

A Critical Analysis of Senior Citizens' Rights in India

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Abstract

Old age is the most vulnerable phase of human life cycle. It is at this phase that the elderly requires maximum care and protection. When it comes to India, there was no specific law protecting the rights of senior citizens before 2007. They were able to claim maintenance and protection against physical torture and mental abuses under the umbrella of multiple generic legislations, such as personal laws, Code of Civil Procedure 1908, Indian Penal Code 1860, and the Protection of Women from Domestic Violence Act 2005 and under the Fundamental Rights mentioned under Part III of our Indian Constitution. But after the enactment of the Maintenance and Welfare of Parents and Senior Citizens Act 2007, elderly can now claim protection and maintenance through this single piece of legislation. The lacuna lies in the huge gap which is created between the Act and its practical implementation. By critically analyzing the provisions of the existing legislations and on the basis of empirical data collected from the Tribunal established under the said Act, it has been inferred that the Rights of the Senior Citizens are not taken seriously. Hence, a list of recommendations is proposed which may bring an effective implementation of laws for protecting the basic human rights of the Senior citizens.

Keywords: *Elderly, Rights, Tribunal*

Introduction

The Sanskrit versus of "Matru Devo Bhav"¹ and "Pitru Devo Bhav"² from Taittiriya Upanishad derives its roots from the ancient Indian Vedic era. According to which the parents were placed at a very high position by giving them the status of living Gods and Goddesses. These were considered as a philosophical advice on morals and ethics for the students who graduated from Gurukuls³.

Old age of parents is an unstoppable phase in the natural life cycle which every human being has to pass through. It brings along several challenges and different thinking and living patterns which becomes in conflict with the younger generations. This generation gap raises their possibility of being mistreated and neglected. They are denied proper food and medication by the members of their own family. Sometimes they are forced to sign the property papers, thrown out of their own houses and even disowned by their own children. This gives rise to physical, verbal, financial and psychological abuse, which leaves them in a very helpless situation. This situation can be best viewed through the lens of Routine.activity theory of victimization, according to which the weak circumstances of the victim makes them vulnerable to abuses.

Many international documents and the national legislations of some foreign countries use varied terminologies like "older persons", "third age" , "aged persons", "elderly" , "the aged", "seniors" for referring to 'senior citizens. In India, we use the term 'Senior Citizen' defined under section 2(h) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 as "Any person being a citizen of India, who has attained the age of 60 years or above."

Keeping in mind the above problems and needs; the Government had adopted The National Policy on Older Persons (NPOP) in 1999 to ensure food, shelter, financial security, health care, protection from abuse and exploitation etc. for improving the standard of living of the elderly. There were various other policies which were enacted under Article 41 and 46 of the Constitution of India. Till 2007, there was no exclusive enactment for protecting the Right of elderly. The courts

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majorly relied upon section 125 of Code of Criminal Procedure and Indian Penal Code 1860 for financial security and penalizing the actions of the wrongdoer.

On 3rd March 2006 first attempt was made by Smt. Sushma Swaraj to introduce Senior Citizens (Maintenance, Protection and Welfare) Bill 2006⁴, but it couldn't proceed further. Later, the 'Ministry of Social Justice and Empowerment' of the Government of India finally introduced 'The Maintenance and Welfare of Parents and Senior Citizens Bill, 2007⁵' on 9th March through the Lok Sabha speaker Smt. Meira Kumar in the lower house of Parliament. This bill received the final assent from the President on 31st December, 2007 and became an Act. The object of the Act is to provide effective legal remedies for the Maintenance and Welfare of Parents and Senior Citizens who are unable to maintain themselves or are above the age of sixty years.

From the above-mentioned provisions and schemes, it seems that the Rights of the Senior Citizens are well protected; however, in reality the problem still remains unsolved. The dilemma lies in the lack of effectiveness of the available laws. There is not even a single piece of 'stringent' legislation which provides complete protection to the Senior Citizens. The 2007 Act undoubtedly, is the only legislation so far enforced in India, solely for Senior Citizens; but the problem with it is that it addresses only economic and financial abuse and fails to provide protection against mental and physical abuses. Many more lacunas may be pointed out through this detailed research.

In the latest August 2018 judgment, the Delhi High Court in one of its cases held that, the daughter-in-law cannot stay at the house of the in-laws, if she mistreats them. This is a remarkable judgment because the Delhi Maintenance and Welfare of Parents and Senior Citizens (Amendment) Rules 2016, mentions only the eviction of son, daughter or legal heirs in case of ill treatment, but does not talk about eviction of daughter-in-law. This is the reason there is need to figure out the lacunas in the legislations, so that it can be corrected urgently.

The Maintenance and Welfare of Parents & Senior Citizens (Amendment) Bill, 2018 amending the 2007 Act has been proposed. Even though the bill seeks to broaden the objective of the act and tries to overcome the lacunas, the issue still remains the same. Hence there is need to critically analyze and study the legislations, its implementations and its effectiveness.

Socio-Economic and Cultural Context of Elder Rights

Social Challenges:

Over the period of time it has been observed that the life expectancy of human beings has increased. People above sixty five years of age are living longer and hence they even require greater input of care and needs which include healthcare, food, clothing, shelter etc.⁶ Some of the social challenges are lack of proper health care, lack of infrastructure, changing family patterns, lack of social support, social inequality etc.

- **Health:** It is very important to recognize the relation between health state and social state while discussing about social challenges, as they go hand in hand. For an independent life, an elderly has to possess basic skills for their daily living, so that they are capable of undertaking some social activities and are also able to perform their domestic and personal tasks. Deterioration of the elderly occurs at three phases- first is in case of sociability, second with the inability to carry out domestic work and lastly with the failure to do personal tasks.

With the increasing age gradual attack of chronic disease takes place and it is not always possible to reverse the back the health into its previous condition perfectly. Some elders have to completely rely upon the regular consumption of medicine till they die. These health problems

make them psychologically, socially and functionally disable. When it comes to social disabilities, it affects the family bond and relationships which becomes worse in when the burden goes on the single earning member of the nuclear families.⁷

Now when it comes to the managing of old age care homes, the number of physiotherapists, medical suppliers and nursing agencies for elderly are very less and are unorganized to provide even the basic or optimal care. The concept of geriatric care also remains a neglected area in India as the physicians have very little knowledge of the functional implications of ageing of the human beings. There are very few training institutions for geriatrics course and even less care takers with no governmental facilities. And whatever facilities of counseling, old age homes, recreational centers exist, become unaffordable for the majority of the poor elderly population.

