

THE MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS ACT, 2007*

(ACT No. 56 OF 2007)

An Act to provide for more effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognised under the Constitution and for matters connected therewith or incidental thereto.

Objects and Reasons

Traditional norms and values of the Indian society laid stress on providing care for the elderly. However, due to withering of the joint family system, a large number of elderly are not being looked after by their family. Consequently, many older persons, particularly widowed women are now forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support. This clearly reveals 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. Though the parents can claim maintenance under the Code of Criminal Procedure, 1973, the procedure is both time-consuming as well as expensive. Hence, there is a need to have simple, inexpensive and speedy provisions to claim maintenance for parents.

The Bill proposed to cast an obligation on the persons who inherit the property of their aged relatives to maintain such aged relatives and also

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Introduced.....Lok Sabha..... 20 March 2007

The Bill was referred to the Departmentally Related Standing Committee on Social Justice and Empowerment on 27 April 2007. The Committee presented/laid their report on 6 September 2007.

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Rajya Sabha..... 6 December 2007

Passed..... { Lok Sabha..... 5 December 2007 [12th Session (14 LS)]
Rajya Sabha..... 6 December 2007 (212th Session)

President's Assent..... 29 December 2007

Date of Commencement.....Awaited.

proposed to make provisions for setting up oldage homes for providing maintenance to the indigent older persons.

The Bill further proposed to provide better medical facilities to the senior citizens and provisions for protection of their life and property.

The Bill, therefore, proposed to provide for:—

- (a) appropriate mechanism to be set up to provide need-based maintenance to the parents and senior citizens;
- (b) providing better medical facilities to senior citizens;
- (c) for institutionalisation of a suitable mechanism for protection of life and property of older persons;
- (d) setting up of oldage homes in every district.

The Bill sought to achieve the above objectives.

Important Provisions

The Act extends to the whole of India except the State of Jammu and Kashmir and it applies also to citizens of India outside India. It shall come into force in a State on such date as the State Government may, by notification in the Official Gazette, appoint. (Section 1)

Section 2 of the Act defines certain words and expressions *inter alia* including: "children" includes son, daughter, grandson and grand-daughter but does not include a minor; "maintenance" includes provision for food, clothing, residence and medical attendance and treatment; "parent" means father or mother whether biological, adoptive or step father or step mother, as the case may be, whether or not the father or the mother is a senior citizen; "property" means property of any kind, whether movable or immovable, ancestral or self acquired, tangible or intangible and includes rights or interests in such property; "relative" means any legal heir of the childless senior citizen who is not a minor and is in possession of or would inherit his property after his death; "senior citizen" means any person being a citizen of India, who has attained the age of sixty years or above; "Tribunal" means the Maintenance Tribunal constituted under section 7; "welfare" means provision for food, health care, recreation centres and other amenities necessary for the senior citizens.

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act, or in any instrument having effect by virtue of any enactment other than this Act. (Section 3)

Section 4 provides that a senior citizen including parent who is unable to maintain himself from his own earning or out of the property owned by him, shall be entitled to make an application under section 5 in case of (i) parent or grand-parent, against one or more of his children not being a minor; (ii) a childless senior citizen, against such of his relative who is not a minor and is in possession of or would inherit his property after his death. Where more than one relatives are entitled to inherit the property of a senior citizen, the maintenance shall be payable by such relative in the proportion in which they would inherit his property. The obligation of the children or relative to maintain his or her parent/senior citizen extends to the needs of such parent/citizen so that parent/senior citizen may lead a normal life.

Section 5 *inter alia* provides for making an application for maintenance by a senior citizen or parent and, if he is incapable, by any other person or organisation authorised by him. The Tribunal may also take cognizance *suo motu*. It empowers the Tribunal to make a monthly allowance for the interim maintenance during the pendency of the proceeding. It provides that an application shall, as far as possible, be disposed of within ninety days from the date of the service of notice of the application. An application for maintenance made against one or more persons and the children or relative may implead the other person liable to maintain. Where a maintenance order is made against more than one person, the death of one of them does not affect the liability of others. It is further provided that if children or relative so ordered fail to comply with the order without sufficient cause, for every breach of the order the Tribunal may issue a warrant and sentence such person in the manner as provided for therein. (Section 5)

Section 6 *inter alia* provides that an application for maintenance may be made by a senior citizen or parent against any children or relative in any district where the senior citizen or parent resides or where the children or relative resides. It provides that the Tribunal has to issue a process on receipt of an application and the Tribunal will have the powers of a Judicial

Magistrate first class for securing the attendance of children or relative. The Tribunal may, before hearing the application, refer the same to a Conciliation Officer who shall submit his findings within one month and, if amicable settlement has been arrived at, the Tribunal shall pass an order to that effect.

