

THE HIMACHAL PRADESH MAINTENANCE OF PARENTS AND
DEPENDANTS ACT, 2001

(AS ASSENTED TO BY THE PRESIDENT ON 8TH SEPTEMBER, 2001)

AN
ACT

to provide for the maintenance of parents, wives and children and for matters connected therewith.

Preamble.—WHEREAS, tendency to neglect the aged and infirm parents and dependants is increasing day by day and there is apparent need to compel the young generation to perform their moral obligations which they owe to the society in respect of their families and aged and infirm parents, so that they are not left beggared and destituted on the scrapheap of society and thereby driven to life of vagrancy for their subsistence;

AND WHEREAS, for the purpose of securing the principles laid down in article 41 read with article 38 of the Constitution of India, it is in the public interest that the public assistance in cases of old age, sickness and disablement and in other cases of undeserved want should be secured.

Be it enacted by the Legislative Assembly of Himachal Pradesh in the Fifty-second Year of the Republic of India, as follows:—

1. (1) This Act may be called the Himachal Pradesh Maintenance of Parents and Dependants Act, 2001.
(2) It extends to the whole of Himachal Pradesh.
(3) It shall apply to all persons domiciled in the territories of Himachal Pradesh except Muslims.
(4) It shall come into force on such date as the State Government may, by notification, in the Official Gazette, appoint.
2. In this Act, unless the context otherwise requires,—
 - (a) "applicant" includes a person in whose favour a maintenance order has been made under the provisions of this Act ;
 - (b) "approved person" or "organisation" means a person or an organisation that has been approved under section 20 by the State Government in writing for the purposes of this Act; and shall include person or organisation as specified in the Schedule appended to this Act—
 - (c) "child" includes a child born out of extra marital relationship, adopted and step child, below the age of 18 years ;
 - (d) "dependant" includes,—
 - (i) parents and grand parents, so long as they are unable to maintain themselves or unable to obtain maintenance in the case of grand parents from their sons and daughters ;

Short title,
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Definitions.

- (ii) wife, so long as she does not re-marry;
- (iii) son or the son of predeceased son, so long as he is minor; provided and to the extent that he is unable to obtain maintenance in the case of grand son from his father's or mother's estate ;
- (iv) unmarried daughter or unmarried daughter of the predeceased son, so long as she remains unmarried; provided and to the extent that she is unable to obtain maintenance in case of a grand daughter from her father's and mother's estate ;
- (v) widowed daughter; provided that and to the extent that she is unable to obtain maintenance—
 - (a) from the estate of her husband ; or
 - (b) from her son or daughter, if any, or his or her estate ; or
 - (c) from her father-in-law or her grand father or the estate of either of them;
- (vi) any widow of the son or of the son of the predeceased son so long as she does not remarry; provided and to the extent that she is unable to obtain maintenance from the estate of her husband or from her son or daughter, if any, or his or her estate ; or in the case of a grandson's widow, also from her father-in-law's estate;
- (vii) son born out of extra marital relationship, so long he remains minor ; and
- (viii) daughter born out of extra marital relationship, so long she remains minor;
- (e) "Maintenance Officer" means the Maintenance Officer for the maintenance of parents and dependants appointed under section 13;
- (f) "prescribed" means prescribed by rules made under this Act ;
- (g) "property" means property of any kind, whether moveable or immovable, tangible or intangible; and includes any rights or interest in such property;
- (h) "respondent" includes a person against whom a maintenance order has been made under the provisions of this Act ; and
- (i) "Tribunal" means the Tribunal for the maintenance of parents and dependants established under section 14.

Application for maintenance order.