- Lack of infrastructure: There has been an increasing rate of longevity of sufferings by the senior citizens because of ailments and chronic diseases. There is need to have better accessibility of physical infrastructure in the upcoming years. Due to the lack of proper infrastructure, senior citizens are not getting enough comfort as much is required by them. Proper physical infrastructure is not only required at home but also at public places. If there are no decent infrastructure the chronic disease of the senior citizens might go unattended. Some other issues include overcrowding of care homes and facilities, poor quality and insufficient focus on elderly care.⁸
- Changing family pattern: Indian tradition since ancient times is based upon joint family system, which played a very vital role in safeguarding and protecting the elderly from social, physical and psychological abuses. Showing respect and care towards the elderly is a traditional norm and value of our society. But with the emerging trend there has been a shift towards the nuclear family system in recent years. As a result of which senior citizens are getting more exposed to economical physical and emotional abuses. Hence, with the modernization the elderly care by the family is likely to decrease even more in future.
- Lack of social support: Its well accepted fact that the elderly is the most vulnerable population as the government of India is not ready to spend upon their social security system. In urban domestic houses a caretaker is hired to look after the elderly, but in villages and poor families the situation is even worse. These senior citizens are unhappy, isolated, lonely and consider themselves a burden to their family as they become more sensitive by the growing age.⁹
- Social inequality: The populations of elderly are mostly heterogeneous with rural and urban divide. Elderly in rural areas are not as vulnerable if compared to under elderly, because the rural community of India still follows the values and norms of the joint family system. Again, the issue is that the elderly problems are not uniform throughout as there is classification of these citizens on the basis of caste and many other cultural and social dimensions. Inequality exists even in case of gender as the elderly women are poorer than an elderly man despite having the greater percentage of education.¹⁰

Economic Impediments:

Elderly populations of our Indian society are fully or partially dependent upon their family members for their economic needs and well-being. When it comes to female, situations are even worse. One of the most challenging factors is poverty, as it acts as a multiplier and raises the chances of the elder abuse.¹¹ Because of financial dependence upon the family members the pressure of responsibility has caused the breakups of joint family systems, insufficient housing, economic hardship and lack of proper health care.

Another issue arise with the age is retirement. Once a person reaches the age of sixty years, he faces compulsorily retirement even if he is fit and wishes to work. Retirement means losing the source of income. This is one of the reasons because of which the elder parents become dependent upon them for economic security. However, there are option of various postretirement benefit schemes for the retired senior citizens, but the amount given as pension may not be always sufficient enough for their medical expenditure and daily living.

Cultural Ramifications:

After the influence of modern culture, the Indian population has deviated from its old age tradition which imposes a duty upon the children to take care and look after their parents. Industrialization, urbanization and modernization have made the adult children to move to rural area from urban areas, which have led to the changes in family patterns. The elderly are not ready to leave their ancestral house situated in the rural area, but their children have to leave and settle in cities for the purpose of employment. Because of the above situation the elderly in India are not guaranteed power, care and prestige in the family and hence they are forced to adjust which becomes stressful for them.

Sometimes cultural norms of keeping problems within the family, face-shaving, shame etc also causes psychological abuse as they lose their confidence. In order to deal with this getting involved in the cultural and recreational activities helps the elders to get back their confidence. The major cultural stigma is that an elder cannot leak out or talk about in the society about the instances of their victimization. They find it against the principle to complain against their own children and family members as there is some amount of emotional bond attached to it despite being victimized. There is need to get rid of this cultural Indian stigma from the society so that the voice of the elderly may not go unheard.

Cultural Practices:

Other dimensions of cultural causes are some anti-elderly tradition followed in various communities of India. These traditions are in line of involuntary euthanasia.

a) Thalaikkooththal:

Thalaikkooththal is a practice of killing the elderly or senicide in the state of Tamil Nadu. It is mainly practiced in some of the southern districts of the state. Even though this practice is illegal in India but this practice is socially and culturally accepted in the state.¹²

Early morning the elderly is given an oil bath after which they are made to drink so much of tender coconut water. This cause high fever, renal failure, fits etc and results in the death of the person in one or two days.¹³ It also involves the techniques of head massage which lowers the body temperature and subsequently causes heart failure. According to the 'milk therapy' technique, the nose of the elderly is plugged and then they are force fed the cow milk leading to difficulty in breathing. In certain cases, poison is used instead of milk.¹⁴

b) Sallekhana:

This religious practice is followed by the Jain community in India. It is considered as one of the five vows of the ethical code of conduct for the Jainism religion. It is practice of reducing the intake of food or fasting till they die. Here right to life comes in conflict to the freedom of religion.¹⁵

The duration of this practice may range from few days to years. There are majorly three forms of Sallekhana. In the first form the person isolates himself, does not move his limbs, sleeps on the bed made of straws, and stops drinking and eating till he dies. According to the second form the person sleeps on the bare floor, he is allowed to sit, move and walk, but avoid food till he dies. In the third form the person stands like a tree without food and water and finally dies.¹⁶

Both the above practices are not legal as it attacks the fundamental right to life of a human being. It becomes a controversial issue because it forms the part of long practiced tradition or culture of the communities

Legal Perspective

Theories:

Elder abuse can be viewed through the lens of two major theories, which deals addresses the reason behind the elder population becoming easy targets and reason for their vulnerability.

Maslow's Theory

In this theory Maslow explains about the fundamental or basic needs of a human being and its emergence. This theory is also known as the 'Maslow's Hierarchical of basic needs theory', because according to him the basic needs of a human being are hierarchical in nature. Once the basic or low-level needs of a human being gets fulfilled, he immediately switches to get the satisfaction for his higher-level needs. The objective behind studying this theory is to measure the quality of life and well-being of the senior citizens.¹⁷

As per this theory, needs are classified as – physiological, safety, love, esteem and lastly self-actualization. In light of the elderly physiological needs would include air, water, food and sleep, which are considered as the most supreme of any other needs and these can be satisfied even if the income is very low.

Once the above set of needs is met, safety needs are the next set of needs that emerge. Safety needs would include medical assurance and facilities for elderly, financial security required for their day to day activities and a proper shelter to stay. According to Maslow, this need is more psychological in nature, which implies that unless a person feels secured and safe the next set of needs won't emerge.

The next sets of needs are called higher level needs. Once lower level needs are met the need for love and belongingness becomes important for senior citizens. It encapsulates within its meaning the need of being accepted and loved by their family members, relatives and friends. This need can be assessed by measuring the time given by the children and family members to the old age parents at home as giving time to them makes them feel loved.

Confidence and status of senior citizens forms the next set of needs called the Esteem needs. It implies the extent to which the elder members of the family are involved in the decision-making process of the household. If their role in the decision making is primary or is jointly involved with their children, then it satisfies their esteem needs.

Self-actualization is the last need in Maslow's hierarchy of basic needs that implies the state when a person feels that he/she has been able to satisfy or achieve all the needs, which shows one's life satisfaction. The major issue is that most of the senior citizens are not able to satisfy or reach to the need of self-actualization because the other needs in the lower hierarchy are not fulfilled due to the lack of proper food, shelter, safety, love and confidence. Once a person

becomes old or reached the age of above 60 years, they are considered to be of no use and therefore their family members don't prefer to spend or invest money on their treatment and healthy food. They are even thrown out of their own houses by their own children and sent to old age homes, therefore depriving them of their safety needs. All these shows lack of love and acceptance by their so called near and dear ones.

Routine Activity Theory

Routine Activity theory is based upon the idea that an offender targets the potential victim because the victim is easily accessible or vulnerable. The three main ingredients of this theory are – (a) a suitable target, (b) a motivated offender and (c) absence of a capable guardian.

