

**FINAL REPORT OF
MINOR RESEARCH PROJECT**

**“THE IMPLEMENTATION OF SENIOR CITIZENSHIP
ACT- A SOCIO-LEGAL SURVEY IN MAHARASHTRA”**

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“**THE IMPLEMENTATION OF SENIOR CITIZENSHIP ACT- A SOCIO-LEGAL SURVEY IN MAHARASHTRA**”, is a non-doctrinal project, conducted to find out the actual implementation of the laws made for the senior citizens. The problems of Senior Citizens are increasing every day. Deteriorating health, malnutrition, lack of shelter, fear, depression, senility, isolation, boredom, non-productivity, and financial incapacity are the most common problems that senior citizens all over the world face today.

This Minor research project undertaken was indeed a difficult task but it was an endeavor to find out different dimensions in which the senior citizenship Act can be implemented by the Government. At such a juncture, it was necessary to rethink on this much litigated right. Our interest in this area has promoted us to undertake this venture.

We are thankful to UGC for giving us this opportunity. We are also thankful Prof. Dr. Mukund Sarada, Dean and Principal for giving his valuable advices and guiding us. Our heartfelt gratitude to Dr. Rajendra Anubule for giving more insight about the subject. We are also thankful to Jayshri Khandare, Archana Ubhe & Snehal Kshetriya for assisting us by formatting and typing the work.

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Prof. Vidya V. Dhere.

Principle Investigator

Chapter Scheme

- Chapter I : Introduction
- Chapter II : Historical Background of the Position of Senior
Citizens
- Chapter III : Legislation Relating to Senior Citizens at Centre and State
Level
- Chapter IV : Implementation of Senior Citizenship Act in
Maharashtra
- Chapter V : Conclusion and Suggestion

Bibliography

E- Material

Questionnaire relating to senior citizen for:

- I. Lecturer in Law
- II. NGO
- III. Lawyers
- IV. Senior Citizens

LIST OF CASES

- Siluvai (age 84) case November, 2011
- Amar Kaur v. Raksha Devi, 2012
- Mehnga Singh v. Satwinder Pal Singh, 2011
- Mrs. Preeti Doundial & Ors. vs Tribunal (Under Maintenance & ... on 26 November, 2009, Delhi High Court.
- Punjab-Haryana High Court Promil Tomar And Others vs State Of Haryana And Others on 6 December, CWP No. 20072 of 2013
- Aditya Mahajan v Shachi Mahajan, 2007
- Sudhir kumar V.State of W.B. , WP No. 22614 (W) of 2009)
- Sukh Deo v. State of A.P., AIR (1986) SC 991 7
- Chameli Singh v. State of U.P., AIR 1996 SC 1051
- Ashok Kumar v. Union of India, AIR (1997) SC 2298

CHAPTER 1

Introduction:

a) Project Title:

“IMPLEMENTATION OF SENIOR CITIZENSHIP ACT- A SOCIO-LEGAL SURVEY IN MAHARASHTRA”

b) Objectives of Study:

Broad Objective

To evaluate the efficiency of existing legislations of Senior Citizens dealing their rights and its significance to implement in the state of Maharashtra.

Specific Objectives

1. To explore the possibility of evolving new principles of law.
2. To identify the extent of the need for checks and balances on the exercise of Senior Citizens rights and duties
3. To make a comparative study of the State laws dealing with the problems and solutions of Senior Citizens
4. To identify the causes of various problems Senior Citizens.
5. To suggest solution so that the Senior Citizens could lead happy and healthy life.

c) Scope of the Study:

The project involves Legislative investigations and the utilization of the prospective outcome to develop new laws and legislation that will help the senior citizens. Sociology and law are interconnected and interdependent on each other. This interdisciplinary study will help the lawmakers and law executors to make and implement law, so as to serve the people. The study aims to develop law to suit the conditions of senior citizens in Maharashtra. The main objective behind all this exercise would be to study the existing conditions and necessity of a State legislation relating to rights of Senior Citizens, make an analysis of the previous legislations and suggest ways for the future so that a comprehensive piece of legislation, at national level is the outcome.

d) Significance of the study:

The present research will be instrumental in identifying various problems pertaining to Senior citizens rights and duties. The present research is very vital to bring to the notice of state government the importance introducing and implementing Senior citizens Act in Maharashtra.

e) Sources of Data:

- i) Doctrinal Sources:
- ii) Non- doctrinal Sources:

f) Limitation of the Study:

- i) The survey is conducted in Maharashtra only.
- ii) The data is not readily available due to non-cooperative nature of the Senior Citizens. They usually do not open up with their personal grievances due to insecurity.
- iii) Limited availability of literature on the said topic.

Introduction:-

The changing social scenario in the name of modernization is influencing the interpersonal relations in a negative manner. The members of traditional joint Indian families have been respecting and caring for their older adults dutifully. The modernization and emergence of nuclear families is gradually eroding these traditional living patterns to the extent that the Government of India had to incorporate an act for the care and protection of the older adults by their children – “*The Maintenance and Welfare of Parents and Senior Citizen Act, 2007.*”¹

A person’s life is generally segregated into five parts namely infant period, childhood, adolescence, adulthood and old age. A man has to face different problems and go through different situations in all of these five stages. Old age refers to the ages that surpass the life expectancy of human beings, and is thus the end of the human life cycle. The old age is that stage of life which is filled with problems. In old age physical strength deteriorates, mental stability diminishes; money power becomes bleak along with negligence from the younger generation.

India with majority of its population aged less than 30 includes problems and issues of its grey population that has not been given serious consideration and there are only a few studies that have been attempted on them in our country. To grab the advantage of demographic dividend, the focus is mainly put on the children and the youth and for proper development fulfilment of their basic needs is given as main priority.

There are 81million older people in India- 11lakh in Delhi itself. After a certain age health problems begin to arise leading to losing control over one's body, coming to a stage where not even recognizing their own family owing to Alzheimer which is common in old age. It is then children began to see their parents as burden. It is these parents who are generally thrown out of their homes. Mostly dump their old parents or grandparents in old-age homes and don't even come to see how actually they are. There are more than 200 Old Age Homes in Maharashtra situated in or near big cities. Some are in villages or in Konkan nature belt.²

¹ See article on Status and requirements of geriatric mental health services in India: An evidence-based commentary, by S. C. Tiwari and Nisha M. Pandey, available at, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3339228/> on 10/10/16 at 2.30 pm.

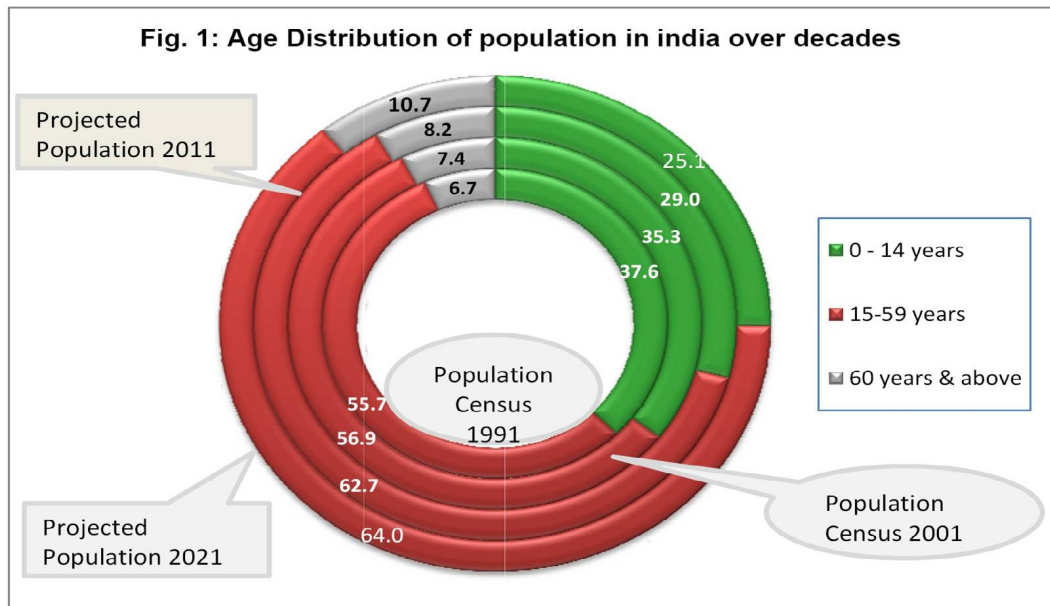
² See article on Mind and Health, available at: <http://ilamchand.blogspot.in/2014/10/report-on-old-age-home.html>, on dated 19/10/2016, at 4.30pm

According to the provisional results of the 2011 national census, Maharashtra is the second most populous state in India with a population of 112,374,333 (9.28% of India's population) of which male and female are 58,243,056 and 54,131,277 respectively.

