CHAPTER – IX

LEGISLATIVE MEASURES FOR PROVIDING SOCIAL SECURITY FOR THE AGED IN INDIA: AN ANALYSIS
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9.1 Introduction

India is yet to have a comprehensive and integrated social security scheme covering all its citizens or even a limited comprehensive scheme covering the industrial employees in respect of various contingencies of life to which they are exposed.¹ In addition to industrial workers the aged people also require social security coverage. Indian population is steadily ageing. According to an estimate 32.8 per cent of the entire Indian population will be over 50 and above by 2050. That means that the number of people who are 50 or more, will cross half a billion by 2050- up from 141 million in 2000.² The increase in the number of aged will have serious consequences for the Indian economy on the one hand and increase the plight of the aged from a feeling of insecurity in the absence of an adequate social security scheme. India lacks a comprehensive legislation to ensure the welfare of the aged. However there is some hope for the aged, as there are few provisions in a number of laws to which recourse can be had for their protection.

This is a paradox nevertheless true that this stratum of the society being the most vulnerable class needs the maximum protection from the contingencies of life. This is one of the major paradoxes of the country. Economics is a decisive factor, which determines the shape and size of governmental programmes. The poorer the

² US census bureau’s projection, cited in Ageing India to Land on Corporate India’s Platter, Deccan Herald, 13.12.2006, p. IV (supplement).
country, the greater is the need of its citizens for social security measures but the lesser is the governmental capacity to finance the same. The poverty of masses (including the industrial Junta) has made them more prone to the unknown and unpredictable interruptions of life. Any break in the income of the economically weak class of persons who barely live at the subsistence level makes them destitute. They have the least capability of fighting the adverse situations caused by way of stoppages or breaks in their meager income. Individually, they have no saving of their own and what can save them is only the collective and coordinated effort of the society that saves them from sinking deeper and deeper into the morass of economic destitution. However, for an economically weak country, the economic assistance is simply out of question. Such a country may have to wait for quite some time before economic development, and the consequent increase in the national income to enable it to launch and implement a comprehensive social security scheme. However, a minimum needs programme has to be evolved to take care of various contingencies facing the life of the common man. \(^3\) Social security is a complex but comprehensive concept and can be institutionalized through a number of instruments. Keeping in view the state of modernization and the idea of welfare state, the instruments of social security are generally placed on a statutory footing. In India there are very few legislations, which have been enacted. \(^4\)

### 9.2 General Laws Relating to the Social Security for the Aged People in India

In India there is no single specific law for the protection of the aged people. But they are protected along with other persons, under different general laws. The

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\(^3\) Deepak Bhatnagar, *supra* note 1, p. 85.

\(^4\) *Ibid*, p. 84.
Constitution of India in its Directive Principles recognizes the care of elderly. Entry 24 in list III of Schedule VII to the Constitution deals with the "Welfare of Labour", including conditions of work, provident funds, liability for workmen's compensation, invalidity and old age pension and maternity benefits. Entry 9 of the State List and Entries 20, 23 and 24 of Concurrent List III relates to old age pension, social security and social insurance, and economic and social planning. Constitution deals with the State's role in providing social security to the aged. Article 41 provides: "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 case of unemployment, old age, sickness and disablement and in other cases of undeserved want". This is an enabling provision, which imposes an obligation on the state to initiate measures to protect the aged people.

9.2.1 The Hindu Adoption and Maintenance Act 1956

This Statute contains a number of provisions for the maintenance and protection of the aged. Thus Section 20(3), provides for the maintenance of the aged parents. This provision deals with the obligation of a Hindu to maintain his or her aged or infirm parent in so far as the parent is unable to maintain himself/herself out of his or her own earnings or other property. Explanation to this provision states that "parent" includes a childless stepmother. This obligation to maintain the aged and infirm parents under this section is placed both on male and female Hindu. The

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5 See supra, Chapter III Constitution & Social Security.
6 According to Section 3 (b), The Hindu Adoptions and Maintenance Act, 1956, maintenance includes: in all cases, provision for food, clothing, residence and medical attendance and treatment.
7 In view of Calcutta High Court the stepson cannot be made liable to maintain the stepmother, where the stepson has not acquired any property of the deceased father and the stepmother is not childless. See Pannalal Hazra v. Fulmoni Hazra, AIR 1987 Cal 368.
obligation is personal and independent of possession of any property. A daughter’s obligation to maintain her aged or infirm father, mother or childless stepmother does not cease on her marriage.

