

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

(EXTRAORDINARY CIVIL WRIT JURISDICTION)

WRIT PETITION (CIVIL) No. 3074 OF 2019

IN THE MATTER OF:

Pawan Reley and Anr.

Petitioners

Versus

Union of India and Ors.

Respondents

IN THE MATTER OF

1. Pawan Reley S/O Late Shri Chandra Bhan Reley, R/O 110, Mavilla Apartment, Mayur Vihar Phase - 1, Delhi - 110091
2. Mitu Choudhary, W/O Sumit Yadav, Age 32, R/O G-1001, Amrapali, Silicon City, Section 76, Noida - 201301

**....Petitioners**

**Versus**

1. Union of India, through Secretary, Ministry of Law and Justice, Dept. of Legal Affairs, 4th Floor, A-Wing, Shastri Bhawan New Delhi-110001
2. Bar Council of India, through Secretary/ Chairperson, 21, Rouse Avenue Institutional Area, Near Bal Bhawan, New Delhi - 110 002.
3. Bar Council of Delhi, through Secretary, 2/6, Siri Fort Institutional Area Khel Gaon Marg, New Delhi-49
4. The Maintenance Tribunal for Senior Citizens (District South West), through DM/

Old Tax Building,  
Kapaskhera, New Delhi:  
110037.

5. Girish Yadav, S/O Late Shri  
Babu Singh Yadav, R/O Flat  
No. 263, Platinum Hights,  
Sector 18 B Dwarka.

....Respondents

**WRIT PETITION UNDER ARTICLE 226 OF THE  
CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT  
OF MANDAMUS OR ANY OTHER APPROPRIATE WRIT  
OR DIRECTIONS DIRECTING AND HOLDING THAT  
SECTION 17 OF THE MAINTENANCE AND WELFARE  
OF PARENTS AND CITIZENS ACT, 2007 IS  
UNCONSTITUTIONAL ON ACCOUNT OF BEING  
VIOLATIVE OF ARTICLE 19(1)(g) AND NOT SAVED  
UNDER ARTICLE 19(6) OF THE CONSTITUTION OF  
INDIA.**

**ISSUE A WRIT IN THE NATURE OF MANDAMUS OR  
ANY OTHER APPROPRIATE WRIT OR DIRECTIONS  
DIRECTING THAT THE ACTION OF THE RESPONDENT  
NO 4 IN PREVENTING THE PETITIONER NO. 1 TO  
REPRESENT PETITIONER NO. 2 BEFORE THE  
MAINTENANCE TRIBUNAL FOR SENIOR CITIZENS  
(DISTRICT SOUTH WEST) IN THE CASE NO. 255 OF  
2018 IS IN VIOLATION OF HIS FUNDAMENTAL  
RIGHT ENUMERATED UNDER ARTICLE 19(1)(g) OF  
THE CONSTITUTION OF INDIA AND SECTION 30 OF  
THE ADVOCATE ACT, 1961.**

**FOR ISSUANCE OF A WRIT IN THE NATURE OF  
MANDAMUS OR ANY OTHER APPROPRIATE WRIT OR  
DIRECTIONS DIRECTING THE CONCERNED  
RESPONDENTS TO ALLOW PETITIONER NO. 1 TO  
MAKE LEGAL REPRESENTATION ON BEHALF OF  
PETITIONER NO. 2 BEFORE THE MAINTENANCE**

**TRIBUNAL FOR SENIOR CITIZENS (DISTRICT SOUTH WEST) IN THE CASE NO. 255 OF 2018.**

**MOST RESPECTFULLY SHOWETH:**

1. That the Petitioners are citizen of India and thus, entitled to invoke the writ jurisdiction of this Hon'ble Court. The Respondents No. 1 to 4 who are necessary parties are 'State' within the meaning of Article 12 of the Constitution of India and thus, amenable to the writ jurisdiction of this Hon'ble Court. That Respondent No. 5 is a Proforma party in present case, thus not required to be 'State' within the meaning of Article 12 of the Constitution of India.
2. That the Petitioner No. 1 is a practising advocate of the Supreme Court of India with the enrolment no. MP/737/2015. He also practises before the Hon'ble High Court of Delhi, District Courts and in various tribunals. Petitioner No. 2 is the client of Petitioner No. 1 against whom complaint and application under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the "The Maintenance Act) was filed by Respondent No. 5 before the Maintenance Tribunal for Senior Citizens (District South West).

3. That the instant Writ Petition gives rise to question of the right of legal representation. Section 17 of the Maintenance Act seeks to prohibit representation by a legal practitioner and this issue needs to be examined in the context of Article 19(1)(g) of the Constitution of India read with Section 30 of the Advocates Act, 1961 which remained un-notified for five decades, but was finally notified by the notification dated 09.06.2011.
4. That Legislature in 1961 passed the Advocates Act, 1961 in order to amend and consolidate the law relating to legal practitioners and to provide for the constitution of the Bar Councils and an All-India Bar. However, Section 30 of the said Act did not come in force till 2011.
5. The Hon'ble Supreme Court in the case ***of Lingappa Pochanna Appealwar Vs State of Maharashtra and another, 1985 AIR (SC) 389*** dealt with the constitutional validity of Section 9 A of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1975, which was couched in similar terms as Section 17 of the said Act beginning with the "notwithstanding" clause depriving the pleader's right to appear on behalf of parties in any proceedings under the Act before the Collector, Commissioner or

the Maharashtra Revenue Tribunal. It was held as under:

*"That contention that an advocate enrolled under the Advocates Act, 1961 has an absolute right to practise before all Courts and Tribunals can hardly be accepted. Such a right is no doubt conferred by Section 30 of the Advocates Act. But unfortunately for legal profession, Section 30 has not been brought into force so far though the Act has been on the Statute Book for the last 22 years. There is very little that we can do in the matter and it is for the Bar to take it up elsewhere. A person enrolled as an advocate under the Advocates Act is not ipso facto entitled to a right of audience in all Courts unless Section 30 of that Act is first brought into force. That is a matter which is still regulated by different statutes and the extent of the right to practise must depend on the terms of those statutes. The right of an advocate brought on the rolls to practise is, therefore, just what is conferred on him by Section 14(1)(a), (b) and (c) of the Bar Councils Act, 1926..."*

The aforesaid discussion, thus, shows that the basic reasoning is predicated on Section 30 of the Advocates Act not being brought into force.