Share of Elderly in Total population:-

If we divide India’s total population into three major age-groups i.e. age in years 0-14, 15-59 and 60 & above, we can clearly find out from it that during the last few decades, the share of children (0-14) is decreasing from 37.6% in 1991 and is estimated to be about 25% by the year 2021.³ On the other hand the proportion of population in the working age-group (15-59) and the aged (60 & above) have also increased rapidly.

The grey population which accounts 6.7% of the total population in 1991 is expected to have a rise in its share to more than 10% by the year 2021.



The old age is an integral part of human life. It is the evening of life. It is unavoidable, undesirable, unwelcome and problem- ridden phase of life. But it is really interesting to note that everybody wants to live a long life, but not to be old. It is ironical that however undesirable the old age, it is bound to come in life. A man is

³ See article on AGEING IN INDIA: AN OVERVIEW, Ms. Nisha Marya, A Journal of Radix International Educational and Research Consortium, Volume 2, Issue 7 (July 2013) ISSN: 2250 – 3994.

compelled to go through the pains and pleasures of this age like the other phases of life before making an exit from this mortal world.

An old man is full of experiences and even though experiences are of immense help to the younger generation, he is taken as an unwanted burden. He himself is caught in a terrible feeling of redundancy. Thinking of old age visions of loneliness and neglect emerge in mind. The picture becomes all the more awesome with the failing health and illness. A sense of despair glooms over all his pleasant feelings. They commanded great respect, regard, love and attention and were taken as source of inspiration, guidance and experience for the younger generation. These words of Elbert Hubbard are true to the situation, “where parents do too much for their children, the children will do not much for themselves.”⁴

Every phase of life has its own problems which require prudence, wisdom, courage and strength to attend to. In childhood and youth one has parents and other close elderly kith and kin to help, cooperate and guide. Besides, he is full of energy, strength, stamina and courage. But the situation takes a reverse turn in the old age. For his every work he needs someone to help. He becomes dependent to others largely due to his physical infirmity. He is, in fact, filled with a feeling of emotional insecurity. He wants someone to take care of his needs and share his feelings. But in this materialist society, everybody is short of time. Nobody has enough time for him. Even his own children, to whom he dedicates his life and his earnings, do not find time for him.

In fact, it is an appropriate time for him to enjoy life without care and concern. He finally has time to live-“sit in shade/reliving the good old times/letting bad memories fade.” Keeping in mind these words of Henry Ward Beecher, “There is no friendship, no love, like that of the parent for the child,” we should be sincere and caring enough to take care of them when they most need it, but not pamper them.⁵

Though it is true that no stage of life has its ever smooth sailing and every stage has its attendant problems, those of old age are more difficult and

4 See article on, 974 Words Essay on the Problems of Old Age, by Vishal, available at, <http://www.shareyouressays.com/2859/974-words-essay-on-the-problems-of-old-age>, dated, 19/10/16, at 4.40pm.

5 The Most Famous Man in America: The Biography of Henry Ward Beecher, Apr 17, 2007, by Debby Applegate

insurmountable because the physical strength and mental capability required to cope up with the adverse situations of life are immensely reduced. The situation becomes all the more difficult when one finds himself/herself left alone without anyone to attend him.

Problems of Old Age:-

1. The population of elderly people in India is tremendously rising day by day and so the problems faced by these people are also increasing simultaneously. According to the reports and surveys, there are quite a number of incidences of old people being forced to sell their residential homes. Some elderly people have also complained that in case of a property dispute they feel more helpless when their wife's side is with their children. Many of them keep on suffering in silence as they have a fear of humiliation in them or they are too scared to speak up.
2. Nowadays it is very common for old people to face the problems like lack of care, emotional support and economic support from the family etc. A phenomenon called as 'grand dumping' is becoming common in urban areas these days as children of such parents are being increasingly intolerant of their parents' health problems.⁶
3. According to an estimate, there are nearly 40% of the senior citizens have been reportedly facing abuse of one kind or another while living with her families, but rarely 1 in 6 such cases actually come to the light.⁷ Although the steps have been taken to enact Maintenance and Welfare of Parents and Senior Citizens Act which punishes those people who leave their parents are given a prison term of three months or a fine. The situation is seriously grim for elderly people in India.
4. Psychological Problems-The common psychological problems that most of the older persons experience are: feeling of powerlessness, feeling of inferiority, depression, uselessness, isolation and reduced competence .These problems along with social disabilities like widowhood, societal prejudice and

⁶See article, OLD AGE- A SOCIAL ISSUE,by,Pragyan Pandey,

<http://ibcmanit.blogspot.in/2012/10/old-age-social-issue.html>,dated,19/10/16, at 5.00pm.

⁷ See article, AGEING PEOPLE: THE LIFE OF THOSE WHO HAVE NO HOPE,by, Aftab Ahmad Ansari, International Multidisciplinary Research Journal, Volume - 5 | Issue - 6 | Dec – 2015, ISSN: 2231-5063.

segregation aggravate the frustration of elderly people. Studies report that conditions of poverty, childlessness, disability, in-law conflicts and changing values were some of the major causes for elder abuse.

5. Health Problems-Health problems are supposed to be the major concern of a society as older people are more prone to suffer from ill health than younger age groups. It is often claimed that ageing is accompanied by multiple illness and physical ailments. Besides physical illness, the aged are more likely to be victims of poor mental health, which arises from senility, neurosis and extent of life satisfaction. Thus, health status of aged should occupy a central place in any study of the elderly population.
6. Economic Problems-It definitely plays a major role in giving care for elderly people. The economic status, of the family, as well as that of the care receiver, the functional ability of care receiver and care giver is an additional factor that appears to contribute to the burden. Economics dependence is one of the major factors that very often affect the well-being of older persons.⁸

⁸ See pdf on, 'Globe Health and Aging', by WHO, available at, http://www.who.int/ageing/publications/global_health.pdf, dated, 19/10/16, at, 5.10 pm.f

CHAPTER: 2

HISTORICAL BACKGROUND OF THE POSITION OF SENIOR CITIZENS

The Sanskrit phrases like “Matru Devo Bhav” and “Pitru Devo Bhao”, reflects the sentiments to one’s parents. During the ancient period parents were worshiped as living Gods and Goddesses and placed at a very high position. But presently due to different problems and nuclear family system, these aged parents are taken by their own son/s or daughter/s as burden. As a consequence of this there is shifting of responsibilities from family members to government or State. Hence from human rights perspective, there is need to help them, to make their life prestigious, dignified and cheerful so also to infuse confidence in them to improve their life. No doubt different legislation and welfare schemes and policies for elderly have been implemented by the Government. The legislators came up with various Bills were said to have been introduced with some serious thought before they were rejected to formulate an Act⁹. Till 2007 there were no special or separate legislation exclusively for Senior Citizens. However, there are efforts made by the Government to initiate a special law to govern and regulate important problems of Senior Citizens. In 2006, on 3rd March, Ms. Sushma Swaraj of BJP has tried to introduce the Bill titled as Senior Citizens (Maintenance, Protection and Welfare) 2006, but the Bill could not proceed further¹⁰. Thereafter, the Government of India, through its Ministry of Social Justice and Empowerment, through then Minister, Smt. Mira Kumar introduced the Bill on 9th March, 2007, titled as “The Maintenance and Welfare of Parents and Senior Citizens Bill 2007” in Lok Sabha¹¹. The basic object of the Bill of 2007 was to provide effective remedies for the maintenance and welfare of Parents and Senior Citizens. The above referred bill is now became the Act, which received an ascent of the President of India on 31 December, 2007. However, even after completion of more than seven years in the implementation of the said legislation we come across the different problems and poor conditions of the aged persons in India.¹²

⁹ Bharat S. Kumar, Abandonment During Sunset Years, LAWZ, June, 2009, p34.