The word 'aged' is not defined in this Act. Therefore, it is to be construed in its ordinary meaning i.e. aged means old. The word ‘infirm’ includes parents who may be ‘young or old’ and the infirmity may be physical or mental such as lunacy, leprosy, blindness, deafness, dumbness, incurable disease etc. The parent in this section denotes only a relationship and thus it is not restricted to legitimate relationship. Therefore aged or infirm father and mother or childless stepmother is entitled to maintenance not only from his or her legitimate son or daughter, but also from his illegitimate son or daughter. Where such parents have more children than one, the parent is entitled to maintenance from any or all of them proportionately.

The obligation of maintenance under this section only extends to the following relations and conditions:

(1) The person liable for a claim of maintenance under this section should be a Hindu;8

(2) The person entitled to maintenance under this section should be a Hindu;

(3) The obligation under this section is legal and can be enforced by a decree;

(4) The obligation in the case of aged or infirm parents continues during his or her lifetime;

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8 Section 2(1), of the Hindu Adoptions and Maintenance Act 1956. The expression “Hindu” in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is nevertheless a person to whom this Act applies by virtue of the provisions contained in this section.
(5) The obligation in case of aged or infirm parents arises only when he or she is unable to maintain himself or herself;

(6) Stepmother though aged or infirm is not entitled to maintenance from his stepson or stepdaughter under this section; and

(7) The age of the parents is not the criterion, under this section, to claim maintenance. Parents of any age, even those who are not old enough and less than 60 years of age, are entitled to claim maintenance;

There are very few cases, which have come up before the various Courts, under this provision.

In *Mr. Samu Bai and another v. Shahji Magan Lal*, the Rajasthan High Court observed: the right of maintenance given to a parent under S.20 of the Hindu Adoptions and Maintenance Act pertains to aged or infirm parents and is available only to the extent that such parent is unable to maintain himself or herself out of his or her own earnings or other property. Again in *Chebolu Satyanarayanmurthy v. Chebolu Ram Subbamma and another*, P. Chandra Reddy C.J and Gopal Rao Ekbote, J., held that, the proposition that under Hindu law the maintenance of a wife by the husband or of the mother out of the existence of the relationship between them irrespective of their possession of ancestral or self-acquired property is indisputable. In these relationships, the obligation is legal and an imperative one and not merely moral and optional. This principle is not in any way inconsistent with the doctrine that the right of maintenance of a widow against the surviving co-parcener is quoad the share of interest of her deceased husband in the joint family property, which has

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*9 AIR 1961 Raj. 207.*

*10 AIR 1964 AP 105.*
devolved by survivorship on the surviving co-parcener. The primary liability, therefore, vests on the co-parcener who has in his hands the share or interest of his father by operation of the law of survivorship. If, however, the income from the share of her husband in the hands of the surviving co-parcener is not adequate to maintain her and something more is needed to meet her wants, the deficiency should be contributed by all the sons equally irrespective of the possession of ancestral property.

A novel question was raised in *Pokuru Rangaiyah, v. Pokur Chinnaiah and another,*\(^{11}\) The High Court of Andhra Pradesh was of the opinion that a stepson has no statutory obligation to maintain his stepmother unless any portion or share of his father in the joint family property is allotted, devolved or taken by him, whereas in the case of a son, natural or adopted, and a husband, the primary liability to maintain his mother or wife, as the case may be, is a matter of a personal obligation arising out of relationship, irrespective of their possession of or self-acquired property. In *Smt. Munni Devi v. Smt. Chhotji and others,*\(^{12}\) The Allahabad High Court, Deoki Nandan J., reiterated that Sub-Sec.(1) of S. 20 imposes the liability personally on every Hindu during his or her lifetime to maintain his or her lifetime children, and his or her infirm parents.