3. (1) Any person who is unable to maintain himself and having income below the level laid down for persons living below the poverty line and is resident in the State of Himachal Pradesh, may apply to the Tribunal for an order—

- (i) in case of a parent or grand parent, that one or more of his children or grand children ;
- (ii) in case of wife, that her husband ;
- (iii) in case of minor son or unmarried daughter, that his or her father and where father is dead, his or her mother ; and

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(iv) in case of dependant (other than a parent, grand parent, wife, minor son or unmarried daughter) if such dependant has not obtained, by testamentary of intestate succession, any share in an estate of his ancestor that the persons who take the share, shall pay him a monthly allowance, not exceeding five thousand rupees per mensem, or any other periodical payment or a lump-sum for his maintenance.

(2) An approved person or organisation in whose care a parent, wife, child or dependant resides may apply to the Tribunal for an order that the respondent shall pay to the approved person or organisation a monthly allowance not exceeding five thousand rupees per mensem or any other periodical payment or a lump sum for the purposes of defraying the cost and expenses of maintaining that parent, wife, child or a dependant, as the case may be.

(3) Where a parent, wife, child or dependant ceases to be in the care of the approved person or organisation, any part of the monthly allowance, other periodical payment or lump sum remaining after deducting the reasonable cost and expenses of maintaining the parent, wife, child and the dependant shall be held in trust for such parent, wife, child and the dependant, as the case may be.

Explanation.—For the purposes of this section, a parent is unable to maintain himself, if his total or expected income and other financial resources are inadequate to provide him with basic amenities and basic physical needs including (but not limited to) shelter, food and clothing.

4. A respondent may serve notice in the prescribed form on other persons liable to maintain the applicant joining them as respondent in the action.

Joinder of respondent.

5. (1) The Tribunal may make a maintenance order if it considers that it is just and equitable that the respondent should maintain the applicant and that—

Maintenance orders.

- (a) the respondent is able to provide maintenance to the applicant after his own requirements and those of his spouse and his children; and
- (b) the applicant is unable, inspite of efforts on his part, to maintain himself through work or from his property or from any other source.

(2) When ordering maintenance for the benefit of a wife, child or aged or infirm parent, the Tribunal shall have regard to all the circumstances of the case including (but not limited to) the following matters:—

- (a) the financial needs of the applicant, taking into account reasonable expenses for housing and medical costs ;
- (b) the income earning capacity, property and other financial resources of the applicant and the manner in which an applicant has spent his saving or dissipated his financial resources ;

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- (c) any physical or mental disability of the applicant;
- (d) the income, earning capacity, property and other financial resources of the respondent;
- (e) the expenses incurred by the respondent in supporting his spouse or children;
- (f) the contributions and provisions, whether financial or otherwise, which the respondent has made for the maintenance of the applicant; and
- (g) if the applicant is living separately, whether the applicant is justified in doing so.

(3) When ordering maintenance, if any, for the benefit to a dependant (other than wife, minor son, unmarried daughter and parents) regard shall be had to—

- (a) the net value of the estate of the deceased after providing for the payment of debts;
- (b) the provisions, if any, made under a will of the deceased in respect of the dependant;
- (c) the degree of relationship between the two;
- (d) the reasonable wants of the dependant;
- (e) the past relations between the dependant and the deceased;
- (f) the value of the property of the dependant and any income derived from the property or from his or her earnings or from any other source; and
- (g) the number of dependants entitled to maintenance under this Act.

(4) Where there is more than one respondent the Tribunal may apportion the maintenance among the various respondents in such manner as may be just.

(5) The Tribunal shall, before hearing an application under this section refer the differences between the parties to a conciliation officer for mediation between the parties.

Maintenance
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6. Where in any proceeding under this Act it appears to the Tribunal that the applicant is unable to maintain himself and has no independent income, it may, on the application of the applicant supported by an affidavit, order the respondent to pay to the applicant such sum by way of interim maintenance as, having regard to the income of the respondent it may seem to the Tribunal to be reasonable but which shall not be less than Rs. 500/- per month pending the final disposal of the maintenance application.

Power of
Tribunal
to order
security
for
maintenance.

7. (1) A maintenance order may provide for the payment of a monthly allowance not exceeding five thousand rupees per mensem or periodical payment or a lump sum for such period as the Tribunal may determine.

