

2. OLDER PERSONS (MAINTENANCE, CARE AND PROTECTION) BILL, 2005

INTRODUCTION/CONTEXT

Everyone has a right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and 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 control¹. Article 21 of the Constitution of India also echoes the same. It says, 'no person shall be deprived of his life or personal liberty except according to procedure established by law'. Further, Article 39 (a) of the Constitution of India says, 'the State shall, in particular, direct its policy towards securing (a) that the citizen, men and women equally, have the right to an adequate means of livelihood'. Article 41 of the Indian Constitution enjoins upon the state to make effective provisions for public assistance, within the limits of its economic capacity and development, in cases of unemployment, old-age, sickness and disablement and in other cases of undeserved want. Both the Central and State Governments are empowered under Entry 23 of List III (Concurrent List) to make provisions with regard to social security and social insurance.

The population of senior citizens, aged sixty and above, in India has increased from 42.5 million in 1981 to 55 million in 1991 and is now placed at 70.6 million in the 2001 census. They comprise about 6.9 per cent of the total population². There is greater life expectancy of citizens at birth and the life expectancy at age sixty is also increasing³.

Family has been the most vital non-formal social security for senior citizens in India. Most senior citizens reside with one or more of their children, particularly when independent living is no longer feasible⁴. 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

¹ Universal Declaration of Human Rights, Article 25(1)

² Tenth Five Year Plan 2002-2007, Vol. 2, Planning Commission, Government of India. The projected population of senior citizens for the year 2016 is about 11.2 million.

³ In the period 1989-93, life expectancy at age sixty was 15 years for males and 16 years for females. Para 1, National Policy on Older Persons, Ministry of Social Justice and Empowerment, Government of India

⁴ Para 80, National Policy on Older Persons, Ministry of Social Justice and Empowerment, Government of India

themselves, both financially and otherwise. However, over the years joint families are gradually disappearing and nuclear families, taking their place.

The Traditional Indian value system inculcates respect for elders. Elders are considered an intrinsic part of the family. Children turn to their elders for advice on every aspect of their life. This also results in senior citizens playing an important role in their families and society. In the current scenario, these values are fast eroding. The breaking up of traditional joint families into nuclear families has resulted not only in the separation of families but also in the severance of family ties. Many senior citizens no longer have the same role in their families as was traditionally played. While it is inevitable in the current scenario that the family unit will remain nuclear, this should not result in the breaking of ties and familial responsibilities. Efforts must be made to retain traditional values in this regard despite modernization of society.

A great anxiety in old age relates to financial insecurity. When the issue is seen in the context, one-third of the population (1993-94) is below the poverty line and about one third are above it but belong to the lower income group, the financial situation of two-thirds of the population of people aged sixty and above can be said to be fragile.⁵ High costs of bringing up and educating children affects the transfer of a share of income for the elderly⁶. Due to the shortage of space in dwellings in urban areas and high rents, persons migrating to urban areas prefer to leave their parents in their native place⁷. These changes have led to a number of senior citizens being left to live alone, with insufficient resources to meet even their most basic requirements of food, clothing, housing and medical care. Lack of social support, breaking up of the joint family system and changing lifestyles aggravate the health and nutritional problems of the elderly⁸. Thus, there is need for making provisions to ensure that the basic requirements of senior citizens are met and that they can enjoy their right to live with dignity as is envisaged by Article 21.

⁵ Para 24, National Policy on Older Persons, Ministry of Social Justice and Empowerment, Government of India

⁶ Para 11, National Policy on Older Persons, Ministry of Social Justice and Empowerment, Government of India

⁷ *ibid.*

⁸ Tenth Five Year Plan 2002-2007, Vol. 2, Planning Commission, Government of India.