A person after retiring at the age of sixty becomes a suitable target because he is removed from the work and spends more time at household environment than public places. They become more vulnerable because the old age citizen stops generating income for the family as a result of which the family members considers them of no use. Their deteriorating health conditions and attack by various diseases makes them easy targets for abuse.

Over the period of time with the growing age, sons and the relatives become greedy to seize the property and money of their older parents. This is how they are already motivated when they realize that their parents are old, and their death is near.

The circumferential living area of the senior citizens becomes confined to their household and neighborhood. All the family members leave for work, college, offices and schools, due to which these older members of the house are left alone at home. When the family members return back in the evening, they are already so exhausted that they are unable to spend time with their parents or grandparents. They even start considering them as burden and feel forced to look after their health and wellbeing. The only reason for them to take care of the aged people of the family is their greediness for the ancestral property. At this point of time the elders start craving for love and belongingness. Even if there are family members acting as their guardian, but in reality, there are no genuine and capable guardian for these senior citizens.

Once all the above three ingredients come together it leads to elder abuse. These abuses can be either in the form of physical or mental. This is how the elders become more vulnerable and easy targets of the abuses.¹⁸

Rights of the Elderly:

Senior citizens are one of those targeted group that suffers from atrocities. When the whole world is busy giving importance to the 'Human Rights', it is to be noted that these human rights can be claimed from the time even before a person is born and extends till the death of that person. Problem becomes vital when people fail to understand and recognize that these senior citizens are also covered under the canopy of fundamental human rights. This is how they become the ignored population of human beings. In light of this there is a need to understand the following human rights as seen solely from the perspective the senior citizens.¹⁹

- **Right to Life:** When the senior citizens become subjected to abuse and neglect, they suffer atrocities to such extent that it leads to their deaths. Such deaths may or may not be direct. Hence it is important to mention here the controversial issue of euthanasia, which involves an act of killing the older persons so that they don't suffer from diseases and ailments for a longer period of time. Euthanasia can be both passive and active. Passive Euthanasia

can be considered legal to some extent as it only involves the removal or omission of life support equipment's (which keeps the person alive) and letting him/her die. Whereas, active euthanasia is not recognized by most of the countries and it involves some external methods or an act of intentional painless killing method.

Another aspect which has to be understood in light to 'Right to life' is that it does not mean mere human existence. But it includes within its ambit right to live life with dignity, right to shelter and most importantly right to health.

- **Freedom from Torture and Inhuman Treatment:** When it comes to senior citizens, it cannot be clearly stated as to what would constitute 'inhuman treatment' and 'torture'. Vulnerability level is high when it comes to old age rather than other age group of people. For example: if a senior citizen is denied meals for a day, he might suffer some serious health issues than the other age group people, who might not be so seriously affected. Hence the concept of inhuman treatment and torture can be seen from the perspective of abuses which they experience, which includes lack of medical and health care, malnutrition. It can even be abuses of psychological nature such as humiliation and intimidation, sexual abuse or forcibly sending to old age homes etc.
- **Right to Privacy:** Violation of privacy rights of the senior citizens can be seen in different aspects. At the old age homes or in hospitals the physical privacy of the senior citizens gets violated as they are partially dressed and kept in the open ward. They are even shifted from one ward to another in their half naked conditions. Their activities are even continuously monitored by cameras.

Sometimes the staffs of the old age homes disclose the health and medical records of the senior citizens to their relatives and children which are confidential in nature. This violates their privacy rights.

Legal and financial privacy comes into the picture, when a person who is given the responsibility to use the ATM card or manage the finances of the senior citizens for the purpose of assisting and making expenditure on their behalf, ends up misusing such data by committing fraud.

- **Freedom from Arbitrary Detention:** Arbitrary detention mostly takes place when the senior citizens are forced to stay at the old age home against their will despite having a residential home. It cannot be denied that there are legitimate cases and reasons to send them to care homes, but it obstructs their freedom from detention, hence violating their rights. Sometimes in order to curb the voices of the senior citizens who suffer abuses, they are confined or forced to stay at the four walls of the houses so that they have least contact with the outside world, to save the other members of the houses from being defamed.
- **Right to Family Life:** Right to family life of an elder would mean right to stay and enjoy the company of his/her wife/husband, children and grandchildren. Problem arises when they are separated from their family members either because of an ongoing medical treatment in some other city or because of the source of earning of the children is situated in some other countries. Sometimes the children adopt the idea of sharing the responsibility of their elderly parents by taking care of just one parent. This causes the separation of elderly couples as in most of the cases their children work in the different city or reside at different locations.
- **Right to Fair and Speedy Judicial Determination:** Whenever there are allegations against an old person or if an old person goes on to file a case. It becomes the responsibility of the judicial wing to give fair and speedy hearing to them, by taking into account their age and health factor.

While claiming for pension and medical benefits under the governmental schemes the procedure becomes so lengthy and complex by administrative authorities, that it becomes very difficult for the senior citizens to enjoy the benefits. Hence it has to be taken care that their right to fair and speedy determination remains protected.

- **Social, Economic, Cultural and Political Rights:** Right to social security includes the protection of the senior citizens from the consequences of the disabilities and the old age. Social security helps them to attain a decent and dignified standard of living. Widely, it also covers the right to housing and shelter as it forms a vital part of adequate standard of living.

Economic Rights can be protected by providing various old age benefit schemes for the elderly. This includes post-retirement benefits or providing work opportunities after the retirement, in case the senior citizens are willing to work.

While talking about the political right, it has to be seen that they are given proper access to voting stations so that their right to vote is not denied. Senior citizens should also be allowed and encouraged to participate in various associations and movements so that their voices do not go unheard. The rationale behind this is that they also form the subject of the policies brought by the government.

In light of the above discussed rights there is need to look into the national and international protections available for the senior citizens across the globe as well as in India.

International:

Human Rights are those basic rights which are universal in nature and are inherent to a human being by birth. Such right extends till the last day of the human life in all aspects ie, civil, political, social, cultural and economic sphere. These rights cannot be taken away by anyone or by any means. Elderly population also forms the part of these rights. In 1948, for the first-time nations came up with a comprehensive human rights' statement of Universal Declaration of Human Rights (UDHR) which was adopted by United Nations General Assembly. Even though it didn't state specifically about the elderly rights, but a core idea of human rights was set out through Article 1²⁰. Later on, in 1966, International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic Social and Cultural Rights (ICESCR) were adopted by the United Nations General Assembly. In 1979 an international treaty on protection women from all forms of discrimination was adopted by the United Nations general Assembly. Article 11(1)(e)²¹ of the Conventions on the Elimination of All forms of Discrimination against Women (CEDAW) mentions 'age' as the prohibited grounds of discrimination.

The very first international document on ageing was created by the 1st World Assembly on Ageing in 1982, which is known as 'Vienna International Plan of Action on Ageing'. The United Nations General Assembly later endorsed it through resolution 37/51. It focuses and outlines the principles and recommendations on Social welfare, income security, family and health.²²

After 40 years of Universal Declaration on Human Rights (UDHR), in 1991 'United Nations Principles on Older Persons'²³ were formulated; that covered the guidelines on independence, dignity and care of the older people. But this document is not binding in nature.

