

Maintenance and Welfare of Parents and Senior Citizens Act, 2007

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1

Maintenance and Welfare of Parents and Senior Citizens Act, 2007

- Dr PT Sivakumar

Case Scenario

Mrs. Saroja is a 75-year-old lady from Mangaluru, Karnataka. Her husband was a businessman, he died a year back due to an accident. Her son is a software engineer working in Bengaluru. He got his mother to transfer the house property to his name through a gift deed. He withdrew the bank balance from his father's account using the ATM card. He had promised that he will take her along with him to live in Bengaluru. But he got her admitted at an old age home and stopped visiting her after that. He refused to take care of her needs.

It is not uncommon to hear similar complaints about abuse faced by senior citizens. This chapter discuss the legal safeguards/ protection to address such issues.

What is the legal provision to aid senior citizens facing elder abuse?

Many senior citizens face neglect and abuse from their family members. Children and son / daughter-in laws are the most common offenders. The Maintenance and Welfare of Parents and Senior Citizens Act (MWP Act), 2007 the legal provision that can be helpful to provide maintenance and ensure protection of the life and property of senior citizens.

1

Who are the eligible beneficiaries under the MWP Act 2007?

Parents and Senior citizens are the beneficiaries under this act. Any individuals aged 60 years and above are considered as senior citizens. Parents of any age are also eligible to get benefits through this act.

What are the important provisions of MWP Act, 2007?

- This law mandates the provision of maintenance and welfare of parents and senior citizens guaranteed by the Constitution of India.
- This act mandates that children are responsible for the maintenance of parents and senior citizens if they cannot maintain themselves through their income.
- In the case of senior citizens without children, any relatives who are entitled to receive the share of property of the senior citizen are responsible for their maintenance.
- This act provides safeguards to protect the life of senior citizen and mandates the State Government to implement this through a comprehensive plan.

- This act has provisions to safeguard the movable and immovable property of senior citizens if the children do not provide proper maintenance after the property is transferred to them
- This act mandates the State Government to establish old age homes for the senior citizens without sufficient means to maintain themselves
- This act mandates the State Government to improve the health care facilities for senior citizens

Who are considered as Children under this act?

- Son, daughter, grandson and grand-daughter are considered as children under this act. This provides for claiming maintenance from them except in case they are minor.
- The scope of the definition of children is proposed to be expanded to cover son-in-law, daughter-in-law as well legal guardian of minor children in the amendment of this act to make it more effective.

What is the need for a specific law to promote the maintenance and welfare of parents and Senior citizens?

- Government of India has the responsibility to fulfill the commitments for promoting the rights and welfare of senior citizens as mandated by the constitution and the global initiatives under United Nations.
- Decline of the joint families and changes in the traditional family values has contributed to the increase in the prevalence of abuse and neglect of parents and senior citizens.
- The existing legal provisions to achieve this have significant limitations and barriers that prevents or delays access to justice for senior citizens

How are the provisions of this law different from the usual legal process in courts?

- The procedures for adjudication of the applications seeking maintenance under this act need not go through the usual judicial process in courts.
- The maintenance tribunals notified under this act are the authorities with powers to adjudicate these applications. They have the powers equivalent to a Civil Court for the implementation of this act.
- The Sub-Divisional Magistrate or Sub-Collector is the maintenance tribunal under this act.
- The District Magistrate or District Collector is the appellate authority to consider the appeal, if the senior citizen is not satisfied with the decision of the maintenance tribunal.

- Section 17 of the MWP Act, 2007 prohibited appearance of lawyers to represent parents / senior citizens or their children in the maintenance or appellate tribunal.
- However, a recent judgement of the High Court of Kerala has declared Section 17 of the MWP Act, 2007 as unconstitutional. This is due to the superseding effect of the rights of advocates to represent before any court/ tribunal as per the Section 30 of the Advocates Act, 1961.
- Senior citizens having difficulty in affording legal representation can get free legal services from the panel lawyers of Legal Services Authority.
- There is a clear timeline to complete the process of enquiry and adjudication of maintenance applications under this act. The process must be completed within ninety days from the date of serving the notice to the respondents. The proceedings can be extended by a maximum period of thirty days due to exceptional reasons.
- This timeline is likely to be strengthened further as the proposed amendment of this act mandates the consideration of the date of application instead of the date of serving the notice to calculate the timeline.

How can a parent or senior citizen apply for maintenance from children or relatives under this act?

- The application for maintenance can be submitted by the parent/ senior citizen or any other person or organization authorized by them.
- The maintenance tribunal may take cognizance of applications under this act Suo-motu if it is brought to its attention even though nobody has submitted application
- In the proposed amendment for this act, application by post or online is also likely to be enabled to improve the access for senior citizens

What are the important benefits for senior citizens that can be granted by the maintenance tribunal as per the MWP Act, 2007?

- The maintenance tribunal can order the children or relative to provide maintenance amount for the affected parent / senior citizen. This amount has been restricted to a maximum monthly payment of Rupees Ten Thousand.
- The maximum limit of Rupees Ten Thousand for maintenance amount is a major disadvantage for many senior citizens as this is not sufficient to ensure a reasonable standard of living.
- This limitation has been recognized and the proposed amendment for this act does not specify the upper limit for the estimation of the maintenance amount. This will facilitate the tribunal to decide an appropriate maintenance amount based on the requirements of parent

/ senior citizen considering the standard of living and the access to resources for the children.

- The provision to declare the transfer of movable / immovable property of the senior citizen to children / relative as null and void if they fail to provide the basic amenities and physical needs is an important provision that can safeguard the property of the senior citizen.

What are legal provisions for punishment under this act?

- The maintenance tribunal has powers of the Civil Court to ensure the implementation of the maintenance order by the tribunal.
- If anyone abandons the senior citizen without providing care, this act has the provision for punishment of imprisonment up to three months or a fine up to five thousand rupees or both.

Does this act include any provision for conciliation to resolve the dispute between parents / senior citizens and their children / relatives?

- This act mandates the referral of any dispute brought before the maintenance tribunal to the Conciliation officer prior to the enquiry by the tribunal.
- The dispute between senior citizen / parent and their children / relatives can be resolved by the conciliation officer within a month

What are the provisions of this act that can be helpful for the parents / senior citizens with out any scope for seeking maintenance from children / relative?

- The MWP Act, 2007 mandates the State Government to establish old age homes in each District to provide accommodation for senior citizens without any means for independent living.
- The act mandates the need for providing separate queues for senior citizens when they seek care from health facilities.
- It also mandates the need to provide beds for senior citizens requiring admission in all Government hospitals.
- It also emphasizes the need for the improvement in health care facilities for senior citizens having chronic, terminal and degenerative diseases
- The proposed amendment of this act mandates the registration and regulation in the management of old age homes, day care centers and home care agencies

What is the status of implementation of the MWP Act, 2007?

- Despite the presence of this act for more than a decade, there is inadequate awareness about this act among the senior citizens and other stake holders.

- Perceived stigma is an important barrier for senior citizens and parents to seek remedy through this act
- The amendment bill to address the limitations of this act is pending to be passed by the Parliament.

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