CHAPTER IX

REVIEW OF RECENT PARLIAMENTARY BILL ON WELFARE AND MAINTENANCE OF PARENTS AND SENIOR CITIZENS

Outline
I. Introduction
II. Historical Background of the Act
III. Salient Features of the Act
IV. Criticism of the Act
V. Importance of the Act
VI. Conclusion

INTRODUCTION

At the time of commencing this research work there were Bill pending in the Rajya sabha. This Bill was introduced by Smt. Sushma Swaraj M.P. on 3rd March, 2006. At the same time yet another Bill were introduced in the other Lok sabha. This Bill was introduced by government on 9th March, 2007, through Meera Kumar, the then Minister, Social Justice and Welfare Department, Government of India. However, the Bill of 2007 is now converted into an Act. i.e. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The purpose of this chapter is to provide an explanation and also provide the review of the provisions of the Act. In these circumstances now an attempt is made to provide a note of review of both Bill and the Act to find out similarities, important provisions and nature of legislation from the view point of welfare of senior citizens in India.
II HISTORICAL BACKGROUND OF THE ACT
The growing population of aged person attracted the attention of world community. Increase in the number of aged people led to some specific problems also. Management, care and welfare of aged population were treated as the important concern by all the nations. India is not the exception. Since independence till date there appear demographical changes in India. India is one of the countries having large number of aged people out of total population. To deal with the problems arisen because of strength of aged people in India, we didn’t have suitable legislative framework. At the same time there were some understandings reached between States at International level to think over the increasing number of aged people and to chalk out programmes and policies regarding social security and welfare of aged people. In compliance with the said understanding and to satisfy the demand and desire of the aged people, the government of India has taken various measures by evolving certain policies and legal framework. In a Welfare State like ours, it is the duty of the Central and State Governments to look after the senior citizens so that they too lead a decent life at the fag end of their lives. The same is discussed in detail hereunder.

History of the Bill
In pursuance of the understanding at International level, Government of India initiated and declared National Policy on Older Persons in 1999. This NPOP recognized certain rights of the aged people and further declared government’s responsibility towards providing economic and social security along with healthcare facilities and protection of life and property of the aged
people. In spite of the fact that the said policy was declared in 1999, even after seven or eight years no steps were taken to implement said policy. There was strong and consistent pressure from different NGOs and demand by aged people, senior citizens organizations etc on the government regarding implementation of the same by appropriate legislation.

Looking into this, the legislators came up with various Bills like Destitute and Needy Senior Citizens (Care, Protection and Welfare) Bill, 2005, Needy and Neglected Senior Citizenss and Orphans and Runaway Children (Care and rehabilitation and Welfare) Bill, 2005, Destitute Abondoned and Neglected Widows and Old Women (Welfare and Rehabilitation) Bill, 2007, Destitute, Indigent and Neglected Citizens (Maintenance and Welfare) Bill, 2007, were said to have been introduced with some serious thought before they were rejected to formulate an Act\(^1\).

Yet another attempt was made and the first Bill directly dealing with aged people titled as “The Senior Citizens (Maintenance, Protection and Welfare Bill” was introduced on 3\(^{rd}\) March, 2006, in the Upper House of Parliament, by Smt. Sushma Swaraj\(^2\).

**Approach of the Bill**

This is the first ever direct legislation intended in Indian legal system regarding protection of the interest of aged people in India. The instant Bill clearly shows the humanitarian approach and great concern of the government to provide for compulsory maintenance,

\(^1\) Bharat S. Kumar, Abandonment During Sunset Years, LAWZ, June, 2009, p.34
\(^2\) Bill No. X of 2006.
protection and welfare of senior citizens so as to secure a life of dignity, peace and security for them and for the welfare measures to be undertaken by the State for its aged citizens and for matters connected therewith or incidental thereto. To provide dignity this Bill had provisions of establishment of Senior Citizens Home having all the amenities including provision of entertainment recreation of the inmates. This Bill intended to provide financial assistance of ₹ 1000 per month by the government for their subsistence. This Bill intended to cast responsibility upon government to provide medical and other facility to senior citizens. This Bill was further having the provision for maintenance of record senior citizens by the police and to provide all type of security to the aged or senior citizens. Perusal of overall provisions of the said Bill demonstrate the clear intent of the government to afford all round protection to the senior citizens in India.

During the pendency of Bill, introduced in Upper House in 2006, the Government of India, through Smt. Meera Kumar, the then Mister for Department of Social Justice and Empowerment, introduced different Bill titled as “The Maintenance and Welfare of Parents and Senior Citizens Bill”, on 9th March, 2007. The Bill of 2007 is now converted into an Act. i.e. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, received the assent of the President on 29th December, 2007.