¹⁰ Bill No. X of 2006.

¹¹ Bill No. 40 of 2007

¹² Dr. Prafull B. Chavate, Law for Senior Citizens and Elder People in India, Hind Law Publication, Pune, 2014.

It may not, however, be presumed that joint family system originated in India. This institution is said to be the outcome of the settling down of the Aryans in different parts of the world. We have similar institutions practically all over the world. As we have learnt before in the ancient Roman society, the supreme authority rested in the eldest male member of the family who, in administering the family affairs, was entitled to take all steps.

When the pastoral stage was over and the people began to live a settled life by tilling the soil, constructing the house and maintaining the patrimony, joint family system came into existence. Difficulties of communication and travel compelled all the members of the family to live together and carry on jointly the family occupation in agriculture or trade.

Over and above these causes the kinship idea and the religion emphasizing ancestor worship further made joint family a complex organisation catering to the spiritual and economic needs of the large family groups which composed the society. In other parts of the world while joint family system has disappeared, in India, it still continues though suffering heavy strains brought about by industrialization and urbanization¹³

In the older times, after the completion of 50 years of life, one had to detach oneself from the responsibilities of a 'Grihastha' and switch over to the third stage of human life which was known as 'Vanpristha' which referred to the devotion of the next 25 years of life by the 'Vanpristhi' by mana, vachana and karma to the selfless service of the suffering humanity and the larger society in return to the services received from society during the first 50 years of life.¹⁴

¹³ See article, Significance of Joint Family System in India, by Shuni, available at, <http://www.yourarticlelibrary.com/family/significance-of-joint-family-system-in-india/47653/>, dated, 19/10/16, 5.20 pm.

¹⁴ See article, Karma Yoga, by Sri Swami Sivananda, available at <http://www.dlshq.org/teachings/karmayoga.htm>, dated, 19/10/16, at 5.30pm.

In India, the joint family system has been in existence since ancient times. The father is considered as the head of the family. His wife, sons, daughters-in-law and grandchildren together constitutes a joint family¹⁵

In ancient and medieval times, the older members of the family enjoyed great respect. They relaxed in the company of their counterparts. They amused themselves with the pranks of their grandchildren. They handled the financial matters of the household. But with the rise of towns and cities, the older and younger generations widened a great deal.¹⁶

Joint family system in India provided 'social security' to all its members. It not only looked after the older people, but also took care of unemployed, sick, orphans, widows, etc. In a joint family the seniors were highly respected and the decision made by them was final.

In ancient and medieval times the older members enjoyed great respect. They relaxed in the company of their counter parts and amused themselves with the pranks of grandchildren; they handled finances of their household.

In the joint family the members are well aware of one another's rights and duties. Each member of the family performs certain duties which benefit the other members as well as the family as a whole. Simultaneously each member enjoys certain benefits contributed by other members in the family. Therefore one enjoys certain rights and performs certain duties simultaneously. This system of mutual rights and duties holds the family members together as a closely knit unit.¹⁷The head of the joint family is known as 'karta'. The head of the family appears to have had absolute control over the family property and members. However the relation between

¹⁵ See article, 'In/dependence, intergenerational, uncertainty, and the ambivalent state: Perception of old age security in India', by Sarah Lamb, bk, 'Security, socialization and affect in Indian families, Unfamiliar grounds' 1st publication 2014, by Routledge, oxon, OX 14 4RN.

¹⁶ See article, 'Comparative Essay on Joint Family Vs. Nuclear Family System', by, Dinayak Shenoy, available at, <http://www.publishyourarticles.net/knowledge-hub/essay/an-comparative-essay-on-joint-family-vs-nuclear-family-system/1576/>, dated, 20/10/16 at 3.00pm.

¹⁷ See article, 'Characteristic Features of Joint Family in India', by, Nitisha, available at <http://www.yourarticlelibrary.com/society/indian-society/family-indian-society/characteristic-features-of-joint-family-in-india/47467/>, dated, 20/10/16 at 3.20.

the head and the other subordinates in the family is cordial. The head of the family is the trustee of the family and enjoys unquestionable authority.

However, joint family system has undergone tremendous change due to the impact of industrialisation, modernisation, westernisation and urbanisation. This has greatly affected the senior citizens in the family. The problems which they are facing today are all due to the disintegration of the joint family.

Due to industrialisation and urbanisation and the changing trends in society, it is the urban elderly who are more likely to face the consequences of this transition as the infrastructure often cannot meet their needs. Lack of suitable housing forces the poor to live in slums which are characterised by poor physical conditions, low income levels, high proportion of rural migrants, high rates of unemployment and underemployment, rising personal and social problems such as crime, alcoholism, mental illness, etc. along with total or partial lack of public and community facilities such as drinking water, sanitation, planned streets, drainage systems and access to affordable healthcare services. With the increasing prevalence of slum dwellers that come to urban areas in search of better opportunities, a significant proportion of them would be elderly. While rural India continues to provide family support in old age, the forces of globalisation have touched many a life leading to migration of children to cities or abroad.¹⁸

¹⁸ 'Studies on Aging in India: A Review', S. Siva Raju, BKPAI Working Paper No. 2, United Nations Population, Fund (UNFPA), New Delhi.

CHAPTER 3
LEGISLATION RELATING TO SENIOR CITIZENS AT CENTRE AND
STATE LEVEL

CONSTITUTIONAL AND LEGAL PROTECTION

A. PROTECTIONS UNDER INDIAN CONSTITUTION

Article- 38. State to secure a social order for the promotion of welfare of the people - (1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

(2) The State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.¹⁹

Article -41. Right to work, to education and to public assistance in certain cases - The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.²⁰

Article - 42. Provision for just and humane conditions of work and maternity relief - The State shall make provision for securing just and humane conditions of work and for maternity relief.²¹

Article - 46. Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections - The State shall promote with special care the educational and economic interests of the weaker sections of the

¹⁹ See website, [http://lawmin.nic.in/olwing/coi/coi-english/Const.Pock%20Pg.Rom8Fsss\(7\).pdf](http://lawmin.nic.in/olwing/coi/coi-english/Const.Pock%20Pg.Rom8Fsss(7).pdf), dated, 20/10/16, at 4.10pm.

²⁰ See website, <https://indiankanoon.org/doc/1975922/>, dated, 20/10/16, at 4.20pm.

²¹ Introduction to the Constitution of India, Dr. Durgadas Basu, Lexis Nexis, 21st edition, 2013.

people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

Article - 47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health - The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

B. LEGAL PROTECTIONS

1. THE HINDU ADOPTIONS AND MAINTENANCE ACT, 1956²²

Section - 20. Maintenance of children and aged parents- (1) Subject to the provisions of this section a Hindu is bound, during his or her lifetime, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents.

(2) A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor.

(3) The obligation of a person to maintain his or her aged or infirm parent or daughter who is unmarried extends in so far as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or other property

Section - 21. Dependents defined- For the purposes of this Chapter "dependents" mean the following relatives of the deceased

- (i) his or her father;
- (ii) his or her mother;
- (iii) his widow, so long as she does not remarry;

²² THE HINDU ADOPTIONS AND MAINTENANCE ACT, 1956, Universal Law Publishing Co. Pvt Ltd. New Delhi, 2011.

(iv) his or her son or the son of his predeceased son or the son of a predeceased son of his predeceased son, so long as he is a minor; provided and to the extent that he is unable to obtain maintenance, in the case of a grandson from his father's or mother's estate, and in the case of a great-grandson, from the estate of his father or mother or father's father or father's mother;

(v) his or her unmarried daughter for the unmarried daughter of his predeceased son or the unmarried daughter of a predeceased son of his predeceased son, so long as she remains unmarried; provided and to the extent that she is unable to obtain maintenance, in the case of a granddaughter from her father's or mother's estate and in the case of a great-grand daughter from the estate of her father or mother or father's father or father's mother;

(vi) his widowed daughter; provided 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 his father or the estate of either of them;

(vii) any widow of his son or of a son of his predeceased son, so long as she does not remarry; provided and to the extent that she is unable to obtain maintenance from her husband's estate, 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;

(viii) his or her minor illegitimate son, so long as he remains a minor;

(xi) his or her illegitimate daughter, so long as she remains unmarried.

