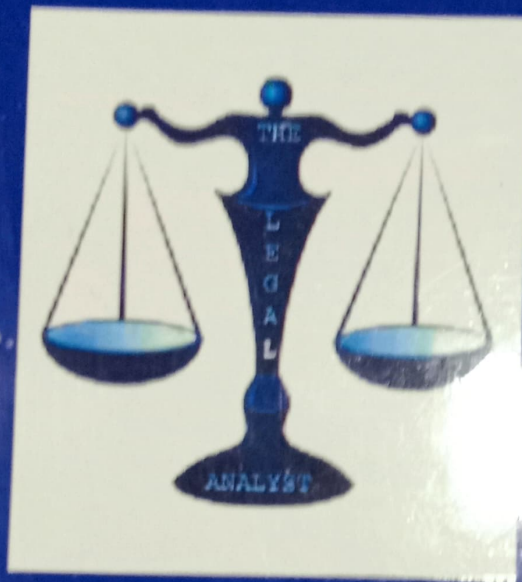


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# THE MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS AMENDMENT BILL 2019: AN OVERVIEW

□ Dr. Shilpa Seth\*

**Abstract** Aged parents have become a matter of burden for his family such a situation has resulted because of degenerating traditional values and break down of the joint family system. Stories of elderly people from well to do families, living on the streets after being ill-treated by their children have become common. The elderly should be seen as a blessing not a burden. Rather than putting them aside to be cared for separately they should be integrated into the lives of communities where they can make a substantial contribution to improving Social Conditions. This article brings out a perspective regarding awareness about the various aspects of the maintenance Act and law that can improve the lives of the elderly in India.

**Keywords**- Parents, Welfare, Maintenance.

## Introduction:

Every citizen of India has fundamental right under Art.21 of Constitution of India to "live with dignity" i.e., right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing, medical care and necessary social security and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

The joint family system prevalent in the country ensured that the needs of the elderly are taken care of at a stage where they are unable to look after themselves because family has been the most vital non formal social security for senior citizens, however nuclear families are taking their place and joint families are gradually withering away. The rational Indian value system considering elders as an intrinsic part of the family is no longer valued in correct perspective. In old age the main problem is financial insecurity. The financial situation of two third of population of senior citizens is not good. They live alone with insufficient resources. Their basic requirement is to live with dignity.

The parameters laid down in the Preamble and the concepts of welfare are the guiding principles. For security and protection through the means of socio-political-economic justice, the state shall strive to reduce the inequalities in income, status and provide facilities and opportunities. In order to achieve these goals some statutory provisions are provided for the upliftment of aged persons or senior people in every sphere of their lives. The maintenance and welfare of parents and senior citizens Act 2007 is most prominently one of them.

The Act is very brief with only 32 sections. Some of the salient features of the Act are:

- 1) It provides for summary proceedings within a period of 90 days from the date of filing a petition in a specially constituted Tribunal for this purpose.
- 2) The senior citizen may either apply in person or through a voluntary organization authorized by him or through a registered organization under the Societies Registration Act.
- 3) The Tribunal on receipt of a petition will *suo moto* take it on file and refer it for conciliation by a conciliation officer within a period of one month.
- 4) The Tribunal enjoys the power of a first class magistrate and follows the same procedure of a civil court to adduce evidence from the petitioner and the respondent.
- 5) The Tribunal can pass an order granting a maximum sum of Rs. 10,000 monthly as maintenance to the senior citizens.
- 6) The person against whom an order for maintenance has been passed has to comply with the order within one month, failing which the Tribunal can imprison him or her up to a period of one month.
- 7) The Act provides for the District Welfare Officer to act as maintenance officer and even to conduct the proceedings for and on behalf of the senior citizens.
- 8) The Act provides for the establishment of old age homes for the senior citizens by the concerned state governments.
- 9) Preferential treatment should be given to the senior citizens in the hospital like separate queues, treatment, offering medicines and also promotion research in the geriatric medicine.
- 10) Appearance of the lawyers before the tribunal is not permitted.
- 11) A senior citizen who has transferred his property either to his son or daughter or near relative, by virtue of a gift, can now get it cancelled applying to the Tribunal, if he or she is neglected by the donee.
- 12) During the pendency of the petition the tribunal is empowered to grant interim relief to the petitioner.

In *Paramjit Kumar Saroya v. Union of India and another*<sup>1</sup>, [AIR 2014 P&H 121]. The Punjab and Haryana High Court examined the Act in detail and requested the central government to re-examine some provisions of the Act that were ambiguous. Thus Union Cabinet thus approved the Maintenance and Welfare of Parents and Senior Citizens (Amendment) Bill, 2019, which aims to provide for the maintenance and welfare of parents and senior citizens for ensuring their basic needs, safety and security, establishment, management and regulation of institutions and services, and rights guaranteed under the Constitution. The Bill amends the maintenance of parents and Senior Citizens Act, 2007.

