

**RIGHTS AND DIGNITY OF “SENIOR CITIZENS” AND  
MECHANISMS FOR IT’S LEGAL PROTECTION – A  
CRITICAL AND COMPARATIVE STUDY WITH  
SPECIAL REFERENCE TO KERALA**

**Thesis Submitted to  
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By  
**C.S. MOHIT**

*Under the Guidance of*  
**Dr. SONIA K. DAS**



**THE NATIONAL UNIVERSITY OF ADVANCED LEGAL STUDIES,  
KALAMASSERY, ERNAKULAM, KERALA- 683503**

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## **DECLARATION**

I hereby declare that the thesis entitled “**RIGHTS AND DIGNITY OF ‘SENIOR CITIZENS’ AND MECHANISMS FOR IT’S LEGAL PROTECTION - A CRITICAL AND COMPARATIVE STUDY WITH SPECIAL REFERENCE TO KERALA**” is the outcome of the original work done under the supervision of Dr. Sonia K. Das, Associate Professor, Government Law College, Thrissur. This thesis has not been submitted either in part or in whole, for the award of any degree, diploma, associateship or any other title or recognition from any University /Institution.

**C.S. MOHIT**

PLACE: Kalamassery

DATE:



**Dr. SONIA K. DAS**  
Associate Professor  
Government Law College, Thrissur

## **CERTIFICATE**

This is to certify that the salient research findings included in the thesis entitled **“RIGHTS AND DIGNITY OF ‘SENIOR CITIZENS’ AND MECHANISMS FOR IT’S LEGAL PROTECTION - A CRITICAL AND COMPARATIVE STUDY WITH SPECIAL REFERENCE TO KERALA”** has been presented in the pre-submission seminar held at the National University of Advanced Legal Studies, Kalamassery, Ernakulam on 27 /01/2021.

**Dr. SONIA K. DAS**  
Supervising Guide

PLACE: Kalamassery

DATE:



**Dr. SONIA K. DAS**  
Associate Professor  
Government Law College, Thrissur

## **CERTIFICATE**

This is to certify that all the corrections and modifications suggested by the Research Committee during the pre-submission seminar of the research work held at the National University for Advanced Legal Studies, Kalamassery, Ernakulam on 27/01/2021 has been incorporated by Sri. C. S. Mohit in this thesis entitled **“RIGHTS AND DIGNITY OF ‘SENIOR CITIZENS’ AND MECHANISMS FOR IT’S LEGAL PROTECTION - A CRITICAL AND COMPARATIVE STUDY WITH SPECIAL REFERENCE TO KERALA.”**

**Dr. SONIA K. DAS**  
Supervising Guide

PLACE: Kalamassery

DATE:



**Dr. SONIA K. DAS**  
Associate Professor  
Government Law College, Thrissur

## **CERTIFICATE**

This is to certify that the thesis entitled **“RIGHTS AND DIGNITY OF ‘SENIOR CITIZENS’ AND MECHANISMS FOR IT’S LEGAL PROTECTION - A CRITICAL AND COMPARATIVE STUDY WITH SPECIAL REFERENCE TO KERALA”** is a bonafide record of research carried out by Sri. C. S. Mohit under my guidance and supervision for the award of the degree of Doctor of Philosophy in Law under the National University of Advanced Legal Studies, Kalamassery, Ernakulam. The work has not been previously submitted to any University, Institution or authority for the award of any degree, diploma or honor.

**Dr. SONIA K.DAS**  
Supervising Guide

PLACE: Kalamassery

DATE:

## PREFACE

*“Population Ageing,” a global phenomenon has dawned on India and our God’s own country, Kerala. The population of the aged is increasing exponentially at a much higher rate than the rate of increase in total population due to various factors like rise in longevity and decline in fertility. This demographic transition has unleashed a plethora of socio-economic and legal issues mainly pertaining to the income and health needs of the aged. Kerala has the highest proportion of the aged population among the states and union territories in India. The drastic demographic shift was never anticipated by our Constitution framers and Lawmakers who lived during the age of “joint families” and for whom “nuclear families” was social taboo.*

*The new era of the “third age” and the “fourth age” calls for a recalibration of the existing legal architecture and framework. “Senior Citizens” are humans and are inherently entitled to all human rights. However, their physical and mental vulnerability due to the inevitable, irreversible, biological phenomenon of ageing entitles them to certain special rights both positive and negative, the most important being the right to dignified living.*

*The study seeks to examine the adequacy and efficacy of the existing legal framework and its mechanisms both statutory and non-statutory in protecting the rights and dignity of senior citizens or persons of and above 60 years of age. The study analyses the biological phenomenon of ageing and its impact on human rights. It analyses the various positive and negative rights of senior citizens. It*

*assesses the extent to which existing legislations, policies, schemes and programmes for the aged help satisfy the manifold rights and dignity of senior citizens.*

*The Indian Constitution and the other general legislations relating to senior citizens particularly the Hindu Adoption and Maintenance Act of 1956 and the Code of Criminal Procedure, 1973 were enacted in a different social milieu when traditional joint family system was the norm and nuclear families were not heard of and when primacy was for the rights of women and children in human rights jurisprudence. The provisions are hence sketchy and inadequate, and they are focussed on maintenance. The revolutionary legislation i.e., the Maintenance and Welfare of Parents and Senior Citizens Act of 2007 has also given primacy to maintenance rather than welfare and it does not cater to the manifold rights of the senior citizens on a comparison with the statutes in other jurisdictions. The national and state policies, however, are very progressive and in tune with the rapidly evolving jurisprudence at the international level for senior citizens. The Central Government and the State Government have formulated several schemes and programmes which have advanced the rights and dignity of senior citizens considerably. However, they are by and large cosmetic in nature since the basic legal framework is inadequate.*

*The humble attempt of the researcher is to analyse critically and comparatively the existing legal framework for senior citizens in the backdrop of the demographic transition aforesaid and to suggest necessary changes for improving the legal architecture and framework in India and particularly in*

*Kerala which has the highest population of senior citizens in India.*

*Since the law is at its infancy in India a comparative study was carried out for better insights. Considering the sociological relevance of the topic an empirical study was also conducted for ascertaining ground level responses and feedback.*

*It is sincerely hoped that the study will contribute to and enrich the limited literature available in the field of seminal contemporary significance.*



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**LIST OF ABBREVIATIONS**

ACJ	-	Accident Claims Journal
ACIDEE	-	All India Centre for Development of Education and Environment
AIR	-	All India Reporter
ALJ	-	Allahabad Law Journal
AOA	-	Administration on Ageing
CEDAW	-	Convention on the Elimination of All Forms of Discrimination against Women
CrI LJ	-	Criminal Law Journal
Cr.P C	-	Code of Criminal Procedure
CRPD	-	Convention on the Rights of Persons with Disabilities
CTR	-	Current Tax Reporter
DESA	-	Department of Economic and Social Affairs
DLSA	-	District Legal Services Authority
DLT	-	Delhi Law Times
DSPD	-	Division for Social Policy and Development
ECOSOC	-	Economic and Social Council
Ed.	-	Edition
ELDER L.J	-	Elder Law Journal
ESCAP	-	Economic and Social Council for Asia and the Pacific

EXP GERONTOL	-	Journal of Experimental Gerontology
GAROP	-	Global Alliance on the Rights of Older Persons
GGJ	-	Gerontology & Geriatric Studies Journal
GLJ	-	Gujarat Law Journal
GO	-	Government Order
HIRDJ	-	Help Age India Research and Developmental Journal
IBR	-	Indian Bar Review
ICCPR	-	International Covenant on Civil and Political Rights
ICERD	-	International Convention on the Elimination of all Forms of Racial Discrimination
ICESCR	-	International Covenant on Economic Social and Cultural Rights
ICPRMWF	-	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
IGNOAPS	-	Indira Gandhi National Old Age Pension Scheme
IGNPDS	-	Indira Gandhi National Disability Pension Scheme
IJPH	-	Indian Journal of Public Health
IJSW	-	Indian Journal of Social Work

ILO	-	International Labour Organisation
ILR	-	Indian Law Reports
ILR	-	International Labour Review
INR	-	Indian Rupee
IOPHRI	-	International Older Persons Human Rights Index
IPJ	-	Indian Police Journal
IUBMB	-	International Union of Biochemistry and Molecular Biology
JDLS	-	Journal of the Department of Legal Studies, Directorate of Legal Studies, Chennai
JILI	-	Journal of the Indian Law Institute
JPERS	-	Journal of Personalised Medicine
Kant HCR	-	Karnataka High Court Reporter
KeLSA	-	Kerala State Legal Services Authority
KHC	-	Kerala High Court Cases
KLJ	-	Kerala Law Journal
KLT	-	Kerala Law Times
KSSM	-	Kerala Social Security Mission
MIPAA	-	Madrid International Plan of Action on Ageing
MWPSC ACT	-	Maintenance and Welfare of Parents and Senior Citizens Act 2007
NFBS	-	National Family Benefit Scheme

NGO	-	Non-Government Organisation
NMBS	-	National Maternity Benefit Scheme
NPHCE	-	National Programme for Health Care of the Elderly
NPOP	-	Indian National Policy on Older Persons
NUJS L.Rev	-	National University of Juridical Sciences Law Review
OAA	-	Older Americans Act
OEWGA	-	Open Ended Working Group on Ageing
OM	-	Official Memorandum
PLV	-	Para Legal Volunteer
PRANAM Act	-	Parents Responsibility and Norms for Accountability and Monitoring Act, 2001
PMVVY	-	Pradhan Manthri Vayo Vandana Yojana
PULJ	-	Punjabi University Law Journal
PWDV Act	-	Protection of Women from Domestic Violence Act
RDO	-	Revenue Divisional Officer
RML	-	Reverse Mortgage Loan
RVY	-	Rashtriya Vayo Rishi Yojana
SC	-	Supreme Court
SCC	-	Supreme Court Cases
SCJ	-	Supreme Court Journal

SCWF	-	Senior Citizens Welfare Fund
SLSA	-	State Legal Service Authority
SPEM	-	State Poverty Eradication Mission
TLSC	-	Taluk Legal Services Committee
UN	-	United Nations
UDHR	-	Universal Declaration of Human Rights
UNPOP	-	United Nations Principles for Older Persons
VPBY	-	Varishta Pension Bhima Yojana
WHO	-	World Health Organisation



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## CHAPTER-I INTRODUCTION

*All the world's a stage,  
And all the men and women merely players:  
They have their exits and their entrances;  
And one man in his time plays many parts,  
His acts being seven ages. At first the infant,  
Mewling and puking in the nurse's arms.  
And then the whining schoolboy, with his satchel,  
And shining morning face, creeping like snail  
Unwillingly to school. And then the lover,  
Sighing like furnace, with a woeful ballad  
Made to his mistress' eyebrow. Then a soldier,  
Full of strange oaths, and bearded like the pard,  
Jealous in honor, sudden and quick in quarrel,  
Seeking the bubble reputation  
Even in the cannon's mouth. And then the justice,  
In fair round belly with good capon lined,  
With eyes severe and beard of formal cut,  
Full of wise saws and modern instances;  
And so he plays his part. The sixth age shifts  
Into the lean and slippered pantaloon,  
With spectacles on nose and pouch on side,  
His youthful hose well saved, a world too wide  
For his shrunk shank; and his big manly voice,  
Turning again toward childish treble, pipes  
And whistles in his sound. Last scene of all,  
That ends this strange eventful history,  
Is second childishness, and mere oblivion,  
Sans teeth, sans eyes, sans taste, sans everything.<sup>1</sup>*

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<sup>1</sup> WILLIAM SHAKESPEARE, AS YOU LIKE IT (1623).

### 1.1. ROLE OF ELDERS IN INDIAN SOCIETY & CULTURE

“Matha, Pitha, Guru, Daivam” the ancient idiom epitomizes the exalted position conferred on elders by Indian culture and tradition. Mother, father and teacher are considered as next to God and are highly respected. Showing respect to elders is an integral part of Indian culture and tradition.

The importance of idioms in the life of an Indian vis-à-vis the aged was highlighted by the High court of Rajasthan in *Deepak Sharma v. State of Rajasthan and Others*<sup>2</sup> wherein the court held that traditional norms and values of Indian society cast a duty upon the son to look after his parents. It was further held that it is not a social obligation but a day-to-day idiom in the life of an Indian and that idioms cannot be ignored. The court added that idioms are ingrained in blood and veins of Indian progeny by inculcating values in the son from the day he is born.

The importance of the aforesaid idiom was reiterated by the Kerala High Court in *Jayasree v. State of Kerala and Another*<sup>3</sup> wherein the court held that in a country like India where there is a culture to respect mother, father, teacher and God in that order of preference a lot of respect was given earlier to the mother and father. The court lamented the present trend among the younger generation to neglect and avoid their parents and grandparents.

The characteristic sociological feature of Indian society and culture down the ages has been the joint family system.

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<sup>2</sup> 2016 KHC 4333.

<sup>3</sup> 2014 KHC 549.

Karve has defined joint family system as “A joint family is a group of people who generally live under one roof, who eat food cooked at one hearth, who hold property in common and who participate in common worship and are related to each other as some particular type of kindred.”<sup>4</sup>

Henry Maine has defined joint family system as “The Hindu joint family is a group constituted of known ancestors and adopted sons and relatives related to these sons through marriage.”<sup>5</sup>

The joint family system as an institution is said to be the outcome of the settling down of the Aryans in different parts of the world. This social institution cannot be premised to have originated in India and there were similar institutions throughout the world. In Roman society, the supreme authority rested in the eldest male member of the family who took all necessary steps for administering the family. Though the joint family system has disappeared in other parts of the world it continues in India despite heavy strains brought about by industrialization and urbanization.<sup>6</sup>

The joint family system has several merits and the most important is that it acts as a social security net for the elderly.<sup>7</sup> The joint family system served as a social insurance company for the aged and it gave them food, shelter and protection. It also provided social security to the aged since all needs of an individual from cradle to cremation was looked after by the joint family. It

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<sup>4</sup> See VIDYA BHUSHAN, D.R.SACHDEVA, AN INTRODUCTION TO SOCIOLOGY 323 (Kitab Mahal XLIII ed.2009).

<sup>5</sup> *Id.* at 324.

<sup>6</sup> *Id.* at 325.

<sup>7</sup> *Id.* at 326.

provided solace and support at times of crises and emergencies. Further the joint family system provided psychological security for its members.<sup>8</sup>

The joint family system has disintegrated substantially in India paving the way to nuclear families due to various reasons. Sociologists have enumerated the important reasons for the transition which are: (i) the influence of education (ii) impact of industrialization (iii) influence of urbanization (iv) changes in the system of marriage and (v) the legislative measures like the Child Marriage Restraint Act 1929, the Hindu Marriage Act 1955, the joint family system abolition laws like the Kerala Joint Hindu Family System Abolition Act 1976. The other factors are democratic ideals of freedom and independence especially for women, decline in influence of mores and religious beliefs, spirit of individualism, economic independence of women and their emancipation, decline in birthrate, divorce and parent-youth conflict.<sup>9</sup>

The current social and cultural norm in India is characterized by the high degree of prevalence of nuclear families. In simple words a nuclear family is one which consists of the husband, wife and their children. Hence a nuclear family is an autonomous unit free from the control of elders and which is almost independent.<sup>10</sup>

Hence in India with the change in family structure from joint family to nuclear families there has come about a change in the role of elders in the family,

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<sup>8</sup> See C. N. SHANKAR RAO, PRINCIPLES OF SOCIOLOGY WITH AN INTRODUCTION TO SOCIAL THOUGHT 361 (S. Chand, Revised ed. 2009).

<sup>9</sup> *Id.* at 357.

<sup>10</sup> *Id.* at 356.

the basic unit of society. Intergenerational bonding has also been adversely affected and families are mostly confined to two generations, if not one generation. However, compared to many other western and eastern societies, the joint family system is still prevalent in India as the most accepted and common family structure and as a social insurance cum social security net for the elderly.

Significantly, under the joint family system, the elderly was respected and treated with dignity. The joint family system was hugely conducive to intergenerational bonding and living and the family was a safe haven for the elderly where they enjoyed adequate protection. Most importantly the oldest person normally was the head of the family who was highly respected. This social system hence guaranteed a culture of respect and dignity for the aged.<sup>11</sup> However recent ethnographic studies have revealed that the joint family system is a myth and that even the elderly who are living with their sons and families are neglected.<sup>12</sup>

The Kerala High Court very succinctly expounded the essence of Indian culture vis-a- vis the aged in *Janardhanan and Another v. Maintenance Tribunal Appellate Authority District Collector, Pathanamtitta and Others*<sup>13</sup> as follows “Every other culture may respect the old, but the Indian culture venerates them.”

## **1.2. ROLE OF ELDERS IN KERALA SOCIETY & CULTURE**

Kerala, since ancient times was an integral part of the Indian sub-continent

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<sup>11</sup> See R.Devarajan. When I am Old and When I need some Help There is None in Sight. *The Hindu*, May 16, 2010.

<sup>12</sup> See Dr. Jayashankar K.I, *Senior Citizens in India A Probe on their Plights and Rights* 42, IBR, No.2, 103, 109 (April – June 2015).

<sup>13</sup> 2017 (5) KHC 1.

sharing a common history and culture and Kerala's history is essentially a reflection of Indian history and culture.<sup>14</sup> However, Kerala's social fabric and culture down the ages had certain unique characteristics like Joint Family System, Polygamy and Marumakkathayam systems<sup>15</sup>. The Marumakkathayam system was a unique system of social organization and family life that evolved in Kerala which is a characteristic speciality of Kerala.<sup>16</sup> Marumakkathayam is a matrilineal system of inheritance and under the system the family lived together as a Tharavadu, comprising of the mother, her brothers, younger sisters and her children. The oldest brother normally was the “Karanavan” and was the head of the family and he managed the family estate. Lineage was traced through the mother under this system. Hence, under this social system all members of a family under the common female ancestor along the female line used to live together under one roof as a single unit called “Tharawad” and the senior male member though had no right over the joint family property managed the properties as the “Karanavan.” According to this system, inheritance was along the female line and the “Karanavan” had no right to alienate the “Tharawad” property without the consent of all members of the Tharawad. There was no individual ownership of property and the property was joint property. This intergenerational living under one roof was the biggest security and safety net for the aged in Kerala since there were family members of all ages to look after and care for the aged in the joint family. Further since the eldest male member

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<sup>14</sup> See A. SREEDHARA MENON, KERALA HISTORY, 17 (20<sup>th</sup> ed. 2019).

<sup>15</sup> See A. SREEDHARA MENON, KERALA CULTURE, 189 (11<sup>th</sup> ed. 2019).

<sup>16</sup> *Id* at 190.



became the “Karanavan” on considerations of age there was a culture to respect the aged in the family. The joint family system however was legally abolished in Kerala by the Joint Family System Abolition Act 1975 which paved the way for proliferation of nuclear families. The family which was the primary caregiving support system crumbled with the disintegration of joint family system.<sup>17</sup>

### **1.3. ROLE OF ELDERS IN MYTHOLOGY & VARIOUS RELIGIONS**

The genesis of the rights of the aged can be traced to mythology and religion. While mythology refers to the accepted tales or fables of a culture, religious prescriptions and tenets can be found in authoritative religious texts of various religions. Hence both mythology and religion have shaped and carved the evolution of rights of the aged. Indian society is a religious society. The traditional norms and values of Indian society emphasized the duty of taking care of elders. In traditional Indian society duties of children towards one’s parents were considered as a debt owed to them.<sup>18</sup>

#### **1.3.1. Mythology**

Hindu mythology celebrates the story of Shravan Kumar in the epic Ramayana where Shravan Kumar is portrayed as a dedicated son who carried his blind and poor parents in two baskets on his shoulder for a pilgrimage. He was killed by King Dasaratha while fetching a pitcher of water from the river Sarayu for his thirsty parents. The story goes that Shravan Kumar's parents, on coming

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<sup>17</sup> See Dr. Jacob John Kattakayam, *Some Thoughts on Elder Dignity and Abuse*, 20 HIRDJ, NO.2, 6, 9 (May 2014).

<sup>18</sup> See Mohamed Mustaque J. in *Manju.G.S. v. K.N. Gopinathan Pillai and Others*, 2020 (1) KHC 10.

to know about the death of their beloved son from King Dasaratha, grieved by the loss of their son cursed the King that he will die of “Putrashoka.” Indian mythology and folklore are replete with such tales of love and affection towards parents and elders.

### 1.3.2. Hinduism

The *Manusmrithi*, the ancient Hindu legal text specifically deals with respect for elders

शय्यासनेऽध्याचरिते श्रेयसा न समाविशेत्।  
शय्यासनस्थश्चैवैनं प्रत्युत्थायाभिवादयेत्॥ 119 ॥  
ऊर्ध्वं प्राणा ह्युत्क्रामन्ति यूनः स्थविर आयति।  
प्रत्युत्थानाभिवादाभ्यां पनस्तान्प्रतिपद्यते॥ 120 ॥

It means that one should not sit on a chair or on an elevated furniture than the chair or seat that is meant for an elderly person to occupy. A person who has already occupied a chair or a couch should raise and respect the elderly person and salute him and make him to sit at the higher level than his own. [II-119-120]

अभिवादनशीलस्य नित्यं वृद्धोपसेविनः।  
चत्वारि तस्य वर्धन्ते आयुर्विद्या यशो बलम्॥ 121 ॥

A person who has developed the habit of giving respect to elders, ensures himself the fulfilment of four-fold<sup>19</sup> values of life, acquires knowledge, fame, and physical and moral health as well [II-121].<sup>20</sup>

The Kurma Purana, one of the eighteen Mahapuranas and named after the

<sup>19</sup> See JUSTICE M RAMA JOIS, ANCIENT INDIAN LAW – ETERNAL VALUES IN MANUSMRITHI, 58-59 (2010).

<sup>20</sup> *Id.* at 58 -59.

tortoise avatar of Vishnu prescribes:

“No Deva can equal the mother and no superior can equal one’s father. Hence, no son can get relieved of the debt he owes to them” [Kurma Purana 2.12.36].

In Manusmrithi, 2/227, it is stated that, “Parents who give birth and rear children face agony that cannot be overcome in a hundred years. Therefore, the father, mother and teacher must always be kept happy and content through care and service. This is important to attain truth and success in life.”<sup>21</sup>

Hence Hindu religion gives primacy to the aged and their dignity.

### **1.3.3. Christianity**

“You shall rise up before the grey headed and honor the aged, and you shall revere your God; I am the Lord” says the Holy Bible (Leviticus 19:32)<sup>22</sup>.

Hence Christianity considers it as a basic tenet to respect the aged. Christianity further exhorts its followers to respect and revere the aged on account of their wisdom and understanding.

“Wisdom is with aged men. With long life is understanding” (Job 12:12)<sup>23</sup>

In the Holy Bible, the tenth book of New Testament, Ephesians, Chap.6, verses 1-3, prescribes:

“Children, obey your parents in the Lord, for this is right. Honour your

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<sup>21</sup> See *Manju.G.S. v. K.N. Gopinathan Pillai and Others*, 2020 (1) KHC 10.