Objectives of the Act
The statement of objects and reason stated makes it clear that traditional norms and values of the Indian society laid stress on

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3 Bill No. 40 of 2007
providing care for the elderly. However, due to withering of the joint family system, a large number of elderly are not being looked after by their family. Consequently, many older persons, particularly widowed women are now forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support. This clearly reveals that ageing has become a major social challenge and there is a need to give more attention to the care and protection for the older persons. Though the parents can claim maintenance under the Code of Criminal Procedure, 1973, the procedure is both time consuming as well as expensive. Hence, there is a need to have simple, inexpensive and speedy provisions to claim maintenance for parents.

Further to cast an obligation on the persons who inherit the property of their aged relatives to maintain such aged relatives and also proposes to make provisions for setting up old age homes for providing maintenance to the indigent older persons.

It also provides better medical facilities to the senior citizens and provisions for protection of their life and property. In addition to this there some more objectives of the Act; first, it is the object of this Act to provide appropriate mechanism to be set up to provide need-based maintenance to the parents and senior citizens. Secondly, provide better medical facilities to senior citizens. Thirdly, for institutionalization of a suitable mechanism for protection of life and property of older persons. Lastly, setting up of Old Age Homes in every district. From the aforesaid provisions it is clear that the Act contains and brings almost all aspects of the
life of aged people in India in the ambit of this legislation with pious objective to provide them life with dignity.

III SALIENT FEATURES OF THE MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS ACT

The name of the Act is descriptive and conveys that the parents and senior citizens are required to be maintained by their children. This Act is applicable to all citizens of India irrespective of their religion and citizens of India outside India. Earlier, provision for maintenance provided under section 20 of the Hindu Adoptions and maintenance Act, 1956 in which the aged parents can file the proceedings for maintenance which is religion restricted act.

This Act has only 32 sections. It ensures that maintenance of old persons by their family will be a matter of right for the parents. It should be the duty of the children to maintain their parents.

This is the unique Act dealing with issue of senior citizens and having following important features.

Maintenance of Parents and Senior Citizen

This legislation basically provides for the maintenance of parents and senior citizen. The definition of maintenance covers all basic necessities and requirements of life. The age of parents is not described. Hence a parent can claim maintenance without any bar of age. Here senior citizen means any person who is citizen of India and who has attained the age of 60 and above. This also includes childless senior citizen. He can claim maintenance from relative who is legal heir of that senior citizen and who is in possession of or would inherit his property after his death. Hence a
senior citizen who is childless can file an application for maintenance under this act. This act has an overriding effect on provisions of any other act. This is a special act and hence it will prevail over other acts.

**Constitution of Maintenance Tribunal**

The State Government has to constitute the Tribunal according to the Act. The maintenance proceedings are required to be adjudicated by the Tribunal exclusively. This Tribunal is presided over by an officer not below the rank of Sub Divisional Officer of a State. The senior citizen or parents can either apply in person or through a person authorized by him or through a voluntary organization registered under the Societies Registration Act. Even the Tribunal can take cognizance suo-moto. So the jurisdiction of the tribunal is very wide.

The Tribunal after considering all the facts may order children or relative to make a monthly allowance. The maximum maintenance allowance may be prescribed by the State Government and which shall not exceed the ten thousand rupees per month. Tribunal has been given power for alteration in urgent needs of senior citizen or parents can be fulfilled. The senior citizen or parent can initiate the proceedings where they are residing presently or last resided where children or relative resides, hence option is given to the parent or senior citizen to initiate the proceedings.

**Option regarding maintenance in certain cases**

An option is given to senior citizen and parent to have recourse to only one proceeding either under Cr.P.C. or under the present Act.
The proceedings should be disposed of within 90 days from the date of the service of notice of the application by the Tribunal.

The person against whom an order for maintenance is passed has to comply with the order within the period of one month otherwise the tribunal can imprison him or her up to period of one month.

**Adoption of Summary procedure in case of Inquiry**

Section 8 of this Act provides, in holding any inquiry, the Tribunal may, subject to any rules that may be prescribed by the State Government in this behalf, follow summary procedure as it deems fit. Before hearing an application for maintenance may refer the same to Conciliation Officer, who shall submit its findings within one month if the settlement is arrived at between the parent or senior citizen and their children and relative and after this the Tribunal will pass an order to that effect. This officer is designated by the State Government. The Tribunal has all the powers of the Civil Court and shall be deemed to be designated as civil court.

**Enforcement of order of Maintenance**

This Act provides for issuance of copy or the order free of cost, to the senior citizen or to parent. It provides that, the said order can be enforced by any Tribunal in any place where the person against whom it is made.

**Provision for Appeal**

Appeal is required to be filed within a period of 60 days from the date of order to the Appellate Tribunal by a senior citizen or a parent. However, appeal can be entertained beyond this period, if
the Tribunal is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time. The decision of the Appellate Tribunal shall be final.