After a decade in 2002, 'Madrid International Plan of Action on Ageing' (MIPAA) was adopted by the Second World Assembly; which for the first time integrated the Social and economic development with the Rights of the older people. In addition to this there is also a General Comment No. 6 on International Covenant on Economic, Social and Cultural Rights (ICESCR) which guides the applicability of the laws and provides overall protection to the older people.

On 13th December 2006, Convention on the Rights of the Person with Disabilities (CRPD) was adopted. This convention deals specifically with the elderly women with disabilities. But the major issue is to what extent old age can be considered as a facet of disability. There is a need to come out of the traditional notion of disability which covers only physical or mental impairments.²⁴

Recently in 2018, on the 70th Anniversary of UDHR the United Nations International Day for Older Persons (UNIDOP) reaffirmed its commitment towards the Fundamental Freedoms and Human Rights of the Older People, by relying upon the idea that growing old does not diminish the right of an individual to live life with dignity.

The major problem with all the above international declarations and conventions are that they are not binding. This means despite being the signatory to the international documents, it is left upon the nations to implement it as a part of domestic law or not. Even if a Nation fails to imbibe such law, there is no stringent enforcement authority to impose such laws. Hence, these are considered as a soft international law.

National:

The Constitution of India, 1950

Article 21²⁵ which talks about fundamental Right to life and Personal Liberty inherently contains right to live Life with dignity. This right includes basic rights to food, shelter, clothing and decent standard of living for every citizen of India. Hence it cannot be denied that an older person also forms the part of human population and therefore has the right to quality life and dignity.

Article 41 and Article 46 under Part IV of the Constitution of India are the directives to the State to protect the Fundamental Rights of the people. Article 41 says that it is the right of a citizen to receive public assistance in the case of old age, sickness and disablement. Another Article 46 talks about protecting the economic interests of the weaker sections, where weaker sections impliedly include senior citizens. Even though these Directive Principles of State Policies are not binding or enforceable by law²⁶, but the state has a positive duty to frame policies for the protection of Senior citizens as these directives play a fundamental role in the governance of the country.

Under these Articles, the Ministry of Social Justice and Empowerment launched the National Policy for Older people, 1999 to help the senior citizens with respect to health care, tax exemption, pension scheme, land grants, setting welfare funds, counseling facilities etc. Various steps taken under this policy can be summarized as follows:

- ◆ 'Annapurna Scheme' was launched for those elderly who were unable to take care of themselves. As per this scheme the destitute elderly will be given ten kilogram of free rice or wheat through the public distribution system.
- ◆ Establishing 'pension fund' for those who were serving unorganized sector.
- ◆ Setting up of re-employment centers for the people above the age of sixty years.
- ◆ Providing air and rail tickets at concessional rates for senior citizens.
- ◆ Section 88 B, 88 D and 88 DB of the Income Tax Act 1961 provides exemption in tax rates for senior citizens.
- ◆ In order to provide benefit to the Elderly citizens, life insurance Corporation has come up with various schemes such as- Medical Insurance Yojna, Jeevan AkshayYojna, Jeevan DharaYojna, Senior Citizen Unit Yojna etc.

Some other schemes protecting the rights of senior citizens launched were, Scheme of Integrated Programme for Older Persons (IPOP), Indira Gandhi National Old Age Pension Scheme (IGNOAPS) and National Programme for the Health Care for the Elderly (NPHCE).

Personal Laws

Our personal law addresses the concept of financial assistance to the elderly. Hindu Adoption and Maintenance Act, 1956 is one of the first personal law statute imposing the duty upon the children. Section 20 of the 1956 Act provides a mandate to maintain their aged parents. It not only imposes the duty upon the son, but also upon the daughters if their parents are unable to maintain themselves financially.²⁷

According to Mulla, children must maintain their old parents even if the parents are capable of earning for themselves. If the mother is poor but not infirm, then also the son has the duty to maintain her even if the circumstances are strained. A poor son is also bound to look after his father who doesn't earn anything. Under Shia Law, grandparents should be treated at par with the parents and should be given equal quantum of maintenance.²⁸

As Christians and Parsis do not have any personal law, therefore parents claiming the maintenance rely upon Section 125 of the Code of Criminal Procedure.

Other Legislations

Section 125 of Code of Criminal Procedure is a generic provision for claiming maintenance irrespective of religion, caste or age. If a person refuses to maintain or neglects his or her parents, then the first-class Magistrate can pass an order directing the payment of monthly maintenance allowance. If the person fails to comply with or breaches the order of the Magistrate, then the Magistrate may pass an imprisonment order of one month or till the payment of the maintenance amount, whichever is earlier.²⁹ While dealing with the context of senior citizens this section addresses only the maintenance aspect. There are various other facets to the elderly problem which includes protection from abuse, social security etc.

Indian Penal Code 1860 is another generic legislation which penalizes majorly physical abuse, without discriminating on the ground of age, caste, religion, gender etc. On the other hand, there is also a gender biased Act- The Protection of Women from Domestic Violence Act, 2005 which protects only the elderly women from financial, mental and physical abuses. Both the laws focus only upon the abuse and assault of the citizens and do not deal with the specific provisions in regard to the protection and maintenance of senior citizens.

A recent concept of 'Reverse Mortgage Scheme 2008' was introduced by the National Housing Bank (NHB)³⁰ for senior citizens in 2007 budget speech. This scheme provides benefits to the Senior Citizen. Under this, the senior citizens who are the homeowners can mortgage their property to the financial institutions and receive periodical payments from the bank for their daily means of livelihood.³¹ And after the death of the senior citizen the property can be transferred in the hands of the children and their family or legal heirs. The amount so received as collateral is not taxable as it is considered as a loan amount. Compared to other countries, this scheme has not been so successful in India because the senior citizens are so attached to their ancestral family house that they are not ready to mortgage it. As a part of Indian culture, they consider it as a family asset which is intended to be inherited by the future generations. The other reasons of failure of this scheme are lack of awareness, lengthy and tedious documentation procedure etc.

Analysis of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007

For the first time in 2007 the Indian legislature came up with a separate central legislation enacted under Article 41³² and Entry 23³³ of Concurrent Lists solely dealing with the protection of the Rights of the Senior Citizens. The legislation is based upon the "Himachal Pradesh Maintenance of Parents and Dependents Act, 2001" enacted by the state of Himachal Pradesh. The Standing Committee on Social Justice and Empowerment through twenty-eighth report expressed the need for enactment of the said law³⁴. This enactment establishes an inexpensive, speedy and simple mechanism for the protection of the rights of the senior citizens. After being passed by both the houses the Bill received an assent from the President of India on 29th December 2007 and was published in the official gazette on 31st December 2007. Some states have already implemented the Act, which some are yet to implement and make rules.

The Act imposes a legal duty upon the heirs and children of the senior citizens to provide them maintenance. It also imposes duty upon the state government for the establishment of old age homes. Under this Act senior citizens or the parents can apply before the tribunal for claiming monthly allowance from their own children or legal heirs.