6. That an advocate of the Supreme Court approached the highest judicial forum for enforcement of Section 30 of the Advocates Act. The Hon'ble Supreme Court on 1.08.1988 in the case of **Aeltemesh Rein**,

***Advocate Vs Union of India and others, 1988 (4)***

**SCC 54** issued a writ in the nature of mandamus to the Central Government to consider whether the time to bring Section 30 of the Advocates Act into force had arrived or not, as the matter could not lie over without application of mind. Six months' time was fixed for the said purpose. The Hon'ble Supreme Court distinguishing ***the Aeltemesh Rein Case*** from ***A.K. Roy Vs Union of India and another, 1982 AIR (SC) 710*** held as under:

*"6. The effect of the above observations of the Constitution Bench is that it is not open to this Court to issue a writ in the nature of mandamus to the Central Government to bring a statute or a statutory provision into force when according to the said statute the date on which it should be brought into force is left to the discretion of the Central government. As long as the majority view expressed in the above decision holds the field it is not open to the Court to issue a writ in the nature of mandamus directing the Central Government to bring Section 30 of the Act into force. But, we are of the view that this decision does not come in the way of this Court issuing a writ in the nature of mandamus to the Central Government to consider whether the time for bringing Section 30 of the Act into force has arrived or not. Every discretionary power vested in the executive should be exercised in a just, reasonable and fair way. That is the essence of*

*the rule of law. The Act was passed in 1961 and nearly 27 years have elapsed since it received the assent of the President of India. In several conferences and meetings of lawyers resolutions have been passed in the past requesting the Central Government to bring into force Section 30 of the Act. It is not clear whether the Central Government has applied its mind at all to the question whether Section 30 of the Act should be brought into force. In these circumstances, we are of the view that the Central Government should be directed to consider within a reasonable time the question whether it should bring Section 30 of the Act into force or not. If on such consideration the Central Government feels that the prevailing circumstances are such that Section 30 of the Act should not be brought into force immediately it is a different matter. But it cannot be allowed to leave the matter to lie over without applying its mind to the said question. Even though the power under Section 30 [sic Section 1(3)] of the Act is discretionary, the Central Government should be called upon in this case to consider the question whether it should exercise the discretion one way or the other having regard to the fact that more than a quarter of century has elapsed from the date on which the Act received the assent of the President of India. The learned Attorney General of India did not seriously dispute the jurisdiction of this Court to issue the writ in the manner indicated above."*

7. That Legislature passed the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 which came in force w.e.f. 31.12.2007. The very statement of objects and reasons of the said Act has referred to the traditional norms and values of the Indian society which laid stress on providing care for the elderly, but due to the withering of the joint family system, a large number of elderly are not being looked after by their family. It is observed that ageing has become a major social challenge and there is a need to give more attention to the care and protection for the older persons. It is perceived that the procedure for claiming maintenance under the Code of Criminal Procedure, 1973 (hereinafter referred to as the Cr.P.C.) is time consuming as well as expensive and, thus, the need to have a simple, inexpensive and speedy provisions to claim maintenance for the parents.

However, while framing the provisions of the said Act, the Legislature has gone much beyond the aspect of maintenance as rights in property have become involved with that aspect not only affecting the senior citizens' and their progenies' inter se rights, but even capable of affecting third party rights. Thus, the matter is not so simple as the statement of objects and reasons states, but on the other hand,

there are certain provisions which are bound to give rise to more complex legal issues where rights in immovable properties are sought to be negated on pleas such as fraud, coercion and undue influence. In fact, even presumptions are sought to be drawn by introducing a deeming provision in certain situation. Further, Section 17 of the Maintenance Act seeks to prohibit representation by a legal practitioner.

8. That the Ministry of Law and Justice passed a notification dated 09.06.2011 in terms whereof Section 30 of the Advocate Act, 1961 brought into force w.e.f. 15.06.2011. The copy of the Notification dated 9.06.2011 passed by the Ministry of Law and Justice bringing Section 30 of the Advocate Act, 1961 into force w.e.f. 15.06.2011 is annexed herewith as **"ANNEXURE P-1."**
9. That one Mr. Girish Yadav (Respondent No. 5) father in law of Petitioner No. 2 on 14.11.2018 filed a complaint along with an Application under Section 23 of the "Maintenance and Welfare of Parents and Senior Citizens Act, 2007" for declaring transfer of Property made by him to his son and daughter in law void before the Hon'ble Maintenance Tribunal for Senior Citizens (District South-West) in case No. 255 of

2018. The copy of the complaint dated 14.11.2018 along with an Application under Section 23 of the "Maintenance and Welfare of Parents and Senior Citizens Act, 2007" filed by Respondent No. 5 before Hon'ble Maintenance Tribunal for Senior Citizens (District South-West) is annexed herewith as **"ANNEXURE P-2."**

10. That Petitioner No. 2 on 11.01.2019 filed reply to the said application and complaint before the Hon'ble Maintenance Tribunal for Senior Citizens (District South-West) in case No. 255 of 2018. The copy of the Reply filed by the Petitioner No. 2 in case No. 255 of 2018 before the Hon'ble Maintenance Tribunal for Senior Citizens (District South-West) is annexed herewith as **"ANNEXURE P-3."**