<sup>22</sup> See KNOWING JESUS, <https://bible.knowing-jesus.com/> (last visited Jan.1 2017).

<sup>23</sup> *Id.*

father and mother, which is the first commandment with a promise that it may go well with you and that you may enjoy long life on the earth” [Ephesians 621-3]<sup>24</sup>

Hence Christianity has given utmost respect and social standing for the aged.

#### **1.3.4. Buddhism**

Buddhism teaches compassion for the suffering of others and under Buddhist philosophy youngsters have an obligation to respect and help the elderly. Respect for the elderly under Buddhism is based on the concept of filial piety where children are bound to repay their parents for the pains undergone by the parents for their children. Significantly under Buddhist religion the main way of showing respect for the elderly is by providing for their needs both financial and personal. Like Christianity, Buddhism also reveres elders on account of their wisdom from experience in life.<sup>25</sup>

#### **1.3.5. Islam**

Islam places elders at the prime position in its social hierarchy. Elders are revered and highly valued for their wisdom and more for their social status in the eyes of Allah. Both the holy Quran and the Hadith are very clear and specific on the attitude and behaviour to be extended towards elders.

Prophet Muhammed has observed “whoever fails to honour our elders is

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<sup>24</sup> *Manju.G.S. v. K.N. Gopinathan Pillai and Others*, 2020 (1) KHC 10.

<sup>25</sup> See James Stuart, *Buddhist Belief in Respect of the Elderly*, CLASSROOM (Oct.10, 2017), <http://classroom.synonym.com/buddhist-belief-in-respect-of-the-elderly-12085136.html>.

not one of us.”

Another Hadith mentions that serving the elderly is akin to serving Allah. The holy Quran repeatedly mandates kindness to elderly parents and mistreatment and showing disrespect to elders can result in denial of admission to paradise. Further, it is important for followers of Islam to show deference while interacting with elders. It is considered extremely shameful to place an elderly family member in a nursing home and the opportunity to take care of an elderly family member is considered a great honour. Families must lovingly take care of the elderly who are unable to play a leadership role on account of physical and mental disability.<sup>26</sup>

In Holy Quran, in Chap.2-83(Al-Baqarah), duty is enjoined upon believers to do good deeds to parents. In Chap.46-15(Al-Ahqaf), it is mentioned “And we have enjoined upon man, to his parents, good treatment. His mother carried him with hardship and gave birth to him with hardship, and his gestation and weaning [period] is thirty monts. [He grows] until, when he reaches maturity and reaches [the age of ]forty years, he says, “My Lord, enable me to be grateful for your favour which You have bestowed upon me and upon my parents and to work righteousness of which You will approve and make righteousness for me my offspring. Indeed, I have repented to you, and indeed, I am of the Muslims.”<sup>27</sup>

Hence the tenets of various religions underscore respect for the aged. India

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<sup>26</sup> See CLASSROOM, <http://classroom.synonym.com/islamic-respect-for-elders-12087809.html> (last visited May 2 2018).

<sup>27</sup> *Manju.G.S. v. K.N. Gopinathan Pillai and Others*, 2020 (1) KHC 10.

is the cradle of many religions and the religious tenets have moulded Indian culture down the ages and has been instrumental in creating a deep-rooted culture that respects the aged.

#### **1.4. DEMOGRAPHIC TRANSITION – WORLD, INDIA, KERALA**

“Demography” or the statistical analysis and study of human populations is very useful for analysing and predicting social, cultural and economic trends related to population. Demographic transition refers to the changes in the population over time and in particular with reference to birth rates and death rates. It is widely accepted that there are five major stages in the “theory” or “model” of demographic transition. The first stage includes a very high growth in death rates and birth rates which is mainly characteristic of backward countries. The second stage is a stage of declining death rate with the birth rate remaining the same. This stage is characterized by an improvement in economy and population explosion. The third stage refers to stage of decline in birth rate and a more rapid decline in death rate. At this stage population grows at a diminished stage. The fourth stage refers to a stage where birth rate and death rate decrease equally. It results in comparatively less growth of population. The fifth stage is when the death rate is more than the birthrate.<sup>28</sup> Universally declining fertility and increased longevity have led to an exponential increase in the aged population

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<sup>28</sup> See Yamini Thottassery, *Understanding Khap Panchayats (Sociological Perspective)*, SOCIOLOGY GROUP (2021), <https://www.sociologygroup.com/khap-panchayats-sociological-perspective/>.

which is considered to be the most remarkable demographic feature of the 21<sup>st</sup> century.

#### 1.4.1. World

According to the United Nations Department of Economic and Social Affairs in 2015 there are 901 million people aged 60 or over, comprising 12 per cent of the global population and the population aged 60 or above is growing at a rate of 3.26 per cent every year.<sup>29</sup> According to the corresponding data for the year 2019, by 2050 one in six people in the world will be over the age of 65, up from one in eleven in 2019<sup>30</sup>. The number of persons aged 80 years and above is projected to triple from 143 million in 2019 to 426 million in 2050<sup>31</sup>.

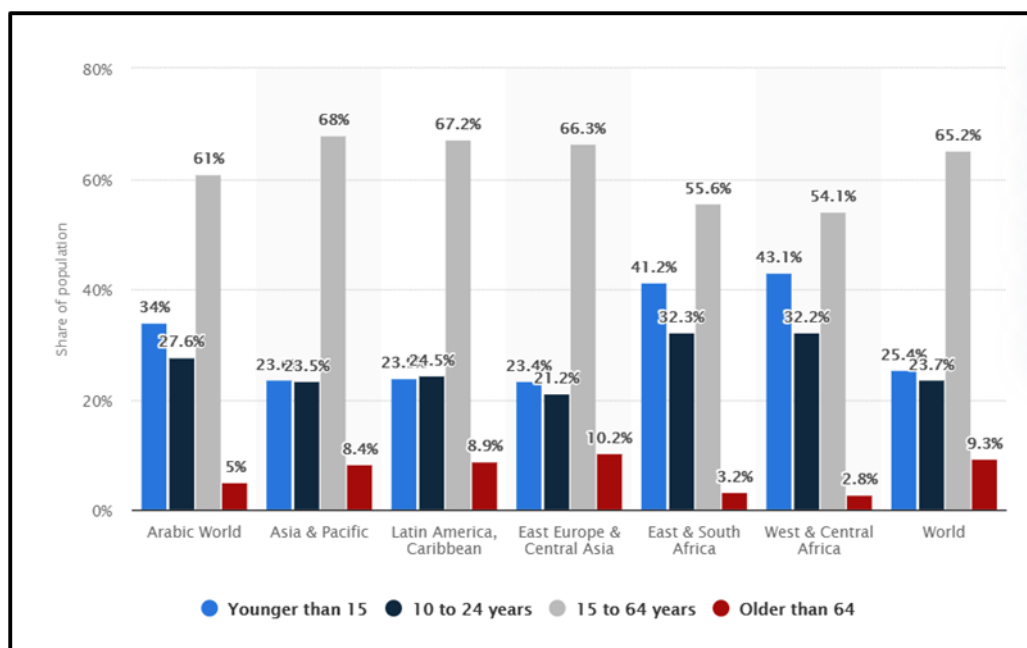


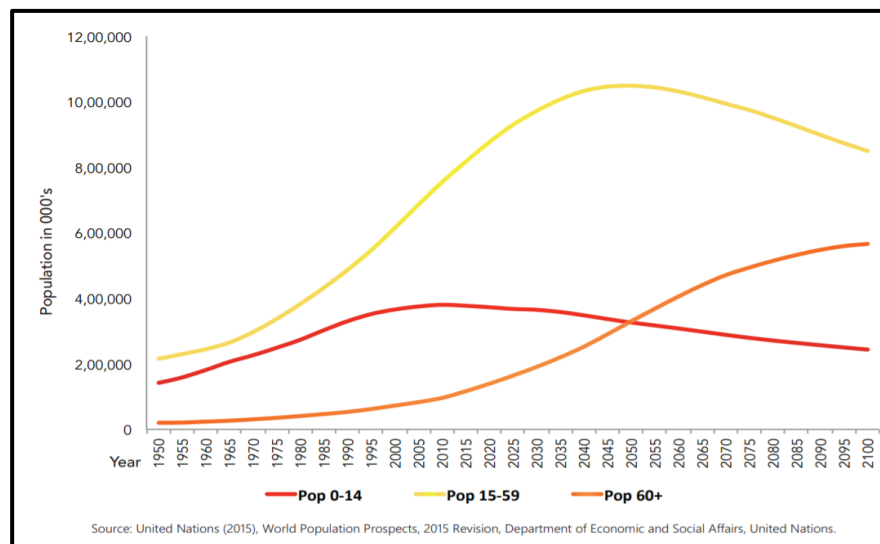
Figure: 1.1

<sup>29</sup> See United Nations, Department of Economic and Social Affairs, Population Division (2015), [https://population.un.org/wpp/publications/files/key\\_findings\\_wpp\\_2015.pdf](https://population.un.org/wpp/publications/files/key_findings_wpp_2015.pdf) (last visited Jul. 30 2015).

<sup>30</sup> United Nations, Department of Economic and Social Affairs, Population Division (2019), <https://www.un.org/en/desa/world-population-prospects-2019-highlights> (last visited Dec. 30 2019).

<sup>31</sup> *Id.*

The above figure<sup>32</sup> portrays the global age wise population in 2020. It clearly indicates an exponential increase in the category of older persons in all regions. It also shows that a percentage of the global population aged above 64 years is 9.3% in 2020.



**Figure: 1.2**

The above figure<sup>33</sup> portrays the rapid increase in the population of persons above 60 years compared to the population of persons aged 15-59 years and 0-14 years for the year 2015.

#### 1.4.2. India

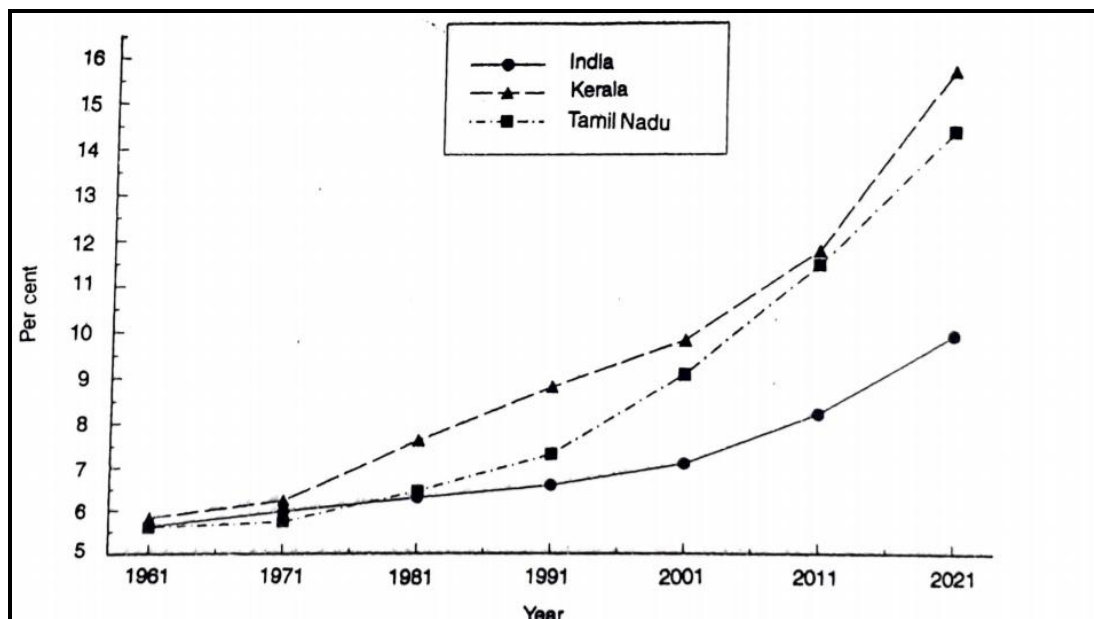
The global phenomenon via-a-vis demographic transition has hit Indian shores as well going by the Indian National Policy on Older persons (NPOP) formulated by the Ministry of Social Justice and Empowerment of the

<sup>32</sup> See STATISTA, <https://www.statista.com/statistics/829732/global-population-by-age/> (last visited Mar.14 2021).The statistic shows the global population as of mid-2020, sorted by age. In mid-2020, approximately 23.7 percent of the global population were aged between 10 and 24 years.

<sup>33</sup> *supra* note 29.



Government of India and adopted by the Union Cabinet on 13<sup>th</sup> February 1999. The proportion of India's 1 billion population aged above 60 years has exceeded 7% and this proportion is expected to surpass 12% by 2025.<sup>34</sup> The National Policy on senior citizens 2011 importantly high lights the demographic transition in the population. Accordingly, in the years 2000-2050 the overall population in India will grow by 55% whereas population of people in the age group 60 years and above will increase by 326% and those in the age group of 80 and above by 700%.<sup>35</sup>



**Figure: 1.3**

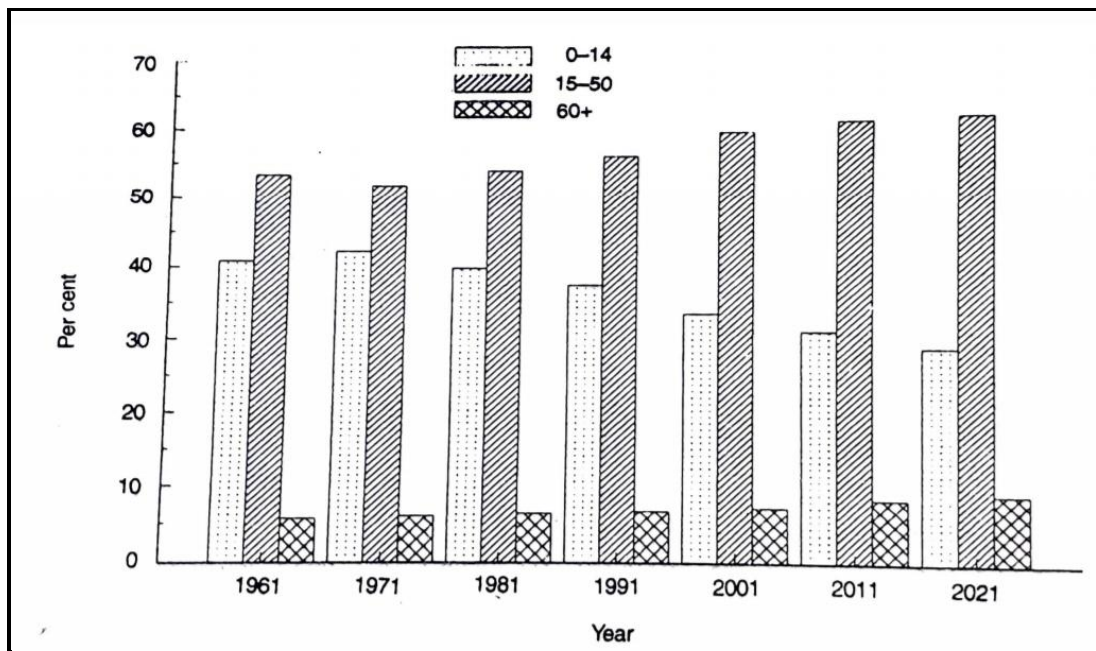
This figure<sup>36</sup> shows the percentage increase in elderly population in India, Kerala and Tamil Nadu for the period 1961-2021. The increase in Kerala is the

<sup>34</sup> See MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT, [www.socialjustice.nic.in](http://www.socialjustice.nic.in) (last visited Jul.7 2015).

<sup>35</sup> *Id.*

<sup>36</sup> See S. IRUDAYA RAJAN, U.S. MISHRA, P. SANKARA SARMA, *INDIA'S ELDERLY, BURDEN OR CHALLENGE* 23 (Sage Publications 1999).

highest much above the national increase and the increase for neighbouring Tamil Nadu.



**Figure: 1.4**

This figure<sup>37</sup> depicts graphically the transition of age composition over the years.

Accordingly, the age group 0-14 shows a steady decline, and the age group 60 plus shows a steady increase between 1961-2021 highlighting low birth rate and low death rate causing the phenomenon of “population ageing.”

The below figure<sup>38</sup> is a population pyramid for India. A ‘population pyramid’ or ‘age-gender pyramid’ graphically illustrates the distribution of population by age groups and gender. Accordingly, the age pyramid graphs for India for 1961, 1991, and 2021 given below demonstrate the exponential increase

<sup>37</sup> *Id.* at 29.

<sup>38</sup> *Id.* at 30.

in the higher age groups over time, the highest being in 2021 of the age group above 70 years in males and females category.

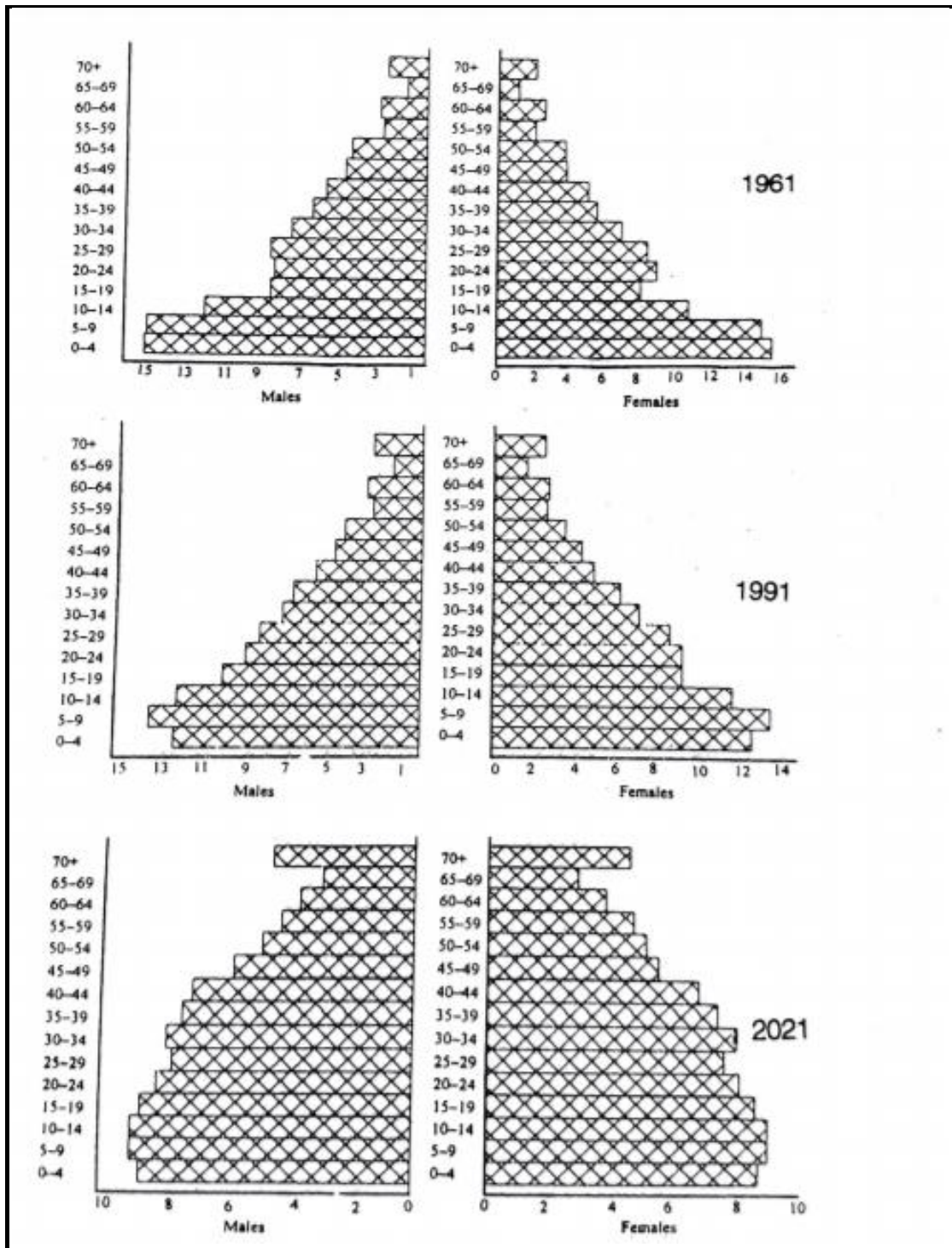


Figure: 1.5

### 1.4.3. Kerala

Among the Indian states Kerala has the largest proportion of elderly population and the growth rate of the aged is increasing higher and higher.<sup>39</sup> Further Kerala is increasingly becoming disproportionately female and the process is characterized by a disproportionate growth of the very old.<sup>40</sup> Hence Kerala is all set to witness a demographic transition with a rise in the proportion of the aged in the total population along with a declining growth rate of population.<sup>41</sup> Kerala's total population as per the 2011 census is around 3.36 crores of which 12.6 per cent are aged above 60 years.<sup>42</sup> Further going by the State Policy on Older Persons 2013 of the Department of Social Justice, Government of Kerala which revised the State Policy on Older Persons of 2006 there has been an exponential increase in the elderly population in the state compared to other states in India. While in 1961 the percentage of elderly people in the total population was 5.83% the corresponding figures in 1991, 2001 and 2011 were 8.82%, 9.79% and 12.83% respectively. Remarkably, the percentage of increase in elderly population was more than the percentage of increase in the total population.<sup>43</sup>

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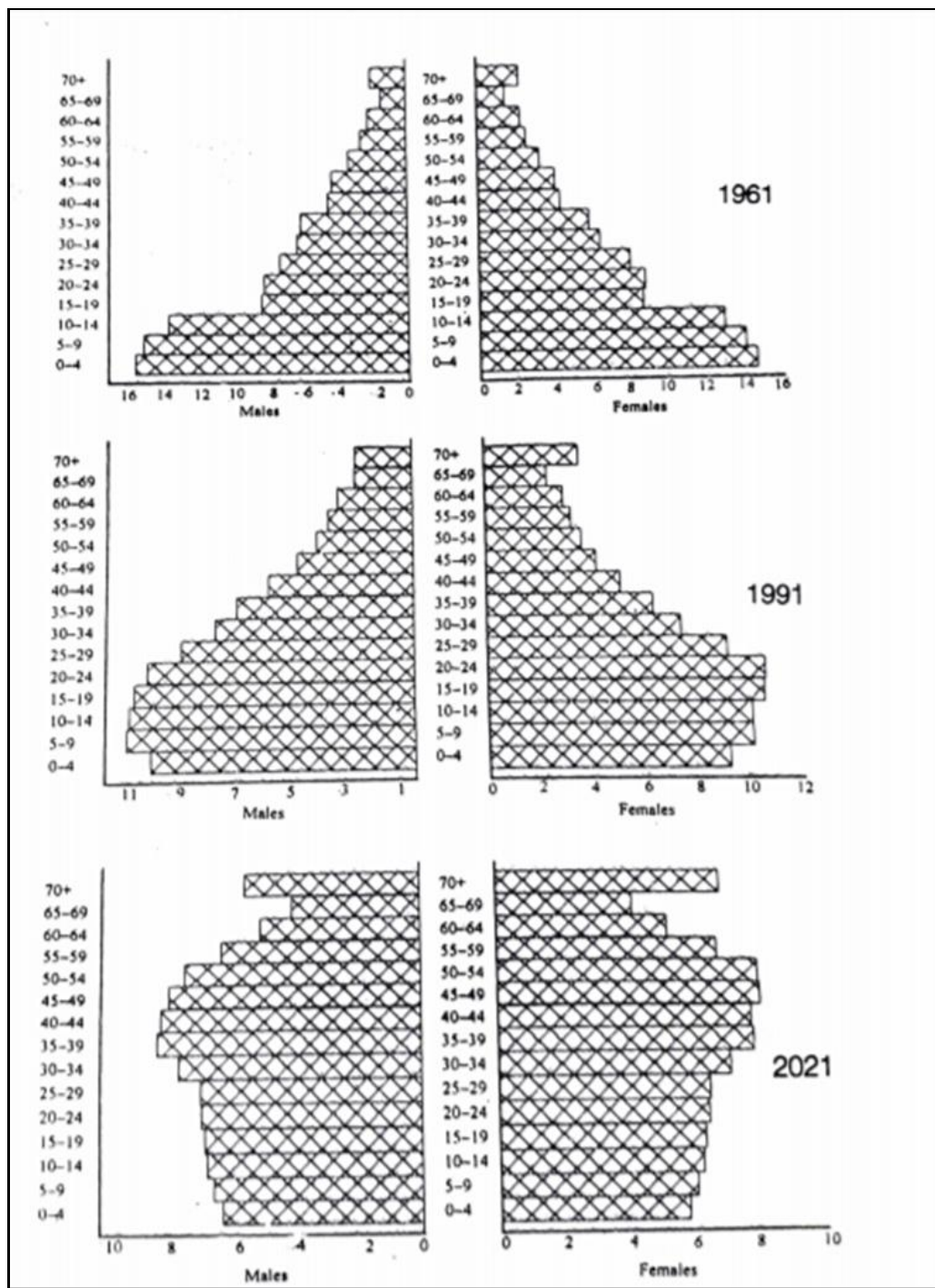
<sup>39</sup> See Rajasi R S, Mathew T, Nujum ZT, Anish T S, Ramachandran R, Lawrence T. *Quality of life and sociodemographic factors associated with poor quality of life in elderly women in Thiruvananthapuram, Kerala*, 60 Indian J Public Health, 210-215 (2016) <https://www.ijph.in/text.asp?2016/60/3/210/189016>.

