

# Legislative Brief

## The Maintenance and Welfare of Parents and Senior Citizens (Amendment) Bill, 2019

The Maintenance and Welfare of Parents and Senior Citizens (Amendment) Bill, 2019 was introduced in Lok Sabha on December 11, 2019.

It was referred to the Standing Committee on Social Justice and Empowerment on December 23, 2019.

### Recent Briefs:

[Draft Rules under Consumer Protection Act, 2019](#)

June 27, 2020

[Draft Transgender Persons \(Protection of Rights\) Rules, 2020](#)

June 5, 2020

**Anya Bharat Ram**  
anya@prsindia.org

**August 25, 2020**

### Highlights of the Bill

- ◆ The Bill brings step-children, adoptive children, children-in-law, and legal guardians of minor children under the definition of children.
- ◆ Under the Act, Maintenance Tribunals may direct children to pay a maximum of Rs 10,000 per month as maintenance amount to their parents. The Bill removes this upper limit on the maintenance fee.
- ◆ The Act provides for senior citizens to appeal the decisions of the Maintenance Tribunal. The Bill allows children and relatives also to appeal decisions of the Tribunal.
- ◆ The Bill provides that if the children or relatives fail to comply with maintenance orders, the Tribunal may issue a warrant to levy the due amount. Failure to pay such fine may lead to imprisonment of up to one month, or until the payment is made.
- ◆ The Bill provides for the regulation of private care-homes for senior citizens, and institutions providing home-care services.

### Key Issues and Analysis

- ◆ Under the Act, Maintenance Tribunals will be presided by administrative officers. The Tribunals will decide the maintenance amount payable to senior citizens by children and relatives. The Bill states that the maintenance amount will be calculated based on (i) the standard of living and earnings of the parent or senior citizen, and (ii) the earnings of the children. Administrative officers may not have the judicial expertise required to determine the maintenance amount payable.
- ◆ State governments must provide the finances needed to implement the Bill. This includes setting up of Maintenance Tribunals, and regulating private care-homes. Implementation of the Bill may be affected if states do not have adequate funds to do so.
- ◆ Homecare services are not defined in the Act or Bill. Note that homecare services can cover a range of activities from cooking and cleaning, to administering IV drips. It is unclear which services will be classified and regulated as homecare services.

## PART A: HIGHLIGHTS OF THE BILL

### Context

As per the 2011 Census, citizens over the age of 60 years comprise 8.6% of India's population, and their share of the population is projected to grow to 21% by 2050.<sup>1</sup> The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 was enacted to provide financial security, welfare and protection for senior citizens. It requires children to provide maintenance for their parents, and the government to provide old age homes and ensure medical care for senior citizens. It sets up Administrative Tribunals and Appellate Tribunals to ensure maintenance.

There have been a number of cases related to the Act. Notably, 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. The Court also interpreted the Act to say that appeals to the administrative tribunal's decision may be made by either party, and removed the bar on legal representation.<sup>2</sup> This Bill amends the 2007 Act to expand the definition of children, relatives and parents, remove the upper limit on the maintenance amount payable to parents by children and relatives, and provide for care-homes and other welfare measures for senior citizens.

### Key Features

Table 1 indicates the key changes proposed by the Bill.

