

Legislative Brief

The Maintenance and Welfare of Parents and Senior Citizens Bill, 2007

The Bill was introduced in the Lok Sabha on March 20, 2007.

The Bill has been referred to the Department-related Parliamentary Standing Committee on Social Justice and Empowerment (Chairperson: Smt. Sumitra Mahajan).

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Highlights of the Bill

- ◆ The Maintenance and Welfare of Parents and Senior Citizens Bill, 2007 seeks to make it a legal obligation for children and heirs to provide maintenance to senior citizens. It also permits state governments to establish old age homes in every district.
- ◆ Senior citizens who are unable to maintain themselves shall have the right to apply to a maintenance tribunal seeking a monthly allowance from their children or heirs.
- ◆ State governments may set up maintenance tribunals in every sub-division to decide the level of maintenance. Appellate tribunals may be established at the district level.
- ◆ State governments shall set the maximum monthly maintenance allowance. The Bill caps the maximum monthly allowance at Rs 10,000 per month.
- ◆ Punishment for not paying the required monthly allowance shall be Rs 5,000 or up to three months imprisonment or both.

Key Issues and Analysis

- ◆ It is unclear whether the creation of maintenance tribunals will ensure financial independence for senior citizens, or whether parents will likely take their children to court to obtain a maintenance allowance from them.
- ◆ The definition of senior citizen includes both Indian citizens aged over 60 years, and all parents irrespective of age. Also, the Bill does not address the needs of senior citizens who do not have children or property.
- ◆ Relatives are obliged to provide maintenance to childless senior citizens. The Bill defines "relative" as someone who is in possession of or would inherit a senior citizen's property. As wills are changeable, it is unclear how one would determine who would inherit the property after death.
- ◆ Only parents may appeal against the decision of the maintenance tribunal. Neither childless senior citizens nor children are permitted to appeal.
- ◆ State governments may establish old age homes and prescribe standards for services provided by them. However, the Bill does not require them to do so.

PART A: HIGHLIGHTS OF THE BILL¹

Context

India's success in increasing life expectancy has led to a larger number of the elderly in the country. The Registrar General of India forecasts the share of older persons (age 60 years and above) in the total population to rise from 6.9% in 2001 to 12.4% in 2026.² Issues related to the financial and social security of older people will become increasingly important. Indeed, the National Policy on Older Persons states, "Some areas of concern in the situations of older persons will also emerge, signs of which are already evident, resulting in pressures and fissures in living arrangements for older persons."³

The Maintenance and Welfare of Parents and Senior Citizens Bill, 2007 seeks to make it a legal obligation for children and heirs to provide sufficient maintenance to senior citizens, and proposes to make provisions for state governments to establish old age homes in every district.

Key Features

Care of Elderly—Application for Maintenance

- The Bill places an obligation on children and relatives to maintain a senior citizen (anyone above the age of 60 years) or a parent to the extent that they can live a "normal life." This obligation applies to all Indian citizens, including those residing abroad.
- A senior citizen who is unable to maintain himself based on his own earnings or property shall have the right to apply to a maintenance tribunal for a monthly allowance from their child or relative. If he is incapable of filing the application on his own, he may authorise any other person or registered voluntary association to apply on his behalf. The maintenance tribunal may also, on its own, initiate the process for maintenance.
- The Bill defines "children" as sons, daughters, grandsons and granddaughters and "relative" as any legal heir of a childless senior citizen who is in possession of or would inherit his property upon death. Minors are excluded from both definitions. "Parents" include biological, adoptive or step parents.
- In cases in which more than one relative will inherit the property of a senior citizen, each relative will be responsible to pay the maintenance fee in proportion to the property they will inherit.