11. It is kindly to be noted that the case No. 255 of 2018 before the Hon'ble Maintenance Tribunal for Senior Citizens (District South-West) involved the tricky and technical questions of law in relation to Transfer of property Act, 1882 and Indian Registration Act, 1908 etc in light of Section 23 of the Maintenance Act. Thus, the Petitioner No. 2 engaged Petitioner No. 1 as her Counsel in order to represent her before the Maintenance Tribunal. Petitioner No. 1 and Petitioner

No. 2 signed the Vakalatnama on 1.02.2019. The copy of the original Vakalatnama dated 1.02.2019 signed by Petitioner No. 1 and Petitioner No. 2 to represent Petitioner No. 2 before the Maintenance Tribunal for Senior Citizens (District South-West) in case No. 255 of 2018 is annexed herewith as "**ANNEXURE P-4.**"

12. It is to be noted that when Petitioner No. 1 approached the Maintenance Tribunal on 1.02.2019, he was denied entry by the Maintenance Tribunal citing Section 17 of Maintenance and Welfare of Parents and Senior Citizens Act, 2007.
13. The fundamental right to practice any profession for an advocate in form of making legal representation has been specifically denied under Section 17 of the Maintenance Act which reads as under:-

*"17. Right to legal representation. — Notwithstanding anything contained in any law, no party to a proceeding before a Tribunal or Appellate Tribunal shall be represented by a legal practitioner."*

14. That on the other hand the Ministry of Law and Justice passed a notification dated 09.06.2011 in terms whereof Section 30 of the Advocate Act, 1961 brought into force w.e.f. 15.06.2011. Section 30 of the Advocate Act which reads as under:

**30. Right of advocates to practise –**

*Subject to provisions of this Act, every advocate whose name is entered in the [State roll] shall be entitled as of right to practise throughout the territories to which this Act extends-*

*(i) in all courts including the Supreme Court;*

*(ii) before any tribunal or person legally Authorized to take evidence; and*

*(iii) before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practise.”*

The aforesaid provision confers a right to practise on the advocate throughout the territories before Courts, Tribunals and any other authority before whom such advocate is entitled to practise. The emphasis is laid on the aspect “legally authorized to take evidence” to submit that the role of a legal practitioner becomes crucial where evidence has to be adduced, as under the provisions of the Maintenance Act, they no more remain simple proceedings of just determining maintenance upto ` 10,000/-, but deal with rights in immovable properties and declarations to nullify transfers under a deeming provision of fraud or coercion or undue influence as Stated under Section 23 of the Maintenance Act. These are ticklish legal issues for which any forum would require proper legal

assistance. A Tribunal can enforce attendance of parties and issue bailable & nonbailable warrants. Powers under Civil and Criminal Procedure Codes have been conferred practically on the lines of a Court to a forum.

15. It is submitted that Section 17 of the Maintenance Act, without a doubt, begins with the "notwithstanding" clause. However, while determining the right of representation by a legal practitioner, a complete phrase used is "notwithstanding anything contained in any law". The reference in law can only be a law which is in force. On the date when the said Act came into force on 31.12.2007, Section 30 of the Advocates Act did not exist in the statute book. This is so as the Parliament in its wisdom had given the right to the Executive to notify from which date this provision would be applicable. Thus, Section 30 of the Advocates Act would be "any law" only if it was on the statute book. This provision came on to the statute book only w.e.f. 15.06.2011.
16. That no doubt, Section 30 of the Advocate Act has been part of the Advocates Act as passed by the Parliament in 1961. The said Act is a subsequent statute of the year 2007. However, this provision was

not part of the law on account of the conscious will of the Parliament to leave the aspect of its enforcement to the Executive and the Executive thereafter in its wisdom brought it into force only on 15.06.2011 i.e. much after the said Act came into force. It is in that sense a subsequent law which has come into force. In fact, while enacting Section 17 of the said Act, as is also apparent from Parliamentary debates, the absence of enforcement of Section 30 of the Advocates Act was an aspect noticed. Thus, there was full consciousness in the debates in Parliament on Section 30 not existing as law on that date.

17. That in order to find out that when a Central Act comes into force, it is important to refer Section 5 of the General Clauses Act, 1987 which is reproduced hereinbelow:

**"5. Coming into operation of enactments –**

*[(1) Where any Central Act is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it receives the assent-*

*(a) in the case of a Central Act made before the commencement of the Constitution, of the Governor-General, and*

*(b) in the case of an Act of Parliament, of the President]*

*(3) Unless the contrary is expressed, a 1[Central Act] or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement."*

It is submitted that the reference aforesaid is in the context as to when a Central Act comes into force *i.e.* when it is not expressed to come into operation on a particular day, it is to be on the day when it receives the assent of the President; and on the expiry of the day preceding its commencement under sub section (3) of Section 5 of the General Clauses Act. However, this has a caveat that "unless the contrary is expressed" by the Parliament itself in terms of sub section (3) of Section 1 of the Advocates Act authorizing the Central Government to appoint different dates for different provisions of the Act. Thus, it did not come into force in terms of clause (b) and sub section (3) of Section 5 of the General Clauses Act and came into force almost five decades later. Thus, it became law posterior to the Maintenance Act.