In *Panna Lal Hazra, v. Fulmoni Hazra and others,*\(^{13}\) A. M. Bhattacharjee and Sukumar Chakravarty, JJ., (Division Bench) observed: under the Hindu law as it stood before the Act, a step-son had no personal obligation to maintain his step-mother. But under S.20, the obligation of the step-son to maintain the step-mother is

\(^{11}\) AIR 1970 AP 33.
\(^{12}\) AIR 1983 All. 444.
\(^{13}\) AIR 1987 Cal 368.
personal in the sense that the same is not in any way dependent on the son's possessing any property, provided the step-mother is childless. Under S.22(1) the step-son would be liable to maintain his stepmother as being the widow and therefore a "dependant" of his deceased father within the meaning of S. 21(iii). But the liability under S.22(1) is not at all personal but absolutely proprietary depending on the stepson inheriting some estate from his deceased father. In Anandi D. Jadhav (dead) by L. R.'s v. Nirmala Ramachandra Kore and others, Supreme Court Judges, S.S Mohammed Quadri and N. Santosh Hegde. J.J., are of the opinion that, right of mother/parent to reside in house built by son is not legally enforceable. Morally son/daughter are obliged to take care of the aged mother by accommodating her in their house, yet in law that obligation cannot be enlarged to legal duty to provide her residence in the house along with their family. Again in S.Jagjit Singh Bhatia, v. S.Balbir Singh Bhatia and others, the Delhi High Court stressed that Hindu son is personally obliged to maintain his mother whether or not he has inherited his father's estate.

9.2.2 The Criminal Procedure Code 1973

Section 125 of Criminal Procedure Code, is a measure for social justice and specially enacted to protect not only women and children but also old and infirm poor parents. It falls within the Constitutional sweep of Article 15(3) (Special Provisions for Women and Children) reinforced by the Directives in Articles 38, 39 and 41, of the Indian constitution. This section gives effect to the natural and fundamental duty of a man to maintain his parents so long as they are unable to maintain themselves.

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14 AIR 2000 SC 1386.
13 AIR 2003 Delhi. 450.
Parents of any age, who are unable to maintain themselves, may seek an order from the Magistrate of the first class. The Indian cultural attitude has been, reinforced by Section 125 of the Code of Criminal Procedure 1973. Among many other things, it creates duty on every person having sufficient means to maintain his father and mother who are unable to maintain themselves.

Section 125 of Criminal Procedure Code provides, “if any person having sufficient means neglects or refuses to maintain his father or mother who are unable to maintain himself or herself”,\(^\text{16}\) 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 father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as the magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct. Such allowance shall be payable from the date of the order, or if so ordered from the date of the application for maintenance.\(^\text{17}\) 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.\(^\text{18}\) Thus Section 125 creates a statutory right for maintenance to the aged, which can be enforced in a Court. In a number of cases the Courts have interpreted this provision. Thus, in \textit{Baban v. Parvatibai Dagadu}

\(^{16}\) Section 125(1) (d), The Criminal Procedure Code 1973.

\(^{17}\) \textit{id.}, Section 125 (2).

\(^{18}\) \textit{id.}, Section 125 (3).
Dange and another, Apte and Sapre, JJ., (Division Bench) of Bombay High Court held that the expression ‘mother’ in S.125 of Cr. P. C. includes an “adoptive mother”. If expression “father” and “son” are to be given wider interpretation, there is no valid reason why the expression “mother” also should not be given similar wider interpretation so as to include an “adoptive mother” as well. Such an interpretation would also seem to accord with the legal status (under the personal law) of an adopted son. Both under the old Hindu Law and after passing of the Hindu Adoptions and Maintenance Act an adopted son occupies the position of natural born son in the adoptive family. Consequently the adoptive father becomes his father and the adoptive mother becomes his mother for all purposes.

In Pandurang Baburao Dabhade v. Baburao Bhaurao Dabhade and another, Chandurkar and Sawant, JJ., of the Bombay High Court have observed: “the obligation of a person to maintain his or her aged or infirm parent or a 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”. Dealing with this provision, the learned commentator of Mulla’s Hindu Law, has observed, “a Hindu is under a legal obligation to maintain his wife, his minor sons, his unmarried daughters and his aged parents whether he possesses any property or not. The obligation to maintain these relations is personal and legal in character and arises from the very existence of the relationship between the parties. Further, the Court held, “having considered the provisions of Section 125 (1), it is