**Table 1: Key changes between the Act and Bill**

Provision	Maintenance and Welfare of Parents and Senior Citizens Act, 2007	Amendments proposed by the Maintenance and Welfare of Parents and Senior Citizens (Amendment) Bill, 2019
<b>Definitions</b>		
<b>Children</b>	<ul style="list-style-type: none"> <li>Children refers to children and grandchildren, excluding minors.</li> </ul>	<ul style="list-style-type: none"> <li>Adds step-children, adoptive children, children-in-laws, and the legal guardian of minor children.</li> </ul>
<b>Relatives</b>	<ul style="list-style-type: none"> <li>Relative refers to the legal heir of a childless senior citizen, excluding minors, who possess or would inherit his property after death.</li> </ul>	<ul style="list-style-type: none"> <li>Expands the definition to include minors. They would be represented by their legal guardians.</li> </ul>
<b>Parents</b>	<ul style="list-style-type: none"> <li>Parents include biological, adoptive, and step-parents.</li> </ul>	<ul style="list-style-type: none"> <li>Adds parent-in-laws, and grandparents.</li> </ul>
<b>Maintenance</b>	<ul style="list-style-type: none"> <li>Maintenance includes provision of food, clothing, residence, medical attendance and treatment.</li> </ul>	<ul style="list-style-type: none"> <li>Expands the definition to include the provision of healthcare, safety, and security for parents and senior citizens to lead a life of dignity.</li> </ul>
<b>Welfare</b>	<ul style="list-style-type: none"> <li>Welfare includes provision of food, healthcare, and other amenities necessary for senior citizens.</li> </ul>	<ul style="list-style-type: none"> <li>Expands the definition to include the provision of housing, clothing, safety, and other amenities necessary for the physical and mental well-being of a senior citizen or parent.</li> </ul>
<b>Maintenance Orders</b>		
<b>Maintenance amount</b>	<ul style="list-style-type: none"> <li>Maintenance Tribunals may be constituted by states to decide on the monthly maintenance amount payable to senior citizens by children and relatives. This amount may not exceed Rs 10,000 per month.</li> <li>Children and relatives must pay maintenance amount within 30 days of the order of the Tribunal.</li> </ul>	<ul style="list-style-type: none"> <li>The Bill removes the upper limit on the maintenance fee. The Tribunals must consider: (i) standard of living and earnings of the parent or senior citizen, and (ii) the earnings of the children, while deciding the maintenance amount.</li> <li>Reduces number of days to 15.</li> </ul>
<b>Maintenance officer</b>	<ul style="list-style-type: none"> <li>Parent or senior citizen may be represented by a maintenance officer during Tribunal proceedings.</li> </ul>	<ul style="list-style-type: none"> <li>Maintenance officer will (i) ensure compliance with orders on maintenance payments, and (ii) act as a liaison for parents or senior citizens.</li> </ul>
<b>Appeals</b>	<ul style="list-style-type: none"> <li>Senior citizens or parents can appeal the decision of the Tribunal.</li> </ul>	<ul style="list-style-type: none"> <li>Children and relatives may also appeal decisions of the Tribunal.</li> </ul>
<b>Offences and Penalties</b>		
<b>Abandonment of senior citizen or parent</b>	<ul style="list-style-type: none"> <li>Punishable with imprisonment of up to 3 months, or fine of up to Rs 5,000, or both.</li> </ul>	<ul style="list-style-type: none"> <li>Punishable with imprisonment between three and six months, or a fine of up to Rs 10,000, or both.</li> </ul>
<b>Abuse of senior citizen</b>	<ul style="list-style-type: none"> <li>No provision.</li> </ul>	<ul style="list-style-type: none"> <li>Punishable with imprisonment between three and six months, or fine of up to Rs 10,000, or both.</li> </ul>

Provision	Maintenance and Welfare of Parents and Senior Citizens Act, 2007	Amendments proposed by the Maintenance and Welfare of Parents and Senior Citizens (Amendment) Bill, 2019
<b>Protection and welfare of senior citizens</b>		
<b>Care-homes</b>	<ul style="list-style-type: none"> <li>State governments may set up at least one old age home in every district with a capacity to house 150 senior citizens.</li> </ul>	<ul style="list-style-type: none"> <li>Senior citizen care homes may be set up by the government or private organisations. These homes must be registered with a registration authority set up by the state government. The central government will set minimum standards for these homes, such as infrastructure, and medical facilities.</li> </ul>
<b>Homecare services</b>	<ul style="list-style-type: none"> <li>No provision.</li> </ul>	<ul style="list-style-type: none"> <li>Requirements for institutions providing homecare include: (i) staff must be trained and certified, and (ii) institutions must register with a registration authority set up by the state government.</li> </ul>
<b>Healthcare</b>	<ul style="list-style-type: none"> <li>Provides for facilities such as separate queues and beds for senior citizens in government hospitals.</li> </ul>	<ul style="list-style-type: none"> <li>All hospitals, including private organisations, to provide these facilities for senior citizens.</li> </ul>
<b>Police protection</b>	<ul style="list-style-type: none"> <li>No provision.</li> </ul>	<ul style="list-style-type: none"> <li>Every police station must have at least one officer (not below the rank of Assistant Sub-Inspector) to deal with issues related to parents and senior citizens. State governments must constitute a special police unit for senior citizens in every district. The unit will be headed by a police officer not below the rank of Deputy Superintendent of Police.</li> </ul>

**Sources:** Maintenance and Welfare of Parents and Senior Citizens Act, 2007; Maintenance and Welfare of Parents and Senior Citizens (Amendment) Bill, 2019; PRS.