Section 2(a) of the Act defines 'children' as son, daughter, grand-son and grand-daughter. This means it only includes biological children and grandchildren. Various instances have been reported before the court where the parents or senior citizens are being ill-treated by the daughter-in-law, son-in-laws or by adoptive children and they are able to escape from the hands of law due to this lacuna.

The definition of 'maintenance' is outlined under section 2(b), which includes only basic necessities such as food, shelter, clothing and medical aid. But it fails to address the aspect of safety and security of the senior citizens or parents.

Section 2(g) defines 'relative' as a person who is in possession of the property or would inherit the property after the death of the childless senior citizen. As we know that the wills can be changed, then in such cases how would a person determine the heir of the property after the death of the senior citizen?

Constitution and establishment of Maintenance Tribunal at every sub-division is dealt under section 7 of the Act, where the Tribunal will exercise all the powers of a civil court. Before entertaining an application, the dispute may be referred to a conciliating officer for amicability settling the dispute within a span of one month. The application before the tribunal should be disposed off with a maximum period of ninety days. An appeal can be filed before the appellate tribunal set up by the state government and has to be disposed off within one month under section 16.

Section 9(2) fixes the maximum maintenance allowance as rupees ten thousand per month, which may be ordered by the tribunal. Many a times this amount may not be sufficient for a decent standard of living of the elderly, for example- if their medical or other expenditures are higher. In some cases where the parents or senior citizens have lived luxuriously or have lived a very high standard of living throughout their lives then in such cases it may not be possible for them to suffice with this minimal amount.

A very important provision regarding legal representation is laid down under section 17 of the Act. It states that parties should not be represented by a legal practitioner. The idea behind this clause is to save the parties from expensive litigation charges. But practically, considering the age and health factor of the old citizens, it will not be possible for them to approach the tribunal by themselves. The language of the section is unclear as to who can make the representation on behalf of the senior citizens.

In order to provide protection to the life and property of the senior citizens section 21 imposes duty upon the state government to undertake certain measures for publicizing the provisions of the act to make senior citizens aware. Section 23 states that the tribunal has the power to declare the transfer of property of the senior citizens void, if their children or heir fail to provide them with the basic amenities and care.

Chapter VI of the Act deals with the offences and penalties. If a person fails to pay the monthly allowance fee, he shall be imprisoned for one month or till the date of payment of the maintenance fee whichever is earlier. In case of abandoning the parents or senior citizens a fine of rupees five thousand or imprisonment up to three months or both can be imposed upon the accused.

The Act fails to address the situation if the senior citizen does not have any property or children. And even if they have children, then to what extent it is likely that they will file a maintenance case before the court of law against their own children. In order to cure the above defects a draft bill has been proposed by the Ministry of Social Justice and empowerment in 2018. But it's yet to be introduced in the Parliament. Brief summary of the proposals mentioned in the draft fill are as follows:

- ◆ Removal of the cap limits of rupees ten thousand per month as the maintenance allowance.
- ◆ Inclusion of adoptive children, minors through guardian, daughter in law and son in law within the definition of 'children' under section 2(a).
- ◆ Bill proposes to include 'safety and security' of parents and senior citizens within the definition of 'maintenance'.
- ◆ The jail term for abandoning and abusing parents has been proposed to be increased from three months to six months

Judicial Interpretation in India:

Before the year 2007, when the rights of the senior citizens were not given much importance, still the cases with regard to the elderly rights were interpreted by the courts of India in light of the above mentioned personal laws and under the provisions of Indian Penal code, 1860 and Code of Criminal Procedure 1973.

But after 2007, the scenario has been changed as a new act – 'Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (2007 Act) has solely been enacted for the elderly rights. But the problems still remain unsolved even after the passage of a term of almost ten years since its enactment, as was seen through the writ petition filed by Dr. Ashwani Kumar³⁵ before the Supreme Court of India. The major issue was in regard to the right of a senior citizen for an adequate pension. As per the Indira Gandhi National Old Age Pension Scheme 1995, pension for the category of elderly aged between sixty years to seventy-nine years was fixed at the rate of rupees two-hundred per month and for those above eighty years of age it was fixed as rupees five-hundred per month. The contention put forward by Dr. Ashwani Kumar was that the pension amount was fixed under the scheme in the year 1995 and even has been revised in the year 2007 without any increment. Such amount becomes inadequate if current value of rupee is taken into consideration. In addition to pension rights he prayed for relief under three other issues, ie. Right to shelter under article 21 and geriatric care and medical facilities of the senior citizens under article 21, 39, 41 and 42. Finally, he prayed for the effective implementation of the 2007 Act. The Supreme Court for the first time dealt with the petition on the subject of elderly rights and held that Article 21 should be given expansive interpretation to cover right to health and shelter of the elderly as a part Right to life which cannot be abridged by the government or

any citizens. In regard to pension benefits the court rejected the argument of the Union of India by stating that economic budgeting or lack of finances cannot be taken a defense by the government. It is assumed that if the government comes up with any welfare scheme, then it is obvious that it would have taken into account the budgeting of finances. At the end the court issued the following guidelines: -

- a) "The Union of India will obtain necessary information from all the State Governments and the Union Territories about the number of old age homes in each district of the country and file a Status Report in this regard.
- b) The Union of India will also obtain from all the State Governments the medical facilities and geriatric care facilities that are available to senior citizens in each district and file a Status Report in this regard.
- c) On the basis of the status report, a plan of action should be prepared for creating awareness about the provisions of 2007 Act among the senior citizens.
- d) Under Section 30 of the 2007 Act the Central Government must exercise its power to issue directions to the State Government and under section 31 the Central Government must conduct review for the purpose of monitoring the implementation of the 2007 Act.
- e) Directed the Government to revisit the outdated schemes and bring convergence to avoid multiplicity of the schemes."³⁶

Some more cases were brought before the High Court in light of the Rights of the Parents and the Senior Citizens under the 2007 Act. The issues can be broadly covered under the following heads: -

Validity of transfer deed under Section 23

In the case of Vinod Anand v. Deputy Commissioner-cum-Appellate Tribunal and Ors.³⁷ the petitioner who was a senior citizen was forced to transfer his property in favor of his son. His son threatened both the elderly parents that he would commit suicide if they don't execute the transfer deed. The High Court of Punjab and Haryana at Chandigarh held that the property was transferred by taking undue advantage of the age and weaknesses of the petitioner. And the Court allowed the petitioner to enforce his legal right of declaring the transfer void by virtue of the definition 'otherwise' under section 23 of the 2007 Act. Similarly, in the case of PromilTomar and Ors. v. State of Haryana and Ors.³⁸ the High court upheld the decision of the tribunal in declaring the transfer of possession of the property under section 23(1) as void on the ground that his son and daughter-in-law have assaulted and maltreated them and have also failed to provide the basic amenities and needs to the respondent. Similar judgment was given by the High Court of Madras (Madurai Bench), whereas per the will the property was supposed to be transferred to a non-relative after the death of the senior citizens. The accused in whose favor the will was executed murdered the senior citizen so as to immediately get the title of the property.³⁹

Direction for Eviction and Maintenance

In Sunny Paul v. State of N.C.T. of Delhi and Ors.⁴⁰ the High Court upheld the directions given by the Tribunal for vacating the house of the senior citizen by placing a reliance upon the rule 22(3) of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009. Directions were given on the ground that both the sons were harassing, physically assaulting and maltreating their parents. In another case it was also held that the son and daughter-in-law have no right to forcibly enter and stay at the house of the parents against their wishes.⁴¹

Where the family members were seen beating and causing injuries in hands and legs of the elderly parents and also obstructing them from using toilet and water, the court ordered eviction and maintenance as was prayed by the elderly mother under the 2007 Act.