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19 1978 CRI. L. J. 1436.
20 1980 CRI. L.J. 256.
21 Mulla's Hindu Law, 14th ed., p.1023.
clear to us that they do not contemplate that the obligation to maintain an aged, infirm parent who is unable to maintain himself or herself can be enforced only if it is preceded by the fulfillment of the parental obligation to maintain and bring up the children during the childhood. In *M.Areefa Beevi v. Dr. K.M. Sahib*.\(^\text{22}\) The Kerala High Court stressed that Daughter too is bound to maintain her father if he has no means of livelihood. "His father" would also mean "her father". The words used in Sec. 125 Cr. P.C. regarding orders for maintenance of wives, children and parents being "any person" "his" and "such person" the daughter would also be bound to maintain her father. Sec. 13, General Clauses Act Also supports the above view. Again in *Pitei Bewa v. Laxmidhar Jena*\(^\text{23}\) the Orissa High Court emphasized that, for maintenance, expression "mother" includes "step-mother". Provision being beneficial one should be construed liberally and no word should be interpreted in any restrictive sense unless intended by legislation. Thus step-mother is also entitled to be maintained under S.125(1) (d).

However in *Rewalal and another v. Smt. Kamalabai*,\(^\text{24}\) the Madhya Pradesh High Court opined that, according to Section 125 Cr.P.C. step-mother cannot claim maintenance from her step son. "Mother" under the said Section means a 'natural mother' i.e. the woman who had given birth to the child and 'adoptive mother' i.e. the woman who had taken the child in adoption were alone entitled to make such a claim against the 'natural son' and the 'adopted son' respectively. A 'step mother' was not entitled to make any such claim against her 'step son' under the said Section. *In Dr.*

\(^{22}\) 1983 CRI. L. J. 412.

\(^{23}\) 1985 CRI. L. J. 1124.

\(^{24}\) 1986 CRI. L.J. 282.
Mrs. Vijaya Manohar Arbat v. Kashirao Rajaram Sawai and another,\(^\text{25}\) the Supreme Court, has observed that the ‘word’, “his” in Cl. (d) - Includes both male and female children. Purpose of the section is to enforce social obligation. There can be no doubt that it is the moral obligation of a son or a daughter to maintain his or her parents. It is not desirable that even though a son or daughter has sufficient means, his or her parents would starve. Apart from any law, the Indian society casts a duty on the children of a person to maintain their parents if they are not in a position to maintain themselves. It is also their duty to look after their parents when they become old and infirm. In *D. Shanmugham v. Pottiammal*.\(^\text{26}\) The Madras High Court held that mother staying with one of her sons, was not disentitled to claim maintenance from other son who was in possession of joint family property and proved to be in affluent circumstances. Further in *Ganga Sharma Varshney v. Smt. Shakuntala Devi and another*,\(^\text{27}\) Justice, S.R. Bhargava, of Allahabad High Court has made a strong observation and held that a mother can file application for maintenance under S.125 of the new Cr.P.C. in the district where she resides. In *Mahendrakumar s/o Ramrao, Gaikwad v. Gulabbai and others*.\(^\text{28}\) The Bombay High Court held Maintenance of mother does not depend on the fact that whether she discharged her parental obligation during childhood of her son. Mother who has no sufficient means can claim maintenance from her son even though her husband is living. If she has two sons, she can claim maintenance form any one or both of them. Further, his Lordship observed, it is not out of place to remember the mandate of *Manu* in the matter of maintenance.

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\(^{25}\) AIR 1987 SC 110.

\(^{26}\) 1996 CRI. L.J. 2984.

\(^{27}\) 1990 CRI. L.J. 128.

\(^{28}\) 2001 CRI. L.J. 2111.
of parents, wife and child. *Manu* said, “the aged parents, a virtuous wife and an infant child must be maintained even by committing a hundred misdeeds”. *Manu* does not speak of solitary duty it is moral duty of a person to maintain aged parents, virtuous wife and infant child. In discharge of this pious duty, *Manu* went to such an extent that he made hundred misdeeds pardonable. During course of time, this moral duty assumed a legal character.²⁹ Again in *Ulleppa Siddanna Kamballi and others v. Gangabai Late Siddanna Kamballi*, ³⁰ the Hon’ble High Court of Karnataka held that the petition for maintenance by step- mother was maintainable, if she proved that she was living alone and due to old age unable to maintain herself. *Vijay Kumar Prasad v. State of Bihar and others.*³¹ The Doraiswamy Raju and Arijit Pasayat, JJ., of the Supreme Court held that for claiming maintenance, place of making application is the place where the person from whom maintenance is claimed lives. Further, the Court observed, the benefit given to the wife and the children to initiate proceeding at the place where they reside is not given to the parents.