Section 7 provides that the State Government may, by notification in the Official Gazette, constitute one or more Tribunals for each Sub-division and the Tribunal shall be presided over by an officer not below the rank of Sub-Divisional Officer of a State. Where two or more Tribunals are constituted for any area, the State Government may, by general or special order, regulate the distribution of business among them. For the purpose of taking evidence on oath and enforcing the attendance of witnesses and compelling the discovery and production of documents, the Tribunal shall have the powers of a Civil Court. (Sections 7-8)

Under section 9, if children or relatives neglect or refuse to maintain a senior citizen, the Tribunal may on being satisfied of such neglect or refusal, order such children or relatives to make a monthly allowance at such monthly rate for the maintenance of such senior citizen as the Tribunal may deem fit. The maximum maintenance, which may be ordered by the Tribunal, shall be such as may be specified by the State Government which shall not exceed rupees ten thousand per month. On proof of misrepresentation or mistake of fact or a change in the circumstances of any person, receiving a monthly allowance, the Tribunal may make such alteration, as it thinks fit and the Tribunal may also cancel or vary the order of maintenance in consequence of any decision of a competent Civil Court. (Sections 9-10)

The order of maintenance made under this Act will have the same force and effect as an order passed under Chapter IX of the Code of Criminal Procedure, 1973. Section 12 provides that where a senior citizen or parent is entitled for maintenance under this Act and also under Chapter IX of the Code of Criminal Procedure, 1973, the parents or senior citizens will have the option to pursue their claim under either of these two but not under both. (Sections 11-12)

Among other things, the Act provides for deposit of the ordered maintenance amount by the children or relatives with the Tribunal; right of an aggrieved senior citizen/parent to prefer an appeal to the Appellate

Tribunal; no entitlement of legal representation during the proceedings before the Tribunal. The Maintenance Officer, as designated by the State Government, shall represent a parent if he so desires. (Sections 13—18)

Section 19 provides that the State Government may establish and maintain the oldage homes in a phased manner, beginning with at least one in each district, for senior citizens who are indigent. Further, it also provides that the State Government may prescribe a scheme for management of oldage homes including the standards and various types of services to be provided by them which are necessary for medical care and entertainment of the inhabitants.

Section 20 provides that the State Government shall ensure that beds be provided for all senior citizens in Government hospitals or hospitals funded fully or partially by the Government as far as possible. It also provides that separate queues be arranged for senior citizens; facility for treatment of chronic, terminal and degenerative diseases and research activities for chronic elderly diseases shall be expanded; and facilities for geriatric patients in every district hospital shall be earmarked.

The State Government shall take measures to give wide publicity to the provisions of the Act through public media including the television, radio and the print at regular intervals. The State Government shall also ensure that the officers of the Central Government and State Government including the police officers and the members of the judicial service are given periodic sensitization and awareness training on the issues relating to this Act and there is an effective co-ordination between the services provided by the concerned Ministries or Departments dealing with law, home affairs, health and welfare to address the issues relating to the welfare of the senior citizens. (Section 21)

The Act also specifies the authorities who may be entrusted with the task of implementing the provisions of this Act. It makes a provision that the State Government shall prescribe a comprehensive action plan for providing protection of life and property of senior citizen. Section 23 provides that if a senior citizen after the commencement of the provisions of this Act, transfers his property by way of gift or otherwise with the condition that the transferee shall provide basic amenities and basic physical needs, and such transferee fails or refuses 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 the transfer be declared void by the Tribunal at the option of the senior citizen. It also provides that where any senior citizen has a right to receive maintenance out of an estate or part thereof and such estate or part thereof is transferred, the right may be enforced against the transferee. If any senior citizen is incapable of enforcing the rights, action may be taken on his behalf by any of the voluntary association registered under the Societies Registration Act, 1860 or any other law for the time being in force. (Sections 22-23)

Any person who is having care or protection of any senior citizen, intentionally abandons a senior citizen shall be liable for punishment of imprisonment up to three months or with fine which may extend to five thousand rupees. The offences under this Act are cognizable and bailable, and shall be tried summarily by a Magistrate. (Sections 24-25)

Miscellaneous provisions made under Chapter VII of the Act *inter alia* include bar on jurisdiction of Civil Courts in respect of any matter to which any provision of this Act applies; protection to the Central/State Governments/local authorities/officers in respect of anything done in good faith in pursuance of this Act/rules/orders thereon; power to the State Government to make provisions to remove difficulties, if any; power of the Central Government to give directions to the State Governments as to the carrying into execution of the provisions of this Act. The Central Government may also make periodic review and monitor the progress of implementation. The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act. Every such rule shall be laid before the State Legislature. (Sections 26—32)