Maintenance payable under order of Tribunal to be inalienable.

Enforcement of maintenance order.

10. Maintenance payable to any person under this Act shall not be assignable or transferable or liable to be attached, sequestered or levied upon for, or in respect of any debt or claim whatsoever.

11. (1) A maintenance order made under this Act shall 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 the execution of such order by that Code.

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(2) An order for maintenance may be executed either by the Tribunal which passed it or by other Tribunal or ordinary court to which it is sent for execution.

(3) In addition to the mode of execution of orders referred to in sub-sections (1) and (2), a maintenance order passed against a person who is in receipt of salary from any State or Central Government or from a local authority or from a Corporation engaged in any trade or industry which is established by a Central or State Government or from a Government Company as defined in section 617 of the Companies Act, 1956 may be executed by way of attachment of salary payable to him

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(4) Where the salary is attached under sub-section (3), the Tribunal, whether the person liable to pay the amount of maintenance, or the employer or the officer disbursing the salary is or is not within the local limits of the Tribunal's jurisdiction, may order that the salary not exceeding one third shall be withheld from such salary by monthly instalments, as the Tribunal may direct and upon notice of the order such employer or disbursing officer, shall remit to the Tribunal the amount of monthly instalments.

(5) Where the attachable portion of such salary is already being withheld and remitted to a Court or a Tribunal in pursuance of a previous and unsatisfied order of attachment, the employer or the disbursing officer shall forthwith return the subsequent order to the Tribunal issuing it with a full statement of all the particulars of the existing attachment.

(6) Every order made under sub-section (3), unless it is returned in accordance with the provisions of sub-section (5), shall without further notice or other process, bind the employer and the employer shall be liable for the sum paid in contravention of the provisions of sub-section (3), (4) and (5) of this section.

Application on behalf of incapacitated applicant.

12. Where an applicant is unable to make an application under this Act (whether by reason of physical or mental infirmity or for any other reason), such an application may be made on his behalf by

- (a) any member of his family; or
- (b) any person in whose care he resides; or
- (c) any other person whom the applicant has authorised to make such application; or
- (d) Maintenance Officer.

13. (1) The District Welfare Officer concerned shall be the Maintenance Officer within his territorial jurisdiction for the maintenance of parents and dependants.

Maintenance Officer.

(2) The Maintenance Officer may make an application under this Act on behalf of an applicant or a minor child (whether or not the applicant is able to do so) or represent such applicant in any proceedings or appeal under this Act.

(3) The Maintenance Officer may consult, or direct any of his officers to consult, with the parties concerned in order to assist them to reach agreement by conciliation.

14. (1) For the purpose of exercising the jurisdiction and powers conferred on a Tribunal for maintenance of parents and dependants by this Act, Government shall, as soon as may be, after the commencement of this Act, establish, in every district, as many Tribunal for maintenance of parents and dependants and at such places, as the State Government may, by notification specify.

Establishment of Tribunal for the maintenance of parents and dependants.

(2) The Presiding Officer who shall not be lower in rank of the Sub-Divisional Officer (Civil) of such Tribunal shall be appointed by the State Government.

(3) The Presiding Officer of the Tribunal shall vacate his office where ---

(a) he resigns ; or

(b) where he has been appointed by virtue of holding any office, he ceases to hold that office.

(4) Where a person ceases to be the Presiding Officer of the Tribunal, the State Government shall, as soon as is reasonably practicable, take steps to fill the vacancy but the existence of any vacancy in the Tribunal shall not invalidate the acts of the Tribunal.

(5) If the Presiding Officer of the Tribunal is for the time being unable to perform the duties of his office, either generally or in relation to any particular proceedings, the State Government may appoint some other person to discharge the duties of the Presiding Officer for any period, not exceeding six months at one time, or as the case may be, in relation to those proceedings ; and a person so appointed shall, during that period or in relation to those proceedings, have the same powers as the person in whose place he is appointed.