18. That the Hon'ble High Court of Punjab and Haryana at Chandigarh in the case of ***Paramjit Kumar Saroya Vs Union of India and Another, CWP-7282-2010*** thorough its judgement and order dated 28.05.2014 scanned the anatomy of Section 17 of the Maintenance

Act in light of Section 30 of the Advocate Act and held Section 17 would not come in the way of legal representation on behalf of parties post 15.06.2011 in view of Section 30 of the Advocates Act having come into force. The Hon'ble High Court observed as under:

*“In the conspectus of the discussions aforesaid, we are thus of the view that the decision vide section 30 of the Advocates Act has become law on a posterior date to Section 17 of the said Act which is sufficient for us to come to the conclusion that there cannot be an absolute bar to the assistance by legal practitioners to a Tribunal or the Appellate Tribunal despite the “notwithstanding” clause. Both the enactments are Central enactments. While the said Act was being enacted, the absence of Section 30 of the Advocates Act was known. Not having conferred that right under Section 30 of the Advocates Act on the legal practitioner, the Parliament in its wisdom had found no reasons to give such rights under Section 17 of the said Act. However, the situation has subsequently changed on account of Section 30 of the Advocates Act having come into force. The right conferred under Section 30, subject to the provisions of the Advocates Act, is on every advocate so far his name is entered in the State roll to practice “throughout the territory to which this Act extends”. Such right is qua all Courts including the Supreme Court. Such right is*

*also before any Tribunal or person "legally authorized to take evidence". Thus, if a Tribunal is legally authorized to take evidence, there is right in the advocate to practise before the Tribunal. The Tribunal has the right to take evidence. That being the status of the Tribunal, there has been intrinsic right in the advocate to practise before such a Tribunal in view of Section 30 of the Advocates Act which cannot be taken away. The position would be the same before the Appellate Tribunal in view of the powers conferred on a Tribunal constituted under Section 7 of the said Act. Sections 6, 8 and 11 of the said Act leave no manner of doubt about the vast powers including taking the evidence on oath, enforcing attendance of witnesses, compelling discovery of documents, it being a Civil Court for all the purposes of Section 195 and Chapter XXVI of the Cr.P.C. etc.*

*The over-riding provisions of the said Act under Section 3 in the context of Section 17 of the said Act have to be appreciated in the context of the law prevalent when the said Act was enacted. The ground reality has changed on account of Section 30 of the Advocates Act having come into force on 15.06.2011, while all the judgments taking contrary view are based on Section 30 not being notified and the consequence thereof. Section 30 was not law when the said enactment was enacted and brought into force.*

Further, the Hon'ble High Court held:

*"Section 17 would not come in the way of legal representation on behalf of parties post 15.06.2011 in view of Section 30 of the Advocates Act having come into force."*

The copy of the judgement and order dated 28.05.2014 passed by the Hon'ble High Court of Punjab and Haryana at Chandigarh in the case of ***Paramjit Kumar Saroya Vs Union of India and Another, CWP-7282-2010*** is annexed herewith as **"ANNEXURE P-5"**.

19. That aggrieved by the act of the Respondents in denying the Petitioner No. 1 to make legal representation on behalf of Petitioner No. 2 before the Maintenance Tribunal and in light of the law laid down in the said Judgement, petitioners on 11.02.2019 filed a writ petition in the case titled "Pawan Reley and Anr. Vs Union of India and Ors.", WP (C) No. 1466 of 2019 before this Hon'ble Court for the direction that Section of 30 Advocate Act, 1961 shall prevail of Section 17 of the Maintenance Act.
20. That the said Writ Petition filed by the Petitioners in the case titled "Pawan Reley and Anr. Vs Union of India and Ors.", WP (C) No. 1466 of 2019 was withdrawn by the Petitioners with liberty to file the

fresh Writ Petition challenging the Constitutional validity of provisions of Section 17 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The Hon'ble High Court in the said order dated 13.02.2019 observed herein under:

*"1. Petitioner no.1, who is also the learned counsel appearing for petitioner no. 2, seeks to withdraw the present petition with liberty to challenge the Constitutional validity of provisions of Section 17 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.*

*2. The petition is dismissed as withdrawn, with the aforesaid liberty. The pending application is disposed of."*

The copy of the order dated 13.02.2019 passed by this Hon'ble Court in the case titled Pawan Reley and Anr. Vs Union of India and Ors, WP (C) No. 1466 of 2019 is annexed herewith as **"ANNEXURE P-6"**.

21. That the Hon'ble Supreme Court in the case of ***N.K. Bajpai Vs. Union of India (2012) 4 SCC 653*** with regard to fundamental right of an advocate to practice held to the following effect:

*"Therefore, the right to practice, which is not only a statutory right under the provisions of the Advocates Act but would also be a fundamental*

*right under Article 19(1)(g) of the Constitution is subject to reasonable restrictions.”*

22. It is in the aforementioned respect, it is submitted that Section 17 of the Maintenance Act, 2007 imposes unreasonable restriction on the fundamental right of Petitioner to practice before the Maintenance Tribunal specifically after Section 30 of the Advocate, 1961 coming into force.

23. Article 19(1)(g) of the Constitution of India provides that All citizens shall have the right to practise any profession, or to carry on any occupation, trade or business. Article 19(1)(g) is subject to Article 19(6) which provides as:

*"19(6) Nothing in sub clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub clause, and, in particular, nothing in the said sub clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,*

*(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or  
(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of*

*any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise*

24. The freedom, however, as guaranteed under Article 19(l)(g) is valuable and cannot be violated on grounds which are not established to be in public interest or just on the basis that it is permissible to do so. For placing a complete prohibition on any professional activity, there must exist some strong reason for the same with a view to attain some legitimate object and in case of non-imposition of such prohibition it may result in jeopardizing or seriously affecting the interest of the people in general. If it is not so, it would not be a reasonable restriction if placed on exercise of the right guaranteed under Article 19(l)(g).
  