The discussion of the above cases establishes that when it comes to the interpretation of the provisions specifically with reference to aged people the Court approach is not uniform and consistent. Some times the Courts have given liberal interpretation and majority of the times very restrictive meaning is attached to the statutory provisions. Because of the indifferent attitude of the Courts a lot of uncertainty and confusion is created in this area. A distressing fact is the undue delay

 ³⁰ 2003 CRI. L.J. 2566.
 ³¹ *AIR* 2004 SC 2123.
the Courts have caused in disposing of the claims for maintenance of the aged people.

The same can be seen in Table 1.

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Name of the Case</th>
<th>Originally filed</th>
<th>Finally decided</th>
<th>No. of years</th>
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<tr>
<td>1</td>
<td><em>Panna Lal v. Fulmoni</em> AIR 1987 CALCUTTA 368</td>
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<tr>
<td></td>
<td>1975</td>
<td>1987</td>
<td>12 - years</td>
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</table>
| 2      | *Yugeshwar Nath Mishra v. Arpana Kumari*, 2003 CRI. L. J. 2625
|        | 1996                              | 2003             | 7 - years      |
| 3      | *Mahendra kumar v. Gulabbai*, 2001 CRI. L. J. 2111 |
|        | 1995                              | 2001             | 6 - years      |
|        | 1975                              | 1980             | 5 - years      |
| 5      | *D. Shanmugham v. Pottiammal*, 1996 CRI. L. J. 2984 |
|        | 1992                              | 1996             | 4 - years      |
| 6      | *Pitei Bewa v. Laxmidhar Jena*, 1985 CRI. L. J. 1124 |
|        | 1981                              | 1985             | 4 - years      |

9.2.3 The Hindu Succession Act 1956

Under section 8 of this Act, parents are entitled to inherit the property of sons and daughters irrespective of their claims for maintenance from their children. The law on inheritance and succession does not create any right for the elderly parents but every parent is entitled to the benefit of their deceased child.

9.2.4 The Indian Succession Act 1925

Under the Indian Succession Act 1925, section 42 provides that, the father succeeds to the property of an intestate who dies without leaving any lineal decedents. The property would devolve on the mother in the absence of the father and lineal descendants of the in testate.

9.2.5 The Shariat Act 1937

In the case of Muslims, only $\frac{1}{8}$ of the property left, after the payment due for services preceding his death and / or amount payable for the prepayment of debt is distributed among the heirs of the deceased.
9.2.6 The Income Tax Act 1961

The Income Tax Act 1961 under section 88 B provides for the benefit of the senior citizens above the age of 65 years.

The various personal laws such as the Hindu Marriage Act 1955, the Indian Divorce Act, 1859, the Parsi Marriage Act, 1954, etc., provide for maintenance, also known as alimony or allowance.

Maintenance is a civil right that enables needy persons to receive economic support from those who are liable to protect and maintain their spouse, children, parents, etc. Bylaw, parents are bound to maintain minor children, major children their parents, the husband his wife, and vice versa. The quantum of maintenance varies depending on the economic status of the parties. The statutory provisions related to maintenance require the aged people to initiate the proceedings in the appropriate Courts of law, which in turn require them to spend their time, leisure and money and make them to run from pillar to post at an advanced age. Civil Courts take a long time to dispose off cases. The Table-1 reveals that the Courts took (4-12) years to dispose of the cases filed by aged people. Even if a competent civil Court passes a judgement and decree, execution takes months and even years due to cumbersome legal procedures. Even before the maintenance is realized the decree holder may die of starvation. Parents to go to Court against the children seldom use the provisions of Cr. P.C. and HAMA. Most litigants under Section 125 of Cr. PC are spouses, that is, wives.
9.3 Specific Laws for the care and Welfare of the Aged People in India

Though In India, provisions have been made under general legislations such as the Code of Criminal Procedure 1973 and the Hindu Adoption and Maintenance Act 1956 to protect the aged people by imposing obligation to maintain them. These laws are general in nature and the needs of the aged are not completely focussed. Due to the increased awareness about the plight of the aged people of late there is a trend of enacting special aged people welfare laws. Few of such laws are analysed below.