**Right to Legal representation**

A party cannot be represented by legal practitioner. This is an important provision as it is responsible to curtail the cost of the proceedings.

**Establishment of Old Age Homes**

This Act requires the State Government to establish and maintain old age homes at assessable places with at least one in each District, which shall have minimum of 150 senior citizens, who are indigent. Hence this will provide a support to senior citizen.

**Medical support for senior citizen**

This Act is having provision for medical care of senior citizen. Further sec. 20 gives some specific instructions to Government Hospital in the matter of health of senior citizen.

**Measures for publicity, awareness etc., for welfare of senior citizen**

This Act directs State Government to take every measure to ensure that, the provisions of this act are given wide publicity through public media including the television, raid and the print, at regular intervals. Further it provides for sensitization and awareness training on the issues of this Act to Central and State Government officials including police officers and the members of judicial services.
Transfer of property to be void in certain circumstances
A senior citizen who has transferred his property either to his son or daughter or near relative, by virtue of a will or gift, can cancel the same by applying to the Tribunal, if he or she is neglected or refused to provide the basic amenities and physical needs by the transferee.

Exposure and abandonment of senior citizen
If parents or senior citizens are abandoned with an intention by a person who has to take care and protection then said person is punishable with imprisonment, which may extend to three month or fine, which may extend to ` 5,000/- or both. And if children or relative behaves like this then the senior citizen can file a complaint before the concerned Police Station.

Jurisdiction of Civil Courts barred
This Act specifically made provision barring civil courts jurisdiction and further provides that, no injunction shall be granted by any Civil Court in respect of anything done or intended to be done by or under this Act.

Protection of action taken in good-faith
Further this Act afford protection to government and provides that, non Suit, prosecution or other proceedings shall lie against the Central and the State Government or the local authority or any officer of the government in respect of anything which is done in good faith or intended to be done in pursuance of this Act and any rules or orders made there under.
Hence senior citizen is now protected from all sides and every offence under this act is cognizable and bailable. The jurisdiction of the Civil Courts is barred in connection with the present Act.

IV CRITICISM OF THE ACT

Implementation

In December, 2007 the Act was passed by the Central Government but still it has been not implemented by many States and also those States who have implement the Act, the local government has not made serious efforts to establish Tribunals and address the problems. It seems that most of the State governments are not serious in implementing the provisions of the act and only a few States have so far come forward to notify the Act in their gazette.

In addition to this following are some of the lacunas in the Act.

Definition of Senior Citizen

The definition of senior citizen includes both Indian citizens aged above 60 years and all parents irrespective of age. It also includes all parents with children above age of 18 years. This definition differs from that in the National Policy on Older People. Also the Act does not address the needs of senior citizens who do not have children or property.

Tribunal

As per provisions of the Act the presiding of the Tribunal will be Sub Divisional Officer and also the appellate powers are vested in the District Magistrate that means the persons from Revenue Department who may not be having the knowledge of law. It is not
known how they will adjudicate into the matter in accordance with the procedure followed by Civil Courts.

Revenue Department is already overburdened and assigning job of adjudicating issues/cases of the senior citizens which require to be decided on priority would not be given that much attention and tried with diligently. If this happens then the very object of enacting this special legislation would frustrate. In this circumstance senior citizens will suffer double injustice. Since jurisdiction of other courts are also barred by this legislation.

**Exclusion of Lawyers**
The Act specifically prohibits the assistance of lawyer in the proceedings under the Act. Complete exclusion of the lawyers from the purview of the Tribunal simply defies logic and reasoning. The Act provides that the Maintenance Officer designated by state government shall represent senior citizen if he so desire, but no such facility is available to other party. This may amount the violation of principle of Natural Justice.

**Appointing authority**
The Act entrusts the entire responsibility of establishing Tribunals, enacting rules etc to the concerned State. Since there is no mandatory provision in the Act State may or may not establish Tribunal to adjudicate the cases of senior citizens. Hence there is every likely hood that the senior citizen will have to face problems.

**Power of Presiding Officer**
The Presiding officer of the Tribunal has no power of discretion in awarding the maintenance amount and the power is vested with the State Government. This will again result in injustice with the aged
people. There is every possibility that the amount fixed by the government may vary from State to State.

**Arbitrariness**

Imposing liability on a person who happens to be a relative of the senior citizen on the ground that he will inherit the property of the senior citizen is illogical and unreasonable because the senior citizen may sell his property to any third party before his death and there is no guarantee that the relative will definitely inherit the property of the senior citizen.

If that relative is not intending to accept the property of the aged person or senior citizen, can he be compelled to look after that senior citizen and provide such person maintenance? This may amount the violation of the fundamental right i.e. Personal liberty, guaranteed under in Constitution of India.