## PART B: KEY ISSUES AND ANALYSIS

### Removal of upper limit on monthly maintenance amount payable

*Act:* Section 9(2)  
*Bill:* Clause 9

The Act allows state governments to constitute Maintenance Tribunals to decide on the monthly maintenance amount payable to senior citizens by children. The Tribunal will be presided over by an administrative officer. The maintenance amount may not exceed a maximum of Rs 10,000 per month. The Bill removes this upper limit on the maintenance fee and allows Tribunals to set the fee by considering: (i) the standard of living and earnings of the senior citizen, and (ii) the earnings of the children. It may be argued that deciding a monthly maintenance amount with no upper limit requires judicial expertise, which the administrative officer presiding over the Tribunal does not have. Note that similar proceedings deciding the maintenance amount payable to a spouse after divorce are presided over by a judicial officer.

Further, the Act states that children must maintain a senior citizen so that they may lead a 'normal life'. The Bill amends this to state that the children will be obligated to maintain a senior citizen so that they may lead a life of dignity. However, the Bill does not define 'life of dignity'. The Supreme Court has previously interpreted the definition of right to live with human dignity to include adequate nutrition, clothing, shelter and facilities for reading, writing and expressing oneself in diverse forms, and freely moving about and mixing with fellow human beings.<sup>3</sup> It may be argued that determining what consists of a 'life of dignity' also requires judicial training and competence, which administrative officers may not have.

All appeals to maintenance orders may be filed with the Appellate Tribunal which is also presided over by an administrative officer. Therefore, there is no provision for judicial appeal under the Act. That is, the only remedy available to a person aggrieved by an order of the Appellate Tribunal would be to file a writ before the High Courts under Article 226 of the Constitution.

### Legal practitioners may not represent parties in Tribunal process

*Act:* Section 17

The Act states that no party to a proceeding before a tribunal or appellate tribunal can be represented by a legal practitioner. While the restriction on legal representation may expedite the process and reduce expenses for the parties involved, it contradicts Section 30 of the Advocates Act, 1961 which states that all advocates have a right to practice in: (i) all Courts including the Supreme Court, (ii) before any tribunal or person legally authorised to take evidence, and (iii) before any other authority or person before whom such advocate is entitled to practice.<sup>4</sup>

The Punjab and Haryana High Court noted in its judgement in the case of *Paramjit Kumar Saroya v. Union of India* that this Section of the Advocates Act, 1961 came into effect after the 2007 Act was passed by Parliament. Therefore,

the provisions of the Advocate Act, 1961 would prevail, and there cannot be an absolute bar on assistance by legal practitioners in a Maintenance or Appellate Tribunal.<sup>2</sup>

### Definition of “relative” is ambiguous

*Act:*  
*Section 2(g)*  
*Bill:*  
*Clause 3(v)*

The Bill defines “relative” as any legal heir of a childless senior citizen. However, the senior citizen may change his will from time to time. Therefore, there is no finality on who would be the legal heir, and therefore who must maintain the senior citizen.

### Definition of homecare services not specified

*Bill:*  
*Clause 20A*

The Bill sets requirements for institutions providing homecare services to senior citizens who have difficulties performing activities of daily life due to 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. However, the Bill does not define what would homecare services include. For example, it is unclear if homecare services would include medical services such as physiotherapy and administering IV drips, or services such as cooking and cleaning.

Further, the Bill requires that institutions providing home care services must hire trained and certified attendants or caregivers. However, it does not specify or delegate to Rules the certifications and trainings that attendants and caregivers must receive to provide such services.

### Financial implications for states

The Bill requires various provisions under the Bill to be implemented by state governments which would require states to incur the related expenditure. These provisions include: (i) setting up of care-homes, (ii) creating accessible public facilities for senior citizens, and (iii) regulating private care-homes and homecare services. The Financial Memorandum of the Bill states that no additional funds will be provided from the Consolidated Fund of India for the implementation of these provisions.<sup>5</sup> Note that the implementation of the Bill may be affected if state legislatures do not make the requisite fund allocations or do not possess adequate funds to do so.

1. National Policy for Senior Citizens, Ministry of Social Justice and Empowerment, March 2011.
2. Paramjit Kumar Saroya v. Union of India and another, [AIR 2014 P&H 121].
3. Francis Coralie Mullin v. Administrator, Union Territory of Delhi and Ors. [(1981) 1 SCC 608].
4. Advocates Act, 1961.
5. Financial Memorandum, [Maintenance and Welfare of Parents and Senior Citizens \(Amendment\) Bill, 2019](#).

DISCLAIMER: This document is being furnished to you for your information. You may choose to reproduce or redistribute this report for non-commercial purposes in part or in full to any other person with due acknowledgement of PRS Legislative Research (“PRS”). The opinions expressed herein are entirely those of the author(s). PRS makes every effort to use reliable and comprehensive information, but PRS does not represent that the contents of the report are accurate or complete. PRS is an independent, not-for-profit group. This document has been prepared without regard to the objectives or opinions of those who may receive it.