

M AINTENANCE & WELFARE OF
PARENTS &
SENIOR CITIZENS ACT, 2007

BACKGROUND:

Socio-cultural scenario:

In the traditional Indian system elderly were respected and they had a great decision making power in the family. Children felt duty bound to serve and respect the elderly and to contribute to the family resources. Children sought the counsel of elders for making major decisions and placed family resources at the disposal of elders for prudent handling.

During the last century this socio economic and value system has slowly eroded. More and more couples are working full time, families have become smaller and nuclear, migration and consumerism have become the order of the day. At the same time, life expectancy of the elderly has gone up from 32 years in 1947 to 67 years in 2001. All these factors cause pressures on families resulting in abuse, neglect and abandonment of the elderly. While most elderly are well looked after, many suffer from poverty, loneliness, neglect, abuse and abandonment and find it difficult to mobilise resources for their most basic needs as their children are either unable or unwilling to maintain them. Problem of widows, widowers and the childless elderly is even more acute.

Legal provisions:

All Indian citizens are entitled to fundamental rights guaranteed to them by the Indian Constitution. Senior citizens are no exception. They are also entitled to fundamental rights to life and personal liberty, freedom of speech and equality before law but these rights are often difficult for them to achieve for a variety of reasons.

Most personal laws including the Hindu Adoptions and Maintenance Act, 1956 recognise duty of the children to maintain their aged parents and the right of the parents to maintenance. Section 125 of the Criminal Procedure Code, 1973 specifically provides for maintenance from children if parents are unable to maintain themselves but cases are rarely filed by parents due to love and affection, fear of stigma and time and money required for the legal proceedings. A need has been felt for long for a simpler and faster means and HelpAge India, as part of its work for the cause and care of the elderly, has been advocating for provision of care and maintenance of the elderly amongst other measures.

MAINTENANCE & WELFARE OF PARENTS & SENIOR CITIZENS ACT, 2007

Government has come to the rescue of the elderly and has brought about "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." as follows

Title of the Act: "The Maintenance and Welfare of Parents and Senior Citizens Act, 2007".

Applicability: "It extends to the whole of India except the State of Jammu and Kashmir and it applies also to citizens of India outside India."

Effective Date: The Act shall come into force in a State from the date fixed and notified by the concerned State Government in the Official Gazette.

Provisions:

The Act has provisions detailed under the following chapters:

- I. Definitions
- II. Maintenance of Parents & Senior Citizens
- III. Establishment of Old Age Homes
- IV. Medical Care
- V. Protection of Life and Property
- VI. Offences

Summary of the Provisions:

Who is a Senior Citizen, Parent, Child or Relative under the Act?

"Senior citizen" is any citizen of India of 60 years and above whether living in India or not.

"Parent" is the father or mother even if not of 60 years yet.

"Children" are adult son, daughter, grandson and grand-daughter

"Relatives" are those who are either in possession of the property of the senior citizen or would inherit it.

Who can demand maintenance under the Act?

Parents and grand parents who are unable to maintain themselves from their own income can demand maintenance from their children as defined above.

and

"Childless Senior Citizens" who are unable to maintain themselves from their own income can demand maintenance from their relatives as defined above.

What is Maintenance?

Maintenance includes provision for food, clothing, residence, medical attendance and treatment. Maximum amount which may be ordered for maintenance of a senior citizen by the Tribunal shall be such as prescribed by the State Government which shall not exceed Rs. 10,000/- per month.

Who is entitled to Maintenance?

Parents, grand-parents and senior citizens who are unable to maintain themselves from their own income and property are entitled to demand maintenance from their children and specified relatives respectively with sufficient means.

Whose obligation is it to maintain the elderly?

It is the obligation of the children and specified relatives with sufficient means to provide maintenance for their parents and childless senior citizen respectively.

How is an Application for Maintenance made and decided?

Application for maintenance may be made by the senior citizen or parent to the Tribunal under Section 4 in layperson's language giving names, full details and addresses of the persons from whom they are demanding maintenance. If there is more than one child or relative, they may claim maintenance from one or all of them depending on their means of income.