Section- 22. Maintenance of dependents- (1) Subject to the provisions of subsection (2), the heirs of a deceased Hindu are bound to maintain the dependents of the deceased out of the estate inherited by them from the deceased.

(2) Where a dependent has not obtained, by testamentary or intestate succession, any share in the estate of a Hindu dying after the commencement of this Act, the

dependent shall be entitled, subject to the provisions of this Act, to maintenance from those who take the estate.

(3) The liability of each of the persons who take the estate shall be in proportion to the value of the share or part of the estate taken by him or her.

(4) Notwithstanding anything contained in sub-section (2) or sub-section (3), no person who is himself or herself a dependent shall be liable to contribute to the maintenance of others, if he or she has obtained a share or part, the value of which is, or would, if the liability to contribute were enforced, become less than what would be awarded to him or her by way of maintenance under this Act.

Section- 23. Amount of maintenance- (1) It shall be in the discretion of the court to determine whether any, and if so what, maintenance shall be awarded under the provisions of this Act, and in doing so, the court shall have due regard to the consideration set out in sub-section (2) or sub-section (3), as the case maybe, so far as they are applicable.

(2) In determining the amount of maintenance, if any, to be awarded to a wife, children or aged or infirm parents under this Act, regard shall be had to-

- (a) the position and status of the parties;
- (b) the reasonable wants of the claimant;
- (c) if the claimant is living separately, whether the claimant is justified in doing so;
- (d) the value of the claimant's property and any income derived from such property, or from the claimant's own earning or from any other source;
- (e) the number of persons entitled to maintenance under this Act.

(3) In determining the amount of maintenance, if any, to be awarded to a dependent under this Act, regard shall be had to-

- (a) the net value of the estate of the deceased after providing for the payment of his debts;

- (b) the provision, if any, made under a will of the deceased in respect, of the dependent;
- (c) the degree of relationship between the two;
- (d) the reasonable wants of the dependent;
- (e) the past relations between the dependent and the deceased;
- (f) the value of the property of the dependent and any income derived from such property, or from his or her earnings or from any other course;
- (g) the number of dependents entitled to maintenance under this Act.

Section- 24. Claimant to maintenance should be a Hindu- No person shall be entitled to claim maintenance under this Chapter if he or she has ceased to be a Hindu by conversion to another religion.

Section- 25. Amount of maintenance may be altered on change of circumstances- The amount of maintenance, whether fixed by a decree of court or by agreement either before or after the commencement of this Act, may be altered subsequently if there is a material change in the circumstances justifying such alteration.

Section- 26. Debts to have priority- Subject to the provisions contained in Section 27 debts of every description contracted or payable by the deceased shall have priority over the claims of his dependents for maintenance under this Act.

Section-27. Maintenance when to be a charge- A dependent's claim for maintenance under this Act shall not be a charge on the estate of the deceased or any portion thereof, unless one has been created by the will of the deceased, by a decree of court, by agreement between the dependent and the owner of the estate or portion, or otherwise.

Section-28. Effect of transfer of property on right or maintenance- Where a dependent has a right to receive maintenance out of an estate and such estate or any 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 the right.

2. Muslim Law²³

Children have a duty to maintain their aged parents even under the Muslim law.

According to Mulla :

- (a) Children in easy circumstances are bound to maintain their poor parents, although the latter may be able to earn something for themselves.
- (b) A son though in strained circumstances is bound to maintain his mother, if the mother is poor, though she may not be infirm.
- (c) A son, who though poor, is earning something, is bound to support his father who earns nothing.

According to Tyabji, parents and grandparents in indigent circumstances are entitled, under Hanafi law, to maintenance from their children and grandchildren who have the means, even if they are able to earn their livelihood. Both sons and daughters have a duty to maintain their parents under the Muslim law. The obligation, however, is dependent on their having the means to do so.

3. Christian And Parsi Law²⁴

The Christians and Parsis have no personal laws providing for maintenance for the parents. Parents who wish to seek maintenance have to apply under provisions of the Criminal Procedure Code.

C. PROTECTIONS UNDER CRIMINAL PROCEDURE CODE, 1973

Section- 125. Order for maintenance of wives, children and parents,

- (1) If any person having sufficient means neglects or refuses to maintain—
 - (a) his wife, unable to maintain herself, or

²³ Text book on Muslim Law, Dr. Rakesh Kumar Singh, Universal Law Publishing Co. Pvt Ltd. New Delhi, 2011, ISBN:978-93-5035-007-2.

²⁴ See article, 'Maintenance: Hindu, Muslim, Christian and Parsi laws', by Rohit Agarwal, available at, <http://www.legalserviceindia.com/articles/hmcp.htm>, dated, 21/10/16, at 2.00pm

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means

(2) Such allowance shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole, or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider

any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing

(4) No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her, husband, or if they are living separately by mutual consent

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order

D. National Policy For Older Persons 1999

In order to address the problems of the older persons The Ministry of Social Justice and Empowerment has launched in the year 1999, A National Policy for Older Persons. Its main features are as follows:

- Old age Pension Scheme
- Tax Exemption for Senior Citizens
- Make PDS to reach older people
- Subsidy in healthcare, geriatrics care, mental health services, counseling facilities
- Grants, land grant at concessional rates to NGIs and private hospitals to provide economical and specialized care for the older person
- Earmarking 10% of the houses in housing schemes and easy access to loans
- Layout of housing colonies to be sensitive to the needs of the older persons
- Quick disposal of cases of property-transfer, mutation, property tax etc
- Assistance for construction/maintenance of old age home, Daycare centers, multi-service citizens center, outreach services, supply of disability related aids and appliances etc
- Setting up a welfare fund for older persons

E. THE MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS ACT, 2007

Government has come to the rescue of the elderly and has brought about “An Act to provide for more effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognised under the Constitution and for matters connected therewith or incidental thereto.” As follows

Title of the Act: “The Maintenance and Welfare of Parents and Senior Citizens Act, 2007”.

Applicability: “It extends to the whole of India except the State of Jammu and Kashmir and it applies also to citizens of India outside India.”

Effective Date: The Act shall come into force in a State from the date fixed and notified by the concerned State Government in the Official Gazette.

Provisions:

The Act has provisions detailed under the following chapters:

- I. Definitions
- II. Maintenance of Parents & Senior Citizens
- III. Establishment of Old Age Homes
- IV. Medical Care
- V. Protection of Life and Property
- VI. Offences

Summary of the Provisions:

Who is a Senior Citizen, Parent, Child or Relative under the Act?

“Senior citizen” is any citizen of India of 60 years and above whether living in India or not.

“Parent” is the father or mother even if not of 60 years yet.

“Children” are adult son, daughter, grandson and grand-daughter

“Relatives” are those who are either in possession of the property of the senior citizen or would inherit it.

Who can demand maintenance under the Act?

Parents and grandparents who are unable to maintain themselves from their own income can demand maintenance from their children as defined above. And “Childless Senior Citizens” who are unable to maintain themselves from their own income can demand maintenance from their relatives as defined above.

What is Maintenance?

Maintenance includes provision for food, clothing, residence, medical attendance and treatment. Maximum amount which may be ordered for maintenance of a senior citizen by the Tribunal shall be such as prescribed by the State Government which shall not exceed Rs. 10,000/- per month.

Who is entitled to Maintenance?

Parents, grand-parents and senior citizens who are unable to maintain themselves from their own income and property are entitled to demand maintenance from their children and specified relatives respectively with sufficient means.

Whose obligation is it to maintain the elderly?

It is the obligation of the children and specified relatives with sufficient means to provide maintenance for their parents and childless senior citizen respectively.

How is an Application for Maintenance made and decided?

Application for maintenance may be made by the senior citizen or parent to the Tribunal under Section 4 in layperson's language giving names, full details and addresses of the persons from whom they are demanding maintenance. If there is more than one child or relative, they may claim maintenance from one or all of them depending on their means of income. Maintenance proceedings may be initiated against any child/children or relative in any district where the parent or senior citizen lives or last lived or where the child/children or relative live. If such applicants are incapable of making an application themselves, any other person or registered voluntary organisation authorised by him/her can make the application; or the Tribunal can take suo motu cognizance and proceed. Upon receipt of the application, the Tribunal would issue notices to the children, conduct hearings, take evidence and

order maintenance. Tribunal may also refer the case for reconciliation or pass interim orders for maintenance.