Nationality of the Parent

A very important issue was address by the High Court of Punjab and Haryana at Chandigarh about the nationality of the senior parent or senior citizens. As per the requirement of the 2007 Act the parent has to be a 'citizen of India' in order to fall within the definition of "senior citizen". In the present case, the parent was a citizen of India who had acquired the U.S. citizenship. But now as he wishes to settle back in India after retirement, he got registered himself as the 'Overseas Citizen of India'. He had filed for the recovery of possession of property under 2007 Act. The Court held that a parent would be entitled to get the benefit under 2007 Act irrespective of his age and nationality as the main object and idea of the act is to protect the rights of the parents and senior citizens.⁴²

Eviction of Daughter-in-law under the 2007 Act.

In the case of Darshna v. Govt. of NCT of Delhi Ors.⁴³ the lacuna of the 2007 Act was taken as a defense by the appellant. She contended that she cannot be asked to vacate the property of the in-laws on the ground of abuse and physical violence under the 2007 Act. The Delhi Maintenance and Welfare of Parents and Senior Citizens (Amendment) Rules 2016 gives permission for eviction of son, daughter or legal heirs, and does not deal with the eviction of daughter-in-law. The High court rejected her contention and held that a "Women cannot stay at in-laws house if she maltreats them."

The judiciary has been playing an activist role when it comes to the social and welfare aspect of the citizens. Till date majority of the judgments have been passed in favor of the rights of the elderly

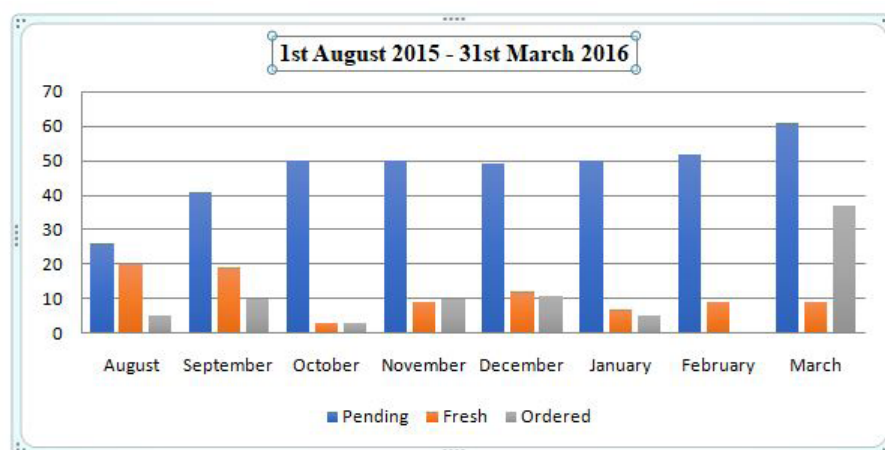
Analysis on The Functioning and Efficacy of The Maintenance and Welfare of Parents and Senior Citizens Tribunal

Analysis:

For the purpose of analyzing the effectiveness of implementation of the provisions of the Act, the data is collected specifically from the 'Tribunal for Maintenance and Welfare of Parents and Senior Citizens, Karnataka- South Division'. This Tribunal is formed under the said Act and is governed by the Karnataka Maintenance and Welfare of Parents and senior Citizens Rules, 2009, framed by the Karnataka State Government. By means of Tribunal visit, the data regarding the number of cases received, disposed or pending cases has been collected for a period of three years, i.e August 2016 to August, 2018. The graph for the data collected each year has been separately represented below and have been used to draw inferences.

A. Data Collected from the Tribunal for the year 2015-2016

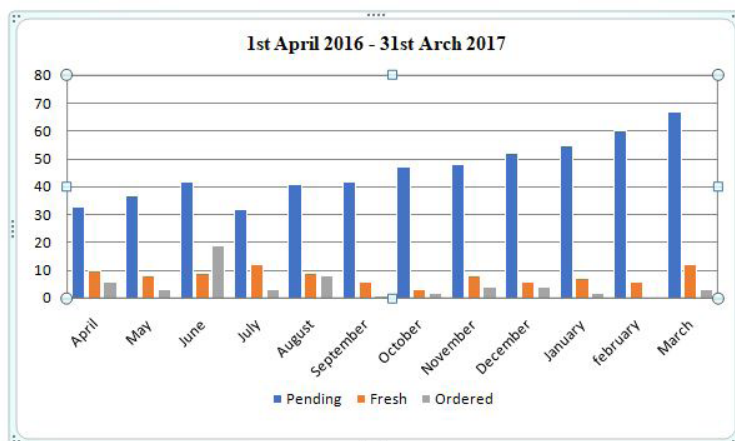
No. of Cases	Pending from Previous Month	Fresh Applications	Ordered
Month			
August	26	20	5
September	41	19	10
October	50	3	3
November	50	9	10
December	49	12	11
January	50	7	5
February	52	9	0
March	61	9	37
TOTAL	379	88	81

TABLE: A**GRAPH: A****Analysis Drawn From Graph A:**

A detailed study of the above graph and table for the duration of 1st August, 2015 to 31st March, 2016 depicts that there has been a long pendency in the cases reaching to 61 cases in the month of March, 2016. Moreover, the fresh applications are being filed on monthly basis with a maximum of 20 applications in the month of August, 2015 alone. The ordered applications show a trend of very slow decision-making process with a maximum of 37 applications being disposed in the month of March 2016.

B. Data Collected from the Tribunal for the year 2016-2017

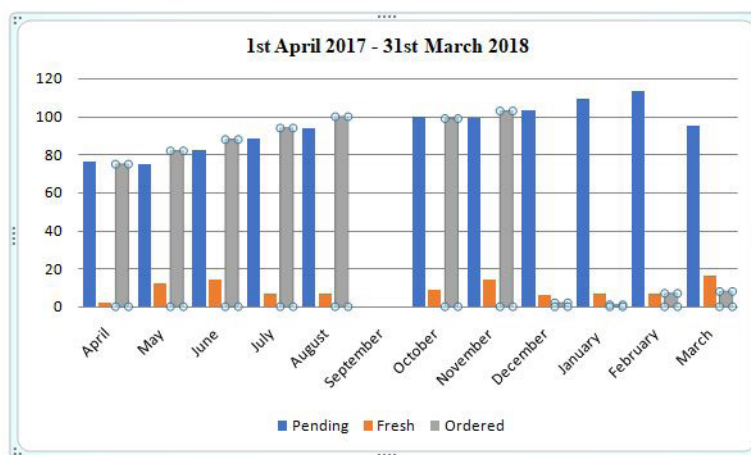
No. of Cases Months	Pending from Previous Months	Fresh Applications	Ordered
April	33	10	6
May	37	8	3
June	42	9	19
July	32	12	3
August	41	9	8
September	42	6	1
October	47	3	2
November	48	8	4
December	52	6	4
January	55	7	2
February	60	6	0
March	67	12	3
TOTAL	556	96	55

TABLE: B**GRAPH: B****Analysis Drawn From Graph B:**

A detailed study of the above graph and table for the duration of 1st April, 2016 to 31st March, 2017 depicts that there has been a long pendency in the cases reaching to 68 cases in the month of March, 2017. Moreover, the fresh applications are being filed on monthly basis with a maximum of 12 applications in the months of July, 2016 and March, 2017. The ordered applications show a trend of very slow decision-making process with a maximum of 19 applications only being disposed in the month of June 2017.