25. That the Hon'ble Supreme Court in the case of ***M.R.F. Ltd. v. Inspector, Kerala Government and Ors, [1998]*** 8 SCC p. 227, has laid certain tests on the basis of which reasonableness of the restriction imposed on exercise of right guaranteed under Article 19(l)(g) can be tested. Speaking for the Court, Saghir Ahmad, J. (as he then was), laid such considerations as follows :

- i. While considering the reasonableness of the restrictions, the Court has to keep in mind the Directive Principles of State Policy.*
- ii. Restrictions must not be arbitrary or of an excessive nature so as to go beyond the requirement of the interest of the general public.*
- iii. In order to judge the reasonableness of the restrictions, no abstract or general pattern or a fixed principle can be laid down so as to be of universal application and the same will vary from case to case as also with regard to hanging conditions, values of human life, social philosophy of the Constitution, prevailing conditions and the surrounding circumstances.*
- iv. A just balance has to be struck between the restrictions imposed and the social control envisaged by Clause (6) of Article 19.*
- v. Prevailing social values as also social needs which are intended to be satisfied by restrictions have to be borne in mind. (See: State of U.P. vs. Kaushaliya, (1964) 4 SCR 1002 = AIR 1964 SC 416).*
- vi. There must be a direct and proximate nexus or a reasonable connection between the restrictions imposed and the object sought to be achieved. If there is a direct nexus between the restrictions, and the object of the Act, then a strong presumption*

*in favour of the constitutionality of the Act will naturally arise.”*

26. It is submitted that Section 17 of the Maintenance Act, 2007 imposes the restriction which is not only arbitrary but also beyond the requirement of the interest of the general public. It is also submitted that there is no direct and proximate nexus between Section 17 of Maintenance Act, 2007 and the object sought to be achieved by it.
  
27. It is submitted that under the provisions of the Maintenance Act, 2007 they no more remain simple proceedings of just determining maintenance upto ` 10,000/-, but deal with rights in immovable properties and declarations to nullify transfers under a deeming provision of fraud or coercion or undue influence as Stated under Section 23 of the Maintenance Act. These are ticklish legal issues for which any forum would require proper legal assistance. A Tribunal can enforce attendance of parties and issueailable & nonailable warrants. Powers under Civil and Criminal Procedure Codes have been conferred practically on the lines of a Court to a forum.

28. It is submitted that the matter in relation to property is getting complicated day by day. Further, the aforesaid restriction on the fundamental right of legal representation has also to be appreciated in the context of Chapter V of the Maintenance Act, 2007 which deals with the protection of life and property of senior citizen. Thus, it is relevant to reproduce Section 23 of the Maintenance Act which is as under:

**"23. Transfer of property to be void in certain circumstances:-** (1) *Where any senior citizen who, after the commencement of this Act, has transferred 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.*

(2) *Where any senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right.*

*(3) If, any senior citizen is incapable of enforcing the rights under sub-sections (1) and (2), action may be taken on his behalf by any of the organization referred to in Explanation to sub-section (1) of section 5."*

The aforesaid provision is very wide in its connotation as it envisages a situation where a transferee is enjoying by way of gift or otherwise a property of the senior citizen. Of course, if it is for consideration, then such a situation would not arise where transfer by way of gift or otherwise is in fact observed to be "deemed to have been made by fraud or coercion or under undue influence" in the eventuality of the transferee refusing or failing to provide amenities and basic physical needs to the senior citizen. The transfer is to be made void as per Section 23 of the Maintenance Act encompassing situations of gift, family settlements, memorandum of understanding etc. Not only that, there may be situations where the property is further transferred to third party who would also be roped in if the first transaction itself is declared void. The sequitur would be that even the second part of the transaction may get affected.

29. It is submitted that in the said proceeding of Section 23 of the Maintenance Act, the oral and documentary

evidence would have to be placed before the Maintenance Tribunal. Subsequently, the evidence of both sides will have to be appreciated and appraised by the Hon'ble Tribunal and it would be required to analyze the submissions and arguments of both sides. If thorough and well prepared submissions are not canvassed on behalf of the petitioner No. 2 in the pending reference, it may well suffer an adverse order. Thus, to meet the challenge raised by Section of the Maintenance Act, Transfer of property Act, Indian Registration Act and Evidence Act, in the pending case assistance of an advocate trained and experienced in the law is necessary.

Thus, in the said situation, if the restriction of Section 17 is imposed, it will be extremely difficult for the parties to the case, to tackle the technical legal problems arising under Chapter V of the Maintenance Act, 2007. Therefore, the said restriction imposed by Section 17 of the Maintenance Act, 2007 in all respects anathema to the interest of general public.

30. It is also submitted that there is no direct and proximate nexus between Section 17 of Maintenance Act, 2007 and the object sought to be achieved by it. The object of the maintenance Act, 2007, which can eminently be emanated from its preamble and the

provisions in entirety, is not confined to merely determining the maintenance upto ` 10,000/-. The object also extends to deal with rights in immovable properties and declarations to nullify transfers under a deeming provision of fraud or coercion or undue influence as Stated under Section 23 of the Maintenance Act. Thus, the object of the maintenance Act, 2007 which is to make the law of maintenance for Senior Citizens simple has been diluted by the addition of Chapter V of the Maintenance Act. It makes the law of determining the rights in property under Maintenance Act more complicated for both the parties in absence of the advocate. Thus, the object of the Maintenance Act cannot, even at the fall of the hammer, be considered to have proximate nexus with restriction imposed by Section 17 of the same.