Maintenance proceedings may be initiated against any child/children or relative in any district where the parent or senior citizen lives or last lived or where the child/children or relative live.

If such applicants are incapable of making an application themselves, any other person or registered voluntary organisation authorised by him/her can make the application; or the Tribunal can take suo motu cognizance and proceed. Upon receipt of the application, the Tribunal would issue notices to the children, conduct hearings, take evidence and order maintenance. Tribunal may also refer the case for reconciliation or pass interim orders for maintenance.

If the children or relatives fail to pay the ordered maintenance without sufficient reason for 3 months after its due date, the senior citizen can approach the Tribunal again who may impose a fine or order imprisonment of the child/relative upto a month or until payment is made whichever is earlier.

What if the elderly themselves and their children and specified relatives do not have sufficient means to maintain them?

State Governments may establish, in a phased manner, sufficient senior citizen homes and maintain the same for indigent or abandoned and neglected (by their kith and kin) beginning with at least one Old Age Home in each district sufficient to accommodate a minimum of 150 elderly. State Government may also prescribe scheme for management of old age homes, set standards and prescribe minimum services for medical care and entertainment of the elderly in the Old Age Homes.

Abandonment:

Under Section 24, if anybody who has responsibility for the care or protection of a senior citizen leaves him/her in any place, with the intention of wholly abandoning him/her, such person shall be punishable under the Act with imprisonment of either three months or fine upto Rs. 5,000 or both. The offence would be cognizable and will be tried by a Magistrate.

Conditional Transfer Of Property:

An important provision has been made for the elderly to claim their property back from children, if given conditionally after commencement of the Act on promise of looking after their needs and amenities if such promise is not fulfilled. Under Section 23, if after commencement of the act any Parents or senior citizens have transferred their property to their children or relatives on the condition that they would provide certain maintenance and amenities to the senior citizen but subsequently neglect or refuse to do so the parents or senior citizens can get such transfers voided (cancelled) at

their option by having such transfer treated as a fraudulent or coercive acquisition and seek return of their property so transferred.

Government's Role:

- Constitution of Maintenance Tribunals and Appellate Tribunals by the State Governments in all Sub Divisions and States within 6 months of commencement of this Act
- State Governments may make rules for carrying out the purposes of the Act by notification in the Official Gazette.
- Summary trials by the Tribunals for passing orders for maintenance.
- Lawyers excluded from the proceedings.
- Elderly can choose to seek maintenance either under this Act or under the provisions of the Criminal Procedure Code 1973 if applicable but not under both the provisions.
- "No Civil Court to have jurisdiction in respect of any matter to which any provision of this Act applies
- No injunction shall be granted by any Civil Court in respect of anything which is done or intended to be done by or under this Act." (Section 27)
- State Govt to designate District Social Welfare Officer or an equivalent officer as Maintenance Officer.
- Maintenance Officer can represent a parent or senior citizen if he/she wants.
- State Government may establish and maintain sufficient senior citizen homes for indigent or abandoned and neglected (by their kith and kin) beginning with one in each district sufficient to house 150 elderly.
- State Government may prescribe a scheme for management of old age homes, setting standards and minimum services necessary for medical care and entertainment of the elderly
- State Government to establish specific medical facilities, allocate doctors/hospital beds, expand treatment for chronic, terminal and degenerative diseases; and conduct research on ailments of the elderly and ageing.
- State Government to take all measures to sensitise and orient the police and judiciary regarding protection of life and property of the elderly and provisions of this act

This is a model Legislation passed by the Central Government for adaptation and application by the States. The Act will apply in a State from the date fixed and notified by the State in the official gazette.

Progress:

The Act has since been notified in Andhra Pradesh, Assam, Delhi, Goa, Jharkhand, Karnataka, Madhya Pradesh, Nagaland, Rajasthan and Tripura.

For any further query contact HelpAge India at the following address/ Phone No.:



C-14, Qutab Institutional Area New Delhi 110016 Helpline Tel: 1800-180-1253, 26519070
Website: www.helpageindia.org

For free copies please contact Ms. Anupama Datta, Deputy Director, Policy Research and Development on the above mentioned address or on the following Phone No.: 42030400 You can also write an email to info@helpageindia.org