<sup>40</sup> *Id.*

<sup>41</sup> See BUSINESS STANDARD, [https://www.business-standard.com/article/pti-stories/kerala-population-ageing-fast-survey-114091800463\\_1.html](https://www.business-standard.com/article/pti-stories/kerala-population-ageing-fast-survey-114091800463_1.html) (last visited Jul. 30 2015).

<sup>42</sup> *Id.*

<sup>43</sup> See SOCIAL JUSTICE DEPARTMENT, [www.swd.kerala.gov.in/index.php/policies](http://www.swd.kerala.gov.in/index.php/policies) (last visited Jul. 7 2015).



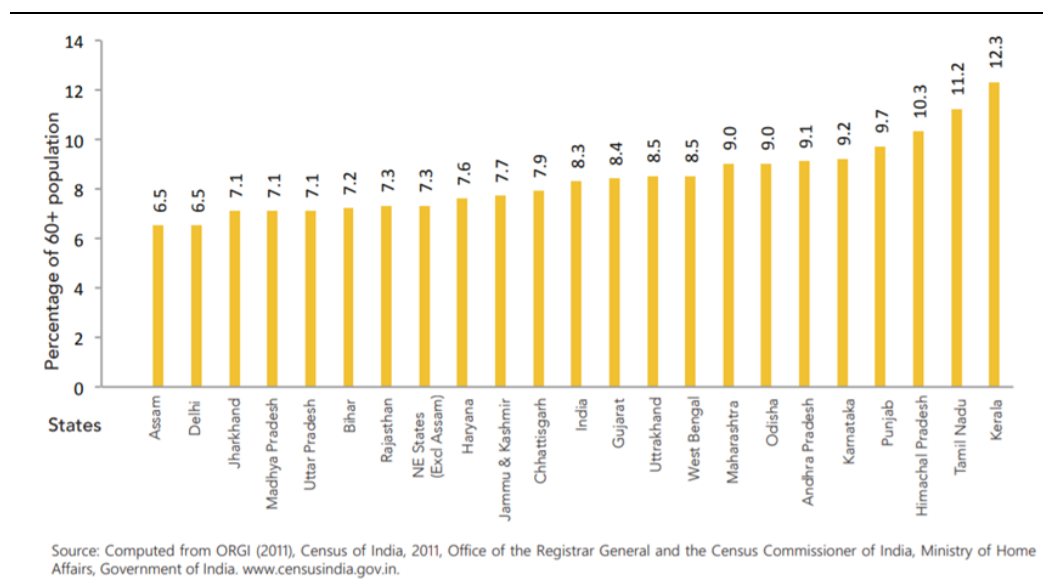
**Figure: 1.6**

The population pyramid of Kerala<sup>44</sup> shown above strikingly reveals the increase in the aged population over the period 1961-1991-2021 the maximum

<sup>44</sup> *supra* note 35, at 183.



being in 2021. It shows a sharp increase in the population of the aged especially above 70 years in 2021.



**Figure: 1.7**

The aforesaid figure<sup>45</sup> which is based in the 2011 national census shows the percentage of population above 60 years in various states in India as well as the national percentage. It reveals that while the national figure is 8.3% the corresponding figure for Kerala, which is highest is 12.3%.

This demographic transition aforesaid has ushered in hitherto unknown and dormant socio-economic problems of welfare and protection of the aged in addition to elder abuse. Elder abuse can be psychological, economic or physical.<sup>46</sup> The problem of elder abuse has assumed alarming proportions going by media reports and other socio-economic data. The report on elder abuse in

<sup>45</sup> See OFFICE OF THE REGISTRAR GENERAL & CENSUS COMMISSIONER, INDIA, <https://www.censusindia.gov.in/> (last visited Dec. 30, 2019).

<sup>46</sup> See generally Dr. K.R. Gangadharan, *Elder Dignity and Abuse: A Global Perspective*, 20, HIRDJ, No.2, 27, 28 (May 2014).

India (2014) prepared by Help Age India, a leading charitable organization working for the welfare of older people in India shockingly reveals the fact that victims of elder abuse amount to 50% of the elderly population and further that the percentage has increased from 23% in 2013 to 50% in 2014.

The report further reveals the fact that 48% of elderly males and 53% of elderly females reported personal experience of abuse in a survey conducted in 12 cities across 8 states in India covering both metro and non-metro cities.<sup>47</sup> The report for 2018 shockingly reveals the fact that nearly one fourth (25%) elders have been victims of elder abuse and that there was no distinction between males and females. It was further revealed that the most common form of abuse experienced was disrespect at 56% followed by verbal abuse at 49% and neglect at 33%. It was also revealed that the main abusers were sons at 52% followed by daughter in law at 34%.<sup>48</sup> Merciless tales of elderly abuse both physical and mental including desertions are reported every other day in newspapers and the media. Spine chilling stories of abuse of the aged by their children and relatives have appeared in the leading newspapers in Kerala.<sup>49</sup> These media reports speak

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<sup>47</sup> See HELP AGE INDIA, [www.helpageindia.org/media/centre/press-release/91 beaten-in-mind-body-spirit](http://www.helpageindia.org/media/centre/press-release/91-beaten-in-mind-body-spirit) (last visited Jul. 30 2015).

<sup>48</sup> See HELP AGE INDIA, <https://www.helpageindia.org/wp-content/uploads/2018/06/ELDER-ABUSE-IN-INDIA-2018-A-HelpAge-India-report.pdf> (last visited May 10 2021).

<sup>49</sup> See Staff Reporter. Rogiaaya Ammaye Swathu Thatti Upeshichu Ennu Parathi: Makanum Marumakalkum Ethirae case. *Malayala Manorama*, August 6 2010; Staff Reporter. Kudumbham Kaivitta Ammayae Nattukkar Rakshapeduthi. *Malayala Manorama*, December 7 2010; Staff Reporter. Makkal Upeshicha Amma Chilkiisa Kittathae Marichu. *Malayala Manorama* December 10 2010; Staff Reporter. Makande Krrroora Mardhanangalkidayillum Amma Yachikkinnu, Makanu Veendi. *Malayala Manorama* July 17 2011; Staff Reporter. Thozhuthil Avashanilayil Kanda Vayodhikayae Adhikrithar Sandharshichu. *Malayala Manorama* June 13 2011; Abandoned Nonagenarian Rescued. *The Hindu*, June 30 2015 ; Man held for Duping Senior Citizen. *The Hindu*, August 1 2015; Seventy-Five-Year-old Beaten up by Daughter in law for Asking her Pension Money in Harippad. *The Times of India* January 31 2017; Seventy Nine year old Woman Gagged, Robbed of Gold Ornaments, *The Times of India*, December 7 2018.

volumes about the cruelty meted out to the elderly by their own relatives and by society. Hence it appears that “elders rights” or “grey rights” are the rights of the “present” and “future” which demand unprecedented and immediate urgent attention. It has been rightly stated that “population ageing” is a universal force that has the power to shape the future as much as globalisation and that forward thinking calls us to embrace the potential of the ageing population as a basis for future development.<sup>50</sup> It is also stated that greying population will prove to be a major development of the 21<sup>st</sup> century and that it will set a new dynamics which is the “grey dynamics” since the world population will reach a plateau and also since the world birth rate will reach below replacement level.<sup>51</sup>

### **1.5. SIGNIFICANCE OF THE TOPIC OF RESEARCH**

Even though ageing as a biological phenomenon was universal from the beginning of human existence, ageing as a social and legal phenomenon gained importance only during the latter half of the 20<sup>th</sup> century when developed countries started facing manifold problems due to demographic changes and population ageing. The demographic transition mentioned above has unleashed a plethora of legal and socio-economic issues pertaining to the protection and welfare of the huge and burgeoning elderly population. The elderly needs nutritious food, adequate clothing, shelter, medical attendance, medical treatment, medicines, and recreation apart from care, love and respect, all of which pose grave problems in the contemporary social milieu of modernisation,

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<sup>50</sup> See UNITED NATIONS, [http://www.un.org/en/events/pastevents/pdfs/Madrid\\_plan.pdf](http://www.un.org/en/events/pastevents/pdfs/Madrid_plan.pdf) (last visited Aug.31 2018).

<sup>51</sup> See ANIL BAGCHI, *THE AGEING WORLD*, 304 (Pearson Longman, 2006).



urbanisation and westernisation. The elderly also needs adequate protection from all forms of abuse physical, mental and psychological. In fact, the elderly are inherently entitled to all basic human rights both civil and political as well as economic, social and cultural. However, they are entitled to certain specific human rights due to their physical and mental vulnerability due to old age like nutritious food, adequate clothing, shelter, safe living environment, medicines, medical attendance and treatment and above all dignity. The core significance of the topic lies in its attempt to understand the extent to which the existing legal framework is successful in protecting the manifold rights and the dignity of the elderly.

The study gives special focus to Kerala, since Kerala has the largest population of the elderly in India and also considering the relatively high socio-economic development indices in Kerala.<sup>52</sup> Kerala has a huge proportion of youngsters working abroad especially in the Gulf countries. Though foreign remittances are the backbone of the state economy a large number of aged parents are left alone especially in Pattanamtitta district. Importantly the existing legislations have given primacy to maintenance or monetary reliefs which caters only to one facet of elders' rights. Consequently, various other valuable rights of elders are not properly addressed by the legal system. The study aims to explore the aforesaid grey area in the legal system.

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<sup>52</sup> See M.P. Muralikrishnan. *Keralam Vaiodhikalidae Naadakinu. Mathrubhoomi*, October 4 2011.

## 1.6. OBJECTIVES OF THE RESEARCH

The proposed study has the following broad objectives:

- To trace the genesis of the rights of the elderly from morality, culture, religion, mythology, and law to ascertain its true import and content.
- To ascertain and identify the entire gamut of rights of the elderly from international legal documents pertaining to human rights.
- To enlist the specific rights of the elderly positive and negative which are to be focused by the legal system.
- To analyse the existing human rights conventions in the international and regional spheres pertaining to elders' rights and to ascertain its level of development and growth trajectory and role of United Nations Organisation.
- To examine the provisions in the Constitution of India and other statutes pertaining to elders' rights and to analyse its efficacy vis-à-vis elders' rights and dignity.
- To evaluate the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act 2007 (MWPSA Act of 2007) and its efficacy in protecting the rights and dignity of elders.
- To analyse the effectiveness and impact of existing executive measures in the form of policies, programmes and schemes in the realm of elders' rights and to ascertain its efficacy.
- To examine the contribution of the judiciary in protecting elders' rights

and dignity.

- To analyse the role of various statutory commissions in protecting the rights of elders and their dignity.
- To critically assess the role played by NGOs and senior citizens organisations in the field of elders' rights promotion and protection.
- To undertake a comparative analysis of the legislations, constitutional and statutory in various other selected jurisdictions pertaining to elders' rights and dignity.
- To undertake an empirical study by empirical methods to evaluate the efficiency of the existing legal framework in the context of protection of the manifold rights of the elderly and their dignity.
- To identify various flaws and lacunas in the legal protection afforded to elderly people.

### **1.7. RESEARCH PROBLEM**

Senior citizens inherently are entitled to all human rights. They are however entitled to certain specific rights, positive and negative due to their vulnerability on account of ageing. There is no International Convention exclusively on the rights of senior citizens. The legal framework in India mainly caters to maintenance. Hence there is the need to understand the gaps in the legal framework and in particular the legal mechanisms for protecting the manifold rights and dignity of senior citizens.

### **1.8. RESEARCH QUESTION**

The demographic phenomenon of “Population Ageing” has unleashed a plethora of socio-legal issues for the elderly. The elderly are entitled to specialized human rights on account of their physical and mental vulnerability. In particular, the elderly requires social security and medical aid. The existing legal framework is mainly based on the concept of maintenance for the aged. The Research question is as follows:

*Whether the existing legal protection mechanisms comprising of statutory and non-statutory mechanisms are adequate to safeguard all the positive and negative rights of senior citizens and their dignity?*

### **1.9. RESEARCH HYPOTHESIS**

The test hypothesis for the study based on the Research Problem and Research Question is as follows:

*The existing legal protection mechanisms comprising of statutory and non-statutory measures is not adequate for safeguarding all the rights and dignity of senior citizens.*

### **1.10. RESEARCH METHODOLOGY**

The study was pursued by a combination of the doctrinal method, the empirical method, and the comparative method. The doctrinal method comprises of the study of relevant legislations, judicial precedents, legal and jurisprudential doctrines. Since the topic is inextricably linked to sociology, the social science method of empirical research is adopted. The survey based on semi-structured

questionnaire method is adopted for obtaining ground level data which will prove vital in arriving at conclusions regarding the efficacy of the legal framework. Since the new legislation of 2007 is at its infancy there will be a dearth of case law on the field for doctrinal analysis. Though the field of elder law is at its nascent stage in India, it is quite advanced in America and other eastern and western countries. Hence a comparative study of the legal framework and statutes in other jurisdictions will be very profitable. In the realm of comparative study two other state legislations in India for the elderly in Himachal Pradesh and in Assam are analysed. While choosing foreign jurisdictions primacy is given to all regions and continents and levels of legal development in the context of their elderly population. Emphasis is given to the United States of America which has a very developed law for the aged, to Japan, the country that has the highest longevity in the world and to Brazil that has a remarkable Constitution and Statute catering to the elderly.

### **1.11. SCOPE AND LIMITATIONS OF THE STUDY**

The universe of the study is the entire population of Senior Citizens in India. Kerala was specifically chosen for the study considering the fact that Kerala has the highest population of Senior Citizens in the country and also the fact that the socio-economic indices in Kerala and particularly in terms of income and health are relatively high.

In the doctrinal study the adequacy and efficacy of the legal framework was analysed mainly on the basis of satisfaction of personal and property rights and remedies particularly through litigations. The level of legal awareness on

relevant legislations was also measured along with the level of satisfaction with the existing legal system. The doctrinal study also explored the genesis of rights of the aged through mythology, religion, morals, jurisprudence, domestic and international law and the legislation of 2007, i.e., the Maintenance and Welfare of Parents and Senior Citizens Act 2007 (MWPSA Act 2007). The study was “rights based” focusing on the need for a regimen of express rights for the aged in the Constitution and statutes.

The empirical field study was conducted to test the findings of the doctrinal study. The empirical study however had some limitations. The level of legal literacy among the aged was abysmally low and hence the majority of the respondents could not give positive answers or even negative answers. For a good majority of questions there was no response and several questions especially pertaining to litigations were left as skipped or unanswered. Further the answers furnished are also not based on firsthand experience of the legal system through litigations and is mostly based on general perceptions. The general trend of answers was the same across all cross sections which is also another limitation. The data collected was not tested using statistical methods.

The secondary data includes the study of human rights documents, Constitution, constituent assembly debates, committee reports, caselaw, statutes, rules, text books, articles, journals, websites, etc.

### **1.12. THEMATIC BREAKUP**

The entire research study is incorporated in ten chapters. Chapter I introduces the topic and discusses the salient features of the work including the

objectives, the research problem, research hypothesis, and methodology. Chapter II deals with the concept of ageing and its multidimensional ambit along with the various theories of ageing. It analyses the evolution of rights of the aged and enlists the positive and negative rights that form the core theme of the study. Chapter III deals with elders' rights in international law and the seminal role of the United Nations Organisation in promoting the rights of the aged. Chapter IV analyses the statutory law in India for protection of elders' rights in the context of Indian Constitution. Chapter V deals with the several other statutes in India for the protection of elders including two state legislations. Chapter VI deals with the revolutionary and exclusive legislation for the aged, i.e., MWPC Act of 2007 and analyses its provisions and case law and proposals for its reform. Chapter VII deals with other legal mechanisms for protection of elders' rights, comprising of policies, programmes, schemes and the role of statutory commissions like Human Rights Commission, Women's Commission and State Commissioner for Persons with Disabilities and also the role of senior citizens associations and NGOs. Chapter VIII deals with elders' rights in various foreign jurisdictions both Constitutional and statutory for a comparative perspective. Chapter IX deals with the empirical study conducted among senior citizens in select rural and urban areas in Kerala. Finally, Chapter X summarises the study and also includes suggestions for legal reforms.

## CHAPTER II

### ELDERS' RIGHTS - CONCEPTUAL ANALYSIS

“Ageing” is a multi-dimensional concept that assumes various meanings in different contexts and across societies and countries depending on cultural and social contexts. There is no universal definition for the concept of “ageing.” Ageing however is a universal biological phenomenon and there are several theories propounded for ageing that sheds light on the complex phenomenon. Rights of the aged rooted in religion and morality evolved jurisprudentially to the present form and they have assumed the character of positive and negative rights. This chapter undertakes a journey of analysis from the concept of “ageing” to the final enlistment of positive and negative rights for further analysis and study.

#### 2.1. CONCEPTUAL ANALYSIS OF AGEING

“Ageing” is the process of growing old in its literal sense going by the Oxford learner's dictionary<sup>1</sup>. However, the medical definition is more elaborate and descriptive. “Ageing” has been defined as the gradual deterioration of a mature organism resulting from time dependant irreversible changes in structure that are intrinsic to the particular species and which eventually leads to decreased ability to cope with the stress of the environment thereby increasing the probability of death.<sup>2</sup>

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<sup>1</sup> See OXFORD LEARNER'S DICTIONARIES, [www.Oxfordlearnersdictionaries.com](http://www.Oxfordlearnersdictionaries.com) (last visited Aug.2 2015).

<sup>2</sup> See MEDILEXION, [www.medilexion.com](http://www.medilexion.com) (last visited Aug.2 2015).



There is no universally accepted definition of the process of ageing. Bernard Strehler, a well-known American Gerontologist has defined “ageing” by means of four postulates:

- a. **Is universal**; a phenomenon associated with the process of ageing must occur in different degrees in all individuals of a species.
- b. **Must be intrinsic**; the causes that are the origin of ageing must be endogenous and they must not depend on extrinsic factors.
- c. **Must be progressive**; changes that lead to ageing must occur progressively throughout the life span.
- d. **Must be deleterious**; a phenomenon associated with ageing will only be considered as part of the process if it is bad for the individual.

Hence ageing under the definition is conceptually considered to be a universal, intrinsic, progressive and deleterious process.<sup>3</sup>

According to Phelps and Henderson, old age is a natural and normal condition. Its pathologies are the same as those that occur at any other age period, but they are intensified by illness, family disorganization, unemployability, reduced income and dependency.<sup>4</sup>

Handler defined ageing as the deterioration of a mature organism resulting from the dependent essential irreversible change, intrinsic to all members of a

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<sup>3</sup> See Viña J, Borrás C, Miquel J. Theories of Ageing, 59, IUBMB Life. 249 (2007), [wwwonline.library.wiley.com](http://wwwonline.library.wiley.com).

<sup>4</sup> See S. DAYABATI DEVI, AMRITA BAGGA, AGEING IN WOMEN - A STUDY IN NORTH-EAST INDIA, (Mittal Publications 2006).

species, such that with the passage of time they become increasingly unable to cope with the stresses of environment thereby increasing the probability of death.<sup>5</sup>

Smith defined ageing processes as those, which render the individuals most susceptible (as they grow older) to the various intrinsic and extrinsic factors, which may cause death.<sup>6</sup>

Timiras defined ageing as a decline in physiological competency that inevitably increases the incidence and intensifies the effects of accidents, diseases and other forms of environmental stress.<sup>7</sup>

Birren and Renner, well known psychologists refer to ageing as the sum of regular changes that occur in mature genetically representative organisms living under representative environmental conditions as they advance in chronological age.<sup>8</sup>

Alex Comfort has stated that “ageing is characterised by a failure to maintain homeostasis under conditions of physiological stress and that this failure is associated with a decrease in viability and an increase in vulnerability of the individual”.<sup>9</sup>

It is widely accepted that there are four dimensions for ageing. They are:

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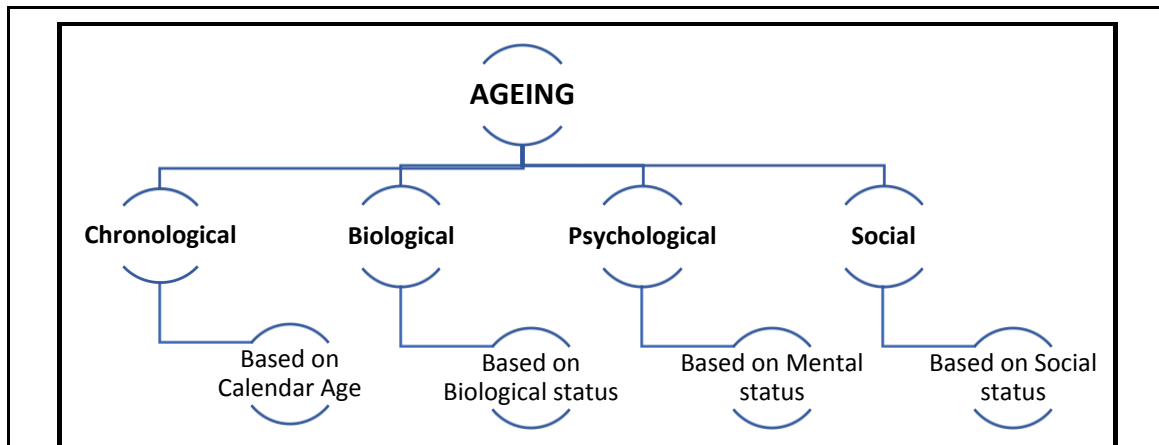
<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*



**Figure: 2.1**

**Chronological Ageing** refers to the number of years a person has lived. It is generally not considered as a measure of the extent of ageing since as a process it varies from person to person.