Across the globe, steps have been taken by various countries such as the United States, Canada, the United Kingdom, New Zealand and Germany to provide social security systems for the elderly and other disadvantaged groups. Such systems ensure that senior citizens are not deprived of their most basic needs when they lack the resources to fulfil them. In India, provisions have been made under legislations such as the Code of Criminal Procedure, 1973 and the Hindu Adoption and Maintenance Act, 19 to enable aged-parents, with insufficient resources to meet their needs. However, the process under these legislations is cumbersome and time consuming. Some States like the State of Himachal Pradesh have enacted legislations enabling the elderly and other dependants to claim maintenance. However, there is no such uniform legislation at the central level, hence the need for the proposed Bill.

NECESSITY / NEED / URGENCY

Over the years it has been noticed that a sense of financial and social insecurity is growing large with the older citizens. The proposed Bill is a welcome step and is a must because of the following reasons:-

- Rise in Life expectancy
- Breaking of joint family system
- Rise in cost of living
- Blind copying of western culture
- Lack of education to respect elders and erosion of traditional values
- Financial and social insecurity of older persons

SCHEME OF THE BILL

TITLE: A more appropriate title for the proposed Bill would be “The Senior Citizens (Maintenance, Care and Protection) Bill, 2005”. Referring to Senior Citizen as ‘older persons’ by and large is not appreciated and not acceptable to most. It hurts their self-esteem.

APPLICABILITY: The Senior Citizens (Maintenance, Care and Protection) Bill is intended as a social welfare legislation to enable senior citizens to obtain maintenance from their children so as to meet their basic requirements and lead a life with dignity. Therefore, the proposed Bill must be made uniformly applicable to all persons irrespective of their caste, creed race, religion or sex. This being a social welfare legislation for the benefit of senior citizens of the country its applicability has to have a wider dimension/ horizon. **Economic and Social security are basic to all community irrespective of their religious affiliation.**

OBJECT: The object/purpose of the proposed Bill should be

- a) To provide an effective mechanism for senior citizens to claim need-based maintenance from their children including foster children, adopted children, step-children, grandchildren and also from such relatives to whom they have provided financial support
- b) To make provisions for maintenance to be provided or steps to be taken by the government for the benefit of such senior citizens, who do not have children, grandchildren or relatives from whom they can claim maintenance
- c) To provide a proper mechanism for protection and care of senior citizens on the part of the government

ELIGIBILITY

The proposed Bill should provide the said benefits/maintenance for senior citizens aged sixty or above, who do not have sufficient financial resources/property, etc. to meet their basic needs or have incomes below the poverty line.

EXCEPTIONS:-

- a) Destitute widows below the age of sixty and
- b) Indigent unemployed men, women (unmarried) below the age of sixty would have the right to be maintained by their adult earning children.

An explanation may be added providing that if such senior citizens are taking benefit under any other state or central law, they would not be entitled to the remedies/benefits provided under the proposed Bill.

AUTHORITY/RESPONSIBILITY– CENTRAL / STATE

ESTABLISHMENT OF A TRIBUNAL

A tribunal in the line and pattern of ITAT (Income Tax Appellate Tribunal) may be established to which application may be made by Senior Citizens for maintenance or any other relief or remedy available under the Act. Persons to be appointed for the tribunal have to have requisite educational qualification coupled with knowledge of law and Human Rights and preferably having experience of handling delicate issues related to older persons and other weaker section of society and having a humanitarian approach.

further specific provision should be incorporated providing that the tribunal shall exercise jurisdiction and entertain claims at the place where the senior citizen/claimant resides

PROCEDURE / POWERS / FUNCTIONS / JURISDICTION OF THE TRIBUNAL

STANDARDISED FORM: A centralised, standardised form should be provided to be filled by the senior citizens entitled to avail remedies/claim benefits under the provisions of the proposed Bill, and other weaker section of society providing details of

- a) Their income and property,
- b) Their children and children's respective incomes,
- c) Health status of the applicant, specifying health problems,
- d) Such other details as necessary

The form should be simple and easy to understand (like the *SaraI* income tax form). Similarly, the children of such senior citizens must be required to give a declaration specifying incomes, property, number of dependent, etc.