If the children or relatives fail to pay the ordered maintenance without sufficient reason for 3 months after its due date, the senior citizen can approach the Tribunal again who may impose a fine or order imprisonment of the child/relative upto a month or until payment is made whichever is earlier.

What if the elderly themselves and their children and specified relatives do not have sufficient means to maintain them?

State Governments may establish, in a phased manner, sufficient senior citizen homes and maintain the same for indigent or abandoned and neglected (by their kith and kin) beginning with at least one Old Age Home in each district sufficient to accommodate a minimum of 150 elderly. State Government may also prescribe scheme for management of old age homes, set standards and prescribe minimum services for medical care and entertainment of the elderly in the Old Age Homes.

Abandonment:

Under Section 24, if anybody who has responsibility for the care or protection of a senior citizen leaves him/her in any place, with the intention of wholly abandoning him/her, such person shall be punishable under the Act with imprisonment of either three months or fine upto Rs. 5,000 or both. The offence would be cognizable and will be tried by a Magistrate.

Conditional Transfer of Property:

An important provision has been made for the elderly to claim their property back from children, if given conditionally after commencement of the Act on promise of looking after their needs and amenities if such promise is not fulfilled. Under Section 23, if after commencement of the act any Parents or senior citizens have transferred their property to their children or relatives on the condition that they would provide certain maintenance and amenities to the senior citizen but subsequently neglect or refuse to do so the parents or senior citizens can get such transfers voided (cancelled) at their option by having such transfer treated as a fraudulent or coercive acquisition and seek return of their property so transferred.

Government's Role:

- Constitution of Maintenance Tribunals and Appellate Tribunals by the State Governments in all Sub Divisions and States within 6 months of commencement of this Act
- State Governments may make rules for carrying out the purposes of the Act by notification in the Official Gazette.
- Summary trials by the Tribunals for passing orders for maintenance.
- Lawyers excluded from the proceedings.
- Elderly can choose to seek maintenance either under this Act or under the provisions of the Criminal Procedure Code 1973 if applicable but not under both the provisions.
- “No Civil Court to have jurisdiction in respect of any matter to which any provision of this Act applies
- No injunction shall be granted by any Civil Court in respect of anything which is done or intended to be done by or under this Act.” (Section 27)
- State Govt to designate District Social Welfare Officer or an equivalent officer as Maintenance Officer.
- Maintenance Officer can represent a parent or senior citizen if he/she wants.
- State Government may establish and maintain sufficient senior citizen homes for indigent or abandoned and neglected (by their kith and kin) beginning with one in each district sufficient to house 150 elderly.
- State Government may prescribe a scheme for management of old age homes, setting standards and minimum services necessary for medical care and entertainment of the elderly
- State Government to establish specific medical facilities, allocate doctors/hospital beds, expand treatment for chronic, terminal and degenerative diseases; and conduct research on ailments of the elderly and ageing.
- State Government to take all measures to sensitise and orient the police and judiciary regarding protection of life and property of the elderly and provisions of this act

This is a model Legislation passed by the Central Government for adaptation and application by the States. The Act will apply in a State from the date fixed and notified by the State in the official gazette.

Progress:

The Act has since been notified in Andhra Pradesh, Assam, Delhi, Goa, Jharkhand, Karnataka, Madhya Pradesh, Nagaland, Rajasthan and Tripura.

Summary of the Act

- Under the act, maintenance application can be filed by parents and senior citizens (above 60 years) unable to maintain himself/herself, against children (not minor) or relatives (who would inherit and are in possession of the property of the elderly).
- The maintenance application can be filed by the senior citizen or a parent or any other person or organization authorized by him, if incapable of doing so himself.
- The maintenance application can be filed either in the district where the elderly resides, or where the children or relatives resides. Notices would be sent and the proceedings should conclude within 90 days from the date of service of the maintenance application on the children or relatives.
- The case would be referred for conciliation, if appropriate, before hearing. The findings of the conciliation officer (who can be the maintenance officer, NGO representative or anyone on behalf of the elderly) should be submitted to the tribunal within a month. If an applicable settlement has been reached, Tribunal shall pass an order according to that settlement.
- If, children or relatives are ordered by the Tribunal to pay maintenance to the elderly, fail to comply, they are liable to a fine or imprisonment.
- Abandonment of the elderly is now a cognizable offence. Anyone responsible for looking after or protecting the senior citizens, leaves him/her in any place with the intention of wholly abandoning, shall be punished and fined.
- Role of NGO has also been legislated under the act e.g. for filling maintenance application on behalf of the elderly if he/she is unable to do so himself/herself, for reconciliation and representation of his/her case if unable to do so and authorized someone else to represent and facilitate.

Judicial Precedent to protect the interest of Senior Citizens:

- The first case under the act was filed in November 2011 by Siluvai (age 84) and his wife Arulammal (age 80) of Tuticorin against their son and daughter-in-law for neglect, besides taking away their two homes and gold jewellery. A community is known by the way it treats vulnerable sections of society such as the elderly. Traditionally, in India, it has been a part of our culture, for society and the family to take care of older persons. Senior Citizens are held in high esteem and are given priority and respect in all matters.
- *Amar Kaur v. Raksha Devi*
- In the first case, Amar Kaur, a Badala resident and wife of Bidhi Chand, had transferred her properties to her daughter Raksha Devi dated July 28, 2008 and September 06, 2012.
- After becoming the owner of the land, Raksha Devi didn't take care of her mother. Amar Kaur had no other source of income. So the registries dated July 28, 2008 and September 06, 2012 were cancelled and the properties were reverted on the name of Amar Kaur.
- *Mehnga Singh v. Satwinder Pal Singh*²⁵
- In the second case, Satwinder Pal Singh of Rattre village had got transferred the ownership of property from his father Mehnga Singh.
- The transfer of ownership was done vide two registries dated April 28, 2011 and October 10, 2011. But after becoming the owner of the land, he threw him out of the house and even beat him up. On complaint of

²⁵<http://www.tribuneindia.com/news/punjab/community/ignored-by-kids-2-get-property-back-under-senior-citizen-act/112659.html>

Mehnga Singh, the SDM cancelled registries dated April 28, 2011 and October 10, 2011.

- Mrs. Preeti Doundial & Ors. vs Tribunal (Under Maintenance & ... on 26 November, 2009, Delhi High Court.²⁶
- Lotika Sarkar is once again owner of her property on L1/10 Hauz Khas Enclave. A tribunal set up under The Maintenance and Welfare of Parents and Senior Citizens Act 2007 said that Lotika ``... has been divested at the age of 87 of her right to life with dignity through fraud by the Dhaundiyls (sic) who took advantage of her age and poor health." The Tribunal also directed the deputy commissioner of police (south district) to ``immediately evict the Dhoundials from the house of Lotika Sarkar²⁷
- Punjab-Haryana High Court Promil Tomar And Others vs State Of Haryana And Others on 6 December, CWP No. 20072 of 2013
- The court said, "The petitioner's transferees have apparently failed to provide for the amenities, physical needs or even care for the welfare of respondent No 5 (Tomar) giving a cause of action to respondent No 5 to seek the protection of Section 23 (1) of the (Parents) Maintenance Act and get the transfer by way of possession declared void bringing the act of the petitioners under the definition of fraud."
- The court observed, "The Maintenance Act proposed to cast an obligation on the persons who inherit the property of their aged relatives, to maintain such aged relatives. The objective of the

²⁶ <http://timesofindia.indiatimes.com/city/delhi/Lotika-Sarkar-gets-her-house-back/articleshow/5178368.cms>

²⁷ <https://indiankanoon.org/docfragment/29125540/?formInput=dhoundial>

Maintenance Act was also to provide to set up appropriate mechanism to provide need-based maintenance to the parents, senior citizens and setting up of old-age homes in every district."

