Educational institutions and teachers can play a vital role in the character and value-building of an individual. Hence, such knowledge should be imparted to young students through mandatory regular sessions so that their religious values can be strengthened and they cannot escape from the performance of their obligations in the later part of their lives. This could significantly reduce the percentage of parental and kin non-maintenance cases.