(6) The Presiding Officer of the Tribunal when and so long as he is serving on the Tribunal shall be deemed to be a public servant within the meaning of the Indian Penal Code and the proceedings of the Tribunal shall be deemed to be judicial proceeding.

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Tribunal
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15. (1) The Tribunal shall have jurisdiction to hear and determine in accordance with this Act, all applications made under this Act

(2) The Tribunal shall decide every application made to it as expeditiously as possible and ordinarily every application shall be decided within a period of six months reckoned from the date on which the application has been made.

(3) Sittings of the Tribunal shall be held at such places and the Presiding Officer of the Tribunal may determine.

(4) Any interested party may be represented before the Tribunal

(a) by an agent acting without fee, gain, reward or any expectation thereof, in any case in which the Tribunal may, at the request of that party and for good reason, permit; or

(b) by the Maintenance Officer; or

(c) by an approved person or organisation through any of its employees or office holders.

(5) No party to any proceedings before the Tribunal may be represented by an Advocate.

(6) Every summons and notice issued under the hand of the Presiding Officer of the Tribunal to any person shall be served on that person

(a) by delivering the summons to the person or to some member of his family at his last known place of residence

(b) by leaving the summons at his usual or last known place of residence or business in an envelope addressed to the person

(c) by sending the summons by registered post addressed to the person at his usual or last known place of residence or business; or

(d) where the person is a body of persons or a company—

(i) by delivering the summons to the Secretary or other like officer of the body of persons or company at its registered office or principal place of business; or

(ii) by sending the summons by registered post addressed to the body of persons or company at its registered office or principal place of business.

(7) Any summons or notice sent by registered post to any person in accordance with sub-section (6) shall be deemed to be duly served on that person to whom the letter is addressed at the time when the letter would in the ordinary course of post be delivered and in proving service of a summons, it shall be sufficient to prove that the envelope containing the summons was properly addressed, stamped and posted by registered post.

(8) The Tribunal shall have the following powers:—

(a) to dismiss frivolous or vexatious claims at a preliminary stage on the basis of the affidavits and other documentary evidence

- (b) to summon any person to appear before a Conciliation Officer for the purpose of mediation;
- (c) to summon any person whom it may consider able to give evidence to attend at the hearing of an application ;
- (d) to examine such person as a witness either on oath or otherwise and to require such person to produce such records, documents or articles as the Tribunal may think necessary for the purpose of the proceedings;
- (e) to allow any person, attending the proceedings any reasonable expenses necessarily incurred by him in so attending to be paid by such party as the Tribunal may determine ;
- (f) to make an order by consent of the parties; and
- (g) all the powers of a Magistrate with regard to the enforcement of attendance of witnesses and hearing evidence on oath.

(9) Every person examined as a witness by or before the Tribunal, whether on oath or otherwise, shall be legally bound to state the truth and to produce such records, documents or articles as the Tribunal may require.

(10) The Tribunal may receive as evidence any report, statement, document, information or matter that may, in its opinion, assist it to deal effectively with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872.

(11) In proceedings before the Tribunal it shall not be necessary to record the evidence of witnesses at length, but the Tribunal, as the examination of each witness proceeds, shall, record or cause to be recorded, a memorandum of the substance of what a witness deposes, and such memorandum shall be signed by the witness and the Presiding Officer of the Tribunal and shall form part of the record.

(12) The evidence of any person where such evidence is of a formal character, may be given by affidavit and may, subject to all just exception, be read in evidence in any proceeding before the Tribunal.

(13) The Tribunal may, if it thinks fit, and shall on the application of any of the parties to the proceedings summon and examine any such person as to the facts contained in his affidavit.

16. (1) The State Government either on its own motion or on the application within 14 days of any party aggrieved by a decision of the Tribunal on the ground that it is wrong in law, may call for the proceedings and the grounds of the award and give such order thereon, either by directing a fresh hearing or otherwise, as seems necessary to secure that substantial justice is done.

State
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call for
proceedings of
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Tribunal.