#### Key Features of the Bill:

- **Definition of children has been expanded:** In the Act, the term 'children' refers to children and grandchildren, excluding minors. The Bill adds stepchildren, adoptive children, children-in-laws, and the legal guardian of minors to the definition.

<sup>1</sup>The Maintenance and Welfare of Parents and Senior Citizens Act, 2007.  
<sup>2</sup>AIR 2014 P&H 121.

<sup>3</sup>Maintenance and Welfare of Parents and Senior Citizens (Amendment) Bill, 2019



- **Definition of relatives has been expanded:** The Act defines a relative as the heir of a childless senior citizen, excluding minors, who possess or would inherit his property after death. The Bill amends this to include minors represented by their legal guardians.
- **Definition of parents has been expanded:** The Act defines parents to include biological, adoptive, and step-parents. The Bill expands this definition to include both parents-in-law and grandparents.
- **Definitions of maintenance has been expanded:** Under the Act, maintenance includes the provision of food, residence, and medical attendance, this bill adds healthcare, safety, and security for parents and senior citizens to lead a life of dignity to it.
- **Welfare includes the provision of food, healthcare, and other amenities necessary for senior citizens;** this bill adds housing, clothing, safety, and other amenities necessary for the well-being of a senior citizen or parent to the list.
- **Maintenance fee:** Under the Act, state governments constitute maintenance Tribunals which may direct children and relatives to pay a monthly maintenance fee of up to Rs 10,000 to parents and senior citizens. The Bill removes the upper limit on the maintenance fee. The Tribunals may take the following into consideration while deciding the maintenance amount:
  1. The standard of living and earnings of the parent or senior citizen, and
  2. The earnings of the children.
- **Appeals:** The Act provides for senior citizens or parents to appeal the decisions of the maintenance Tribunal. The Bill allows children and relatives also to appeal decisions of the Tribunal.
- **Maintenance officer:** The Act provides for a maintenance officer to represent a parent during proceedings of the Tribunal. The Bill requires maintenance officers to ensure compliance with orders on maintenance payments, and act as a liaison for parents or senior citizens.
- **Establishment of care-homes:** Under the Act, state governments may set up old age homes. The Bill removes this and provides for senior citizen care homes which may be set up by the government or private organizations. These homes must be registered under the state government. The central government will prescribe minimum standards for these homes, such as food, infrastructure, and medical facilities.
- **Healthcare:** The Act provides for certain facilities (such as separate queues, beds, and facilities for geriatric patients) for senior citizens in government hospitals. The Bill requires all hospitals, including private organizations, to provide these facilities for senior citizens. Further, home care facilities will be provided for senior citizens with disabilities.
- **Appointment of Nodal Police Officers** for Senior Citizens in every Police Station and District level Special Police Unit for Senior Citizens has been included.
- **Offences and penalties:** The Bill increases the penalty for the abandonment of a senior citizen or parent from the imprisonment of up

to three months to imprisonment between three and six months or of up to Rs 5,000, to Rs 10,000. The Bill also provides that non-comply with the maintenance order by children or relatives may result in imprisonment up to one month, or until the payment is made.

### Analysis of the Bill:

- Under the Act, Maintenance Tribunals which are presided over by administrative officers will decide the maintenance amount payable by senior citizens by children and relatives. The Bill states that the maintenance amount will be calculated based on (i) the standard of living of the parent or senior citizen, and (ii) the earning capacity of the children. Administrative officers may not have the judicial authority required to determine the maintenance amount payable.
- Implementation of the Bill may be affected if states do not have adequate funds.
- Definition of "relative" is ambiguous. The Bill defines "relative" as a legal heir of a childless senior citizen. However, the senior citizen may change his will from time to time. Therefore, there is no finality as to who would be the legal heir, and therefore who must maintain the senior citizen<sup>1</sup>.
- Definition of homecare services not specified the Bill sets requirements for institutions providing homecare services to senior citizens who have physical or mental impairments. These requirements include: (i) hiring trained and certified attendants or caregivers, and (ii) registering with a registration authority set up by the state government. The Bill does not define what homecare services include.
- There are no provisions related to the criteria of Appointment of members of the Jury in the tribunal.
- The appellate authority of the maintenance tribunal has not been provided in the bill.

### Conclusion:

- The Ambiguity of the bill must be resolved through the amendment.
- There should be a mechanism to audit the old-age home at the regular interval.
- The definition of Grandchildren should be clear. Most of the Indian society follows the patriarchy where the maternal grand-parents are not connected with.

Though there are several numbers of laws and govt. policies made for the protection of rights of senior citizens and old parents but nothing much has been achieved so far. As we all know that our Indian society is blended with culture and emotion it is really very difficult for parents to drag their children through the doors of court or tribunal and in most of cases they start forgiving as well as sacrificing their rights. Because of this, the next generation does not have to learn the proper lesson.

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<sup>1</sup><https://www.prsindia.org/billtrack/maintenance-and-welfare-parents-and-senior-citizens-amendment-bill-2019>. Retrieved on 08.02.2021.