Maintenance Tribunals

- The state government may establish one or more maintenance tribunals per sub-division to decide upon the order for maintenance. The tribunal will be presided over by an officer not below the rank of sub-divisional officer. The tribunal shall have all the powers of a civil court. No civil court shall have jurisdiction in respect of any matter dealing with any provisions of this Bill.
- If the tribunal is satisfied that the senior citizen is unable to take care of himself and that there is neglect or refusal of maintenance on the part of the children or relative, it may order children or relatives to give a monthly maintenance allowance to the senior citizen. The maximum maintenance allowance shall be prescribed by the state government, and shall not exceed Rs 10,000 per month.
- Before hearing an application, the tribunal may refer the case to a conciliation officer to reach amicable settlement within one month. If such agreement is reached, the tribunal may pass that order.
- The tribunal may order children or relative to make a monthly allowance as interim maintenance while the application is pending. The application shall, as far as possible, be disposed of within 90 days.
- The maintenance allowance shall be payable from either the date of the order or the application, to be deposited within 30 days of the order. A simple interest payment between 5% and 18% on the monthly allowance from the date of the application may also be required.
- The tribunal may alter the allowance for maintenance on proof of misrepresentation or mistake of fact or a change in the circumstance of the senior citizen or parent receiving the monthly payment.
- Any maintenance order made by the tribunal shall have the same force as an order passed under Chapter IX of the Code of Criminal Procedure, 1973 (CrPC), which also provides for maintenance of senior citizens. If a senior citizen is entitled for maintenance under both Acts, he can claim maintenance under only one Act.

Appellate Tribunals

- The State Government may establish one appellate tribunal per district to be presided over by an officer not below the rank of District Magistrate. The appellate tribunal shall try to pronounce its order in writing within one month of the appeal.

Offences and Penalties

- On failure to comply with the maintenance fee, the tribunal may issue a warrant for collection within three months of the due date. Should the fee remain unpaid, the accused may be imprisoned for up to one month or until payment, whichever is earlier.
- Punishment for abandoning a senior citizen shall include an imprisonment of up to three months or fine of up to Rs 5,000, or both.
- The tribunal can declare a transfer of property (as gift or otherwise) from a senior citizen to a transferee as void if the transfer was made under the condition of maintenance, and the transferee neglects the agreement. A registered voluntary organization may take action on behalf of the senior citizen if he or she is unable to enforce these rights.

Representation in Tribunals

- A party before a maintenance or appellate tribunal shall not be represented by a legal practitioner. A senior citizen may choose to be represented by the maintenance officer (a district social welfare officer).

Other Provisions for Elderly Care

- The state government may establish and maintain at least one old age home per district with a minimum capacity of 150 senior citizens per home. The state government may also prescribe a scheme for the management of such homes. The scheme shall specify standards and services to be provided including those required for medical care and entertainment of residents of these old age homes.
- The state government shall ensure that government hospitals and those funded by the government provide beds for all senior citizens as far as possible. It shall ensure separate queues for senior citizens, expand facilities for treatment of diseases and expand research for chronic elderly diseases and aging. Every district hospital shall also earmark facilities for geriatric patients.
- The state government is responsible for publicizing the provisions, as well as ensuring that government officers undergo periodic sensitizations and awareness training on issues relating to the Bill. The district magistrate shall be responsible for implementing the provisions of the Bill.

PART B: KEY ISSUES AND ANALYSIS

Old Age Security

The purpose of the Bill is to secure financial stability for parents who are unable to maintain themselves. The Constitution through its Directive Principles directs the State, not private citizens, to make effective provision for maintenance of senior citizens. Two Acts—the Code of Criminal Procedure, 1973, and the Hindu Adoption and Maintenance Act, 1956—currently mandate the care of parents by their children if they are unable to take care of themselves. In this Bill too, the onus has been placed on children and relatives of senior citizens. Additionally, while the Bill allows state governments to establish old age homes, it does not make it mandatory. Also, this Bill does not address the needs of senior citizens who do not have either children or property.

Table 1: Laws Regarding Maintenance and Care of Senior Citizens and Parents

Law	Requirement	Maintenance Allowance
Constitution of India, Directive Principles, Article 41	"The State shall, within the limits of its economic capacity and development, make effective provision for...old age, sickness and disablement, and in other cases of undeserved want."	Not justiciable
Code of Criminal Procedure (Chapter IX, Section 125(1)(2))	Requires persons who have sufficient means to take care of his or her parents if they are unable to take care of themselves.	Rs 500/month maximum
Hindu Adoption and Maintenance Act, 1956	Requires Hindu sons and daughters to maintain their elderly parents when parents are unable to maintain themselves	To be determined by court

Sources: Constitution of India; Respective Acts; PRS.