MAINTENANCE OFFICER

A maintenance officer should be appointed to assist senior citizens in filing the appropriate forms for claiming maintenance or other benefits under the proposed Bill, particularly when the applicant is unable to make applications by reason of physical/mental infirmity or any other reason.

CONCILIATION OFFICER

A Conciliation Officer shall be appointed for the purposes of the Bill. Conciliation officer must be competent in conciliating skills. To put it in other words he/she should be well qualified and should have a humane approach.

FIXING THE AMOUNT OF MAINTENANCE

The Tribunal appointed under the proposed Bill, after verifying the details provided by both parties and holding such summary enquiry as it may deem necessary pass order paying the amount of maintenance to be provided to the applicant. In fixing the amount regard may be given to:

- a) The status of the applicant and the respondent/s,
- b) The reasonable requirements of the applicant,
- c) The value of the property of the applicant (if any) and income derived therefrom (If any),
- d) The incomes of the applicant and the respondent,
- e) If the applicant is living separately, his justification for so doing,
- f) The number of dependents of the respondent,
- g) The contribution and provisions, financial or otherwise, made by the respondent with regard to the maintenance of the applicant.

If the senior citizen making the application has more than one adult earning children, the amount of maintenance fixed may be apportioned between such children in such manner as may be just.

The order of the tribunal fixing the amount of maintenance will become final and enforceable after 30 days from the date of the passing the order if no review has been filed against the order.

INTERIM MAINTENANCE

A provision must be made for interim maintenance to be paid to such senior citizens who are in urgent need of maintenance, for the period for which their application is pending or till the final decision is made. It must be pointed out that the applications made by senior citizens must be decided within the prescribed time and without undue delays. This provision must only be resorted to in case the application made cannot be decided immediately and the applicants are in urgent need of maintenance.

REVIEW: The aggrieved party may file a review petition against the order of the tribunal within Thirty Days from the date of the pursuing the order. The tribunal may then, refer the petition to the conciliation officer, who after looking into the matter and discussing, if necessary, with both the parties their respective pleas will make its recommendations to the tribunal. The tribunal will take note of the suggestions and recommendations made by the conciliation officer before giving its final decision on its review petition

MAINTENANCE AMOUNT TO BE DEPOSITED IN BANK

The tribunal while passing the final order may direct the respondent to deposit the maintenance amount in a designated Bank in the first week of every month on regular basis or a lump sum amount collectively for several months.

ISSUANCE OF CARD

The Tribunal, after the Review procedure is over and final decision is taken on the amount of maintenance or where no review application has been made should issue to the applicant a card to be known as the Senior Citizens Maintenance Card, which the applicant may use at the designated Nationalized bank to obtain the amount of maintenance awarded. The record of the amount of maintenance to be paid to the applicant should be maintained by the Bank.

EFFECTUATION OF ORDER: A maintenance order made under the proposed Bill should have the same force and effect as an order passed under Chapter IX of the Code of Criminal Procedure, 1973 and shall be executed in the manner prescribed for execution of such order by the code.

FAST TRACK COURTS

In case of delay in execution of the order, the matter may be referred to a fast track court which shall decide the matter within one month.

NOTIFICATION OF DEATH

The death of the applicant or respondent should be notified to the tribunal, upon which the order of maintenance would expire or be modified accordingly.

PERIODIC REVIEW OF AMOUNT OF MAINTENANCE

Provisions must be made for a yearly review of the amount of maintenance payable to any senior citizen. At such reviews, changes in circumstances such as the health of the senior citizen, the receipt of some income by such senior citizen that was not previously received, loss of employment of the respondent etc should be taken into consideration and the amount of maintenance fixed accordingly. **Further, a provision may be made for maintenance to be paid to the senior citizen from the fund to be created for the welfare of senior citizens in case of any emergencies or other circumstances in which the respondent is unable to pay maintenance for a particular period of time.**

Further, in case of any stoppage of maintenance by the children on any pretext including any court proceedings, the maintenance should be paid from the fund created

COMPLAINTS OF NEGLECT, INJURY OR CRUELTY:

In addition to the scrutiny of forms and fixing of amount of maintenance, the tribunal should also be empowered to look into complaints of neglect, physical injury, mental cruelty, separation from families and its restoration or other occasions or matters requiring

redressal. Provisions should be made however, for such complaints to be referred at first instance, to the mediator/conciliation officer appointed. If no settlement is reached in such proceedings, the complaints may be referred back to the tribunal for decision, who would take note of the suggestions of the above said officer.