**Biological Ageing** refers to the biological events occurring over time that impair the physiological system lowering immunity to disease and accelerating death. It is linked to decline in the functioning of the vital organs of the body.

**Psychological Ageing** refers to the changes that occur during adulthood affecting the mental functioning of a person and his mental faculties.

**Social Ageing** refers to the changes in the social roles and social relationships as one ages and passes through the different stages in the life cycle.

It is significant to note that different cultures express age in different ways. Different stages of life are described using different terms like infancy, childhood, pre-adolescence, adolescence, early adulthood, middle adulthood and late adulthood. Most legal systems define a specific age for various human activities like voting age, drinking age, driving age, age of majority, age of criminal responsibility, marriageable age, age of candidacy and mandatory

retirement age. Each nation, government and non-governmental organization has different ways of classifying age. In other words, chronological age is different from social age and biological age. It is significant to note that different cultures treat 'ageing' in different ways. Though a majority of cultures treat 'ageing' as a positive facet of the life process, even in India there are cultures that treat the aged and ageing process as a negative phenomenon and as a burden. In neighbouring Tamil Nadu for instance, the aged are viewed as a liability or burden and the ancient inhuman practise of '**thalaikoothal**' or putting the aged to death is still prevalent.<sup>10</sup> Hence 'ageing' is inextricably linked to culture of the society and its social mores and values.

Most developed countries have accepted the chronological age of 65 years as a definition of elderly or older person. At the moment there is no United Nations Organisation (UN) standard numerical criterion, but the UN agreed cut off is 60 plus to refer to the older population.<sup>11</sup>

In India, the statutory age for becoming a senior citizen is 60 years going by the MWPC Act of 2007<sup>12</sup>.

The aforementioned concepts of ageing are crucial for an understanding of the biological reality of a process that is inevitable and irreversible, and it also sheds light on the compelling need for a rights-based approach for elders similar to that for children and women in all jurisdictions. In fact, the legal

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<sup>10</sup> See Shinto Joseph. Thalaikoothal. *Malayala Manorama* April 24 2016; Dennis. S. Jesudasan. Thalaikoothal: Death in 26 Ways, *The Hindu* Feb 18 2016.

<sup>11</sup> See WORLD HEALTH ORGANISATION, [www.who.int](http://www.who.int). (last visited Aug.2 2015).

<sup>12</sup> See Maintenance and Welfare of Parents and Senior Citizens Act, 2007, § 2 cl. h.

developments during the 20<sup>th</sup> century were mainly centred around child rights and women's rights and it is only during the late 1990's that an awareness has come about, thanks to the UN for the promotion of rights of the elderly in the context of the demographic transition in favour of the elderly discussed above. The key and vital contribution made by the UN will be discussed below in the next chapter.

It is no exaggeration to state that the rights of elders are the rights of the future which call for urgent and unprecedented attention and if the 20<sup>th</sup> century was the century of child and women's rights the 21<sup>st</sup> century is the century for 'elders rights.'

**2.2. THEORIES OF AGEING**



**Figure: 2.2**

Theories of ageing fall under two main groups (1) Biological theories and (2) Non-Biological theories.

### **2.2.1. Biological Theories**

Biological theories are theories that explain ageing as a complex biological process in which changes at the molecular, cellular and organ levels result in degeneration of biological activities.

Current biological theories of ageing in humans fall into two main categories. The first is the programmed ageing theories and the second is the damage theories.<sup>13</sup>

- **Programmed Ageing Theories**

These theories state that ageing follows a biological timetable which is a continuation of the one that regulates childhood growth and development. This regulation would depend on changes in gene expressions that affect the systems responsible for maintenance, repair and defence responses. The theory asserts that ageing is programmed into human systems and that ageing is about evolution and not about biology. The main programmed Ageing theories are the telomeric theory, genetic ties theory, diet theory, m TOR theory, evolutionary theory, reproductive cell cycle theory and autoimmune theory.

- **Telomere Theory**

Telomeres are bits of junk DNA located at the end of the chromosomes and

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<sup>13</sup> See WIKIPEDIA, [www.wikepideia.org](http://www.wikepideia.org) (last visited Jan.1 2017).

they protect the real DNA every time cells divide. As cells divide the telomeres become shorter and shorter and disappear. As a result, the real DNA cannot be copied and the cell ages losing power to replicate stopping cell divisions.<sup>14</sup>

- **Genetic Ties Theory**

Genetic Ties theory states that lifespan is largely determined by the genes we inherit. According to this theory, longevity is primarily determined at the moment of conception and is largely reliant on parents and genes.<sup>15</sup> The basis behind the theory is that segment of DNA that occurs at the end of chromosomes called Telomeres determine the maximum lifespan of a cell. Telomeres become shorter and shorter and eventually the cells cannot divide without losing important pieces of DNA resulting in ageing.

- **Diet Theory**

Diet theory postulates that calorie or dietary restriction will lead to longevity. Accordingly, a reduction of particular or total nutrient intake without causing malnutrition will increase lifespan. The theory suggests that animals invest in maintaining and repairing the body in times of low food availability to await times when food availability increases again.<sup>16</sup>

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<sup>14</sup> See Mark Stibich, *The Telomere Theory of Aging -What Happens As Cells Divide*, VERYWELL HEALTH (2020), <https://www.verywellhealth.com/telomere-shortening-the-secret-to-aging-2224346>.

<sup>15</sup> See Mark Stibich, *What Is the Genetic Theory of Aging? How Genes Affect Aging and How You May Alter Your Genes*, VERYWELL HEALTH (2020), <https://www.verywellhealth.com/the-genetic-theory-of-aging-2224222>.

<sup>16</sup> See TECHNOLOGY WORKS, <https://www.technologynetworks.com/applied-sciences/news/established-theory-of-diet-impact-on-lifespan-challenged-331344> (last visited Jan.13 2021)

- **mTOR Theory**

mTOR theory is based on the mechanistic target of rapamycin a controlling hub at the centre of nutrient sensing and signalling in cells that govern cellular growth, protein synthesis and degradation. The mTOR pathway is a central regulator of metabolism and philosophy and decreased TOR activity has been found to increase lifespan.<sup>17</sup>

- **Evolutionary Theory**

The Evolutionary theory holds that ageing is an evolutionary phenomenon stemming from the need to replace the old to make room for the new generation. It is based on Darwin's concept of natural selection.

- **Reproductive Cell Cycle Theory**

The Reproductive Cell Cycle theory states that the hormones that regulate reproduction act in an antagonistic pleiotrophic manner to control ageing through cell cycle signalling. Accordingly, growth and development are the focus early in life for achieving reproduction. However, later in life there is a futile attempt to promote reproduction leading to dysregulation and senescence. According to this theory reproduction is the most important function of an organism and reproductive cell cycle signalling factors determine the rate of growth, rate of development, rate of reproduction and rate of senescence.<sup>18</sup>

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<sup>17</sup> See WIKIPEDIA, <https://en.wikipedia.org/wiki/MTOR> (last visited Jan.13 2021).

<sup>18</sup> See Atwood CS, Bowen RL, *The reproductive-cell cycle theory of aging: an update*, 46 Exp Gerontol. 100 (2011), <https://pubmed.ncbi.nlm.nih.gov/20851172>



- **Autoimmune Theory**

The immunological theory of ageing asserts that the process of human ageing is a mild and generalised form of a prolonged autoimmune phenomenon. According to this theory ageing involves a highly complex series of process which are largely controlled by the immune system.<sup>19</sup>

- i. **Damage Theories or Error Theories**

The damage theories emphasize environmental assaults to living organism that induce cumulative damage at various levels as the cause of ageing. The theory states that ageing is the result of accumulation of errors in cellular molecules that are essential for cellular function and reproduction that eventually reaches a catastrophic level incompatible with cellular survival. The main damage theories are DNA damage theory, accumulative waste theory, wear and tear theory, error accumulation theory, cross linkage theory, free radical theory and the mis repair accumulation theory.<sup>20</sup>

- **DNA Damage Theory**

DNA Damage theory proposes that ageing is a consequence of unrepaired accumulation of naturally occurring DNA damages. Damage is a DNA alteration that has an abnormal structure. Though both mitochondrial and nuclear DNA change can contribute to aging the theory is focused on nuclear DNA damage. Nuclear DNA damage can contribute to aging either directly by increasing cell

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<sup>19</sup> See VERYWELL HEALTH, <https://www.verywellhealth.com/immunologicaltheoryofageing2224224#> (last visited Jan.13 2021).

<sup>20</sup> See WIKIPEDIA, [www.wikepideia.org](http://www.wikepideia.org) (last visited Jan.13 2021).

dysfunction or indirectly by increasing apoptosis or cellular senescence.<sup>21</sup>

- **Accumulative Waste Theory of Ageing**

The theory also known as disposable soma theory of ageing states that organisms age due to an evolutionary trade-off between growth, reproduction and DNA repair maintenance. This theory states that an organism only has a limited amount of resources that it can allocate to its various cellular processes and hence a greater investment in growth and reproduction would result in reduced investment in DNA repair maintenance leading to increased cellular damage, shortened telomeres, accumulation of mutations compromised stem cells and ultimately senescence.<sup>22</sup>

- **Wear and Tear Theory of Ageing**

The Wear and Tear theory of ageing asserts that the effects of ageing are caused by progressive damage to cells and body systems over time. Accordingly, bodies “wear out” due to user and once they wear out, they cannot function correctly. This theory is also referred to as simple deterioration theory or fundamental limitation theory.<sup>23</sup>

- **Error Accumulation Theory**

The theory related to DNA replication and translation states that when mistakes occur in the enzymes and other proteins responsible for synthesizing

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<sup>21</sup> See DNA REPLICATION SYSTEM, <https://sites.google.com/site/dnareplicationsystem/dna-damage-theory-of-aging> (last visited Apr.4 2021).

<sup>22</sup> See H+PEDIA, [https://hpluspedia.org/wiki/Waste\\_Accumulation\\_Theory\\_of\\_Aging](https://hpluspedia.org/wiki/Waste_Accumulation_Theory_of_Aging) (last visited Apr.18 2021).

<sup>23</sup> See Mark Stibich, *The Wear and Tear Theory of Aging*, VERYWELL HEALTH (2020), <https://www.verywellhealth.com/wear-and-tear-theory-of-aging-2224235>.

DNA and RNA or in the protein synthesizing machinery itself it could lead to an increasing cascade of errors referred to as error catastrophe. While the error rate will be low in young individuals it will be more in older individuals.<sup>24</sup>

- **Cross Linking Theory**

The theory is also referred to as Glycosylation Theory of Ageing. Under this theory it is the building of glucose to protein that causes problems. Once the binding has occurred the protein becomes impaired, and it cannot function efficiently. A longer life will lead to the increased possibility of oxygen meeting glucose and protein causing disorders.<sup>25</sup>

- **Misrepair Accumulation Theory of Ageing**

The theory emphasises that it is misrepair and not the original damage that accumulates and leads to ageing and also that ageing can occur at different levels and that aging of the body takes place at the tissue level and not necessarily at the cellular level. The theory unifies the understanding of the roles of environmental damage, repair, gene regulation and multicellular structure in the aging process.<sup>26</sup>

- **Free Radical Theory**

The Free Radical theory asserts that many of the changes that occur as

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<sup>24</sup>See MEDICINE.JANK.ORG, <https://medicine.jrank.org/pages/1760/Theories-Biological-Aging-Error-Catastrophe.html> (last visited Apr.18 2021).

<sup>25</sup>See ANTI-AGING-TODAY.ORG, <http://anti-aging-today.org/research/aging/theory/cross-linking.htm> (last visited Apr.18 2021).

<sup>26</sup> See FIGHT AGING, <https://www.fightaging.org/archives/2009/04/the-misrepair-accumulation-theory-of-aging/> (last visited Apr.18 2021).

bodies age are caused by free radicals. Damage to DNA, protein cross linking and other changes have been attributed to free radicals. Accordingly, over time the damage accumulates and causes ageing. Free radicals are highly reactive and unstable molecules that are produced in the body naturally as a by-product of metabolism or by exposure to toxins in the atmosphere. Free radicals live only for a fraction of a second but during that time can damage the DNA.<sup>27</sup>

The biological theories of ageing though not directly relevant provide valuable insights on the inevitable, irreversible biological process of ageing and how the human body degenerates with age. It exposes the inherent vulnerability of old age both physical and mental of the human being and the need for specific human rights for the aged like children.

### **2.2.2. Non-biological Theories**

The non-biological theories or psychosocial theories attempt to explain changes in behaviour, roles and relationships that occur as individuals age. The non-biological theories fall into four categories. They are activity theory, continuity theory, disengagement theory and selectivity theory.

- **Activity theory**

The activity theory or the normal theory proposes that successful ageing occurs when older adults stay active and maintain social interactions. It takes the view that the ageing process is delayed, and the quality of life is enhanced

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<sup>27</sup> See Lynne Eldridge, *Free Radicals: Definition, Causes, Antioxidants, and Cancer What Exactly Are Free Radicals and Why Are They Important?* VERYWELL HEALTH (2020), <https://www.verywellhealth.com/information-about-free-radicals-2249103>.

when old people remain socially active.

- **Continuity theory**

The continuity theory states that older adults will usually maintain the same activities, behaviours, personalities and relationships as they did in their earlier years of life. According to this theory older adults try to maintain this continuity of lifestyle by adopting strategies that are connected to their past experiences.

- **Disengagement theory**

The disengagement theory states that it is an inevitable, mutual withdrawal or disengagement resulting in decreased interaction between the ageing person and others in the social system he belongs to. The theory claims that it is natural and acceptable for older adults to withdrawn from society.

- **Selectivity theory**

The selectivity theory or the socio emotional selectivity theory maintains that as the time horizons shrink people become increasingly selective investing greater resources in emotionally meaningful goals and activities. Older adults place a higher value on emotional satisfaction and hence often spend time with familiar individuals with whom they have had rewarding relationships. This selective narrowing of social interaction maximizes positive emotional experiences and minimizes emotional risks as individuals become older.<sup>28</sup>

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<sup>28</sup> See Löckenhoff CE, Carstensen LL, *Socioemotional selectivity theory, aging, and health: the increasingly delicate balance between regulating emotions and making tough choices*, 72 JPERS 1395 (2004), <https://pubmed.ncbi.nlm.nih.gov/15509287/>.

Though many theories of ageing have been propounded currently there is no consensus on this issue. Many of the theories interact with each other in a complex manner. It is possible to promote successful ageing by understanding the theories of ageing. The concepts and theories of ageing helps to understand the complex biological process of ageing and its social and legal consequences. In fact, “ageing” is a multidimensional concept and phenomenon which has different dimensions based on social and cultural factors. It is hence difficult to fix a standard cut off age for the aged. Further the problems of the aged vary based on their level of competency, physical and mental. While the “young old” are largely vibrant and productive, that is between 60-70, “the oldest old”, that is above 80 or 90, are mostly incompetent both physically and mentally and their condition worsens once they cross 90 years. Hence legal protection mechanisms are to be designed on the basis of the aforesaid concepts and theories of ageing for effective results and they should also be flexible to cater to the different age segments of the elderly. The theories and concepts guide the evolution of legal protection mechanisms in its proper perspective.

### **2.3. RIGHTS OF ELDERS: JURISPRUDENTIAL ANALYSIS**

Salmond has distinguished moral and legal rights in his classic work on Jurisprudence.<sup>29</sup> Accordingly, a moral or natural right is an interest recognised and protected by a rule of morality, an interest the violation of which would be a moral wrong and respect of which a moral duty. A legal right on the other hand

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<sup>29</sup> See SALMOND, SALMOND ON JURISPRUDENCE, 218 (12<sup>th</sup> ed. 2007).

is an interest recognised and protected by a rule of law, an interest the violation of which would be a legal wrong and respect for which is a legal duty. Rights according to Salmond are concerned with interests protected by the rules of right, legal or moral<sup>30</sup>. For an interest to become the subject of a legal right it must obtain both legal protection and legal recognition. According to Salmond, every right carries with it a corresponding duty and a duty is an act which one ought to do and the opposite of which would be a wrong and duties are also either moral or legal.<sup>31</sup>

According to Hibbert a right is a person's capacity of obliging others to do or forbear by means not of one's own strength but by the strength of a third party and if the third party is God the right is divine, if the third party is the public generally acting upon the right, the right is moral and if the third party is the state acting directly or indirectly the right is legal.<sup>32</sup>

According to Gray a legal right is that power that a man has to make a person or persons do or refrain from doing a certain act or acts so far as the power arises from society imposing a legal duty upon a person or persons.<sup>33</sup>

According to Holland a right is a capacity residing in one man of controlling with the assent and assistance of the state, the actions of other.<sup>34</sup> Holland distinguished moral and legal rights and held that in the case of moral rights all depends on the readiness of public opinion and in the case of legal

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<sup>30</sup> *Id.* at 217.

<sup>31</sup> *Id.* at 216.

<sup>32</sup> *See* V.D. MAHAJAN, JURISPRUDENCE AND LEGAL THEORY, 252 (5<sup>th</sup> ed. 2020).

<sup>33</sup> *Id.* at 252.

<sup>34</sup> *Id.* at 253.

rights all depends on the readiness of the state to exert its force on behalf of the holder of the right.

Salmond has classified rights into positive rights and negative rights. Accordingly, a positive right corresponds to a positive duty and is a right that he on whom the duty lies shall do some positive act on behalf of the person entitled. A negative right corresponds to a negative duty and is a right that the person bound shall refrain from some act which would operate to the prejudice of the person entitled. The former is a right to be positively benefitted and the latter is a right not to be harmed. According to Salmond the distinction is of practical importance, and it is easier and necessary for the law to prevent infliction of harm than to enforce positive beneficence.<sup>35</sup>

Coming to morality and law it is significant that in ancient times there was no distinction between law and morals and Indian jurists in ancient India did not make any distinction between law and morals.<sup>36</sup>

In Europe, the Greeks and the Romans recognised certain moral principles as the basis of law. During the Middle Ages Christian morality was considered the basis of law. During the 17<sup>th</sup> and 18<sup>th</sup> centuries theories of natural law had a moral foundation and the law was linked with morals. Jurists like Austin and Kelsen of the 19<sup>th</sup> century were of the view that law had nothing to do with morals.

However modern sociological jurisprudence studies morals also although

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<sup>35</sup> *supra* note 29, at 235.

<sup>36</sup> *supra* note 32, at 85.



a distinction is drawn between law and morals. Roscoe Pound was of the view that law and morals have a common origin, but they diverge in their development<sup>37</sup> and Bentham was of the view that law has the same centre as morals, but it has by no means the same circumference<sup>38</sup>.

Dean Roscoe Pound has described four stages in the development of law with respect to morality:

1. The stage of undifferentiated ethical custom, customs of popular action, religion and law or the pre legal stage where law and morals are the same.
2. The stage of strict law codified or crystalised which in time is outstripped by morality and has not sufficient power of growth to keep abreast.
3. The stage of infusion of morality into the law and reshaping it by morals.
4. The stage of conscious, constructive law making in which morals and morality are for the law maker and law alone is for the judge.<sup>39</sup>

Paton has rightly observed that when the law lags behind popular standards it falls onto disrepute and if the legal standards are too high there are difficulties of enforcement.<sup>40</sup> Morals are also considered to be the end of law as the aim of law is to secure justice which is based on morals. “Dharma” in Sanskrit is synonymous with law and which is the basis of Hindu philosophy is based on morals and “Dharma” implies morals. Finally coming to legal enforcement of

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<sup>37</sup> *Id.* at 86.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 91.

<sup>40</sup> *Id.* at 92.

morals and as to whether the fact that a conduct which is by common standards immoral should be made punishable by law, though there is divergence of opinion among jurists the predominant view supported by Lord Devlin and H.C.A Hart is that such acts should be punishable since morality is essential for any society to survive.<sup>41</sup> Hence moral considerations play an important part while making law, interpreting law and exercising judicial discretion. It is rightly observed that no legislature will dare to make a law which is opposed to the morals of society.<sup>42</sup> The sociological approach is very much concerned with the end to be pursued by law and morals have become a very important study subject for good law making.<sup>43</sup>

The concept and evolution of rights of elders in India is inextricably linked to morality. In fact, until the enactment of the MWPC Act 2007 the rights of elders were entirely in the realm of morals and “Dharma.”

According to ancient Hindu jurisprudence “Dharma” includes not only what is known as law in the modern sense of the term but all rules of good and proper human conduct. “Dharma” consisted of both the elements of morality and religion. “Dharma” was considered as righteousness and the path which is in conformity with a man’s inner and true nature and which leads him on to salvation in his own unique way.<sup>44</sup> The concept of “Dharma” was broad based and had a wide meaning and it included law, custom, usage, morality, virtue,

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<sup>41</sup> *Id.* at 93-94.

<sup>42</sup> *Id.* at 94.

<sup>43</sup> *Id.*

<sup>44</sup> *See* DR. S.R. MYNENI, JURISPRUDENCE (LEGAL THEORY), 24 (2nd ed. 2004).

religion, deity, piety, justice and righteousness. Hence Dharma implied much more than what law connotes and it is regarded as one of the most outstanding notions of Indian philosophy.<sup>45</sup>

It is the moral precept that the young should look after the old and should care and protect the old. There was no positive law prescribing the rights of the aged and the duties of the young. Jurisprudentially Indian society is presently in the second stage of the transition laid down by Dean Roscoe Pound where the legislation has crystallised some of the rights of the aged for the first time based on moral precepts. Obviously, the law has to be fine tuned on the basis of existing moral precepts to attain maturity in the coming years to enter the third and fourth stages of jurisprudential transition. The realm of elders' rights in human rights is one area that is traditionally, historically and religiously most associated with morality and hence any jurisprudential study of elder rights and its evolution would be incomplete without reference to morality.

The jurisprudential study of rights sheds light on the real legal basis of the rights, its true nature and import and its characteristics. It explains the seminal transformation of rights from religious tenets and morality to legal rights and also the classification of such rights as positive rights and negative rights for a proper legal analysis.