9.3.1 The Himachal Pradesh Maintenance of Parents and Dependants Act 2001

This Act, the first of its kind in India, was enacted with the specific objective to provide for the maintenance of parents, wives and children. In its preamble the Act provides: “the tendency to neglect the aged and infirm parents and dependents is increasing day by day and there is apparent need to compel the young generation to perform their moral obligations which they owe to the society in respect of their families and aged infirm parents, so that they are not left beggared and destituted on the scrap-heap of society and thereby driven to life of vagrancy for their subsistence”. This Act is a unique legislation in the entire country. The benefit of the Act is available to parents and dependants. The term ‘dependant’ includes, interalia, “parents and grand parents, so long as they are unable to maintain themselves or unable to obtain maintenance in the case of grand parents from their sons and daughters”.32 This clause enables not only the parents even the grand parents to claim maintenance either from their sons or from their grand

32 Ibid, Sec. 2(d)(i).
sons/daughters, so long as they are unable to maintain themselves. Another important feature of this definition is parents of any age if they are incapable they can claim maintenance. Further Section 3(1) provides that any person who is unable to maintain himself and having income below the level laid down for persons living below the poverty line may apply to the Tribunal\textsuperscript{33} for an order:-

(i) In case of a parent or grand parent, that one or more of his children or grand children; (ii) An approved person\textsuperscript{34} or organization in whose care a parent resides may apply to the tribunal for an order, that the respondent shall pay him/approved person or organization a monthly allowance, not exceeding five thousand rupees per mensem or any other periodical payment or lump sum for his maintenance or for the purposes of defraying the cost and expenses of maintaining that parent.

This is a very significant provision which enables the aged as well as the ‘approved person’ ‘or organization’ to make an application before the Tribunal. This provision also motivates and encourages the voluntary organizations and Non Governmental Organizations to come forward to take care of the elderly who are in need of help.

The Act makes provision in Section 6 for payment of interim maintenance. Thus it provides: “where in any proceedings under this Act it appears to the Tribunal that the applicant is unable to maintain himself and has no independent income, it may, on the application of the applicant supported by an affidavit, order the

\textsuperscript{33} \textit{Ibid}, Sec. 2(i) “Tribunal means the Tribunal for the maintenance of parents and dependants established under section 14”.

\textsuperscript{34} \textit{Ibid}, Sec. (2) (b) The term approved person has been defined to include “A person or an organization that has been approved under section 20 by the State Government in writing for the purposes of this Act; and shall include person or organization as specified in the schedule appended to this Act”.

respondent to pay to the applicant such sum by way of interim maintenance as, having regard to the income of the respondent it may seem to the Tribunal to be reasonable but which shall not less than Rs. 500/- per month pending the final disposal of the maintenance application”. This provision is advantageous to the applicant as it saves him from starvation till a final maintenance order is made by the Tribunal.

Section 7(1) provides that a maintenance order may provide for the payment of a monthly allowance not exceeding five thousand rupees per mensem or periodical payment or a lump sum for such period as the Tribunal may determine. The Tribunal may in its discretion when awarding maintenance order the respondent to secure to the whole or any part of it by vesting any property in trustees upon trust to pay the maintenance or part thereof out of the income from that property.\(^{35}\)

This provision helps in effective implementation of the order of the Tribunal. Sufficient caution is taken to ensure that the property is not disposed off by the opponent without complying with the Tribunal’s order. Further, the Tribunal while awarding maintenance may give directions as to the manner and method of payment.\(^{36}\)

The Tribunal may vary or rescind any subsisting order for maintenance, where it is satisfied that the order was based on any misrepresentation or mistake of fact or where there has been material change in the circumstances of the applicant or respondent.\(^{37}\)

A maintenance order made under this Act shall have the same force and effect as an order passed under Chapter IX of the Code of Criminal Procedure 1973, and shall be executed in the manner prescribed for the execution of such order by that