The state of Himachal Pradesh enacted a similar law in 2001. That law, the Himachal Pradesh Maintenance of Parents and Dependents Act, 2001, requires adequate maintenance for parents and dependents who are unable to take care of themselves.

Table 2: Comparison with the Himachal Pradesh Act

Provision	Himachal Pradesh Maintenance of Parents and Dependents Act, 2001	The Maintenance and Welfare of Parents and Senior Citizens Bill, 2007
Eligible applicants	Applicants must be below poverty line, parents and grandparents wife, minor son, unmarried daughter, and widow if all not able to maintain themselves; not applicable to Muslims.	Applicable to senior citizens and parents of children above 18 years of age; applicable to all Indian citizens irrespective of religion.
Maximum amount for maintenance	Rs 5,000 per month.	To be specified by states, maximum limit of Rs 10,000 per month.
Amount of maintenance	To cover basic amenities.	To maintain 'normal life'.
Enforcement of maintenance order	If the person liable for payment is a government employee, maintenance may be deducted from his salary.	No such provision.
Application on behalf of senior citizen or parent	If applicant is unable to make an application, any member of his family, any person in whose care he resides, any other authorised person by him, or maintenance officer may file application.	If applicant is unable to make an application, any person or organisation authorised by him, or the maintenance tribunal may file application.
Provisions for maintenance order	Must be 'just and equitable', and the respondent should be able to first provide maintenance for himself, his wife and children	The maintenance tribunal may make a maintenance order on satisfaction of neglect or refusal or maintenance.
	Tribunal must consider manner in which the applicant spent his savings, and if applicant is justified living separately.	No such provision.
Appeals	The applicant, maintenance officer on behalf of the applicant, respondent, or approved person or organisation or any other affected party may appeal to the district judge from the decision of the tribunal upon any question of law or of mixed law and fact.	State government may set up an appellate tribunal in each district. Any parent may file an appeal to the appellate tribunal within 60 days from the date of order. Respondents and childless senior citizens are not granted the same right.

Sources: Respective Act and Bill.

Financial Independence

The goal of old age security programmes is to ensure the financial independence and dignity of senior citizens. In addition to this Bill, there are some financial schemes that also attempt to achieve old age security. Two such schemes are the recently announced reverse mortgage concept and the New Pension Scheme.

The Bill sets the maximum cap for monthly maintenance allowance for senior citizens at Rs 10,000 per month, which is significantly higher than what is given by both the central and state governments under the National Old Age Pension Scheme (NOAPS). Under NOAPS, central assistance amounts to Rs 200 per month⁷ and state government pensions range from Rs 75 per month in Andhra Pradesh to Rs 400 per month in West Bengal.⁸

International Comparison

Some other countries have enacted laws related to the protection and security of the elderly. Sri Lanka and China require children to take care of their elderly parents, and the State to take care of childless senior citizens.

Table 3: Laws in Some Countries Regarding Elder Care

Act	Purpose/Broad Provisions
Sri Lanka: Protection of the Rights of Elders Act, 2000	Establishes National Older Persons Council; requires children to provide care for their parents and makes provisions for parents to obtain maintenance from children; requires state to provide appropriate residential facilities to destitute elderly without children.
United States: Older Americans Act of 1965	Creates the Administration on Ageing within the Department of Health, Education and Welfare; authorises grants to States for community planning, services for elderly, and research and training in the field of aging.
China: Law of the People's Republic of China on Protection of the Rights and Interests of the Elderly, 1996	Places responsibility on families to care for elderly; establishes a state-based old-age insurance system, increases legal protection of elderly with speedy court procedure.
South Africa: Older Persons Act no 13 of 1996	Provides strict controls for registered old-age facilities; makes abuse of the elderly a criminal offence; creates social and cultural community-based services for elderly.
Canada (Saskatchewan & Manitoba): Parents Maintenance Act, 1978 & 1993 respectively	Mandates children to pay maintenance to dependent parents up to \$20 per week.

Sources: Respective Acts; PRS.