#### **2.4. EVOLUTION OF ELDERS' RIGHTS**

The aged until recently were never considered as a vulnerable group

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<sup>45</sup> *Id.* at 28.

entitled to special legal rights. They were considered as ordinary human beings who are entitled to all human rights inherently as human beings. It was during the last decade of the 20<sup>th</sup> century that there evolved an international recognition for the need for special rights specifically for the aged on account of their physical and mental vulnerability. The UN was at the forefront of such a movement and initiated two world assemblies on ageing in 1982 and 2002 in Vienna and Madrid respectively paving ground for a new era of human rights for the aged. India was also influenced by the development and framed a policy in 1999 which eventually culminated in the specific legislation of 2007. This segment hence will trace the evolution of rights of the elderly from the ancient era of religious and moral tenets to the era of specific legislation for the aged.

#### **2.4.1. India**

Prior to Independence, there was hardly any legislation catering to the rights of elders that is worth mentioning. Even the Cr. P C of 1898, dealt only with the maintenance of wives and children and it did not cater to parents.<sup>46</sup> The Constitution of India contains nominal and minimal provisions for the aged in Part IV under the Directive Principles of State Policy. Understandably this socio-legal problem did not engage the attention of the framers of the Constitution considering the socio-cultural mores of Indian society in the 1940's when joint family systems were the social norm. A perusal of the debates of the Constituent Assembly will reveal the fact that Article 41 of the Constitution which

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<sup>46</sup> See RATAN LAL & DHIRAJ LAL, THE CRIMINAL PROCEDURE CODE 1898, 384 (7<sup>th</sup> ed. 1952).

corresponds to Article 32 of the Draft Constitution was incorporated in the Constitution without any discussion worth mentioning.<sup>47</sup> By introducing the Draft Constitution in the Constituent Assembly earlier on November 4, 1948, Dr. B.R. Ambedkar had asserted that the directive principles were not “useless” and that the elected representatives would be answerable before the electorate in the event of ignoring the principles.<sup>48</sup>

The emphasis was laid on the rights of women and children and their constitutional protection.<sup>49</sup> The demographic transition discussed above and the international developments which will be discussed below impelled the law makers to amend the Cr. P C and to introduce Section 125 (1) (d) for maintenance of parents along with wives and children. This change in the law was pursuant to the Report of the Joint Committee on the Code of Criminal Procedure Bill of 1973. Earlier at the time of codification of Hindu laws, the Hindu Adoption and Maintenance Act 1956 was enacted which catered to the maintenance of aged and infirm parents of persons belonging to Hindu religion. Other religions were governed by their personal laws. A major impetus came about pursuant to the commemoration of the year 1999 as the International year of Older Persons under the auspices of the UN and after the revolutionary first World Assembly on Ageing held in Vienna in 1982. The National Policy on Older Persons was formulated in 1999 in the aforesaid backdrop and later the National Policy of

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<sup>47</sup> See 7 CONSTITUENT ASSEMBLY DEBATES, Book no. 2, (4 Nov 1948 – 8 Jan 1949). It was discussed on Tuesday, 23 November 1948.

<sup>48</sup> See DR. SUBASH. C. KASHYAP, THE FRAMING OF INDIA’S CONSTITUTION A STUDY, 329 (2<sup>nd</sup> ed. 2004).

<sup>49</sup> See INDIA CONST. art.15 cl.3 allows to make special provisions for protective discrimination favoring women and children.

Senior Citizens was formulated in 2011 after the second World Assembly on Ageing in Madrid, Spain in 2002. The defining moment was the enactment of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 which came into force in Kerala on 24.8.2008. Hence the evolution of elder law jurisprudence in India can be traced partly to the demographic transition of the elderly population and its socio-legal problems and partly to international developments.

To conclude it can be stated that elder law jurisprudence in India is at its infancy when compared to many other countries especially the United States of America which enacted a comprehensive legislation namely the Older American's Act of 1965, thirty years after the enactment of the Social Security Act in 1935. It is noteworthy that the United States has already celebrated the 50<sup>th</sup> anniversary of the said Act of 1965 in 2015.

#### **2.4.2. International Law**

The evolution of elder law jurisprudence at the international level can be traced mainly to the initiatives of the UN and after the two World Wars. The core mandate of the Charter of the UN is to reaffirm faith in fundamental human rights and in the dignity and worth of the human person<sup>50</sup>. The three seminal human rights instruments of the UN, viz., the Universal Declaration of Human Rights, 1948 (UDHR), the International Covenant on Civil and Political Rights, 1966 (ICCPR) and the International Covenant on Economic, Social and Cultural

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<sup>50</sup> See UNITED NATIONS, <https://www.un.org/en/about-us/un-charter/full-text>. (last visited Aug.31 2018).

Rights, 1966 (ICESER) though underscores the inherent dignity of all human beings including the elderly does not contain express and visible provisions for the elderly. The first major initiative was taken by virtue of resolution number 33/52 of the UN General Assembly of 14.12.1978 to convene a World Assembly on Ageing. The first World Assembly on Ageing was accordingly held in Vienna, Austria from 26<sup>th</sup> July to 6<sup>th</sup> August 1982. The cardinal objectives of the Assembly were (i) to develop and apply at the international, regional, and national level policies designed to enhance the lives of the aged (ii) to study the impact of ageing populations on development and that of development on Ageing. Very importantly the Preamble of the Plan of Action reaffirms the belief that all the fundamental human rights enshrined in the Universal Declaration of Human Rights apply fully to the aged. The Preamble also recognises that quality of life is no less important than longevity. The Vienna Action Plan made recommendations for action and implementation in key areas like (a) health and nutrition (b) protection of elderly concerns (c) housing and environment (d) family (e) social welfare (f) income security and employment and (g) education.

The Vienna Declaration of 1982 was followed by the landmark United Nations Principles for Older Persons adopted by the General Assembly pursuant to Resolution no 46/91 of 16.12.1991 highlighting the key principles of (a) independence (b) participation (c) care (d) self-fulfilment and (e) dignity. The UN principles of 1991 was followed by the commemoration of 1999 as the International Year of Older Persons with the central theme “a Society for All Ages.” The second World Assembly on Ageing was held in Madrid, Spain in

2002 and it adopted the revolutionary Madrid International Plan of Action on Ageing (MIPAA, 2002). This international plan was an attempt to respond to the opportunities and challenges of population ageing in the 21<sup>st</sup> century and to promote “a society for all ages.” The aim of the international plan of action was to ensure that the persons everywhere are able to age with security and dignity and to continue to participate in their societies as citizens with full rights. The plan of action gave priority to three core areas which are (i) older persons and development (ii) advancing health and wellbeing into old age (iii) ensuring, enabling and supportive environments. The crucial importance of MIPAA 2002, lies in the fact that it is the first attempt of Governments to link questions of ageing to other frameworks for social and economic development.

The aforesaid initiatives of the UN have brought the rights of the aged into the centre stage of human rights discourse. Unfortunately, these international instruments are not legally binding, and its implementation is voluntary. The international community is hence eagerly looking forward to the third world assembly of Ageing under the aegis of UN and for a binding international Convention on the Rights of the Aged.

Apart from the aforesaid global developments, it is noteworthy that certain regional human rights treaties deal with the rights of the elderly like the Revised European Social Charter of 1988,<sup>51</sup> the Charter of Fundamental Rights of the European Union of 2000,<sup>52</sup> the African Charter on Human and People’s Rights

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<sup>51</sup> See Article 4 of the Additional Protocol.

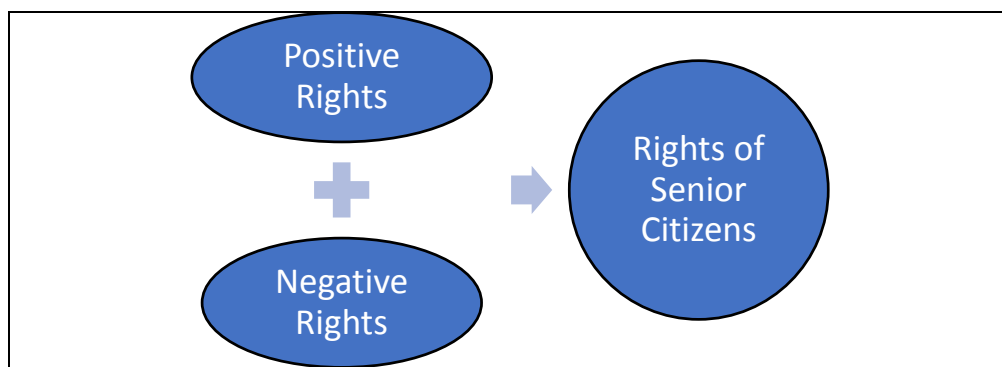
<sup>52</sup> See Articles 21 and 25.



of 1981,<sup>53</sup> and the Arab Charter on Human Rights of 2004.<sup>54</sup> Hence it is evident that though the elder law jurisprudence is at a nascent stage in India, it has developed considerably both internationally and regionally guiding national policies and programmes.

## 2.5. ENLISTMENT OF RIGHTS

On a careful scrutiny of the aforesaid seminal documents in the international, national, and regional spheres in the realm of elders' rights it can be understood that the elders have specific rights as a class of persons on account of their physical, mental, and emotional vulnerability due to age. The rights of the elderly can be conveniently classified into two broad categories as positive rights and negative rights.



**Figure: 2.3**

### 2.5.1. Positive Rights

A positive right is said to exist when the owner of the right is entitled to something to be done by the person of incidences or the person charged with the

<sup>53</sup> See Articles 1 and 4.

<sup>54</sup> See Article 38.

duty to do that which has to be done. In the case of a positive right the person having the right can compel the person upon whom the correlative duty is imposed to do some positive act.<sup>55</sup> Positive rights are the rights that are necessary for the elderly to lead a life filled with dignity, independence, security, and self-fulfilment whereas negative rights are more in the nature of protective measures for fulfilment of positive rights. The **positive rights** are the following:

- **Right to Food**

This right is the core basic right of the elderly for life and sustenance. Food for the elderly however has to be nutritious and hence the elderly has a right to obtain nutritious food also which is necessary for their physical state and health.

- **Right to Clothing**

Clothing like food is a basic human right vital for the elderly. However as far as the elderly is concerned, unlike the requirements of the children and the youth the elderly require warm clothing especially during the winter months and the rainy season for their physical comfort.

- **Right to Shelter**

This right again is a basic human right for the elderly. However, the right to shelter for the elderly has several dimensions. The elderly requires age friendly buildings for their easy access and mobility. The presence of ramps, railings, and lifts are an additional requirement apart from proper flooring which is not slippery, user friendly toilets, kitchens, and work areas and adequate lighting and

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<sup>55</sup> See MYNENI, *supra* note 44, at 210.

suitable ventilation. There is an increasing demand among the elderly for community living where the elderly can live as a community in age friendly buildings, for effective living conditions and in particular for companionship and recreation.

- **Right to Medicine and Medical Attendance**

The right to obtain timely medicines and medical attendance is one of the most vital human rights of the elderly. Medical attendance is different from medical treatment and medical attendance often precedes medical treatment. Medicine of proper quality and in sufficient quantity is a right for the elderly considering the physiological degeneration. Medicines can be a cure for ailments and can also be supplements for promoting health and wellbeing. Medical attendance is the link between disease and treatment. Medical attendance will also be needed in many cases as a follow up of treatment and hence can be a successor to medical treatment.

- **Right to Medical Treatment**

This right succeeds the right to medical attendance, and it is the culmination of the former right. The right to medical treatment is perhaps one of the most important and vital of human rights since the aged are biologically most vulnerable to diseases of the body and mind on account of their biological degradation the most fundamental scientific reason for Ageing. The elderly suffers from various kinds of diseases which are occasional and seasonal, lifestyle induced, and age induced. While occasional and seasonal diseases like

fever cold etc. can be remedied by timely and onetime treatments, lifestyle diseases like blood pressure, diabetics, cholesterol, hypertension etc. require prolonged and continuous treatment. Age induced diseases like Arthritis, Dementia, Alzheimers, Parkinsons require specialised medical treatment which will be lifelong. Apart from the aforesaid the elderly are also highly vulnerable to life threatening diseases like cancer. There is a need for adequate geriatric care for the elderly in all the hospitals public and private both in terms of availability of specialised geriatricians and adequate number of beds for geriatric care. The aged also require special age friendly facilities for treatment like separate queues in hospitals, easy accessibility for doctor appointments etc and they are also entitled to informed treatment protocols.

- **Right to Recreation**

This right though not a core right like the right to food, clothing, and shelter is nevertheless vital for a healthy life both physical and mental. The right to recreation takes in its fold all the modes of recreation available and possible for the aged from reading newspapers to visiting centres of amusement. Recreation ensures a healthy mind and a healthy body, and it also adds to a vibrant life filled with entertainment and amusement. It gives mental peace and tranquillity to the aged and physical recreation in the form of games can also contribute to physical health.

- **Right to Care and Attention**

The elderly on account of their physical, mental, emotional vulnerability

often long for care and attention from the family and society. Care and attention in the Indian context have to come from the immediate family and especially from children, grandchildren and relatives which is most rewarding mentally and emotionally.

- **Right to Companionship**

This right is an ancillary right and the elderly often long for companionship from children, relatives and friends. Isolation and social exclusion are the anti-thesis of this valuable right. The elderly value and cherish the companionship of persons of similar age and similar social and economic backgrounds for sharing thoughts needs, and experiences. The recognition of this valuable right has prompted the new trend of community living of the aged.

- **Right to Safe Living Environment**

This right ensures an age friendly living environment conducive for the elderly. An age friendly environment would take in its fold age friendly buildings, landscapes, public transportation, public utility services, public recreation centres, public offices and public comfort stations. Age friendly public transportation systems like low floor buses are vital in this context.

- **Right to Participation in Decision Making**

The elderly are often excluded and side-lined in decision making in their own homes and in society. Since the elderly do not wield official authority post retirement and post-employment their involvement in decision making gets considerably reduced despite their rich knowledge, and wealth of experience.

Often, the elderly have no say even in personal decisions that affect their own lives and they are left to the mercy of decisions made by their children, grandchildren, and relatives. This is more so in cases where the elderly are dependant physically and financially on their children and relatives.

- **Right to Employment**

The right to employment post retirement is slowly gaining recognition as a valuable human right of the elderly. The elderly constitutes an invaluable pool of knowledge, wisdom, and experience and the society at large can gain tremendously if this rich pool of talent, wisdom and experience is harnessed. It can also contribute to the upliftment of the elderly since it would augment the financial capacity and financial independence of the elderly. The drastic reduction in income post retirement which is one of the seminal factors that contribute to the plight of the elderly can be overcome by generating employment for the elderly based on individual consent and needs.

- **Right to Information**

Information is the life blood of knowledge which often gets diminished post retirement and for the aged who are often cut off from the sources of knowledge. The elderly requires knowledge and information on various areas of concern like health, legislations, wellness, schemes of Government, public services and pensions, treatment protocols etc. Though this right is confined mostly to the literate among the elderly who can seek and gain information on their own, the right is equally important to the illiterate who can be provided

information by children, relatives, friends and care givers.

- **Right to Continuing Education**

Continuing education has become a contemporary norm in all professions. Continuing education is vital for advancement of knowledge and information and the elderly also have a right to obtain education in their chosen fields. This right is ancillary to the right to obtain employment mentioned above and also the right to information. Continuing education for the elderly can equip them with the required knowledge and expertise for productive employment in old age.

- **Right to obtain Social Security Benefits**

Financial capacity and financial independence form the core human right of the elderly. It is on account of financial deprivation and reduction in income during old age that the elderly are subjected to abuse and deprivation. Public assistance at the instance of the state in the form of social security benefits is the most preferred form of financial aid and assistance for the elderly. The Indian Constitution<sup>56</sup> envisages “public assistance” for the aged. Kerala has the highest number of social security pensions out of which pension for widows, pension for agricultural workers, and the national old age pension scheme are the most popular<sup>57</sup>. Right to social security benefits is perhaps the most commonly recognised and most widely prevalent right in world Constitutions for the aged.

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<sup>56</sup> See INDIA CONST. art. 41.

<sup>57</sup> See OFFICIAL WEB PORTAL GOVT. OF KERALA, <https://kerala.gov.in/documents/10180/46696/Old20age20Policy202006>. (last visited Sept. 16 2018).

- **Right to Privacy**

This invaluable right applies with equal vigour for the elderly as it does for the youth. The elderly cherishes their right to privacy both in the personal plane as well as with respect to property rights.

- **Right to Participation in Social and Cultural life**

The elderly is often excluded from social and cultural arenas on account of their age and reduced physical and mental faculties and mobility. However, social interaction and participation in cultural life are highly essential for a life of fulfilment and contentment. Social interaction especially with peer groups is a emotionally enriching experience for the elderly which contributes to their mental wellbeing. Often the elderly are deprived of such interactions on account of lack of companionship and mobility. Likewise, participation in cultural events especially music concerts, dance performances, drama performances etc. are enriching experiences which add to the mental and emotional well-being of the elderly.

- **Right to Self-Fulfilment**

This right encompasses the whole gamut of rights which contribute to the sublime feeling of self-fulfilment for the elderly. Obviously, the level of self-fulfilment varies from person to person and this right denotes the attainment of a feeling of satisfaction in life based on life experiences for the elderly.

- **Right to Legal Aid & Assistance**

This is an invaluable right for the elderly for attaining legal redressal of



legal grievances through the justice delivery system. Presently the Legal Services Authorities Act 1987,<sup>58</sup> does not include the elderly as persons entitled to free legal aid though women are entitled irrespective of age. Significantly the revised Kerala State Old Age policy of 2016 and the former policy of 2006 envisage providing free legal aid to the elderly.

- **Right to obtain Speedy Justice**

The elderly on account of their advanced age has the right to obtain speedy justice from the justice delivery system. Unfortunately, in developing countries like India, the justice delivery system has been insensitive to the needs of the elderly. Often civil litigation spills over to the next generation on account of lengthy procedures so much so that the elderly often does not savour the fruits of litigation during their lifetime. Though the Cr. P C of 1973 contemplated a speedy legal mechanism for adjudication of maintenance for parents<sup>59</sup> which includes the elderly the provision has not been successful in providing speedy justice. The Maintenance and Welfare of Senior Citizens Act, 2007<sup>60</sup> was enacted to provide a simple, speedy, and inexpensive remedy in terms of maintenance and welfare of the elderly with simplified procedures of a summary nature and stipulated timelines for adjudication. The Honourable Apex Court has repeatedly directed expeditious disposal of all pending litigations in all high courts and subordinate courts.<sup>61</sup> The Kerala state Old Age Policy of 2006 and the

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<sup>58</sup> See Legal Services Authorities Act, 1987, § 3.

<sup>59</sup> See Code of Criminal Procedure, 1973, §125.

<sup>60</sup> See Statement of Objects and Reasons, Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

<sup>61</sup> *Union of India v. Najeeb K.A.*, I.L.R 2021 (1) Kerala 947.

Revised Old Age Policy of 2016 has highlighted the aforesaid intervention at the instance of the Honourable Apex Court.

- **Right to Dignity**

This right form the core right of the elderly as the subject of this study and it is the culmination of the attainment of the various positive rights mentioned above apart from being the attainment of the negative rights to be enlisted below.

### **2.5.2. Negative Rights**

A negative right is a right in which its owner is not entitled to something positive but is entitled to some forbearance on the part of the person who is duty bound. It is a right which compels not to do a certain thing. Negative rights are in fact duties imposed on the state, society, and family to ensure achievement of positive rights by elders.

Negative rights are very important rights that are required for the aged to live a life of dignity and mainly relate to violation of their physical and mental integrity, freedom and wellbeing. They refer to deliberate attacks on their wellbeing by others and are hence more important than positive rights.

The negative rights are the following:

- **Right to Protection Against Physical and Mental Abuse**

This is the most important negative right. The aged are most vulnerable in terms of strength and financial resources making them easy prey to physical and mental abuse both at home and in the outside living environment. In India and in Kerala this right assumes immense significance since the aged prefer to live at

home with their relatives rather than in Institutions and hence the possibility of physical and mental abuse which can range from casual scolding to brutal assaults is high.

- **Right Against Age based Discrimination or Ageism**

This is a very important right since society has stereotyped the aged as useless and obsolete especially after superannuation and retirement. The aged have a right to be treated without any discrimination based on age in all walks of life. In fact, all the policies prescribe inclusiveness and non-discrimination though such mandates are lacking in the Constitution and in the Statues. It extends to all facets of life including employment, access to housing, healthcare, and social services.

- **Right Against Exploitation**

The aged have a right not to be exploited especially financially. In the society there are many instances of the young exploiting the old financially by misappropriating their assets and money exploiting the vulnerability of the aged due to ill health and poor mental faculties. Forceful execution of wills and assignments of property are rampant in the society.

- **Right Against Social Deprivation and Exclusion**

This valuable right ensures that the aged are always in the mainstream of society even after retirement. The aged have a right to be included in all social activities and the policies of the Government give primacy to “a society for all ages”. Unfortunately, loneliness and social exclusion are the bane of Indian

Society when it comes to the aged. Since the aged are often side-lined and excluded from mainstream activities and are even considered “inauspicious” and “inconvenient.”

- **Right to Protection Against Non-Consensual Treatment and End of Life Decisions**

The aged have a right to obtain information on disease diagnosis and treatment protocols. They are entitled to protection from interference in treatment methods against their informed consent and in end-of-life decisions against their will and consent.

- **Right Against Abandonment**

This is a valuable right of the aged which prevents wilful abandonment by the relatives. This act is made a punishable offence under the MWPC Act of 2007 considering the gravity of the illegal act.

- **Right to Protection Against Isolation and Neglect**

Isolation and neglect are the two common negative factors that haunt the elderly. Often the elderly are neglected by their own biological children and relatives. Isolation adversely affects the psychological health of the elderly.

The aforesaid rights, positive and negative are not exhaustive and are illustrative for the purpose of the study which is focused on “rights” and “dignity” of the aged. The aforesaid rights and its satisfaction through an empirical study forms the core area of the study which aims to gauge the efficacy of the existing legal framework on the basis of the aforesaid criteria. The

empirical study will be dealt with under Chapter IX.

## **2.6. CONCLUSION**

“Ageing” is a complex- multi dimensional concept that has four main facets i.e., chronological, biological, psychological and social; chronological ageing by itself cannot be taken as the sole criterion for elders’ rights and protection but there is the need to fix a universally acceptable age for legal protection and benefits.

The legal framework is mainly concerned with social ageing and there are no universally accepted parameters presently for social ageing which depends on social and cultural factors. The standards of social ageing vary considerably on the basis of socio-cultural factors. There is a close relation between all the four conceptual facets of ageing and hence the legal framework has to harmonise all the four facets for an effective legal regime.

“Senior Citizens” are inherently human beings and are hence entitled to all human rights, that inheres in every human being without any classification or distinction.

“Senior Citizens” however are a vulnerable class by themselves due to their biological and psychological deterioration due to the ageing process necessitating in certain specialized human rights for their protection and welfare like women and children.

Jurisprudentially, Senior Citizens are entitled to both positive rights and negative rights and these rights are rooted in morality and religion.

The relationship between morality and rights have defined the evolution of the rights of Senior Citizens in jurisprudence.

Theories of ageing, both biological and non-biological helps to understand the complex, inevitable, irreversible phenomenon of ageing and its socio-legal consequences.