It is always better, nay, necessary too that the freedoms as guaranteed under the Constitution should be allowed to be enjoyed by the citizens to the fullest extent without putting shackles of avoidable cobweb of rules and regulations putting check and restrictions in the enjoyment of such freedoms. It is submitted that no reasonable ground to have put an absolute prohibition for advocate to make legal representation before the Maintenance tribunal as it does not fall in

any of such categories which may justify placing such restrictions completely debarring him to stand before it. Curtailment of freedom must have some strong reasons and real nexus with the purpose sought to be achieved. It would not be imposed merely because it is permissible for the State to do so. It is kindly to be noted that such complex and complicated issues which are untrammelled to the Maintenance of the Senior Citizens but go on to the extent of eviction from property, arise out of bundle of facts which have to be properly presented and unfolded before a Judge. The parties are before a Court of law. The parties are expected to not only discharge the burden cast on them by the law, but they are also expected to render assistance to a Judge to arrive at a just conclusion in a case. All this is possible if an experienced and legally trained professional totally dedicated to his profession, expert in handling and presenting cases of a complex nature, is allowed to appear and represent the parties. It is submitted that the presence of an advocate before a Court ensures proper focus, direction and control of the proceedings. An advocate rarely goes astray or at a tangent and on all occasions, he focuses himself on the issues at hand and arising out of the

facts of a particular case. Therefore, the precious judicial time is saved.

31. It is submitted that even a single percent chance of being the restriction imposed by Section 17 of the maintenance Act, 2007 reasonable have been taken away after Section 30 of the Advocate Act coming into force.
32. It is submitted that it is the fundamental right of an advocate to make legal representation in form his practicing profession as enshrined under Article 19(1)(g) read in tandem with Section 30 of the Advocate Act, 1961 before any Tribunal and Court if the party has engaged him in the case through filling the proper Vakalatnama or subject to only conditions as mentioned under Advocate Act, 1961. In the same way, it is also the interconnected right of the party to engage an advocate and explain her case *in toto* to the Court if permitted by the relevant and prevailing law in force.
33. It is submitted that justice should not be a casualty, it should not be only done, but seen to be done. Therefore, in larger public interest, the effect of Section 17 of the Maintenance Act has to be nullified

on account of it being violative of Article 19(1)(g) and not saved under Article 19 (6) of the Constitution of India.

34. That the petitioners have no other alternative efficacious remedy except to file the present writ petition.
35. That the petitioners have not filed any similar writ petition either before this Hon'ble Court or before any other court of the Country having the similar cause of action.
36. Those under the circumstances the Petitioners are left with no alternative but to approach this Hon'ble Court by way of present petition for protection of their rights and interest.

### **P R A Y E R**

It is therefore, most respectfully prayed that in the interest of justice, the Hon'ble Court be pleased to:

- a) Issue a writ in the nature of mandamus or any other appropriate writ or directions directing and holding that the section 17 of the Maintenance And Welfare Of Parents And Citizens Act, 2007 is unconstitutional on account of being violative of Article 19(1)(g) and

not saved under Article 19 (6) of the Constitution Of India.

- b) Issue a writ in the nature of mandamus or any other appropriate writ or directions directing that the action of the respondent no 4 in preventing the petitioner no. 1 to represent petitioner no. 2 before the Maintenance Tribunal For Senior Citizens (District South West) in the Case No. 255 of 2018 is in violation of his fundamental right enumerated under Article 19(1)(g) of the Constitution of India and Section 30 of the Advocate Act, 1961.
- c) Issue a writ in the nature of mandamus or any other appropriate writ or directions directing the Concerned Respondents to Allow Petitioner No. 1 to make legal representation on behalf of Petitioner no. 2 before The Maintenance Tribunal for Senior Citizens (District South West) In The Case No. 255 Of 2018.
- d) Pass any other or further orders as may be deemed fit and proper in the facts and circumstances of the present case.

Petitioners

(Pawan Reley) & (Yogesh Agarwal)  
Advocates

Counsel for the Petitioners  
110, Mavilla Apartment, Mayur Vihar, Phase – 1,  
Delhi - 110091

New Delhi  
Dated:

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

(EXTRAORDINARY CIVIL WRIT JURISDICTION)

WRIT PETITION (CIVIL) No. OF 2019

IN THE MATTER OF:

Pawan Reley and Anr.

Petitioners

Versus

Union of India and Ors.

Respondents

**MEMO OF PARTIES**

IN THE MATTER OF

1. Pawan Reley S/O Late Shri Chandra Bhan Reley, R/O 110, Mavilla Apartment, Mayur Vihar Phase - 1, Delhi - 110091
2. Mitu Choudhary, W/O Sumit Yadav, Age 32, R/O G-1001, Amrapali, Silicon City, Section 76, Noida - 201301

**....Petitioners**

**Versus**

1. Union of India, through Secretary, Ministry of Law and Justice, Dept. of Legal Affairs, 4th Floor, A-Wing, Shastri Bhawan New Delhi-110001
2. Bar Council of India, through Secretary/Chairperson, 21, Rouse Avenue Institutional Area, Near Bal Bhawan, New Delhi - 110 002.
3. Bar Council of Delhi, through Secretary, 2/6, Siri

Fort Institutional Area Khel  
Gaon Marg, New Delhi-49

4. The Registrar, Maintenance Tribunal for Senior Citizens (District South West), Old Tax Building, Kapaskhera, New Delhi: 110037.
5. Girish Yadav, S/O Late Shri Babu Singh Yadav, R/O Flat No. 263, Platinum Hights, Sector 18 B Dwarka.

**....Respondents**

Petitioners

(Pawan Reley) & (Yogesh Agarwal)  
Advocates  
Counsel for the Petitioners  
110, Mavilla Apartment, Mayur Vihar, Phase – 1,  
Delhi - 110091

New Delhi  
Dated:

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Pawan Reley and Anr.

Petitioners

Versus

Union of India and Ors.

Respondents

**URGENT APPLICATION**

Sir,

Will you kindly treat this accompanying application as an urgent one in accordance with the High Court Rules and Orders. The grounds of urgency are mentioned in the main Case.