- Aditya Mahajan v Shachi Mahajan

Fact of the case is that husband of the plaintiff died due to some natural factor and the plaintiff transferred all property deed to their children. After transferring all the deed to their children, children did not treat well to their mother and the children do not provide food to mother (plaintiff) due to which mother suffered too much. Later on mother (plaintiff) filed case against their children under maintenance and welfare of parents and senior citizen act 2007.

HELD– Mother (plaintiff) got damages (compensation) under this act because this act is made for the welfare of the senior citizen to save them from bad treatment.

As- In the Sudhir Kumar case the high court directed the police authorities to keep strict vigilance on elderly victims to protect their life and property (Sudhir kumar V.State of W.B. , WP No. 22614 (W) of 2009)

- Sukh Deo v. State of A.P., AIR (1986) SC 991 7
- Chameli Singh v. State of U.P., AIR 1996 SC 1051 and
- Ashok Kumar v. Union of India, AIR (1997) SC 2298

CHAPTER: 4

IMPLEMENTATION OF SENIOR CITIZENSHIP ACT IN MAHARASHTRA

The changing norms of a society raise various problems. Our society, possibly more in the urban areas, is today faced with the ground reality of a unitary family, rather than a joint family where different generations live together. There are various causes for this easier movement for employment, requirement of greater privacy of the younger generation, the ability and the need to lead their lives etc.. There is absence of social security system to take care of the older generation. And this is coupled with longevity as a consequence of better medical assistance.

One of the steps taken by the Legislature in support of the parents and senior citizens is the said Act). However, in the urgent need for the said enactment, we do feel that possibly the fine tuning of certain provisions has escaped attention as is being elucidated by us hereinafter. The very statement of objects and reasons of the said Act has referred to the traditional norms and values of the Indian society which laid stress on providing care for the elderly, but due to the withering of the joint family system, a large number of elderly are not being looked after by their family²⁸. It is observed 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. It is perceived that the procedure for claiming maintenance under the Code of Criminal Procedure, 1973 (hereinafter referred to as the Cr.P.C.) is time consuming as well as expensive and, thus, the need to have simple, inexpensive and speedy provisions to claim maintenance for the parents. However, while framing the provisions of the said Act, the Legislature has gone much beyond the aspect of maintenance as rights in property have become involved with that aspect, but even capable of affecting third party rights. Thus, the matter is not as simple as the statement of objects and reasons states, but on the other hand, there are certain provisions which are bound to give rise to more complex legal issues where rights in immovable properties are sought to be negated on pleas such as

²⁸ 'Current Affairs Rechners', Tata McGraw-Hill Publishing Co. Pvt Ltd, ISBN-978-0-07-022166-6, 2008

fraud, coercion and undue influence²⁹. In fact, even presumptions are sought to be drawn by introducing a deeming provision in certain situation.

The National Policy for Older Persons (NPOP) was formulated in 1999 in response to the increasing number of persons 60 years and above and their vulnerabilities arising out of income insecurity and concerns about health and other socio-economic and physical well being.³⁰ This National Policy had its own constraints which acted as hurdles in implementation process. Therefore, this policy could not be effectively implemented.

A survey is conducted by the researcher, in which seniors residing at home and in old age homes are taken as samples. The survey was conducted to find how many seniors really avail this Act for their benefits. A sample of hundred seniors was selected. The following is the table representation of the responses given by Senior Citizens through questionnaire:

Sr. No.	Criterion		No. of Responses	
			Yes	No
1.	Living	in Old Age home	20%	
		with Family	80%	
2.	Stay at Old Age Home	Voluntary	60%	
		Involuntary	40%	
3.	Awareness of Law relating to Senior Citizens		84%	16%
4.	Facilities available from	Old Age Home	62%	38%
		Home	54%	46%
5.	Security	Financially	69%	31%
6.	Care Taking	By Own Children/ By Relatives	30%	70%
7.	Any Injustice	By Own Children/ By Relatives	33%	No response
8.	Approached	Police	15%	85%
9.	Filed a Case Against	Children / Relatives	14%	86%

²⁹ Paramjit Kumar Saroya Vs Union of India, CWP-7282-2010(O&M)

³⁰ Age Care in India- National Initiative on Care for Elderly, national Institute for Social defence, Ministry of Social Justice and Empowerment, Government of India, January, 2008.

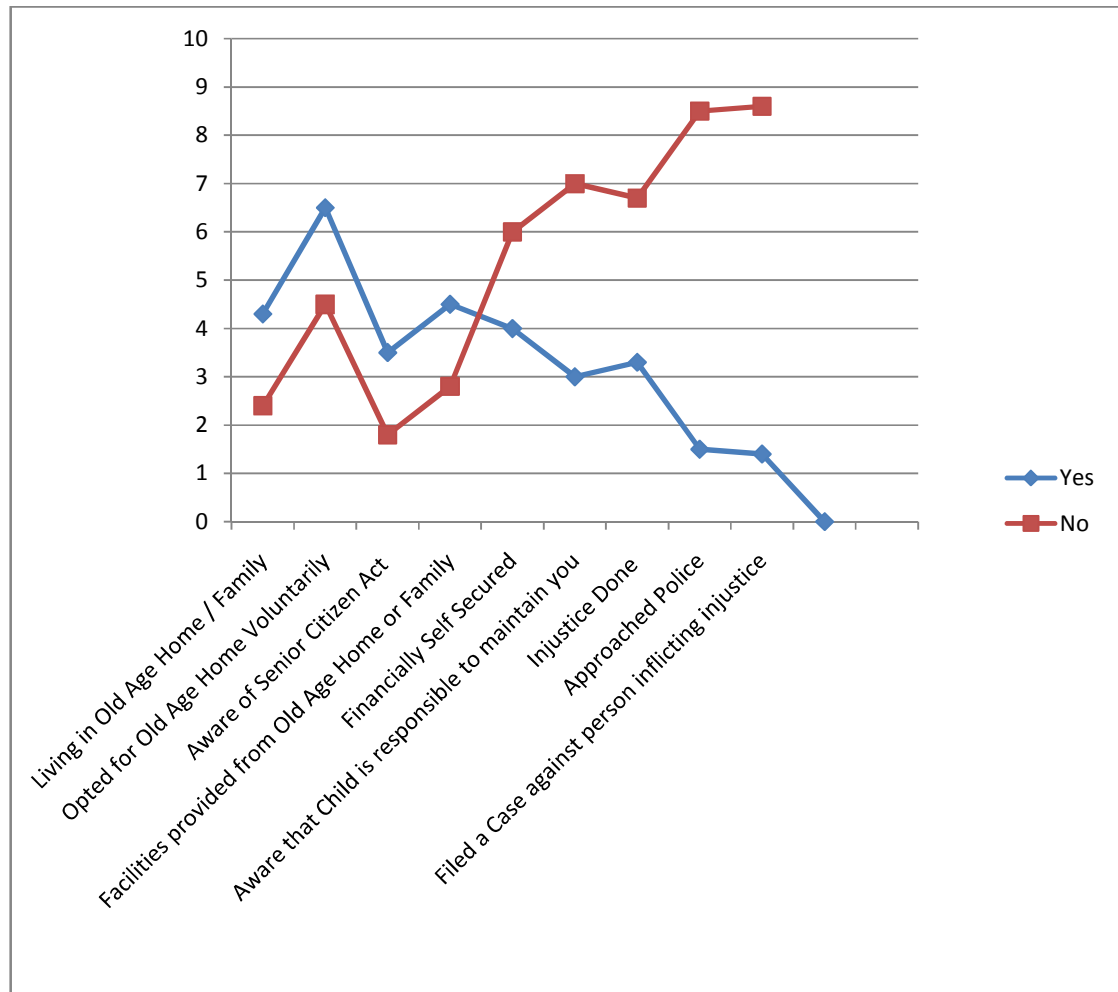


Fig. 2: Graph of Comparative Responses

The above graph (Fig.2) shows the comparative responses given by the Senior Citizens on the questions included in the Questionnaire. The Figure shows wide differences in the responses as we go deep into personal level of implementation of the Act. The questionnaire was designed in such a manner where the initial questions were supposed to judge the awareness of Senior Citizens at general level. The questions were preceded towards implementation of the Act at personal level.