\(^{35}\) Ibid, sec. 7(2).
\(^{36}\) Id, Sec 7(4).
\(^{37}\) Id, Sec. 9.
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Code.\textsuperscript{38} Under section 11(3) maintenance order passed against a person may be executed by way of attachment of salary payable to him. This provision helps in proper implementation of the Tribunal order otherwise both Civil and Criminal consequences will follow. Emphasizing the need for speedy disposal of cases involving old people the Act provides that "the Tribunal shall decide every application made to it as expeditiously as possible and ordinarily every application shall be decided within a period of six months reckoned from the date on which such application has been made".\textsuperscript{39} Further, no party to any proceedings before the Tribunal may be represented by an Advocate.\textsuperscript{40} This provision enables the aggrieved party to get justice expeditiously and speedily without many technicalities. The procedures are highly simple, summary in nature. The procedural laws are not applicable in strict sense. Sec.15 (8) (g) provides that the Tribunal has all the powers of Magistrate with regard to the enforcement of attendance of witnesses and hearing evidence on oath. This is another provision, which helps the Tribunal to dispose of the matter quickly by compelling the parties to appear before it.

The Act provides for appeals against a decision of the Tribunal. Thus under section 17(2) the applicant, the Maintenance Officer on behalf of the applicant, a respondent, an approved person or organization or any other affected party may appeal to the District Judge from the decision of the Tribunal upon any question of law or of mixed law and fact except in any case where the tribunal has made the order with the consent of the parties unless it is alleged that the consent was obtained by

\textsuperscript{38} Id, Sec. 11(1).
\textsuperscript{39} Id, Sec. 15 (2).
\textsuperscript{40} Id, Sec. 15(5).
means of fraud, duress, threat or misrepresentation. Section 15(6) provides that there shall be no further right of appeal from the decisions of the District Judge.

The Act contains no provision in respect of issueless parents. Hence a provision must be made for the maintenance / care of such senior citizens who do not have children, grandchildren or any other person from whom they can claim maintenance and who lack the means to meet their basic needs. There must also be provisions for payment of maintenance allowance to those senior citizens whose children, grandchildren or other relative have insufficient resources to provide for their maintenance. In such a situation a provision can be made for imposing obligation on the state for their maintenance. Further, the Act does not provide for any penal provision and in the absence of penal provisions it is very difficult to implement and execute the provisions of the Act.

9.3.2 The Senior Citizens (Maintenance, Protection and Welfare) Bill, 2006

It is heartening to note that the Central Government intends to enact a Law for providing protection to aged persons. With this in view a Bill called, “the Senior Citizens (Maintenance, Protection and Welfare) Bill 2006” has been introduced in Parliament. Objective of the Bill is to provide for the compulsory maintenance, protection and welfare of senior citizens so as to secure a life of dignity, peace and security for them and for the welfare measures to be undertaken by the State for its aged citizens and for matters connected therewith and incidental thereto. The Act is applicable to indigent Senior Citizens above the age of sixty years. Thus, Section 2 (b) of the Act provides that “Indigent” means a senior citizen who, due to age related infirmity or disability or ailment, is incapable to earn his livelihood and who has no
independent and adequate means of livelihood, and under Sec, 2(d) "Senior Citizen" means any citizen who is sixty or more years of age. Compared to Himachal Pradesh Statute the scope of the Act is narrow as under that statute parent of any age may claim maintenance.

A notable feature of this Bill is that it imposes a legally enforceable duty on the children to maintain their parents and grand parents. Section 4 (1) provides that notwithstanding anything contained in any other law for the time being in force it shall be the duty of every person to take care, look after and maintain his parents and grand parents and more so who do not have any source of income or sustenance, as the case may be. And whoever fails to comply with the provisions of sub-section (1) shall be guilty of an offence under this Act.\(^{41}\)

In case of non-compliance of the provisions of section 4 by any person, a Magistrate of the first class may, upon proof of such neglect or refusal by such person, order such person to make a monthly allowance or lump sum payment thereof for such period as may be prescribed for the maintenance of his father or mother or both, as the case may be and to pay the same to such senior citizen as the Magistrate may from time to time direct.\(^{42}\) An appeal shall lie to the concerned High Court from any order made by the Magistrate under sub-section (1).\(^{43}\)

The order of the Magistrate under section 10 (1) is dependent upon proof of neglect or refusal. However, it will be very difficult to get evidence to that effect, the burden of proof heavily lies on the parents which may cause undue hardship to them.