“Prayer for directing and holding that section 17 of the Maintenance And Welfare Of Parents And Citizens Act, 2007 is unconstitutional on account of being violative of Article 19(1)(g) and not saved under Article 19 (6) of the Constitution of India has been made.”

Yours faithfully,

(Petitioners

(Pawan Reley) & (Yogesh Agarwal)

Advocates

Counsel for the Petitioners

110, Mavilla Apartment, Mayur Vihar, Phase – 1,

Delhi - 110091

New Delhi

Dated:

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

(EXTRAORDINARY CIVIL WRIT JURISDICTION)

WRIT PETITION (CIVIL) No.        OF 2019

IN THE MATTER OF:

Pawan Reley and Anr.

Petitioners

Versus

Union of India and Ors.

Respondents

**NOTICE OF MOTION**

Sir,

The enclosed application in the aforesaid matter is being filed on behalf of the petitioners and is likely to be listed on ..... or any date, thereafter, please take notice accordingly.

Petitioners

(Pawan Reley) & (Yogesh Agarwal)  
Advocates

Counsel for the Petitioners

110, Mavilla Apartment, Mayur Vihar, Phase – 1,  
Delhi - 110091

New Delhi  
Dated:

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

(EXTRAORDINARY CIVIL WRIT JURISDICTION)

WRIT PETITION (CIVIL) No.        OF 2019

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6.	<b>ANNEXURE P-1:</b> The copy of the Notification dated 9.06.2011 passed by the Ministry of Law and Justice bringing Section 30 of the Advocate Act, 1961 into force w.e.f. 15.06.2011	
7.	<b>ANNEXURE P-2 (Colly) :</b> The copy of the complaint dated 14.11.2018 along with an Application under Section 23 of	

the "Maintenance and Welfare of Parents and Senior Citizens Act, 2007" filed by Respondent No. 5 before Hon'ble Maintenance Tribunal for Senior Citizens (District South-West).

8. **ANNEXURE P-3:**

The copy of the Reply filed by the Petitioner No. 2 in case No. 255 of 2018 before the Hon'ble Maintenance Tribunal for Senior Citizens (District South-West).

9. **ANNEXURE P-4:**

The copy of the original Vakalatnama dated 1.02.2019 signed by Petitioner No. 1 and Petitioner No. 2 to represent Petitioner No. 2 before the Maintenance Tribunal for Senior Citizens (District South-West).

10. **ANNEXURE P-5:**

The copy of the Judgement and order dated 28.05.2014 passed by the Hon'ble High Court of Punjab and Haryana at Chandigarh in the case of Paramjit Kumar Saroya Vs Union of India and Another, CWP-7282-2010.

11. **ANNEXURE P-6:**

The copy of the order dated 13.02.2019 passed by this Hon'ble Court in the case titled Pawan Reley and Anr. Vs Union of India and Ors, WP (C) No. 1466 of 2019

12. **CM No. of 2019:**

Application under section 151 of code of civil procedure, 1908 for interim relief.

12. **VAKALTANAMA**

Petitioners

(Pawan Reley) & (Yogesh Agarwal)  
Advocates  
Counsel for the Petitioners  
110, Mavilla Apartment, Mayur Vihar, Phase – 1,  
Delhi - 110091

New Delhi  
Dated:

## **LIST OF DATES**

1961 Legislature passed the Advocates Act, 1961 in order to amend and consolidate the law relating to legal practitioners and to provide for the constitution of the Bar Councils and an All-India Bar. However, Section 30 of the said Act did not come in force.

4.12.1984 The Hon'ble Supreme Court in the case of ***Lingappa Pochanna Appealwar Vs State of Maharashtra and another, 1985 AIR (SC) 389*** dealt with the constitutional validity of Section 9 A of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1975, which was couched in similar terms as Section 17 of the said Act beginning with the "notwithstanding" clause depriving the pleader's right to appear on behalf of parties in any proceedings under the Act before the Collector, Commissioner or the Maharashtra Revenue Tribunal. It was held as under:

*"That contention that an advocate enrolled under the Advocates Act, 1961 has an absolute right to practise before all Courts and Tribunals can hardly be accepted. Such a right is no*

*doubt conferred by Section 30 of the Advocates Act. But unfortunately for legal profession, Section 30 has not been brought into force so far though the Act has been on the Statute Book for the last 22 years. There is very little that we can do in the matter and it is for the Bar to take it up elsewhere. A person enrolled as an advocate under the Advocates Act is not ipso facto entitled to a right of audience in all Courts unless Section 30 of that Act is first brought into force. That is a matter which is still regulated by different statutes and the extent of the right to practise must depend on the terms of those statutes. The right of an advocate brought on the rolls to practise is, therefore, just what is conferred on him by Section 14(1)(a), (b) and (c) of the Bar Councils Act, 1926..."*

The aforesaid discussion, thus, shows that the basic reasoning is predicated on Section 30 of the Advocates Act not being brought into force.