Biological theories of ageing highlight the inherent vulnerability of the aged on account of the irreversible biological consequences of the ageing process and the need for a specialized regime of rights for the aged. Non biological theories like Activity Theory helps us understand the impact of ageing on human behavior and conduct.

Evolution of a regimen of specialized rights for Senior Citizens is a recent legal phenomenon initiated by the UN with the conduct of the First World Assembly on Ageing which reaffirmed that all the rights in the UDHR 1948 apply fully to the aged.

Though there are several international human rights instruments highlighting human dignity commencing from the Charter of the United Nations 1945 the instruments are conspicuously silent on the rights of the elderly.

An efficient legal system has to diligently balance all the positive as well as negative rights available to Senior Citizens through appropriate legal mechanisms.

Though Senior Citizens are entitled to a whole bunch of positive and negative rights for dignified living, the current legal framework does not focus

on the broad spectrum of rights. A conceptual, theoretical and jurisprudential foundation of the rights of the aged will give valuable insights into the adequacy of the legal framework and the need for reforms.

### CHAPTER III

#### **ELDERS' RIGHTS IN INTERNATIONAL LAW AND ROLE OF UNITED NATIONS ORGANISATION - AN ANALYSIS**

The rights of the aged in international law can be analysed broadly under three heads (i) Rights of the aged in global international human rights instruments (ii) Rights of the aged in regional human rights instruments (iii) Rights of the aged under the aegis of the United Nations Organisation (UN). Significantly the basic first-generation human rights instruments like *Universal Declaration of Human Rights* of 1948, the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights* of 1966 does not specifically cater to the rights of the aged. However certain later international human rights instruments deal specifically with the rights of the aged. Regional human rights conventions are remarkable since many of them specifically deal with rights of the aged. Coming to the UN, this global organisation is singularly responsible for initiating steps for a “new age” human rights regime for the “third age.” The UN and its activities can be studied under three main heads. The first is with respect to the UN Charter and its various offices and authorities which deal with the human rights of the aged. The second is through the various specialised organs of the UN through which its functions in the realm of the aged human rights and third is through the major international assemblies and principles convened and formulated by the UN for promoting the rights of the aged.

The UN is today the most representative inter-governmental organisation



in the world representing 193 countries and its role position and authority is hence irreplaceable. One of the primary mandates of the UN is the protection of human rights and the organisation has diligently stood in the forefront of human rights issues and has been instrumental in evolving and nurturing a human rights regime for the aged. This Chapter analyses the rights of the aged in international human rights instruments and in regional human rights instruments. It also analyses the role of the UN and its agencies in the realm of the rights of the aged.

### **3.1. GLOBAL CONVENTIONS**

The fundamental human rights document in the international arena is the UDHR which is considered as a milestone document in the history of human rights. The declaration was proclaimed by the UN General Assembly in Paris on 10<sup>th</sup> December 1948 as a common standard of achievements for all peoples and nations and it sets out for the first time fundamental human rights to be universally protected.<sup>1</sup>

The preamble to the Universal Declaration of Human Rights<sup>2</sup> recognizes inherent dignity and the equal and inalienable rights of all members of the human family which includes elders also as the foundation of freedom, justice and peace in the world. Further, the preamble reaffirms the dignity and worth of the human person and the equal rights of men and women which includes the elderly also. The Universal Declaration of Human Rights has been proclaimed as a common

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<sup>1</sup> See UNITED NATIONS OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, <https://www.ohchr.org/EN/pages/home.aspx> (last visited Aug.8 2018).

<sup>2</sup> See UNITED NATIONS, <http://www.un.org/en/universal-declaration-human-rights/index.html> (last visited Aug.8 2018).

standard of achievement for all peoples and all nations.

Article 1 of the Universal Declaration of Human Rights mandates that all human beings are born free and equal in dignity and rights which will include the elderly also.

Article 2 of the Universal Declaration of Human Rights stipulates that everyone is entitled to all the rights and freedoms mentioned in the Declaration without distinction on various parameters such as race, colour, sex, language, religion, etc. Though age has not been mentioned as a criterion it is stated that there should not be discrimination on the basis of other status which will include age-based discrimination also.<sup>3</sup> Protection against Discrimination of all forms is also guaranteed by Article 7.<sup>4</sup>

While Article 3 guarantees Right to life, liberty and security of person Article 5 prohibits torture, cruel, inhuman and degrading treatment highly germane for the elderly. Article 12<sup>5</sup> prohibits arbitrary interference with the

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<sup>3</sup> See UNITED NATIONS, <http://www.un.org/en/universal-declaration-human-rights/index.html> (last visited Aug.30 2018). Article 2 of UDHR states: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

<sup>4</sup> See UNITED NATIONS, <http://www.un.org/en/universal-declaration-human-rights/index.html> (last visited Aug.30 2018). Article 7 of UDHR states: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

<sup>5</sup> See UNITED NATIONS, <http://www.un.org/en/universal-declaration-human-rights/index.html> (last visited Aug.30 2018). Article 12 of UDHR states: No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

privacy, family, home or correspondence of individuals. Importantly Article 16<sup>6</sup> recognises the family as a natural and fundamental group unit of society which is entitled to protection both by the society and the state as well as the right to found a family. The right to own property and the right not to be deprived arbitrarily of property is enshrined in Article 17.<sup>7</sup> Likewise, the freedom of opinion and expression is enshrined in Article 19<sup>8</sup>. The most crucial right to social security is enlisted in Article 22<sup>9</sup> which mandates right of everyone as a member of the society to social security in accordance with the resources of the state of economic, social, and cultural rights that are indispensable for the dignity of the individual and the development of the personality. The right to work and the free choice of employment as well as protection against unemployment is guaranteed under Article 23.<sup>10</sup> Finally, the rights of the aged has been crystallised

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<sup>6</sup> See UNITED NATIONS, <http://www.un.org/en/universal-declaration-human-rights/index.html> (last visited Aug.30 2018). Article 16 of UDHR states: (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.(2) Marriage shall be entered into only with the free and full consent of the intending spouses.(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

<sup>7</sup>See UNITED NATIONS, <http://www.un.org/en/universal-declaration-human-rights/index.html> (last visited Aug.30 2018). Article 17 of UDHR states: (1) Everyone has the right to own property alone as well as in association with others.(2) No one shall be arbitrarily deprived of his property.

<sup>8</sup> See UNITED NATIONS, <http://www.un.org/en/universal-declaration-human-rights/index.html> (last visited Aug.30 2018). Article 19 of UDHR states: Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

<sup>9</sup> See UNITED NATIONS, <http://www.un.org/en/universal-declaration-human-rights/index.html> (last visited Aug.30 2018). Article 22 of UDHR states: Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality..

<sup>10</sup> See UNITED NATIONS, <http://www.un.org/en/universal-declaration-human-rights/index.html> (last visited Aug.30 2018). Article 23 of UDHR states: (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection

in Article 25<sup>11</sup> covering food, clothing, housing, medical care, health, wellbeing and security in the event of unemployment.

The next major documents are the ICCPR and ICESCR of 1966. The preambles of both these documents underscore the inherent dignity of the human person. Both these covenants underline the principles of equality and liberty in addition to the importance of family as the natural and fundamental unit of society.

The ICCPR of 1966 has reiterated the aforesaid rights against discrimination (Article 2). The right against cruel, inhuman, and degrading treatment (Article 7), right to liberty and security of the person (Article 9), Right against unlawful interference with privacy, family, home, and correspondence (Article 17), Right to hold Opinions (Article 19), and the Right of family as the natural and fundamental group unit of society entitled to protection by society and state (Article 23). The International Covenant on Economic, Social, and Cultural Rights reiterates the right to work (Article 6) including the right of everyone to the opportunity to gain his living by work. The Right of everyone to

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against unemployment. (2) Everyone, without any discrimination, has the right to equal pay for equal work. (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. (4) Everyone has the right to form and to join trade unions for the protection of his interests.

<sup>11</sup> See UNITED NATIONS, <http://www.un.org/en/universal-declaration-human-rights/index.html> (last visited Aug.30 2018). Article 25 of UDHR states: (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

social security including social insurance (Article 9), the right to the widest possible protection and assistance to the family, the natural and fundamental group unit of society (Article 10), the right to food, clothing, housing and to adequate standard of living (Article 11). The Covenant further recognises the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (Article 12). Finally, the covenant also recognises the right to fundamental education for all persons who have not received primary education in (Article 13.2 (d)).

The UDHR as well as the ICCPR and the ICESCR are conspicuously silent on the rights of elders. Interestingly though the ICESCR makes express mention of the need for special protection for mothers and children and young persons in Article 10 there is no express mention of elders' rights in all these crucial and basic international human rights documents.

Quite remarkably though the basic international human rights documents aforesaid did not make mention of elder rights later international conventions have dealt with the rights of the elderly, some expressly and some impliedly. While the *International Convention on the Elimination of all forms of Racial Discrimination* of 1965 (ICERD) dealt with the right to public health, medical care, social security and social services in Article 5, the *Convention on the Elimination of all form of Discrimination against Women* (CEDAW) of 1981 in Article 11 dealt with the right to social security particularly in cases of retirement, unemployment, sickness, invalidity and *old age* and other incapacity to work. The *Convention on the Rights of Persons with Disabilities* of 2006

(CRPD) provides elaborate provisions catering to equality and non-discrimination, awareness raising, accessibility, equal recognition before the law, community inclusion, liberty and security, access to justice, freedom from exploitation, violence and abuse, health, habilitation and rehabilitation, statistics and data collection and participation in cultural life, recreation, leisure and sports.<sup>12</sup> In particular, Article 28 which deals with adequate standard of living and social protection seek to ensure access by persons with disabilities in particular women and girls with disabilities and *older persons* with disabilities to social protection programmes and poverty reductions programmes.

It is worth mentioning that many of the principles enunciated in the convention are applicable to elders also especially the principles of equality and non-discrimination (Article 5), Creating awareness (Article 8), Accessibility to external environment (Article 9), Freedom from exploitation, violence and abuse (Article 16), Living independently and being included in the community (Article 19), Personal mobility (Article 20), Respect for home and the family (Article 23), Health (Article 25), Habilitation and Rehabilitation (Article 26), Adequate standard of living and social protection (Article 28), Participation in cultural life, recreation and sports (Article 30) and Statistics and data collection (Article 31). Age based discrimination is prohibited by virtue of Articles 1 & 7 in the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* 1990 (ICPRMWF). Hence it is evident that though the earlier conventions do not expressly cater to the elderly the later

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<sup>12</sup> See Article 5 - Article 31 of the Convention on the Rights of Persons with Disabilities 2006.

conventions specifically do so highlighting the slow evolution of the new jurisprudence.

The under mentioned table illustrates the specific rights conferred by the International Conventions discussed above. It is noteworthy that none of the seminal conventions specifically provides for the Rights of the Aged directly. The Right to Social Security is a predominant right focused by a majority of the conventions. Importantly, the later conventions have started focusing specifically on the Rights of the Aged.

<b>Name of the Convention</b>	<b>Article</b>	<b>Right Conferred</b>
Universal Declaration of Human Rights, 1948	Art 1	Equality in dignity and all rights
Universal Declaration of Human Rights, 1948	Art 5	Protection against cruel, inhuman or degrading treatment and torture
Universal Declaration of Human Rights, 1948	Art 7	Equal Protection of law without discrimination
Universal Declaration of Human Rights, 1948	Art 12	Right to Privacy
Universal Declaration of Human Rights, 1948	Art 16	Family the natural and fundamental group unit of society
Universal Declaration of Human Rights, 1948	Art 17	Right to own property
Universal Declaration of Human Rights, 1948	Art 22	Right to Social Security
Universal Declaration of Human Rights, 1948	Art 23	Right to work and employment
Universal Declaration of Human Rights, 1948	Art 25	Right to security in the event of old age
International Covenant on Civil and Political Rights of 1966 (ICCPR)	Art 2	Right against discrimination

International Covenant on Civil and Political Rights of 1966 (ICCPR)	Art 7	Right against cruel, inhuman and degrading treatment
International Covenant on Civil and Political Rights of 1966 (ICCPR)	Art 9	Right to liberty
International Covenant on Civil and Political Rights of 1966 (ICCPR)	Art 17	Right to Privacy
International Covenant on Civil and Political Rights of 1966 (ICCPR)	Art 23	Right to Family
International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966	Art 6	Right to work
International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966	Art 9	Right to social security and social insurance
International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966	Art 10	Right to protection and assistance to the family
International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966	Art 11	Right to food, clothing, housing and adequate standard of living
International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966	Art 12	Highest attainable standard of physical and mental health
International Convention on Elimination of all forms of Racial Discrimination 1965 (ICERD)	Art 5	Social Security and Social Services



Convention on the Elimination of all forms of discrimination against women, 1981 (CEDAW)	Art 11	Right to Social Security in Old Age
Convention on the Rights of Persons with Disabilities, 2006 (CRPD)	Art 5	Equality and non-discrimination
Convention on the Rights of Persons with Disabilities, 2006 (CRPD)	Art 9	Accessibility to external environment
Convention on the Rights of Persons with Disabilities, 2006 (CRPD)	Art 16	Freedom from exploitation, violence and abuse
Convention on the Rights of Persons with Disabilities, 2006 (CRPD)	Art 19	Living independently and living included in the community
Convention on the Rights of Persons with Disabilities, 2006 (CRPD)	Art 20	Personal mobility
Convention on the Rights of Persons with Disabilities, 2006 (CRPD)	Art 25	Health
Convention on the Rights of Persons with Disabilities, 2006 (CRPD)	Art 26	Habilitation and Rehabilitation
Convention on the Rights of Persons with Disabilities, 2006 (CRPD)	Art 28	Social Protection

Convention on the Rights of Persons with Disabilities, 2006 (CRPD)	Art 30	Participation in recreation, cultural life and sports
International Convention on the Protection of Rights of All Migrant Workers and Members of Their Families, 1990 (ICPRMWF)	Art 7	Protection against age-based discrimination

**Table: 3.1****3.2. REGIONAL CONVENTIONS**

Significantly unlike global conventions many regional human rights documents deal expressly with protection of the rights of the elderly. The *European Social Charter* of 1961 provides for the right to social and medical assistance to persons without adequate resources in addition to the right to benefit from social welfare resources. The Charter also recognizes the right of the family to appropriate social, legal and economic protection.<sup>13</sup> Significantly Article 12 deals with the right to social security and undertakes to maintain a social security system at a satisfactory level at least equal to that required for ratification of International Labour Organisation (ILO) convention No.102 concerning minimum standard of social security. Very importantly, Article 4 of the *Additional Protocol to the European Social Charter* of May 1988 deals with the right of elderly persons to social protection. Accordingly, it undertakes to adopt or encourage either directly or indirectly or in cooperation with public or

<sup>13</sup> See SOCIAL PROTECTION HUMAN RIGHTS, <https://socialprotection-humanrights.org/instru/the-european-social-charter-1961/> (last visited Aug.8 2018).

private organizations appropriate measures to enable elders to remain full members of society for as long as possible. Further, it undertakes to enable the elderly to choose their lifestyle freely and to lead independent lives in their familiar surroundings for as long as they wish and finally to guarantee to elderly persons living in institutions appropriate support while respecting their privacy and participation in decisions concerning their living conditions. The appendix to the protocol clarifies that the term “for as long as possible” in Article 4 refers to the elderly person's physical, psychological and intellectual capacities.

Significantly the Revised European Social Charter of 1996 in Article 23 reiterates the right of the elderly persons to social protection. The *Revised European Social Charter* of 1996 which takes into account evolution in the understanding and context of social and economic rights since 1961 deals with the right to social security in Article 12. Article 12 envisages to establish a system of social security at a satisfactory level at least equal to that necessary for ratification of the European Code of Social Security and reiterates in Article 23 the right of elderly persons to social protection.<sup>14</sup>

The *Charter of Fundamental Rights of the European Union* of 2000 apart from prohibiting age-based discrimination in Article 21, deals with the rights of the elderly in Article 25. It states that the European Union recognizes and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life. Article 34 deals with social security and

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<sup>14</sup> See IAN BROWNLIE, GUY S. GOODWIN-GILL, *BROWNLIE'S DOCUMENTS ON HUMAN RIGHTS*, (6<sup>th</sup> ed. 2010).

social assistance in cases of old age and Article 35 deals with right of access to preventive health care.

The *African Charter on Human and People's Rights* of 1981 called the Bangul Charter which deals with member states of the Organization of African Unity after recognizing the inherent dignity of the human being in Article 5 deals with the aged in Article 1 & 4. It states that the aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs. Very significantly Chapter II deals with duties and Article 27 deals with duties towards the family and society and Article 28 mandates that every individual shall have the duty to respect and consider his fellow beings without discrimination. Article 29 stipulates that an individual shall also have the duty to preserve the harmonious development of the family and to work for cohesion and respect of the family and to respect his parents at all times and to maintain them in case of need. Further, remarkably the *Protocol to the African Charter on Human and People's Rights on the Rights of women in Africa* of July 2003 mandates in Article 22 Special Protection for Elderly Women and envisages Protection to elderly women and specific measures commensurate with their physical, economic and social needs and access to employment and professional training in addition to freedom from violence including sexual abuse, age-based discrimination and right to be treated with dignity.

The *American Declaration of the Rights and Duties of Man* of 1948 significantly stresses the importance of rights and duties in its preamble and underscores the fact that rights and duties are interrelated in every social and

political activity of man and declare that while rights exalt individual liberty; duties express the limits of that liberty. It further declares that duties of a juridical nature presupposes others of a moral nature which support them in principle and constitute their basis. Article XVI in part one dealing with Rights deals with the Right to Social Security which protects persons from the consequences of old age. Article XXX in Chapter two dealing with duties deals with duties towards children and parents. Accordingly, it is the duty of children to honour their parents always and to aid support and protect them when they need it. Article XXXV deals with the duty of every person to cooperate with the state and the community with respect to social security and welfare.

The *Arab Charter on Human Rights* adopted by the Council of the League of Arab States in 1994 undertakes to provide outstanding care and special protection for the family, mothers, children and *the aged* in Article 38.

The *Arab Charter on Human Rights* of 2004 in Article 33 caters to the needs of the Elderly. Accordingly, it declares that the state and society shall ensure the protection of the family and strengthening of family ties. It further mentions that the states shall ensure the necessary protection and care for older persons. Article 36 caters to the right of every citizen to social security and social insurance, while Article 38 caters to right to a decent life including food, clothing, housing services and right to healthy environment and Article 39 the right to basic health care services and medical facilities without discrimination.

Interestingly, the *American Convention on Human Rights* 1969 in Article 4 prohibits capital punishment of persons over 70 years of age and highlights the

responsibility of every person to his family, community and mankind in Article 32. Article 9 of the *Additional Protocol to the American Convention on Human Rights in the Area of Economic Social and Cultural Rights* of 1988 deals with right to social security in Article 9. Going by the mandate of Article 9 everyone shall have the right to social security protecting him from the consequences of old age which prevents him from securing the means for a dignified and decent existence physically or mentally. Article 15 directs the state to undertake special programmes of family training so as to help create a stable and positive environment in which children will receive and develop values of understanding, solidarity, respect and responsibility.

Article 17 mandates that everyone has the right to special protection in old age and it mandates that states have to progressively take steps to (a) provide suitable facilities as well as food and specialized medical care for the elderly (b) undertake work programmes for elderly to give them an opportunity to engage in productive activities suited to their abilities and consistent with their vocations or desires and (c) foster the establishment of social organizations aimed at improving the quality of life for the elderly.

The *Inter American Convention on the Prevention Punishment and Eradication of Violence against Women* of 1994 in Article 9 directs the state to give special consideration to elderly women who are subjected to violence considering their vulnerability.

The following table portrays the specific nature of rights and duties conferred by the Regional Conventions discussed above. It is pertinent that the

majority of Regional Conventions focus on the Right to Social Security, even though various other rights of the aged are incorporated in some of the conventions.

<b>Name of the Charter/Convention</b>	<b>Article</b>	<b>Right/Duty Conferred</b>
European Social Charter 1961	Art 12	Social Security
Additional Protocol to European Social Charter, 1988	Art 4	Social Protection
Revised European Social Charter, 1996	Art 23	Social Protection
Charter of the Fundamental Rights of the European Union, 2000	Art 21	Protection from age-based discrimination
Charter of the Fundamental Rights of the European Union, 2000	Art 25	Dignity and Independence
Charter of the Fundamental Rights of the European Union, 2000	Art 34	Social Security and Social assistance
Charter of the Fundamental Rights of the European Union, 2000	Art 35	Access to preventive health care
African Charter on Human and People's Rights of 1981	Art 5	Dignity
African Charter on Human and People's Rights of 1981	Art 4	Right to special measures of Protection
African Charter on Human and People's Rights of 1981	Art 27	Duty towards family and society

African Charter on Human and People's Rights of 1981	Art 28	Duty not to discriminate
African Charter on Human and People's Rights of 1981	Art 29	Duty to respect family and Parents
Protocol to the African Charter on Human and People's Rights, 2003	Art 22	Special Protection for Elderly women including access to employment, freedom, violence and right to dignity
American Declaration of the Rights and Duties of Man, 1948	Art 16	Right to social security
American Declaration of the Rights and Duties of Man, 1948	Art 30	Duty towards Parents to honour them and to aid support and protect them
American Declaration of the Rights and Duties of Man, 1948	Art 35	Duty to cooperate with the state and community regarding social security and welfare
Arab Charter on Human Rights, 1994	Art 38	Outstanding care and special protection for the aged
Arab Charter on Human Rights, 2004	Art 33	Protection and Care for Older Persons
Arab Charter on Human Rights, 2004	Art 36	Social Security and Social Insurance
Arab Charter on Human Rights, 2004	Art 38	Right to decent life including food, clothing, housing services, healthy environment
Arab Charter on Human Rights, 2004	Art 39	Basic Health Care Services and medical facilities without discrimination



American Convention on Human Rights, 1969	Art 4	Prohibits Capital punishment of persons over 70 years of age
Additional Protocol to the American Convention on Human Rights 1988	Art 9	Right to Social Security
Additional Protocol to the American Convention on Human Rights 1988	Art 15	Special programmes of family training for children to develop values of understanding, solidarity, respect, responsibility
Additional Protocol to the American Convention on Human Rights 1988	Art 17	Special Protection in old age including food, specialised medical care, work programmes and establishment of social organisations for elderly
Inter American Convention on the Prevention, Punishment and Eradication of Violence against Women, 1994	Art 9	Special consideration on account of the vulnerability of women due to age

**Table: 3.2**

A close scrutiny of the provisions in the Regional Charters discussed above will reveal the fact that the regional charters are more vibrant, sensitive and dynamic to elders rights than the global charters. Many of the regional charters discussed above have incorporated elaborate safeguards to secure protection of elders. In fact, the regional charters have underlined the importance of duty coupled with rights for effective implementation of the rights of elders. It is also

noteworthy that many regional charters have given special importance to elderly women and their protection. Hence these Regional Charters no doubt constitutes an invaluable guide in the onward march of the rights of the elderly.