Some new schemes for old age income security

Reverse Mortgages: The 2007 Budget speech announced the introduction of reverse mortgage for senior citizens by The National Housing Bank (NHB).⁴ The NHB Draft Guidelines state: The scheme involves the senior citizen borrower(s) mortgaging the house property to a lender, who then makes periodic payments to the borrower(s) during the latter's lifetime.⁵

New Pension Scheme: The New Pension Scheme (NPS) seeks to provide old age security for all individuals, including the unorganised sector by creating a mechanism to enable them to save through their working lives. Under NPS every subscriber is to have an individual pension account, portable across job changes.⁶ The amount (including income on the investments) will be available at the age of 60 years, with at least 40% to be converted into monthly payments for the rest of their lives.

In India, existing schemes for old age pension include the Employees' Provident Fund and the New Pension Scheme, which cover roughly 13% of the working population (10% as government servants and 3% from the formal private sector). In addition, the National Old Age Pension Scheme provides for destitute persons of 65 years and above.⁹ Table 4 summarises the schemes for providing for old age security and financial independence in some countries.

Table 4: Government Schemes for Old Age Pension and Social Security in Some Countries

Country	Primary State Old Age Scheme	Law & Year Established	Target Audience	Type	% Population it covers
Malaysia	Employees Provident Fund	Employees Provident Fund Act, 1991	Private and non-pensionable public sector employees	Mandatory contribution based on monthly wages (paid jointly by employee and employer)	11.4 million members or roughly 50% of population
Singapore	Central Provident Fund	Central Provident Fund Ordinance, 1955	All working citizens (employers and self-employed) to save for retirement. Target age to begin withdrawals: 62 years	Compulsory comprehensive social security savings plan (monthly contributions by working Singaporeans and employers) that covers retirement, healthcare, home ownership, family protection, and asset enhancement	3.12 million (in Jan- March, 2007) or roughly 70% of population
US	Social Security & Medicare	Social Security Act, 1935 & Federal Insurance Contributions Act (FICA), 1939	Citizens over age 65 years, plus disabled. Not intended to be used as full retirement plan, but in addition to pensions, savings, etc	Based on tax tables, number of years of work, contributions, and "average indexed monthly earnings"	163 million people work and pay Social Security taxes & 49 million people receive monthly SS payments
UK	Old Age Pension	Old Age Pensions Act, 1908 & National Insurance Act, 1946	Citizens over 65 years of age	Contributory state pension for all, based on National Insurance payment record, paid to men at 65 years, women at 60 years People aged 80+ receive non-contributory pension	36% of population aged 65 -74 years, and 43% of population aged 75-84

Sources: See endnote 10 for Malaysia, 11 for Singapore, 12 for United States, and 13 for United Kingdom.

Tribunal Procedure

Constitution of Tribunal

The Bill states that state governments may establish one or more maintenance tribunals for each sub-division. It does not make this mandatory.

Right to Legal Representation and Appeal

The Bill specifically states that no party to a tribunal or appellate tribunal can be represented by a legal practitioner. However, a parent (though not a childless senior citizen) may be represented by a maintenance officer designated by the state government. It is not clear why the parties are denied the right to defend their interests with the help of qualified legal practitioners, and whether this is against the principle of natural justice.

While the Bill permits states to establish one appellate tribunal per district, the Bill grants only parents the right to appeal. There is no facility for appeal available to childless senior citizens, children or relatives.

Declaring Transfer of Property Void

The Bill states that a tribunal can declare a transfer of property to be void if it was made "by way of gift or otherwise" with the condition that the transferee would maintain the transferer and has not done so. Under the Gift Tax Act, 1958, a gift is unconditional – therefore such a transfer cannot be termed a gift. Alternatively, if the property is given under condition to maintain the transferer, and the transferee does not adhere to these conditions, then it would be breach of contract under The Indian Contracts Act, 1872, making this provision redundant.

Provision for Old Age Homes

The Bill grants state governments permission to establish and maintain old age homes "as it may deem necessary, in a phased manner," beginning with "at least one in each district." There is no obligation on state governments to establish these homes. The Bill specifies that each old age home should accommodate at least 150 senior citizens. Specifying such details in the Bill reduces the flexibility to cater to differing local conditions and needs.