1.08.1988 An advocate of the Supreme Court approached the highest judicial forum for enforcement of Section 30 of the Advocates

Act. The Hon'ble Supreme Court in the case of ***Aeltemesh Rein, Advocate, Supreme Court of India Vs Union of India and others, 1988 (4) SCC 54*** issued a writ in the nature of mandamus to the Central Government to consider whether the time to bring Section 30 of the Advocates Act into force had arrived or not, as the matter could not lie over without application of mind. Six months' time was fixed for the said purpose. The Hon'ble Supreme Court distinguishing the ***Aeltemesh Rein*** from ***A.K. Roy Vs Union of India and another, 1982 AIR (SC) 710*** held as under:

*"6. The effect of the above observations of the Constitution Bench is that it is not open to this Court to issue a writ in the nature of mandamus to the Central Government to bring a statute or a statutory provision into force when according to the said statute the date on which it should be brought into force is left to the discretion of the Central government. As long as the majority view expressed in the above decision holds the field it is not open to the Court to issue a writ in the nature of*

*mandamus directing the Central Government to bring Section 30 of the Act into force. But, we are of the view that this decision does not come in the way of this Court issuing a writ in the nature of mandamus to the Central Government to consider whether the time for bringing Section 30 of the Act into force has arrived or not. Every discretionary power vested in the executive should be exercised in a just, reasonable and fair way. That is the essence of the rule of law. The Act was passed in 1961 and nearly 27 years have elapsed since it received the assent of the President of India. In several conferences and meetings of lawyers resolutions have been passed in the past requesting the Central Government to bring into force Section 30 of the Act. It is not clear whether the Central Government has applied its mind at all to the question whether Section 30 of the Act should be brought into force. In these circumstances, we are of the view that the Central Government should be directed to consider within a reasonable time the question whether it should bring Section 30 of the Act into force or not. If on such consideration the Central Government feels that the prevailing*

*circumstances are such that Section 30 of the Act should not be brought into force immediately it is a different matter. But it cannot be allowed to leave the matter to lie over without applying its mind to the said question. Even though the power under Section 30 [sic Section 1(3)] of the Act is discretionary, the Central Government should be called upon in this case to consider the question whether it should exercise the discretion one way or the other having regard to the fact that more than a quarter of century has elapsed from the date on which the Act received the assent of the President of India. The learned Attorney General of India did not seriously dispute the jurisdiction of this Court to issue the writ in the manner indicated above.”*

31.12.2007 Legislature meanwhile passed the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the “The Maintenance Act) which came in force w.e.f. 31.12.2007. The very statement of objects and reasons of the said Act has referred to the traditional norms and values of the Indian society which laid

stress on providing care for the elderly, but due to the withering of the joint family system, a large number of elderly are not being looked after by their family. It is observed that ageing has become a major social challenge and there is a need to give more attention to the care and protection for the older persons. It is perceived that the procedure for claiming maintenance under the Code of Criminal Procedure, 1973 (hereinafter referred to as the Cr.P.C.) is time consuming as well as expensive and, thus, the need to have a simple, inexpensive and speedy provisions to claim maintenance for the parents.

However, while framing the provisions of the said Act, the Legislature has gone much beyond the aspect of maintenance as rights in property have become involved with that aspect not only affecting the senior citizens' and their progenies' inter se rights, but even capable of affecting third party rights. Thus, the matter is not so simple as the statement of objects and reasons states, but on the other hand, there are certain

provisions which are bound to give rise to more complex legal issues where rights in immovable properties are sought to be negated on pleas such as fraud, coercion and undue influence. In fact, even presumptions are sought to be drawn by introducing a deeming provision in certain situation. Further, Section 17 of the The Maintenance Act seeks to prohibit representation by a legal practitioner.

09.06.2011 The Ministry of Law and Justice passed a notification dated 09.06.2011 in terms whereof Section 30 of the Advocate Act, 1961 brought into force w.e.f. 15.06.2011.

14.11.2018 One Mr. Girish Yadav Respondent No.5 father in law of Petitioner No. 2 filed a complaint along with an Application under Section 23 of the "Maintenance and Welfare of Parents and Senior Citizens Act, 2007" for declaring transfer of Property made by him to his son and daughter in law void before the Hon'ble Maintenance Tribunal for Senior Citizens (District South-West) in case No. 255 of 2018.

- 11.01.2019 Petitioner No. 2 filed reply to the said application and complaint before the Hon'ble Maintenance Tribunal for Senior Citizens (District South-West) in case No. 255 of 2018.
- 1.02.2019 Since the case No. 255 of 2018 before the Hon'ble Maintenance Tribunal for Senior Citizens (District South-West) involved the tricky and technical questions of law in relation to Transfer of property Act, 1882 and Indian Registration Act, 1908 etc, the Petitioner No. 2 engaged Petitioner No. 1 in order to represent her before the Maintenance Tribunal. Petitioner No. 1 and Petitioner No. 2 signed the Vakalatnama on 1.02.2019. It is to be noted that when on Petitioner No. 1 approached the Maintenance Tribunal on 1.02.2019, he was denied entry by the Maintenance Tribunal citing Section 17 of Maintenance and Welfare of Parents and Senior Citizens Act, 2007.
- 11.02.2019 That aggrieved by the act of the Respondents in denying the Petitioner No. 1 to make legal

representation on behalf of Petitioner No. 2 before the Maintenance Tribunal, petitioners on 11.02.2019 filed a writ petition in the case titled "Pawan Reley and Anr. Vs Union of India and Ors.", WP (C) No. 1466 of 2019 before this Hon'ble Court for the direction that Section of 30 Advocate Act, 1961 shall prevail of Section 17 of the Maintenance Act.

13.02.2019 That the said Writ Petition filed by the Petitioners in the case titled "Pawan Reley and Anr. Vs Union of India and Ors.", WP (C) No. 1466 of 2019 was withdrawn by the Petitioners with liberty to file the fresh Writ Petition challenging the Constitutional validity of provisions of Section 17 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The Hon'ble High Court in the said order dated 13.02.2019 observed herein under:

*"1. Petitioner no.1, who is also the learned counsel appearing for petitioner no. 2, seeks to withdraw the present petition with liberty to challenge the Constitutional validity of provisions of Section 17 of the Maintenance and Welfare of*

*Parents and Senior Citizens Act, 2007.*

*2. The petition is dismissed as withdrawn, with the aforesaid liberty. The pending application is disposed of."*

Hence, present writ Petition.