### **3.3. ROLE OF THE UNITED NATIONS ORGANIZATION**

The issue of aging was debated for the first time in the UN at the instance of Argentina in 1948. The issue was again raised by Malta in 1969. In 1971 the General Assembly requested the Secretary General to prepare a comprehensive report on the elderly. Finally in 1978, the General Assembly decided to hold a world conference on ageing.<sup>15</sup>

The role of the UN Organization in the promotion and protection of rights of elders can be analysed broadly under three heads. The **first** pertains to the UN Charter and its various offices and authorities dealing with rights of the aged. The **second** pertains to the specialised organs of the UN that specifically deal with the rights of the aged. The **third** relates to the specific principles formulated by the UN for older persons and the two world assemblies convened by it in 1982 and 2002 for promoting the rights of the aged.

#### **3.3.1. United Nations Charter and its Offices**

The UN Organization and its principal organs work under the Charter of the UN which was signed on July 26, 1945 in San Francisco and which was the outcome of the UN Conference on International Organization. The core mandate

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<sup>15</sup> See Dr. Rakesh.Kr. Singh, *Rights of Senior Citizen: Need of the Hour*, 38, IBR 127, 128 (2006).

of the UN Charter is *to reaffirm faith in fundamental human rights in the dignity and worth of the human person* and also to promote social progress and better standards of life<sup>16</sup>. The preamble to the UN Charter mandates to employ international machinery for the promotion of the economic and social advancement of all people.

The General Assembly, the Economic and Social Council (ECOSOC) and the Secretariat are the main organs of the UN that directly and indirectly deal with rights of the elderly.

The General Assembly can institute studies and make recommendations for the purpose of promoting international cooperation in realizing human rights under Article 13 of the UN Charter. The General Assembly also has the authority to discuss any question or matter within the scope of the charter under Article 10. The main organ dealing with Elders Rights is the ECOSOC constituted under Article 61 of the Charter. The ECOSOC apart from initiating studies and reports with respect to social issues can make recommendations for promoting human rights and it can also prepare draft conventions for submission to the General Assembly in addition to conducting conferences at an international level<sup>17</sup>. Under Article 68, the ECOSOC can set up Commissions in economic and social fields for promotion of human rights.

Accordingly, the Commission for Social Development was established. Initially the Commission was established in 1946 as the social commission and

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<sup>16</sup> See UNITED NATIONS, <https://www.un.org/en/about-us/un-charter/full-text>. (last visited Aug.31 2018).

<sup>17</sup> See Section 62 of the U.N. Charter, 1945.

it was later renamed as Social Development Commission in order to clarify its role as a preparatory body of ECOSOC in the whole range of social development policy. The Commission is the key UN body which is presently co-coordinating activities in the field of Elders Rights. Apart from the commission for social development, the Commission on Human Rights, a creation of the ECOSOC contributed tremendously for the development of Human Rights jurisprudence from 1946 to 2006. In 2006, pursuant to the recommendation of the Secretary General, the Commission on Human Rights was replaced by the Human Rights Council.

Apart from the Commission for Social Development, the general assembly has established the Open-Ended Working Group on Ageing (OEWGA) in December 2010. The working group focuses on strengthening the protection of human rights of older persons by considering the existing International framework of human rights for older persons and identifying possible gaps and their solutions.

The Division for Social Policy and Development (DSPD) part of the Department of Economic and Social Affairs (DESA) of the UN Secretariat seeks to strengthen international cooperation for social development and the social inclusion of older persons.

### **3.3.2. Specialised Organs of the United Nations**

Apart from the aforesaid offices and agencies of the UN some of the specialized agencies of the UN are also intimately connected with the rights of the elderly. These specialized agencies of the UN are instrumental in generating

and making periodic reports on human rights issues which are forwarded to the human rights council and other bodies by the Secretary General. Hence specialized agencies of the UN and in particular the ILO and the World Health Organisation (WHO) has played a cardinal role in development of human rights jurisprudence for the elderly.

Finally, there is the office of the UN High Commissioner for Human Rights (UNHCHR) under the UN Secretariat which is an agency that works to promote and protect the human rights that are guaranteed under International Law. The office was established by the UN General Assembly on December 20, 1993, in the wake of the world conference on human rights in 1993.

The office is headed by the High Commissioner for Human Rights who coordinates human rights activities throughout the UN system. The High Commissioner is made accountable to the Secretary General.

The aforesaid forms the main organizational structure for implementing human rights of elders in the United National Organization.

Significantly the UN commemorates international day of older persons on first October every year and elder abuse awareness day is commemorated every year on June 15.

#### ***3.3.2.1. World Health Organisation***

The World Health Organisation (WHO) is a specialised agency of the UN that is concerned with international public health. The Organisation was given a broad mandate under its Constitution to promote the attainment of “the highest

possible levels of health” by all peoples and the organisation has defined health positively as “a state of complete, physical, mental and social wellbeing and not merely the absence of disease or infirmity.” The Organisation has taken cognizance of demographic transition in all countries and the phenomenon of population Ageing across the globe. It has noted that a longer life brings with it opportunities not only for older people and their families but also for societies as a whole and the older people also contribute in many ways to their families and communities. It has also cautioned that the extent of such opportunities and contributions depends heavily on one factor, health.<sup>18</sup>

The WHO defines healthy Ageing as “the process of developing and maintaining the functional ability that enables wellbeing in older age.” Healthy Ageing is the focus of WHO’s work on Ageing between 2015-2030. The most significant contribution of the WHO in the realm of Ageing is the adoption by the sixty ninth World Health Assembly in May 2016 of the global strategy and action plan on ageing and health. The strategy builds on two international policy instruments that have guided action on Ageing and health since 2002, the MIPAA and the WHO’s policy framework on active Ageing. The policy framework was intended to inform discussion and formulation of action plans that promote healthy and active Ageing. It was developed by WHO’s Ageing and Life Course Programme as a contribution to the Second UN World Assembly on Ageing. The strategy starts from an assumption that ageing is a valuable often challenging

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<sup>18</sup> See WORLD HEALTH ORGANISATION, <https://www.who.int/news-room/fact-sheets/detail/ageing> (last visited May 12 2020).

process, and it considers that it is good to get old and that society is better off for having older populations. The strategy's vision is a world in which everyone can live a long and healthy life and the world will be a place where functional ability is fostered upon the life course and where older people experience equal rights and opportunities and can live lives free from age-based discrimination. The global strategy has formulated five priority areas of action which are:

1. Commitment to Healthy Ageing which requires all Government to create awareness of the value of healthy Ageing and sustained commitment and action to formulate evidence-based policies that strengthen the ability of older persons.
2. Aligning health systems with the need of the older population which requires health system to be better organised around older person's needs and preferences and designed to enhance older persons intrinsic capacity.
3. Developing system for providing long term care in all countries to meet the needs of older people.
4. Creating age friendly environment which require actions to combat ageism, enable autonomy and support healthy ageing in all policies and at all wings of Government.
5. Improving measurement, monitoring and understanding through focused research, new metrics and analytical methods for a wide range of ageing issues.

The WHO has earmarked the decade 2020-2030 as the decade of Healthy Ageing pursuant to the endorsement by the 73<sup>rd</sup> World Health Assembly and the

proposal is to effectuate the Agenda for Sustainable Development of 2030. The decade of Health Ageing (2020-2030) is an opportunity to bring together Governments, civil society, international agencies, professionals, academia, the media and the private sector for ten years of concerted, catalytic and collaborative action to improve the lives of older people, their families and the communities in which they live.<sup>19</sup>

### ***3.3.2.2. International Labour Organisation***

The International Labour Organisation that was established in 1919 as part of the treaty of Versailles that ended world war I is a tripartite agency of the UN that brings together Governments, employers and workers of 187 member countries for setting labour standards and for setting policies and programs for promoting decent work for men and women. The International Labour Organisation is devoted to promoting social justice and internally recognised social and labour rights. The main objectives of the International Labour Organisation are to

1. Promote and realise standards and fundamental principles and rights at work.
2. Create greater opportunities for women and men to decent employment and income.
3. Enhance the coverage and effectiveness of social protection for all.

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<sup>19</sup> See WORLD HEALTH ORGANISATION, [www.who.int/initiatives/decade-of-the-healthy-ageing](http://www.who.int/initiatives/decade-of-the-healthy-ageing) (last visited Dec. 6 2020).



#### 4. Strengthen tripartism and social dialogue.<sup>20</sup>

India is a founder member of the International Labour Organisation. The principal means of action in the International Labour Organisation is the setting up of international labour standards in the form of conventions and recommendations. While conventions are international treaties that create legally binding obligations on the countries that ratify them, recommendations are non-binding and are guidelines for national policies and actions. There are eight core conventions for the International Labour Organisation which are:

1. The Forced Labour Convention (No.29)
2. Abolition of Forced Labour Convention (No.105)
3. Equal Remuneration Convention (No.100)
4. Discrimination ( Employment Occupation) Convention (No.111)
5. Minimum Age Convention (No.138)
6. Worst Forms of Child Labour convention (No.182)
7. Freedom of Association and Protection of Right to Organise Convention (No.87)
8. Right to Organise and Collective Bargaining Convention (No.98)

Pursuant to the World Social Development Summit in 1995 the aforesaid convention numbers 1, 5, 6, 7 and 8 were categorised as fundamental human rights conventions or core conventions by the International Labour Organisation. India has ratified the first six conventions and has not ratified the 7<sup>th</sup> and 8<sup>th</sup>

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<sup>20</sup> See INTERNATIONAL LABOUR ORGANISATION [www.ilo.org](http://www.ilo.org).(last visited Nov.22 2020).

conventions.

The International Labour Organisation has addressed the issue of ageing on several occasions.<sup>21</sup> The Older Workers' Recommendation of 1980 (No.162) regulates the issue of age discrimination. It recommends that older workers should without discrimination on the grounds of their age have equality of opportunity and treatment in employment. The recommendation applies to all workers who are liable to face difficulties in employment and occupation because of advancement in age. The Recommendation urges member states to promote equality of opportunity and treatment for workers regardless of age within the framework of their National Policy and also to take measures for the prevention of discrimination in employment and occupation with regard to older workers. The Recommendation also deals with protection of older workers and preparation for and access to retirement of older workers. The Recommendation urges member states to take measures for ensuring a gradual transition from working life to retirement, to make retirement voluntary and to make the qualifying age for old age pension flexible. The ILO has played a key role in protection against discrimination for workers.<sup>22</sup>

The Discrimination (Employment Occupation) Convention 1958 (No.111) permits special measures for satisfying the needs of people who are generally recognised as needing special protection or assistance for reasons such as age.

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<sup>21</sup> See generally Gideon BEN-ISRAEL and Ruth BEN-ISRAEL, *Senior Citizens: Social Dignity, Status and the Right to Representative Freedom of Organisation*, 141 ILR No.3, 253, 257 (2002).

<sup>22</sup> See 2 DAVID.P. FORSYTHE, *ENCYCLOPEDIA OF HUMAN RIGHTS*, 52 (2009).

The Employment Promotion and Protection against Unemployment Convention 1988 (No.168) requires ratifying states to guarantee equal treatment for all persons protected against unemployment including the elderly.

The Human Resource Development Recommendation, 1975 (No.150) enlists measures for older workers for promoting equality in training and employment. The Termination of Employment Recommendation 1982 (No.166) states that age may only constitute a valid motive for termination subject to national law and practice regarding retirement. It is worth mentioning that of late the International Labour Organisation has taken keen interest in the realm of rights of older workers. The governing body of the International Labour Organisation has considered the possibility of adding “age” to the prohibited grounds of discrimination in a protocol to the discrimination ( Employment and Occupation) Convention,1958 (No.111). In a paper entitled “*An inclusive society for an Ageing population: The employment and social protection challenge*” a paper contributed by the International Labour Organisation to the Second World Assembly on Ageing held in Madrid in April 2002, the International Labour Organisation warned that the “demographic revolution” due to population Ageing could lead to widespread poverty and social exclusion among the elderly. The paper highlighted the fact that the increasing proportion of the population aged 60 and above poses a growing policy challenge in developed and developing countries.<sup>23</sup>

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<sup>23</sup> See ILO WORLD SOCIAL PROTECTION DATA DASHBOARD, <https://www.social-protection.org/gimi/ShowResource.action> (last visited Nov. 22 2020).

### ***3.3.2.3. United Nations Open Ended Working Group on Ageing***

It was established on 21st December 2010 by virtue of Resolution no 65/182 of the UN General Assembly for strengthening the protection of human rights of older persons. The OEWG has conducted 10 sessions since its inception. The 10th session was conducted between 15 -18 April 2019. The session focused on two important issues:

- i. Education, training, lifelong learning and capacity building for the elderly.
- ii. Social protection and social security for the elderly. It was decided that the 11th session will focus on access to justice and access to employment.

The mandate of OEWG is to consider the existing international framework of the human rights of older persons and identify possible gaps and to find solutions for a comprehensive and integral international legal instrument to promote and protect the rights and dignity of older persons. The OEWG has to consider the feasibility of further instruments and measures to address the particular human rights challenges faced by older persons.

Any member state of the UN can participate in the OEWG. NGOs can apply for accreditation. The OEWG has a bureau of representatives from 5 member states to manage its work.<sup>24</sup>

The OEWG has done commendable work during the past decade and has a promising role to play in the future development of International Human Rights

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<sup>24</sup> See UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, <https://www.ohchr.org/EN/Issues/OlderPersons/Pages/OEWorkingGroup.aspx> (last visited Jan. 20 2021).

Law on the rights and dignity of the elderly.

Recently the 11th session of the OEWG was held in March 2021 focussing on the right to work and access to labour market and on access to justice.

### **3.3.3. United Nations and its Endeavours for the Aged**

The three most outstanding contributions of the UN General Assembly in the field of the rights of the elderly are the UN Principles for Older Persons adopted by the General Assembly Resolution 46/91 of December 16, 1991, the First World Assembly on Ageing known as the Vienna International Plan of Action on Ageing of 1982 and the Second World Assembly on Ageing known as the MIPAA of 2002. These three vital documents together constitute the main UN legal framework on elders' right. It is significant to note that there is no comprehensive convention at the international level exclusively for senior citizens and there is a global movement for such a convention.<sup>25</sup>

#### ***3.3.3.1. 1<sup>st</sup> World Assembly on Ageing and the Vienna International Plan of Action 1982***

The assembly was the outcome of resolution No. 33/52 of the UN General Assembly of 14<sup>th</sup> December 1978 to convene a World Assembly in 1982. Going by the preamble the two cardinal objectives of the Assembly were (1) to develop and apply at the international, regional and national level policies designed to enhance the lives of the aged (2) to study the impact of ageing populations on development and that of development on the ageing. Importantly the preamble

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<sup>25</sup> See generally, Mallika Ramachandran, *Older Persons and the International Human Rights Framework: Argument for a Specific International Convention*, 56, JILI, 523 (2014).

also reaffirms the belief that fundamental human rights enshrined in the Universal Declaration of Human Rights (UDHR) apply fully to the ageing. Hence the Vienna Declaration is exceptional in that it is the first document wherein the basic fundamental rights enumerated in the UDHR were held as applying within full rigour to elders. The preamble also recognized that quality of life is no less important than longevity.

The purpose of the 1<sup>st</sup> World Assembly was to provide a forum to launch an international action programme aimed at guaranteeing economic and social security to older persons as well as opportunities to contribute to national development.

The main principles of the plan of action are the following (1) the development process must enhance human dignity and ensure equality among age groups in sharing of societies resources, rights and responsibilities (2) the development and humanitarian problems of the aged find their best solution in a condition where there is respect for human rights. (3) each country should respond to demographic trends in the context of its own traditions and cultural values (4) the spiritual, cultural and socio-economic contributions of the ageing are valuable to society and should be recognized and promoted. (5) the family, the fundamental unit of society linking generations should be maintained strengthened and protected. (6) Governments in particular local authorities NGOs voluntary organizations, volunteers' associations of the elderly can make significant contribution for providing support and care for elderly in the family and community. (7) An important objective of socio economic development is

an age integrated society where age discriminations and involuntary segregation are eliminated (8) Ageing is a lifelong process and should be recognized as such and preparation of the population for ageing should be an integral part of social policy (9) Aged should be active participants in the formulation and implementation of policies (10) Governments, NGOs and all concerned have a special responsibility to the most vulnerable among the elderly particularly the poor of whom many are women and are from rural areas. (11) Further study on all aspect of ageing is necessary.

The Vienna Action Plan after laying down the principles aforesaid made recommendation for Action and Implementation and also dealt with the different areas of concern for the elderly like (a) health and nutrition (b) protection of elderly concerns (c) housing and environment (d) family (e) social welfare (f) income security and employment and (g) education. Finally, the plan also incorporated provisions for assessment, review and appraisal and stated that assessment, review and appraisal should be done at the national level at intervals to be determined by each country. It also recommended that the commission for social development should be designated the intergovernmental body to review the implementation of the plan of action every four years and to make proposals for updating the plan and that the findings should be transmitted to the General Assembly through the ECOSOC.

The Vienna Declaration of 1983 was followed by the landmark United Nations Principles for Older Persons adopted by the General Assembly resolution 46/91 of 16<sup>th</sup> December 1991.

Very importantly the General Assembly appreciated the contribution that older persons make to their societies and by virtue of the principles encourage Government to incorporate the principles formulated into their National Programmes whenever possible. The document states that it is made pursuant to the International Plan of Action on Ageing of 1982 and bearing in mind the standards already noted by the said plan.

### ***3.3.3.2. United Nations Principles for Older Persons, 1991***

The United Nations Principles for Older Persons (UNPOP) lists the principles under different heads like (a) Independence (b) Participation (c) Care (d) Self-fulfilment and (e) Dignity and stresses the importance of each of these seminal principles vital for the aged in society.

The UN principles of 1991 were followed by the commemoration of 1999 as the international year of older persons by the UN with the central theme "A society for all Ages." The theme had four dimensions (a) Individual lifelong development (b) Multi-generational relationship (c) Interrelationship between population and development and (d) Situation of older persons. The commemoration of the international year of older persons helped to advance awareness, research and policy action worldwide.

The five broad principles for the rights of older persons formulated by the UN lays down five cardinal principles which are the following:

- i. Independence: Under the head Independence are listed the rights to food, water, shelter, clothing, health care, right to work, right to education and



training, and right to a safe environment.

- ii. Participation: The principle of participation takes within its fold the right to participate actively in the formulation and implementation of policies, the right to form associations and the right to serve their communities.
- iii. Care: This head includes right to derive benefits from family and community care and protection, access to health care, access to social and legal services, access to institutional care, and right to enjoy all human rights and fundamental freedoms while residing under institutional care.
- iv. Self-fulfilment: This broad principle includes opportunities for full development of potential and access to educational, cultural, spiritual, and recreational sources.
- v. Dignity: This principle includes the right to live with dignity and security free from exploitation and the right to be treated fairly and to be valued independently without considering their economic contribution.

Finally, the international year of older persons commemorated in 1999 under the auspices of UN centred around four dimensions or themes which were:

- Individual lifelong development.
- Multigenerational relationships.
- Inter relationship between population, Ageing and development.
- Situation of older persons.

The aforesaid four central themes also take within its fold the specific rights already mentioned above especially the Right to Self-fulfilment, the Right to

participation, the Right to Development, the Right to a conducive environment for the aged.

**3.3.3.3. *II<sup>nd</sup> World Assembly on Ageing and the Madrid International Plan of Action on Ageing, 2002***

The Madrid International Plan of Action on Ageing 2002 (MIPAA )and the Political Declaration was adopted at the second world assembly on Ageing in Madrid, Spain in April 2002.

Kofi. A. Annan the former Secretary General of the UN Organization in his foreword to the document states that “the Madrid Plan of Action offers a bold new agenda for handling the issue of ageing in the 21st century.”<sup>26</sup>

The political declaration declares that the representatives of the Government has decided to adopt an International plan of Action on Ageing 2002 to respond to the opportunities and challenges of population ageing in the twenty first century and to promote the development of a society for all ages.

Significantly the MIPAA of 2002 calls for changes in attitudes policies and practices at all levels in all sectors so that the enormous potential of ageing in the twenty first century can be fulfilled. The aim of the International plan of action is to ensure that persons everywhere are able to age with security and dignity and to continue to participate in their societies as citizens with full rights. The plan of action gives priority to three core areas which are (1) Older persons and development (2) Advancing Health and well-being into old age (3) Ensuring

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<sup>26</sup> See UNITED NATIONS, [https://www.un.org/en/events/pastevents/pdfs/Madrid\\_plan.pdf](https://www.un.org/en/events/pastevents/pdfs/Madrid_plan.pdf) (last visited Jul.8 2018).

enabling and supportive environments. The plan after undertaking an elaborate and meticulous analysis of the entire spectrum of issues confronting the aged around the world under the three thrust areas mentioned above also deals with Implementation and follow up and highlights the fact that Governments have the primary responsibility for implementing the broad recommendations of the plan and also that the role of NGOs is important in supporting Governments in their implementation. The plan of 2002 also envisages international action and highlights research on ageing in all countries particularly in developing countries. Finally, the commission for social development is made responsible for follow up and appraisal of the implementation of the international plan of action on ageing 2002. The crucial importance of the MIPAA 2002 is that it represents the first-time Governments agreed to link questions of ageing to other frameworks for social and economic development and human rights most notably those agreed at the UN conferences and summits of the past decade.

The MIPAA was subjected to review and appraisal at the Regional level in two important documents which are:

- ***Shanghai Plan of Action 2002***

The Plan of Action also known as Shanghai Implementation Strategy is the outcome of a regional survey on national programmes and policies on ageing conducted by the Economic and Social Council for Asia and the Pacific (ESCAP) in June 2002. The Asia-Pacific seminar on Regional Follow up to the Second World Assembly on Ageing reviewed the results of the survey and identified priorities and key obligations under four heads, i.e.,

- Older Persons and Development
- Advancing Health and Wellbeing into Old Age
- Ensuring enabling and supportive environments
- Implementation and follow up.

The Plan of Action highlighted key areas like mainstreaming ageing into development policy, alleviation of poverty in old age, older persons and emergencies, recognising gender specific issues in ageing, providing quality health and long-term care, housing and enabling environments, care and support for caregivers and importantly protection of the rights of the older persons.

- ***Macau Outcome Document 2007***

The ESCAP convened a high-level meeting on the Regional Review of the Madrid International Plan of Action on Ageing in Macau, China in October 2007. The meeting was convened mainly to review developments in the area of ageing in Asia and the Pacific to review and apprise the implementation of MIPAA in the region and to identify priorities for further action in the implementation of MIPAA. The meeting recognized that many countries in the region had made significant progress in developing long term plans and policies for the elderly and institutional mechanisms to prepare for an ageing society. Changing family structures and living arrangements and the increasing burden of chronic diseases was identified as common key challenges. The meeting underscored the importance of a multi pillared health care system targeted at older persons informal caregiving and lifelong preparation for ageing. Finally the meeting made several recommendations for action in accordance with the three priority

areas of MIPAA i.e., older persons and development, advancing health and wellbeing into old age and ensuring enabling and supportive environments. It also gave additional recommendations. These recommendations mainly focus on:

- i. Expanding and improving coverage of social security including social pension for poor older persons.
- ii. Increase awareness among younger generations about lifelong preparation for retirement and old age.
- iii. Promoting access to employment for older persons.
- iv. Developing and strengthening intergenerational bonding.
- v. Developing school curriculum on ageing issues.
- vi. Addressing feminisation of ageing.
- vii. Promoting healthy lifestyles and active ageing.
- viii. Prioritising primary health care resources.
- ix. Prevention and management of chronic diseases.
- x. Recognising and motivating informal caregivers.
- xi. Including Geriatrics in all health and social services.
- xii. Strengthening older persons associations and NGOs.
- xiii. Fostering community-based services.
- xiv. Development of age friendly physical environments.
- xv. Promoting use of technological advances including ICT application.
- xvi. Promoting barrier free physical environment, transportation, public facilities and services.