C. Data Collected from the Tribunal for the year 2017-2018

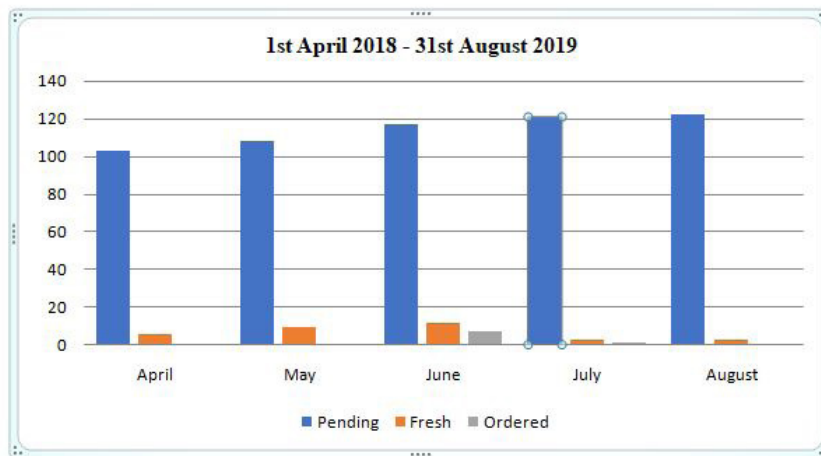
No. Of Cases Months	Pending from Previous Month	Fresh Applications	Ordered
April	76	2	75
May	75	12	82
June	82	14	88
July	88	7	94
August	94	7	100
September	No Record	No Record	No Record
October	100	9	99
November	99	14	103
December	103	6	2
January	109	7	1
February	113	7	7
March	95	16	8
TOTAL	1034	101	659

TABLE: C**GRAPH: C****Analysis Drawn From Graph C:**

A detailed study of the above graph and table for the duration of 1st April, 2017 to 31st March, 2018 depicts that there has been a long pendency in the cases reaching to 113 cases in the month of February, 2018. Moreover, the fresh applications are being filed on monthly basis with a maximum of 16 applications in the month of March, 2018. The ordered applications show a trend of very slow decision-making process with a maximum of 103 applications being disposed in the month of November 2018. The data for the month of September was not available in the registry.

D. Data Collected from the Tribunal for the year 2018-2019

No. of Cases Months	Pending from Previous Month	Fresh Applications	Ordered
April	103	5	0
May	108	9	0
June	117	11	7
July	121	2	1
August	122	2	0
TOTAL	571	29	8

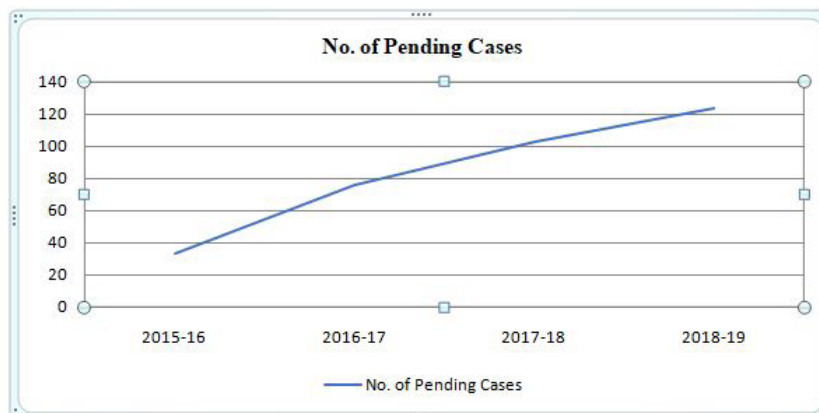
TABLE: D**GRAPH: D****Analysis Drawn from Graph D:**

A detailed study of the above graph and table for the duration of 1st April, 2018 to 31st August, 2018 depicts that there has been a long pendency in the cases reaching to 122 cases in the month of August, 2018. Moreover, the fresh applications are being filed on monthly basis with a maximum of 11 applications in the months of June, 2018 and March, 2017. The ordered applications show a trend of very slow decision-making process with a maximum of 7 applications only being disposed in the month of June 2018.

E. Data Collected from the Tribunal in regard to pending cases

Duration	2015-16	2016-17	2017-18	2018-19
No. of Pending Cases	33	76	103	124

TABLE: E

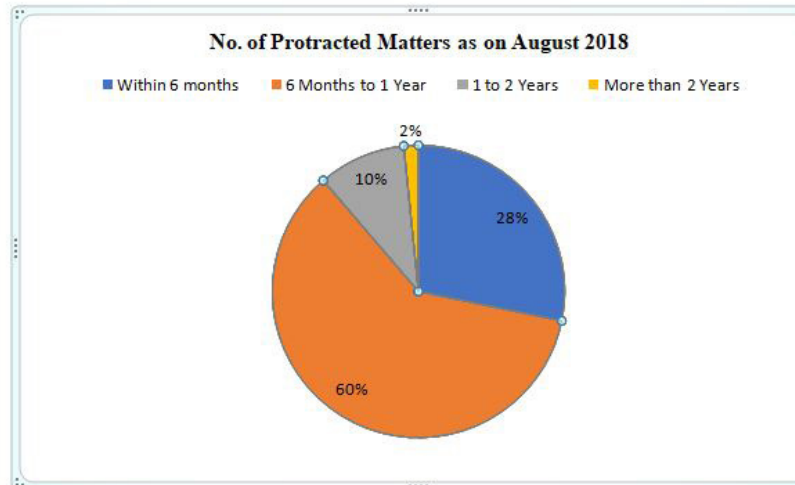
**GRAPH: E****Analysis Drawn from Graph E:**

A study of the line graph and table above depicts a growing trend in the number of pending matters in each cycle (April to March). On 31st March 2016 the number of pending matters was 33. Similarly, on 31st March 2017 it increased to 76 and on 31st March 2018 to 103. The last available data was for August 2018 which showed that the toll for pending matters has risen to 124 as on 31st August 2018.

F. Data Collected regarding Protracted Matters as on August 2018

Duration	No. of Protracted Matters as on August 2018
Within 6 Months	35
6 Months to 1 Year	75
1 to 2 years	12
More than 2 Years	2

TABLE: F



GRAPH: F

Analysis Drawn from Graph F:

The table and chart above show the number of cases that were pending as on 31st August, 2018 with the segregation of these cases into categories of the time frame in which they were filed and the duration for which they remain unresolved.