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\(^{41}\) Sec. 4 (2).
\(^{42}\) Id, Sec. 10 (1).
\(^{43}\) Id, Sec 10 (3).
Basically in India parents are reluctant to go to Court against their own sons/daughters, and it is a herculean task for the aged parents to approach the High Court by way of appeal. This provision will defeat the very purpose and the object of the Act.

Section 11 provides that if any person who is ordered to pay maintenance allowance under section 10 of this Act, fails without sufficient reasons to comply with the order or willfully refuses to maintain and take care of his parents or grand parents, as the case may be, shall be liable to imprisonment for a term which shall not be less than five years but may extend to ten years and also with fine which may extend to ten lakh rupees. This provision for punishment to the person who fails to comply with the order of the magistrate appears to be too harsh. Punishment is not alone going to serve the purpose of the Act. It will have far reaching consequences, civil as well as criminal, on defaulter and his family. Instead a provision for a charge on the income or property of the defaulter for the benefit of his aged parents may be stipulated. Another important feature of the Act is that it provides for the establishment of Senior Citizens homes. Thus section 6(1) provides: the Central Government shall establish and maintain sufficient number of senior citizens' homes at conspicuous places in the country in consultation with the concerned Governments of the States and Union Territory Administrations and provide all necessary facilities in such homes as may be prescribed. All indigent and other Senior Citizens neglected by their kith and kin shall be kept in such homes.44

44 Id, Sec. 6 (2).
The Act makes provision for financial assistance to senior citizens. Thus section 7(1) provides: Every senior citizen shall, on an application made in the prescribed format, be given rupees one thousand per month, as financial assistance for his subsistence by the appropriate government in whose jurisdiction the senior citizen ordinarily resides and the financial assistance payable to such citizens shall be linked with the cost of living index so as to ensure a decent living to the senior citizens: Provided that the financial assistance shall not be given to those senior citizens who are residing and being looked after in the senior citizens homes established under section 6. The financial assistance referred to in sub-section (1) shall be disbursed to the senior citizens through Government Treasury or any branch of a Public Sector Bank or Post Office as per the preference given by the concerned senior citizen in his application form.45

Other facilities to senior citizens contemplated under the Bill are free medical treatment in Government hospitals and dispensaries, nursing homes and clinics recognized by the Appropriate Government, free travel facilities by public transport and concessions in private owned transport, free pilgrimages, facilities for Yoga and other sports, and interest free loans for housing and self employment purposes.46

Further, Senior Citizens especially those living alone, are vulnerable to security threats. To provide proper security to them, Section 9 of the Bill provides that the local police of every police station or police post shall keep a record of all the senior citizens residing in its jurisdiction so as to provide maximum security to such citizens. And it shall be the duty of the area Station House Officer or in-charge of the police

45 Id, Sec. 7 (2).
46 Id, Sec. 8.
post of the local police as the case may be to provide maximum security to every lone senior citizen or lonely couple residing in his jurisdiction.

The implementation of many provisions of the Bill, involve expenditure and many States are not in a position to bear this additional burden. In view of this, a provision is made in the Bill, wherein, the Central Government shall, after due appropriation made by Parliament by Law in this behalf, provide requisite funds to the State Governments for carrying out the purposes of this Act. This provision will facilitate the smooth implementation of the Act.

The Bill provides that, proceedings against a person who is under a duty to take care of his parents and grand parents lie before a judicial magistrate. This may entail delay and hardship to senior citizens. Instead, a Tribunal could be setup with necessary powers. This will prevent unnecessary technicalities and procedures inherent in a magistrate’s Court. Further, the provision for appeal to High Court will also impose great burden on the senior citizens. Hence, an appeal to District Court from the order of the Tribunal appears to be more practicable.

9.4 Conclusion

Despite the benevolent provisions in the Criminal Procedure Code, it has been experienced that this legal response is limited in its application. The slow and dilatory Court machinery is a great deterrent factor to approach the Court. In addition to the social and economic compulsions including the risk of loss of family prestige. The legal delays are again agonizing and distressing for them. The provision for maintenance of parents by children, wives by husbands, etc. under these statutes,
however, is not merely to provide minimum income or old age security but to prevent destitution and vagrancy. It cannot, therefore, substitute for state action in providing risk cover to older persons. A critical analysis of these statutory provisions show that they have been merely, a drop in the ocean in view of the vast aged population of India.