As of 2005, there were 1,018 Old Age Homes in India. Of the 739 homes for which detailed information is available, 427 homes are free of cost, 153 old age homes are on a pay and stay basis, and 146 homes have both free as well as pay and stay facilities. Kerala has 186 old age homes, the most of any state.⁸

Financial Considerations

The Financial Memorandum states that since the existing government machinery is proposed to be utilised, there would be no additional expenditure. Any expenditure on establishing old age homes would be borne by state governments. The Financial Memorandum does not estimate this expenditure.

Definitions

Senior Citizen

The Bill defines “senior citizen” as (a) Indian citizens 60 years of age or older and (b) all parents with children above the age of 18 years. For example, the provisions of this Bill would be applicable to even a 40-year-old parent of a 20-year-old person. This definition differs from that in the National Policy on Older People, which sets the age at 60 years or older.

Parent and Child

The Bill defines “parent” as a biological, adoptive or step mother or father. It defines “children” as sons, daughters, grandsons and granddaughters. These two definitions do not mirror each other.

Relative

The Bill defines “relative” as someone who is in possession of or would inherit a senior citizen’s property after death. As wills are changeable, it is unclear how one would determine who would inherit the property after death, and therefore who would be obliged to maintain the senior citizen.

Normal Life

The Bill states that the obligation of the children or relative to maintain a senior citizen extends to the needs of the senior citizen so that they may lead a “normal life.” The Bill does not define what consists of a “normal life.”

Organisation

The Bill clarifies that an “organisation” that may file an application for maintenance on behalf of a senior citizen means “any voluntary organisation registered under the Societies Registration Act, 1860, or any other law for the time being in force”. However, the Societies Registration Act does not define “voluntary organisation”.

Notes

1. This Brief has been developed on the basis of The Maintenance and Welfare of Parents and Senior Citizens Bill, 2007 introduced in Lok Sabha on March 20, 2007. The Bill has been referred to the Department-related Parliamentary Standing Committee on Social Justice and Empowerment (Chairperson: Smt. Sumitra Mahajan).
2. 2001 Census, Government of India, see http://www.censusindia.net/Projection_Report.pdf.
3. National Policy on Older Persons, 1999, Ministry of Social Justice and Empowerment, Government of India, see <http://socialjustice.nic.in/social/sdcop/npop.pdf>.
4. Union Budget Speech 2007-08, see <http://indiabudget.nic.in/ub2007-08/bs/speecha.htm> para 89.
5. Reverse Mortgage Loan (RML): Draft Operational Guidelines, National Housing Bank, see http://www.nhb.org.in/Whats_new/Reverse_Mortgage_Operations_Guidelines.htm.
6. For more details, see our Legislative Brief on The Pension Fund Regulatory and Development Authority Bill, 2005 (http://www.prsindia.org/docs/bills/1167471772/bill74_2006123074_legislative_brief_pfrda_bill_2005_final_english.pdf).
7. Union Budget Speech 2006-07, see <http://indiabudget.nic.in/ub2006-07/bs/speecha.htm> para 29.
8. “Senior Citizens Guide 2005,” Helpage India, see <http://www.helpageindia.org/downloads/SeniorGuide.pdf>.
9. “National Old Age Pension Increased to Rs 200,” Press Information Bureau, see <http://pib.nic.in/release/release.asp?relid=18839&kwd=>.
10. Employees Provident Fund, Government of Malaysia, see <http://www.kwsp.gov.my/index.php?lang=en>;
11. Central Provident Fund, Government of Singapore, see <http://mycpf.cpf.gov.sg/Members/Gen-Info/Sch-Svc/S-and-S.htm>.
12. Social Security Administration, Government of United States of America, “Understanding the Benefits,” see <http://www.ssa.gov/pubs/10024.html> and “Social Security Benefit Amounts and <http://www.ssa.gov/OACT/COLA/Benefits.html>.
13. At a Glance: Pension Report, “The Future of Pensions,” see <http://news.bbc.co.uk/2/hi/business/4462404.stm>.

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