On 31st August 2018;

- 28% of the pending cases were those that were filed in the last 6 Months i.e. between 1st March, 2018 to 31st August, 2018.
- Similarly 60% of the pending cases were filed between 1st August, 2017 to 28th February, 2018.
- Further, 10% of the pending cases were filed between 1st August, 2016 to 31st July, 2017.
- Lastly, 2% of the pending cases were filed prior to 31st July, 2016.

Findings:

Following are the inferences which can be drawn from collected empirical data, which is categorized into Primary and Secondary findings.

- ◆ **Primary Findings:** These are the direct findings inferred from the above data and the table.
 - The trend shows that there has been increase in the number of pending cases being carried forward every year, which means the Tribunal has not been able to dispose of the cases which it receives every year.
 - There has been an increase in trend with number of fresh cases received every year, which shows that the parties are aware about the existence and functioning of the tribunal. On the other hand, there is also an encouragement from tribunal's side to settle the disputes.
 - The number of cases disposed of each year is not in proportionate to the fresh applications received in that particular year. There has been reduction in the disposal rate, which

means that the Tribunal has not been effective in settling the disputes in the same year itself.

- The pie chart of the number of protracted cases as of August, 2018 shows that 60% of the cases are on an average six months to one year old and are still pending. Hence, it can be inferred that the Tribunal is not in compliance with the 90 days limit to dispose of the cases.
- ◆ Secondary Findings: These are the indirect findings inferred through the field visit and interactions with the officials at the tribunal.
 - Till date Tribunal has ordered the maximum maintenance of Rs. 10,000 per month.
 - It was observed that the Tribunal is not taking any suo moto cases.
 - The cases filed before the Tribunal is mostly through the advocates.
 - It was discovered that the presiding officer is adjudicating over matters with respect to revenue appeal, labour reform, SC and ST, RTI 2nd appeal, Land tribunal and other miscellaneous matters.
 - The tribunal hears the matters only on Wednesdays, that too only for two hours from 11 A.M. to 1P.M.
 - There is no separate case register maintained for the cases filed under this Act.
 - There is no online portal or any website of the Tribunal.

Conclusion and Suggestions

The rights that are protecting the senior citizens are not specific in nature. These rights provide protection only by virtue of basic human rights that are available to all the human beings by birth. Hence in order to critically analyze the effectiveness of the only legislation⁴⁴ claiming protection for the senior citizens' rights, the efficacy of the functioning of the Maintenance Tribunal established under the said Act was studied. On the basis of the deduced findings following suggestions are made:

- **Maintenance amount:**

The inference drawn from the empirical data shows that the maximum monetary benefits received by the parents are not more than Rs.10,000 per month, which is a minimal amount for their decent sustenance, especially in metropolitan cities. Hence the cap limit of Rs.10,000 per month as mentioned in the Act should be removed. Even the recent The Maintenance and Welfare of the parents and senior citizens (Amendment) Bill 2018, mentions the removal of the cap limit. The tribunal can consider these two major factors while awarding the maintenance amount:

- (a) The Financial Capability of the legal heir
- (b) The Standard of living the Senior Citizen/ Parents were habituated to.

- **Suo Motto Powers:**

The Maintenance and Welfare of the parents and senior citizens Act, 2007 empowered the tribunal with certain Suo Motto Cognizance which is rarely used by the tribunal. Keeping in mind the increase in atrocities against Senior Citizen/ Parents, it is advisable that the tribunal should frequently use this Discretionary power for protecting the rights of Senior Citizen/ Parents.

- **Legal Representation:**

Considering the Fact that The Maintenance and Welfare of the parents and senior citizens Act, 2007, is a special legislation enacted to be a litigant-friendly forum; but it was deduced through the observation that almost all the representations were made through the Advocates. Therefore, it is suggested that according to the Act to encourage the Senior Citizen/ Parents to be their own representatives.

- **Speedy Disposal:**

The Provision in the Act mandates the disposal of the petitions is done within 90 days, from the date of service of notice this provision is specifically included to secure speedy remedy. The effective implementation of the section is needed to ensure that the grievances of the senior citizens and parents are addressed at the earliest and they are not harassed with repetitive adjournments.

- **Overburdened Presiding Officer:**

It is necessary that the Presiding officer is not overburdened with multiple administrative duties. The research clearly shows that currently the Presiding officer is adjudicating over six different forums and hence hears matters regarding this Act only once during the week on Wednesdays which has led to backlog of cases.

- **Role of Conciliation Officer:**

Under section 6(6) of the Act, the Tribunal is empowered to refer the dispute to Conciliation Officer who shall in turn strive to settle the matter amicably through mutual conciliation. Making use of the said provision the conciliation officer should actively encourage the parties to settle the disputes in harmonious way.

- **Preliminary Enquiry:**

In order to scrutinize the cases which may be frivolous in nature, the workforce of the tribunal can be diligently utilized to devise a mechanism to filter application at the preliminary stage.

Miscellaneous Suggestions:

- As per the observation made in this particular tribunal, it is noted that the office fails to maintain a separate case registry for the cases which are filed under this Act. Maintaining a specific registry is recommended.
- Even after the advent of the scheme 'Digital India', the tribunal fails to incorporate an online portal. It is suggested that an exclusive online portal be set up which would rely the information like daily cause list, orders, etc., for the benefit of the parties, advocates, and other academic purposes.
- One of the hurdles observed is the lack of awareness among the general public regarding the existence of such tribunal, measures like frequent awareness campaigns, free circulation of literacy booklets to households can help overcome the ignorance.

In a nutshell, there is need to immediately address the old age problems with due care and diligence. Our Constitution can be amended to add a specific provision for the protection of senior citizens and subsequently bring it within the umbrella of a fundamental right. This will impose a constitutional duty upon the State to undertake measures for the protection and welfare of the citizens above the age of sixty years. We are well aware of the fact that India is country with abundance of laws, but the problem lies in their implementation. The same goes with the Maintenance and Welfare of Parents and Senior Citizen Act, 2007. Through this research paper we

have reached to the conclusion that this existing law is not a complete law and requires revision and consideration in order to make it efficient and viable so that the elderly population of India like every other citizen also has their fundamental rights that are protected. In addition to this as a sense of social responsibility it is the duty of every individual to prevent the Indian value of considering parents as mortal Gods, from being eroded away.

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Footnotes

¹ Honour thy Mother as God

² Honour thy Father as God

³ Ancient Vedic schools

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⁵ Bill No. 40 of 2007

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²² United Nations international Day for older persons (UNIDOP), "2018 UNIDOP Celebrates Older Human Rights Champions", (18th September 2018)

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²⁴ Harpur, Dr. Paul, (2016) "Old Age Is Not Just Impairment: The Crpd And The Need For A Convention On Older Persons", *Penn Law: Legal Scholarship Repository*, Volume 37, issue ¾, pp 1027-1-59

²⁵ The Constitution of India, 1950

²⁶ Article 37 of the Constitution of India, 1950- "Application of the principles contained in this Part The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws"

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⁴⁴ The Maintenance and Welfare of Parents and Senior Citizen Act, 2007