SPECIAL CASES

a) Gift of property of Senior citizen

If the property of any senior citizen is transferred by way of gift or otherwise to any other person, subject to the condition that the transferee shall provide the transferor the basic amenities and requirements and if the said transferee fails to do so, then the transfer of property may be deemed to be made by fraud, coercion or under undue influence and should be declared void at the option of the transferor, by the tribunal. The application to declare the transaction void must be decided within one month. Provision must be made to declare the person to whom such gift of property has been made as a person liable to pay maintenance under the proposed Bill

b) Senior Citizens having no Children / Single Senior Citizen

Provision must be made for the maintenance / care of such senior citizens who do not have children, grandchildren or any other person from whom they can claim maintenance and lack the means to meet their basic needs from the fund created for the purpose. **There must also be provisions for payment of maintenance to those senior citizens whose children, grandchildren or other relative have insufficient resources to provide for their maintenance.**

SUGGESTIONS/ RECOMMENDATIONS

CREATION OF A FUND

A fund should be created for providing maintenance and looking after the other needs of the senior citizens to whom the proposed Bill is to be made applicable. The contributions

made by individuals (family members of applicants) may be deposited in the said fund. There should also be some budget allocation by the Centre, State or both, towards the said fund. The National Policy on Older persons recognizes that larger budgetary allocations from the State will be needed and the Rural and Urban Poor will be given special attention. However, it is neither feasible nor desirable for the State alone to attain the objectives of the National Policy. Individuals, families, communities and institutions of civil society have to join hands as partners⁹. In keeping with this policy, efforts must be made to encourage contributions to this fund by corporations, societies, institutions as well as individual citizens, NRI's with resources. Further, all contributions made to this fund may be given the benefit of Income Tax exemption. Funds must be dispersed to nationalized banks from the said fund, where it can be accessed by senior citizens, using the card provided to them.

HOMES FOR SENIOR CITIZENS

The Central and State governments should be required to set up homes in every district with adequate facilities for men, women and couples. Such homes shall particularly be set up for senior citizens who are lonely and who do not have a home or any adequate shelter. Facilities should be provided to meet their nutritional, medical, recreational and spiritual facilities.

PROTECTION OF SENIOR CITIZENS

Senior Citizens have become soft targets for criminal elements. The National Policy on Older persons at Para 67 provides that police will be directed to keep a friendly vigil on elderly couples/single persons living alone and promote mechanisms of interaction with neighbourhood associations. Provisions should be made for mechanisms of protection of their lives and property. In every police chowki/Thana, a special cell must be provided for the protection of senior citizens. An area wise list of senior citizens must also be maintained. **Involvement of NGO's, public spirited people, Residents Association,**

⁹Para 22, National Policy on Older Persons, Ministry of Social Justice and Empowerment, Government of India

Scheme like Bhagedhari should be encouraged, and recognised by the Government by giving awards, certificates etc. to these associations.

OTHER MEASURES

Other measures for the welfare of senior citizens must also be taken. Awareness programmes relating to traditions of the country, importance of values, morals, ethics etc. should be organised frequently to educate the younger generation to respect and care their seniors. Prevention is always better than cure. It is high time for us to once again introspect and to give due recognition to the strength, inspiration, and experience of elderly citizen of the country. Steps may be taken to promote schemes such as the 'adoption of senior citizens' by persons or families having means as a welfare measure. Such a scheme would not only provide financial security to senior citizens, it would also create a sense of belonging.