(2) The powers of revision conferred under this section shall not question the decision of the Tribunal as to the quantum of maintenance awarded or apportioned under this Act.

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Appeals.

17. (1) Except as provided in this section and section 16 the decision of the Tribunal shall be final.

(2) The applicant, the Maintenance Officer on behalf of the applicant, a respondent, an 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 except in any case where the Tribunal has made the order with the consent of the parties unless it is alleged that the consent was obtained by means of fraud, duress, threat or misrepresentation.

(3) The District Judge shall decide every appeal preferred to it as expeditiously as possible.

(4) The procedure governing such appeals under sub-sections (2) and (3) shall be the same as that for appeals from decisions of the Sub-Judge to the District Judge.

(5) The District Judge shall have jurisdiction to hear and determine any such appeal and may confirm, vary or annul the decision of the Tribunal on appeal and make such further or other order on such appeal, whether as to costs or otherwise, as the District Judge may consider fit.

(6) There shall be no further right of appeal from decisions of the District Judge.

Costs.

18. The costs of—

- (a) an application under this Act shall be in the discretion of the Tribunal;
- (b) an appeal shall be in the discretion of the District Judge hearing the appeal.

Effect of transfer of property on right of maintenance.

19. (1) Where any person who, after the commencement of this Act, has transferred by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferer and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of the property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferer be void.

(2) Where any person has a right to receive maintenance out of an estate and such estate or part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right.

Approved persons or organisations.

20. The State Government may approve—

- (a) institutions or organisations engaged in social welfare or the representatives thereof;
- (b) persons professionally engaged in promoting the welfare of the family;

- (c) persons working in the field of social welfare; and
- (d) any other persons ;

whose association with a Tribunal would enable it to exercise its jurisdiction more effectively in accordance with the purpose of this Act.

21. The provisions of this Act shall be in addition to and not in derogation of the provisions of Chapter IX (relating to the order of maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 and the provisions of any law for the time being in force in respect of a suit or proceeding for maintenance.

Provisions
not to be
derogator
to certain
laws.

22. (1) The State Government may, subject to the condition of previous publication, make rules for the purpose of carrying into effect the provisions of this Act.

Power to
make rules.

(2) Without prejudice to the generality of the foregoing power such rules may provide for--

- (a) regulating and prescribing the procedure to be followed for applications and the conduct of proceedings under this Act ;
- (b) regulating the means by which particular facts may be proved, and the mode in which evidence thereof may be given including but not limited to affidavits ;
- (c) the manner in which frivolous or vexatious claims may be dismissed at a preliminary stage on the basis of the affidavits and other documentary evidence ;
- (d) the discovery of documents and other evidence and public records ;
- (e) the manner and method of payment of maintenance awarded under this Act ;
- (f) the costs of any proceedings under this Act ; and
- (g) the manner in which, the purposes for which and conditions subject to which institutions, organisations and other persons may be approved for providing assistance to the Tribunal.

(3) Every rule made under this section by the State Government shall be laid, as soon as may be, after it is made, before the State Legislative Assembly, while it is in session, for a total period of fourteen days which may be comprised in one session or two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid the Assembly agrees in making any modifications in the rule or the Assembly agrees that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

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[See section 2 (b)]

List of person or organisation engaged in retaining or maintaining old, infirm or dependant persons.

1. Himachal Pradesh Council for Child Welfare, Shimla-2.
2. State Social Welfare Advisory Board, Himachal Pradesh, Khalini.
3. Balh Valley Kalyan Sabha, Bhangrotu, Tehsil Sadar, District Mandi, Himachal Pradesh.
4. Association for Social Health in India, Craig Garden, Kothi No. 3, Shimla-2.
5. Age Care India, Himachal Pradesh Chapter, Onkar House, Kasumpti, Shimla-9
6. Indira Ladies Club Rauzore Palace, Nahan, District Sirmaur, Himachal Pradesh.
7. Sisters of Charity, Prom Ashram, Una, District Una, Himachal Pradesh.