Samples of Lawyers, Lecturers in Law, NGOs were also selected to support the findings relating to implementation of senior citizenship law. They are directly or indirectly related with the issues of senior citizens. They were of the view that, there should be changes in law as well as the implementation machinery has to be improved. Greater insight has to render for the implementation machinery. The laws

relating to senior citizens are soft laws i.e. law which is not implemented, it is just on paper. But the problem exist which needs attention. The following Fig. 3 represents the graphical representation of the responses given by, Lawyers, Lecturers in law and NGO's.

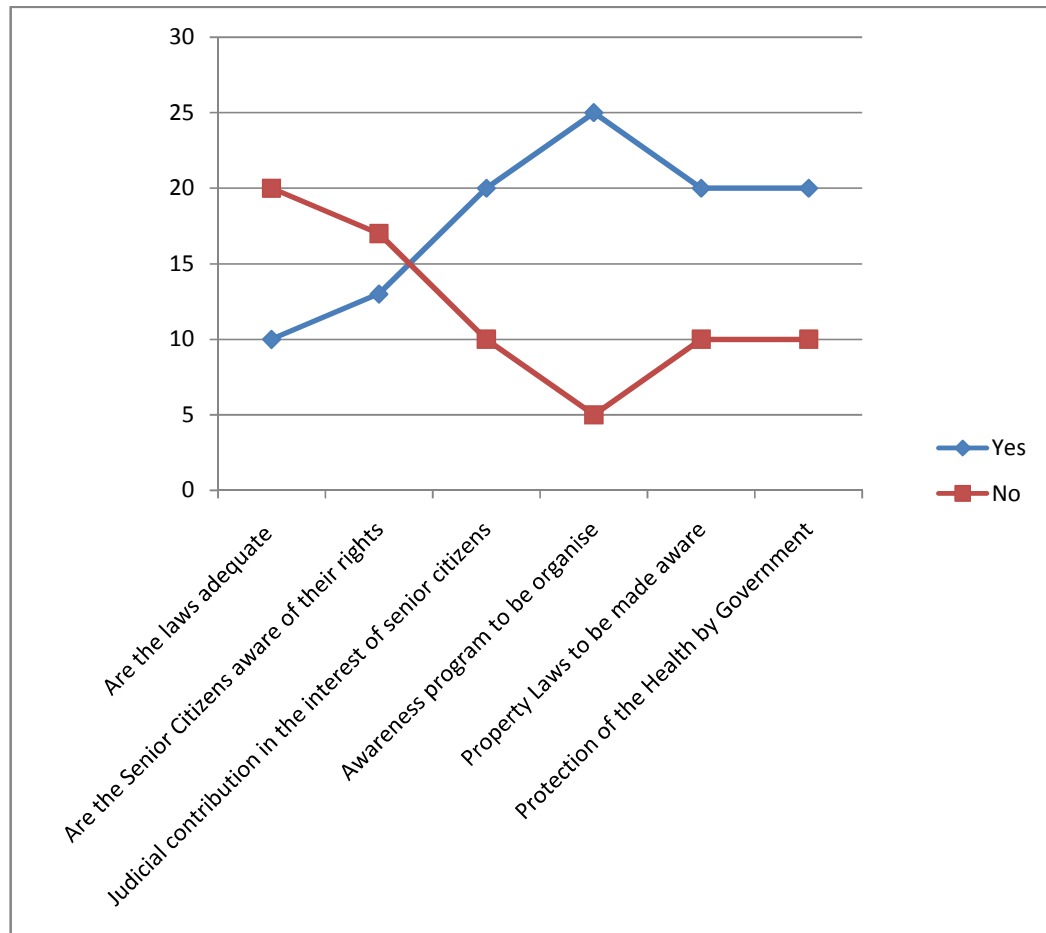


Fig. 3: Graph of Responses by Lawyers, Law Teachers & NGO's

According to the findings, more than 50% are of the view that, there are loopholes in law relating to senior citizens which need change. 50% of the samples are of the view that seniors are aware but don't implement. Some are of the view that they are not aware of the laws and so don't implement. Maximum number of respondent say that, the contribution of judiciary is greater in the upliftment of the cause of senior citizens,

but the sad part is that the seniors are reluctant to approach the court. There should be programmes for implementation of laws, is the view of maximum number of respondents. The implementation machinery should be developed to solve the problems of senior citizens. At the same time, there should be awareness relating to property laws, is also the view of many respondent. Health related problems also should be taken care of by the government, is the view of some respondents. According to few respondents, parents are very emotional as far as their children are concern. They prefer to tolerate injustice done by the children but will never complaint. Even if the NGO's try to help them to fight against injustice, they may not support them. Therefore the numbers of cases filed under the senior citizenship Act are very few.

Practically, the entire NGO members have come across the problems of senior citizens. They are of the view that, the present laws relating to senior citizens are inadequate. The seniors are not aware of their rights. The NGO finds it very difficult to plead their case, as they are not well aware with the legal provisions. They suggested changes in law. According to them, the changes can be brought through series of personal interviews and interaction with all the stakeholders working in the area of population aging.

CHAPTER V

CONCLUSION AND SUGGESTION

Conclusion

The problem relating to elderly people not only still prevails in society but is also increasing gradually as well. It is evident that something is going wrong with the implementation of these provisions. To find out the root cause of the problem we have to apply a multidisciplinary approach towards this problem to cure it from the root. The famous jurist Sir Henry James Sumner Maine in his book 'Ancient law' rightly said that, "law & society moves from status to contract", seems very relevant in present social concept. It is next to impossible and quite impractical to ask people to live the way of life as their grand-parents lived and revive joint family system in the present society. So, we have to come up with some effective solution which may suit our present social setup.

Reasons for non-implementation of senior citizenship Act 2007

Laws are in place. But who will implement and ensure that it reaches proper person.

There is no awareness of the Act amongst the senior citizens. The waiting list for admission in old age home speaks itself that, when removed from home they seek shelter in old age home rather than file a case against their children or relatives.

The government has not taken any steps to aware the senior citizens about their right. It looks as if most of the state governments don't find implementing the provisions of this Act as important and there is only one state i.e. Andhra Pradesh that has moved ahead to notify the act in the gazette.

There is no co-ordination between law makers and law implementation.

There is no budget sanctioned by the government for implementation machinery. The concerned officer of the Tribunal has no power of awarding the

maintenance amount to the aggrieved and the power is only vested with the state government.

Periodic sensitisation like organising seminars, workshops, training the officers for implementation of Act is not conducted by the Government.

The case heard at Sub-Division Officer/ Magistrate Governmental. The Tribunal is not staffed by persons with judicial qualification or experience. It is difficult to know how they will look into matters that arise from the procedure followed by a civil court. The exclusion of the jurisdiction of civil courts is not at all justified, because Tribunals are not staffed by legally qualified or experienced persons.

Notwithstanding anything contained in any law, no party to a proceeding before a Tribunal or Appellate shall be represented by a legal practitioner. The person himself/herself or an NGO may appear in the court. Complete separation of the professional lawyers from the reach of the Tribunal that simply defines logic and reasoning.

Imposing a liability on a person who is a relative of the senior citizen on the grounds that he is going to inherit the property of the senior citizen is illogical and unreasonable. The senior citizen might sell his property to some third party before his death and there stays no guarantee that the relative will take over the property of the senior citizen.

Though this Acts provides provisions for a better position for the parents and elderly, there are some criticisms also. It is alleged that ,this Act is not easy to implement, there is no obligation casts on the state government to establish old age homes, there is no provisions for old age pensions, definitions provided are confusing etc. Also, because finding credible, willing and able persons and NGOs for inclusion in the Tribunals is quite a task, the practicality of setting up the Tribunal itself becomes a challenge.

Reaffirming that sons do not have any legal rights over the self-acquired property of parents, the Delhi High Court has dismissed a plea filed by a man who had approached the court to be allowed to stay in his parents' house.

“Merely because the parents have allowed him to live in the house so long, as his relations with the parents were cordial, does not mean that the parents have to bear his burden throughout his life,” held the bench of Justice Pratibha Rani in a judgment issued on November 24, 2016.

The order was issued on a plea filed by Nangloi resident Sachin, who had challenged the decree by a trial court, which had directed him to vacate the property owned by his parents.³¹

In the above case, it was the son who filed the case against their parents. The parents are reluctant to take any legal action against their children.