The Act 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 transferor and has not done so. Under the Gift Tax Act 1958, a gift is unconditional- therefore such a transfer cannot be termed as a gift. Alternatively, if the property is given under condition to maintain the transferor and the transferee does not adhere to these conditions, then it would be breach of contract under The Indian Contract Act, 1872, making this provision redundant.

**Exclusion of Civil Court Jurisdiction**

The exclusion of the jurisdiction of civil courts is not justified, because Tribunals are not manned by legally qualified or experienced persons. Further the protection given to Central and State Government and the authorities of the government that no
proceedings can be initiated against them. This indirectly confers supremacy to Tribunal and will amount ouster of jurisdiction of High Court, which is not permissible under our Constitution.

**Right to file Appeal**

The provision regarding appeal is also discriminatory. The Act confer right to file appeal only to senior citizen and other party to the proceeding namely sons or daughter or relatives are concerned they are not having said right. This is contradictory to the Constitutional principle of equality. There is no facility available to childless senior citizens.

**Old Age Homes**

*No doubt this Act directs the Government to establish at least one* Old Age Home at District level and shall accommodate 150 senior citizens. Specifying such details in the Act reduces the flexibility to cater to differing local conditions and needs. Also in this provision the word “MAY” has been used. Hence it is for the State Government to take decision to establish Old Age Homes or not. It does not make this mandatory. Further, this Act is silent regarding management and administration of such Old Age Home. Already there are some Old Age Home run by assistance of government and some organization on charity. The position of such Old Age Home is miserable. In absence of clear cut provisions in respect of Old Age Home, the said provision may not work in reality and will frustrate the intent of legislature.

**Medical support for Senior Citizen**

The provision of the Act directing the government to provide medical support to the senior citizens, shall provide beds to senior citizens and such hospital shall be headed by a medical officer
having experience in Geriatric care found to be ornamental only. Very few hospitals have Geriatric Care and medicine Experts in India. In absence of expertise how senior citizens will get proper treatment and care is the important question. In that event senior citizen will have to approach such hospitals having expertise in Geriatric care and will have to pay exorbitant fees for the same. This again frustrates the provisions of the Act.

V IMPORTANCE OF THE ACT
The Act is important and may have implications for future. It ensures speedy, inexpensive proceedings. This will be a great relief to the parent and senior citizens.

This Act would reduce the burden upon regular Judiciary since the present Act provides for establishment of Tribunals. This Act does not allow legal practitioners and hence cost of the proceedings is reduced.

The provision regarding award of punishment of imprisonment to the person not complying with the order of the Tribunal will deter such person and there will be no hurdle in the enforcement of order. Further this Act will curtail the incidences of grabbing the property of aged parents or senior citizens by their own kith and kins, since the Act provides such transfer as void and further tribunal is empowered to cancel such transaction.

With the naissance of such an Act, the legislature has sought to have taken adequate care, which in turn would safeguard the rights of the elderly to the optimum. However, there still lie few
grey areas. They should be worked upon so that they no longer hamper the apt functioning of the Act.

Further approximately three years time is not enough for the government to implement the said Act aptly and in its letter and spirit. Government should be provided sufficient time period to implemented it effectively and then and then only it is possible to know the merits of this legislation.

To sum up, in order to implement the act more effectively and render justice freely and speedily, the Central Government should come forward to remove the above referred drawbacks. Otherwise very purpose of enacting this Act to provide secure life to senior citizens may not be fulfilled.

VI CONCLUSION

With the naissance of such an Act, the legislature has sought to have taken adequate care, which in turn would safeguard the rights of the elderly to the optimum. However, there still lie few grey areas. They should be worked upon so that they no longer hamper the apt functioning of the Act.

To assess the utility or effectiveness including feasibility it is necessary that the said legislation be implemented at least for 8 to 10 years. Unless the said legislation passes through this period it will be difficult to identify the lacunas or difficulty in the same.

It seems that most of the State governments are not serious in implementing the provisions of the act and only a few States have so far come forward to notify the Act in their gazette. If this
position continues, the very purpose of enacting this Act to provide
secure life to senior citizens may not be fulfilled.

In order to implement the act more effectively and render
justice freely and speedily, the Central Government should come
forward to remove the above referred drawbacks.

In the light of foregoing observations the researcher put forth the
following suggestions for proper and adequate implementation of
the Act.

First, Government has to adopt suitable mechanism to create
awareness in general public, regarding Act.

Second, All the State government shall be issued mandatory
directions to implement the Act.

Third, The Act shall be given wide publicity so that it could
reach to the last person in the society.

Fourth, State government shall not have the discretion in
determining the amount of maintenance to be awarded by the
Tribunal.

Fifth, The Tribunal shall be manned by person having
proficiency in law and sensitize towards the problems of senior
citizens.

Sixth, The Act shall have integrated approach towards the
welfare and maintenance of senior citizens.

Last, The Act shall be made comprehensive.