The questionnaire filled by the seniors, reveal that some of them are aware of the provision of the Act for senior citizens, only few of them have implemented it. There was rarely a reply on the question whether any injustice is done to them. Many were reluctant to answer the questionnaire. It was very difficult to convince them to fill the questionnaire. According to the data inferred, the Senior Citizens are more secretive about their personal issues. They feel that this information could be misused and they might have to face the problems in future. The people who were admitted in the old age homes involuntarily have not questioned their children neither have they filed any case against them. The parents seemed to be more emotionally attached with their children than the children being attached to them. Also those who wish to fight against this injustice and file a case against them cannot do it due to physical weakness. The law does not support them as they cannot appoint a lawyer to carry out the suit. Yet out of them, there were a few who went against and have approached the police and filed a case. A good number of them were financially secured and were

³¹ See article, “Son has no legal right in house owned by parents: Delhi High Court”, available at, news paper, <http://indianexpress.com/article/india/india-news-india/son-right-parents-house-delhi-high-court-4402517/> on :November 30, 2016 5:11 am

aware that their children were responsible to take care of them morally and legally. But those who were left financially insecure , lead a life as per the terms and conditions laid down by their children, for which they are unhappy but do not want to compel them legally to be taken care of.

Suggestions

- Government should take active participation in creating awareness among the senior citizens relating to the rights mentioned in senior citizenship Act 2007. They also should be made aware through mass media like- Radio, Television, News Paper etc. To create awareness, help should be taken from law institutions with contribution of students, teachers, advocates etc.
- Property laws i.e. Succession laws must be properly explained to senior citizens.
- There should be free legal- aid provisions for seniors.

- Regular seminars should be organised to create awareness amongst the Senior Citizens. Government should organise campaigns for the awareness of senior citizens.

- Present law is inadequate for rendering justice. There should be changes in law to suit the requirements of senior citizens. One of the important changes in law is- Lawyers should be allowed to plead their case on their behalf, so that the seniors are not physically and mentally taxed.

- There should be fast track courts for senior citizens. Justice should not be delayed. Their matter should be heard on day to day basis. The Judges are already overloaded with regular cases, so it takes a lot of time to hear the cases on senior citizens. Therefore, separate tribunal should be establish for senior citizens.

- Separate police cell should be established to handle the cases relating to senior citizens.

- Offences against senior citizens should be treated as aggravated offences and should be sentenced with additional penalty. The penal provisions are not adequate. There is no direct relief.

- Special cell should be open in every government and private offices to make the senior citizens aware of their rights after retirement. The aging process brings senior citizens both happiness and sadness. They must choose the path

they want to follow as seniors it is up to us to make these years the best years. There are positive ways we can deal with the common problems of chronic illness, depression, pain and family strife.³² Such kinds of positive thinking should be developed by the office members at the time of retirement.

- The government has tried its best to provide for the upliftment and protection of older persons (that could make their everyday living better) by drafting various governmental concessions, schemes and policies specifically for them. However the implementation of these well-intended instruments is very poor. The enforcement agencies should be made more active.
- There should be compulsory detention of minimum self acquired property with the person. The property should be transferred only after the person dies. Property should not be transferred to the heir without proper maintenance credited in the name of the parents.
- There should be complaint redressal cell established by Government at local level to help the senior citizens with grievances. There should be appointment of investigation officers to check real conditions of the seniors.
- Proper provision should be made by government for protection of their health. Provisions of medicines, regular check-up by Doctors, etc.
- There should be effective cooperation and coordination between all the stake holders who are responsible for the effective implementation and execution of this social legislation.

The above mentioned suggestions, if implemented will definitely help the senior citizens. The researcher would like to end this research on concluding note, that, it is not only the government's responsibility to protect the interests of the elderly people, but as a responsible citizen of the society everyone should make effort to secure the dignified status of the old age people in the family and in the society as well. In today's fast life, most people complain that they have no enough time or money at

³² Senior Moments: Getting the Most Out of Your Golden Years, Silva, David Wayne, ISBN 10: 1598001639 ISBN 13: 9781598001631, Publisher: Outskirts Press, 2005

some particular time to provide proper care and health facilities to their parents and grand-parents. In that case, it might be quite possible to form a welfare society or co-operative society by some families with some joint fund which would provide proper care to old members of these families. Through this welfare society they can also create some jobs for other people. As; care takers, doctors, nurses etc. to serve these elderly people and they can also add their family in this welfare society. These self financed welfare societies may be a good alternative to the government aided institutions. NGO's and some other private institutions are also playing very important role in the society for elderly people. Government should support these NGO's to improve the condition of the older people in the society. But, without the awareness and support of the people in the society all these laws and provisions would be useless because it is not only a legal problem but a social problem as well. People should have love and affection and a sense of responsibility towards their aged parents.

One should never forget that every child has to grow and has one day to fall in the category of old aged person/parents. What we give to our parents shall automatically come back up on us. It is the Law of the Nature that one has to pay in dues, by observing his duties then only one can expect others/children to perform their duty towards them.³³

³³ Problems Of Elderly People In India – A Socio- Legal Analysis *Neha Bharti, International Journal Of Research And Analysis Volume 4 Issue 1,2016.

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Questionnaire relating to senior citizens for Lecturer in Law

Name : _____

Address : _____

Age : _____ Gender : _____

Occupation : _____

1. What subject of law do you teach? _____
2. Do you have any awareness relating to the problems faced by senior citizens? Yes/No
3. Do you think the present laws relating to senior citizens are adequate? Yes/No.
4. Are the senior citizens aware of their rights? Yes/No
5. Do you think the present law can render justice to senior citizens? Yes/No
6. Is there any need required in senior citizenship Act? Yes/No
7. Is Judiciary contributing in uplifting the interest of senior citizens? Yes/No
8. Your suggestions in bringing about change in law to suit requirement of senior.

Questionnaire relating to senior citizens for NGO

Name : _____

Address : _____

Age : _____ Gender : _____

Occupation : _____

1. Do you have any awareness relating to the problems faced by senior citizens?

Yes/No

2. Do you think the present laws relating to senior citizens are adequate?

Yes/No.

3. Are the senior citizens aware of their rights?

Yes/No

4. Have you ever pleaded for senior citizens?

Yes/No

5. Do you come across any hardship while pleading their case?

Yes/No

6. Are the NGO's aware of laws relating to senior citizens?

Yes/No

7. Do you think the present law can render justice to senior citizens?

Yes/No

8. Your suggestions in bringing about change in law to suit requirement of senior.

Questionnaire relating to senior citizens for Lawyers

Name : _____

Address : _____

Age : _____ Gender : _____

Occupation : _____

1. Have you come across any case relating to senior citizens? Yes/No
2. Do you think the present laws relating to senior citizens are adequate? Yes/No.
3. Do you entertain senior citizens with their problems? Yes/No
4. Are the senior citizens aware of their rights? Yes/No
5. Do you think the present law can render justice to senior citizens? Yes/No
6. Is there any need required in senior citizenship Act? Yes/No
7. Is Judiciary contributing in uplifting the interest of senior citizens? Yes/No
8. Your suggestions in bringing about change in law to suit requirement of senior.

Questionnaire for Senior Citizens

Name: (Not compulsory) _____

Age: _____ Gender: _____

Occupation: _____

Number of Children: _____

Leaving in old age home/ Family _____

1. The reason behind coming to the Old Age home: Voluntary/ Involuntary

If voluntary, the reason is _____

2. Are you aware of the Laws relating to Rights of Senior Citizens?

Yes / No / Do not know

3. Do you know that there are other government facilities available to senior citizens like travelling concessions, etc?

Yes/No

4. Are the facilities like- proper meals, medical aid, recreation, proper residence etc are provided by old age home/ at home?

Yes/No

5. Are you able to maintain yourself financially?

Yes/No

6. Are you aware that, you child is morally and legally responsible to maintain you?

Yes/No

7. If no, do your children/ relatives help you?

Yes/ No.

If no, what steps have you taken?

8. Do you think injustice is been done to you?

Yes / No

If Yes, by whom? _____

9. Have you filed a case against the person inflicting injustice?

Yes / No

10. Did you approach the Police?

Yes / No