- xvii. Reviewing existing laws and enacting legislation relating to older persons.
- xviii. Strengthening institutional mechanisms that deal with ageing.
- xix. Promoting corporate social responsibility to better address the issues of population ageing.

All the aforesaid recommendations are highly relevant for India and in particular Kerala and a majority of them are already incorporated in the National and State policies. The recommendation regarding feminisation of ageing is very relevant for Kerala since Kerala has a huge population of women in the “Oldest Old” category.

### **3.4. CONCLUSION**

At the international level there is no comprehensive single convention enumerating the rights of senior citizens like the UN Convention on the Rights of the Child, 1989, CEDAW of 1979 or the Convention on the Rights of Persons with Disabilities of 2006.

The regional human rights conventions are more vibrant, dynamic, sensitive and progressive compared to the international instruments since a majority of the regional conventions contains specific provisions for social security and for rights of the aged especially aged women. Many of the regional charters like the Arab Charter on Human Rights of 2004, the American Convention on Human Rights of 1969 and the African Charter on Human and People’s Rights of 1981 have incorporated elaborate provisions for protection of elders.

Though there is no comprehensive convention on ageing at the global level the UN has taken the lead in evolving and creating a jurisprudence of elder rights through two World Assemblies on Ageing held in 1982 in Vienna and in 2002 in Madrid and through its Principles for older Persons of 1991 which has set the agenda for a new jurisprudence for the aged.

There is the dire need for a comprehensive document at the international level enlisting the positive and negative rights of senior citizens for creating a strong legal framework at the global, regional, and national levels since there is a normative gap at the international level.

The fundamental human rights documents at the international level, i.e., the Universal Declaration of Human Rights 1948 and the two International Covenants on Civil and Political Rights and Economic Social and Cultural Rights of 1966 does not expressly deal with elders' rights even though they underscore human dignity, equality and liberty.

The later international conventions like the Convention on the Elimination of all forms of Discrimination against Women of 1979 and the Convention on the Right of Persons with Disabilities of 2006 however specifically deal with older persons reflecting the evolving global sensitivity towards the aged and their rights.

The UN is singularly responsible for the creation and sustenance of the present international human rights regime for the aged.

The specialized organs of the UN and in particular the ILO, WHO and

OEWG on ageing are doing commendable work for protection of the rights of the aged and for a new regime based on an international convention exclusively for the aged.

Many of the rights enumerated for persons with disabilities in the CRPD of 2006 are squarely applicable for the elderly and can be included in a specific convention. The conventions of the UN and its assemblies though have set the trend for a new legal regime have had little impact on enforceable rights for the aged in domestic law due to want of Rights based legislation.



## CHAPTER IV

### CONSTITUTIONAL PROVISIONS FOR PROTECTING ELDERS' RIGHTS – AN EVALUATION

The core legal framework in India for the protection of the rights and dignity of elders comprises of the provisions of the Constitution of India and a few statutes which have laid down legal mechanisms for redressal of rights of the aged. The Constitution of India contains sketchy provisions for the aged. The other legislations apart from the exclusive legislation of 2007, i.e., MWPC Act of 2007 also contains minimal provisions focussing on the right to maintenance for the aged and that too only for parents. Accordingly, the Cr. P C of 1973 and the Hindu Adoption and Maintenance Act of 1956 contains provisions only for maintenance of parents. The PWDV Act of 2005 also contains limited provisions for protection of aged women from “domestic violence.” This chapter analyses the provisions in the Constitution of India to ascertain the efficacy of the legal mechanism as envisaged in the basic statute of India. The Constitution is considered separately since it is the fundamental law of the land and also since the constitutional philosophy guides the broad legal framework of the country. Considering the importance of the exclusive legislation of 2007, i.e., the MWPC Act of 2007, the said law is analysed separately.

#### 4.1. CONSTITUTIONAL PROVISIONS AND CASE LAW – AN ANALYSIS

The Constitution is the supreme *lex*<sup>1</sup> and the preamble of our supreme *lex*

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<sup>1</sup> See 2 H.M. SEERVAI, CONSTITUTIONAL LAW OF INDIA, 1923 (4<sup>th</sup> ed. 1999).

encapsulates the essence of its ideology and noble objectives. The preamble contains the “fundamentals” of the Constitution.<sup>2</sup> “Dignity” of the individual is highlighted in the preamble of the Constitution of India under the mandate of 'FRATERNITY'. The preamble calls upon the people of India the authors as well as the beneficiaries of the Constitution to secure to all citizens fraternity assuring the dignity of the individual and the unity and integrity of the Nation. JUSTICE, LIBERTY, EQUALITY AND FRATERNITY form the core mandates which the Constitution aims to secure. “Justice” includes social justice and “equality” includes equality of status. All these cardinal principles of justice, liberty, equality and fraternity have a direct bearing on the scope and ambit of elders’ rights. While elders’ rights are central to the theme of social justice, elders want liberty as much as any other individual. Likewise, “ageism” or age-based discrimination is antithetic to equality and finally fraternity in a manner assuring the inherent dignity of the human person is a core requirement for elders’ rights. It was observed by the learned constitutional jurist, H.M. Seervai that the preamble to the Constitution indicates the objectives of the founding fathers of the Constitution.<sup>3</sup> A.K. Sikri, CJ. expounded the true import of the Preamble in the celebrated case of *Kesavananda Bharati* <sup>4</sup> in the following words<sup>5</sup>

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<sup>2</sup> See M.P.JAIN, INDIAN CONSTITUTIONAL LAW, 12 (7<sup>th</sup> ed. 2014).

<sup>3</sup> *Id.* at 276.

<sup>4</sup> *His Holiness Kesavananda Bharati Sripadgalvaru and Others v. State of Kerala and Another*, 1973 KHC 800.

<sup>5</sup> *Id.* at para 21.

“It seems to me that the Preamble of our Constitution is of extreme importance and the Constitution should be read and interpreted in the light of the grand and noble vision expressed in the Preamble.”

The Preamble apart from proclaiming the mandate of social justice also envisages dignity of the individual which includes the elderly. Thus, dignity of the elderly is one of the cornerstones of Indian constitutional philosophy. The Supreme Court has emphasized that the words *fraternity assuring the dignity of the individual* have a special relevance in the Indian context because of the social backwardness of certain sections of the community who had in the past been looked down upon.<sup>6</sup>

Apart from the mandate of dignity in the Preamble and the right to life and personal liberty, in Part III dealing with fundamental rights, all the fundamental rights enshrined in Part III applies with full vigour to the aged. Further human dignity is the core ingredient of the right to life and personal liberty enshrined in Article 21 of the Constitution.<sup>7</sup> The Apex Court in a catena of decisions including the decision in *Francis Coralie Mullin v. Union Territory of Delhi*<sup>8</sup> expounded the true import of Article 21 in the following words of P.N. Bhagavathi J.,<sup>9</sup>

We think that the right to life includes the right to live with human dignity and all that goes along with it namely the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing

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<sup>6</sup> *Indra Sawhney v. Union of India*, AIR 1993 SC 477.

<sup>7</sup> See INDIA CONST. art. 21

<sup>8</sup> AIR 1978 SC 597.

<sup>9</sup> *Id.* at para 8.

and expressing oneself in diverse forms, freely moving about and mixing and comingling with fellow human beings.

Incidentally it was held by the Apex Court in *Chameli Singh v. State of UP*<sup>10</sup> that the right to shelter is a fundamental right under Article 21 of the Constitution and in *Consumer Education and Research Centre v. Union of India*<sup>11</sup> the Apex Court held that the Right to health and medical care is a fundamental right under Article 21 of the Constitution. Both the aforesaid decisions have a seminal role to play in the human rights entitlements of the elderly.

Article 21 of the Constitution which is the seminal article dealing with human life and dignity was granted a new dimension by the Apex Court in *Maneka Gandhi's case*<sup>12</sup> wherein the Apex Court held that the words “personal liberty” in Article 21 is of the widest amplitude covering a variety of rights which go to constitute the personal liberty of man.

After the landmark ruling in *Maneka Gandhi*<sup>13</sup> the Supreme Court has repeatedly underlined the theme that Article 14, 19 and 21 are not mutually exclusive but that they sustain, strengthen and nourish each other.<sup>14</sup>

In *Unnikrishnan's Case*,<sup>15</sup> the Supreme Court asserted that Article 21 is the *heart* of the Fundamental Rights.

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<sup>10</sup> (1996) 2 SCC 549.

<sup>11</sup> (1995) 3 SCC 42.

<sup>12</sup> *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

<sup>13</sup> *Id.*

<sup>14</sup> *T.V. Vatheeswaran v. State of Tamil Nadu*, AIR 1983 SC 361.

<sup>15</sup> *Unnikrishnan v. State of Andhra Pradesh*, AIR 1993 SC 2178.

Yet another fine exposition of Article 21 touching the chord of *dignity* was pronounced in *Rathinam's* case<sup>16</sup> by the Apex Court wherein it was held that the right to live with human dignity “takes within its fold some of the fine graces of civilization which makes life worth living” and that the expanded concept of life would mean the tradition, culture and heritage of the person concerned and in *Bandhua Mukthi Morcha*<sup>17</sup> Article 21 was expounded to mean “to live with human dignity, free from exploitation.”

A scrutiny of the many vibrant and lively interpretations of Article 21 will reveal a remarkable feature which has been that many of the non-justifiable Directive Principles have been converted into enforceable fundamental rights by the magical wand of judicial creativity. It is also evident that in the process of expanding Article 21, the Supreme Court has integrated many Directive Principles with Article 21.<sup>18</sup> Further by reading Article 21 along with the preamble and several Directive Principles the Supreme Court has ruled that right to social justice constitute a fundamental right.<sup>19</sup>

The broadest and most proactive interpretation of all fundamental rights in consonance with contemporary social realities has flowed from the Apex Court over the years enriching elder law jurisprudence in India though indirectly. Recently in *NALSA v. Union of India and Others*<sup>20</sup> the Apex Court while dealing with the rights of transgenders held that the Constitution makers could not have

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<sup>16</sup> *P. Rathinam v. Union of India*, 1994 (3) SCC 394.

<sup>17</sup> *Bandhua Mukthi Morcha v. Union of India*, AIR 1984 SC 802.

<sup>18</sup> See M.P.JAIN, *supra* note 2, at 1159.

<sup>19</sup> See *CESC Ltd., v. Subhash Chandra Bose and Others*, AIR 1992 SC 573.

<sup>20</sup> 2014 KHC 4251.

envisaged that each and every human activity be guided, controlled, recognised or safeguarded by laws made by the legislature. The Court held that Article 21 has been incorporated to safeguard those rights and that a constitutional court cannot be a mute spectator when those rights are violated. Importantly it was also held that in the absence of contrary legislation municipal courts in India would respect rules of international law which has a bearing on elderly rights since elder law has developed under international law and especially under the auspices of the UN.

Very significantly the only direct provisions in the Constitution that provides expressly for the elderly are Articles 39 (e) and Article 41 in Part IV of the Directive Principles of State Policy. Article 41 mandates that the state shall within the limits of its economic capacity and development make effective provision for securing the right to work to education and to **public assistance** in cases of unemployment, **old age**, sickness and disablement and in other cases of undeserved want. Article 39(e) directs the state to make policies for securing that citizens are not faced by economic necessity to enter avocations unsuited to their **age** and strength.” Apart from these express provisions Article 46 also in part IV of the Constitution directs the state to promote with special care the educational and economic interests of the weaker sections of the people and in particular the scheduled castes and scheduled tribes and to protect them from social injustice and all forms of exploitation. Though the provision does not make express mention of the rights of the elderly, the provision no doubt will apply indirectly to the elderly since the elderly form a ‘weak’ section of the society.

Importantly, Article 37 states that the provisions contained in Part IV shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and further it shall be the duty of the state to apply these principles in making laws.

Hence, unfortunately, the Constitution contains sketchy provisions meant exclusively for the elderly. The prime provision is incorporated in Article 41 and as an unenforceable Directive Principle of State Policy.<sup>21</sup> This provision is usually referred to as one for social security.<sup>22</sup> This solitary and cardinal provision mandates social assistance for the aged but with the caveat that such state assistance is subject to the economic capacity of the state and its development.

Coming specifically to Article 41, the Hon'ble Apex Court in *D.S. Nakara v. Union of India*<sup>23</sup> was called upon to consider the legality of an office memorandum of the Ministry of Finance of the Government of India relating to pension benefits. The Hon'ble Apex Court after analysing the scope and objective of pensions in detail struck down the office memorandum on the ground that it violated the right to equality under Article 14 of the Constitution after adjudicating the crucial issue whether classification of pensioners on the basis of their date of retirement is a valid classification for pensionary benefits. The Apex Court

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<sup>21</sup> See INDIA CONST. art. 41 - Right to work, to education, and to public assistance in certain cases - the state shall, within the limits of its economic capacity and development make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want.

<sup>22</sup> See V.N. SHUKLA, CONSTITUTION OF INDIA, 375 (12<sup>th</sup> ed. 2013).

<sup>23</sup> AIR 1983 SC 130.

speaking through D.A. Desai J. has beautifully explained the constitutional objective of Article 41 in the context of pensionary benefits as follows<sup>24</sup>:

Then comes the old age in the life of everyone, be he a monarch or a mahatma, a worker or a pariah. The old age overtakes each one, death being the fulfilment of life providing freedom from bondage. But then socialism aims at providing an economic security to those who have rendered unto society what they are capable of doing when they are fully equipped with their mental and physical prowess. In the fall of life, the state shall ensure to the citizens a reasonably decent standard of life, medical aid, freedom from want, freedom from fear and the enjoyable leisure relieving the boredom and the humility of dependents in old age. This is what Article 41 aims when it enjoins the state to secure public assistance in old age, sickness and disablement.

It was held in *Ram Lubhaya Baggas' Case*<sup>25</sup> that, a policy based on financial constraints is not violative of Article 47 or 21 and that Article 41 recognizes this aspect. In the said case, the challenge was against the new policy of the Government of the year 1995 with respect to reimbursement of medical expenses of Government servants and pensioners incurred in non-governmental hospitals. The Hon'ble Apex Court eventually held that the new policy is valid and not violative of Article 21 of the Constitution. The Apex Court speaking through A.P. Misra J., held as follows<sup>26</sup>

Any state endeavour for giving best possible health facility has direct correlation with finances. Every state for discharging its obligations to provide

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<sup>24</sup> *Id.* at 139.

<sup>25</sup> *State of Punjab v. Ram Lubhaya Bagga* AIR 1998 SC 1703.

<sup>26</sup> *Id.* at 1711.



some projects to its subject requires finances. Article 41 of the Constitution gives recognition to this aspect.

It is heartening to note that it has now become a judicial strategy to read fundamental rights along with Directive Principles with a view to define the scope and ambit of Fundamental Rights and that Directive Principles are used to broaden and give depth to fundamental rights<sup>27</sup>. Article 51 A (f) in Part IV A under Fundamental Duties<sup>28</sup> enshrines a fundamental duty on every citizen to value and preserve the rich heritage of the composite culture which certainly would take in the value norm to respect, care for and protect the elderly. In *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamaat and others*<sup>29</sup> it was held by the Apex Court that when the Court is faced with the question of testing the constitutional validity of any statutory provision or an executive act or testing the reasonableness of any restriction cast by law on the exercise of any fundamental right by way of regulation, control, or prohibition the Directive Principles of State Policy and Fundamental Duties as enshrined in Article 51A of the Constitution play a significant role.

Hence it is evident from the aforesaid discussion that the Constitution contains only bare minimal basic provisions for protection of the rights of elders and understandably considering the demographic scenario and the socio-cultural mosaic of the 1940's. However, it is heartening to note that the Hon'ble Apex Court has been very progressive and modernistic in its interpretation of the provisions

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<sup>27</sup> See M.P. JAIN, *supra* note 2, at 1413.

<sup>28</sup> See Constitution 42<sup>nd</sup> Amendment Act, 1976.

<sup>29</sup> 2005 KHC 1907.

in Part III and Part IV of the Constitution which has definitely enured for the benefit of the elderly. It is equally disheartening that despite the passage of about seven decades of vibrant exposition of constitutional law, the constitutional courts have not endeavoured for advancing the rights of elders as a vulnerable class of the society barring the progressive interpretation of Article 41 mentioned above. It is sincerely hoped that the plight of the elderly and their manifold problems both legal and social will engage the attention of the constitutional courts in the future. In the realm of Directive Principles, the Supreme Court has held that Directive Principles seek to introduce the concept of welfare State<sup>30</sup>

Originally the Directive Principles were considered more akin to moral rather than legal precepts as they did not have much value from a legal point of view. The main idea was that they would serve an educational purpose. With the passage of time however greater emphasis has come to be laid on the fulfilment of goals set out in these principles.

With respect to justiciability, the principles were made non justiciable since they impose positive obligations on the State and while taking positive action Government functions under severe restraint the most crucial being financial resources and the Constitution makers hence took a pragmatic view as they believed more in an awakened public opinion than in Court proceeding.

In *Ranjan Dwivedi's* case<sup>31</sup> it was held that court will not issue an order or a writ of mandamus to the Government to fulfil a Directive Principle. However,

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<sup>30</sup> *Paschim Banga Khet Mazdoorsamity v. State of West Bengal*, AIR 1996 SC 2426.

<sup>31</sup> *Ranjan Dwivedi v. Union of India*, AIR 1983 SC 624.

it was held in *UPSE Board*<sup>32</sup> that the Courts are bound to evolve affirm and adopt principles of interpretation which will further and not hinder the goals set out in the Directive Principles.

In *Deep Chand's Case*<sup>33</sup> it was held that Directive principles guide the exercise of legislative power but does not control the same and further in *Koluthara Exports*<sup>34</sup> it was held that the competence of a legislature to enact a law is to be adjudged with reference to entries in the three lists and not with reference to the Directive Principles which confer no legislative power.

As far as interrelation between Directive Principles and Fundamental Rights are concerned though the initial view as evident from *Champakam Dorairajan's Case*<sup>35</sup> was that the Directive Principles could not override the fundamental rights the judicial attitude changed with *Minerva Mills*<sup>36</sup> wherein it was held that fundamental rights are not an end in themselves but a means to an end and that the end is the Directive Principles of State Policy. In *Unnikrishnan's case*<sup>37</sup> it was held that the fundamental rights and Directive Principles are supplementary and complementary to each other and not exclusionary of each other and further that fundamental rights are to be construed in the light of the Directive Principles.

It has now become a judicial strategy to read fundamental rights along with

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<sup>32</sup> *UPSE Board v. Hari Sankar*, AIR 1980 SC 65.

<sup>33</sup> *Deep Chand v. State of UP*, AIR 1959 SC 648.

<sup>34</sup> *Koluthara Exports Ltd., v. State of Kerala*, AIR 2002 SC 973.

<sup>35</sup> *State of Madras v. Champakam Dorairajan*, AIR 1951 SC 525.

<sup>36</sup> *Minerva Mills v. Union of India*, AIR 1980 SC 1789.

<sup>37</sup> *Unnikrishnan v. State of Andhra Pradesh*, AIR 1993 SC 2178.

Directive Principles with a view to define the scope and ambit of the fundamental rights and mostly Directive Principles have been used to broaden and to give depth to some fundamental rights and to imply some more rights there from for the people over and above what are expressly stated as Fundamental Rights.<sup>38</sup>

The Fundamental Duties were incorporated by way of the Constitution 42<sup>nd</sup> Amendment Act in 1976 in Part IV A as Article 51A. Article 51 A stipulates that it is the duty of every citizen to abide by the Constitution and respect its ideals and Article 51A (f) makes it a duty to value and preserve the rich heritage of the composite culture.

In the *Ramlila Maidan Case*<sup>39</sup> the Supreme Court held that when the courts are called upon to examine the reasonableness of a legislative restriction on the exercise of a freedom the fundamental duties are relevant.

For the first time in the history of the Apex Court directions were issued in the decision reported in *Ashwani Kumar (Dr.) v. Union of India and others*<sup>40</sup> with respect to the rights and welfare of Senior Citizens.

Madan P Lokur J., after adverting at the outset to the preambular postulate of social justice and its perennial relevance rightly held that the rights of elderly persons is one emerging situation that was not fully foreseen by the Constitution framers and that though there is reference to the health and strength of workers, men and women and the tender age of children in Article 39 of the Constitution

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<sup>38</sup> See M.P. JAIN, *supra* note 2 at 1413.

<sup>39</sup> *In re Ramlila Maidan Incident*, (2012) 5 SCC 1.

<sup>40</sup> 2019 (1) KHC 173.

and to public assistance in case of old age in Article 41, there is no specific reference to the health of the elderly or to their shelter in times of want and to their dignity and sustenance due to their age.<sup>41</sup> The Court took the petition as an opportunity to recognise and enforce the rights of elderly person recognised under Article 21 of the Constitution.

The petitioner had highlighted four issues for consideration of the Apex Court which were:

1. Pension for the Elderly
2. Shelter for the Elderly
3. Geriatric care and medical facilities for the Elderly
4. Effective Implementation of the Maintenance and Welfare of Parents and Senior Citizens Act 2007.

The Apex Court held that the petition raises significant issues relating to the recognition and enforcement of the fundamental rights of the elderly and also acknowledged that it is the first petition on the subject.<sup>42</sup>

The Apex Court after considering the litigation as non-adversarial held that there is the need to continuously monitor the program of implementation of the constitutional mandate to make available to the elderly the right to live with dignity and to provide them with reasonable accommodation, medical facilities and geriatric care. The Court adopted the judicial technique of continuing mandamus and asserted the need for vigorous efforts considering the

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<sup>41</sup> *Id.* at para 3.

<sup>42</sup> *Id.* at para 43.

constitutional importance of the topic.

The Apex Court eventually gave the following directions:

1. 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.
2. The Union of India will also obtain from the State Government the medical facilities and geriatric care facilities that are available to senior citizens in each District and to file a status report.
3. On the basis of the status information in the reports a Plan of Action should be prepared for giving publicity to the provisions of the MWPC Act of 2007 and making senior citizens aware of the provisions of the said Act and the constitutional and statutory rights of senior citizens.
4. The Central Government must exercise its power under Section 30 of the Act and issue appropriate directions to the State Governments, for the effective implementation of the MWPC Act of 2007 by State Government and the Central Government must conduct a review for the purpose of monitoring the progress of implementation of the MWPC Act of 2007 by the State Government.
5. It is high time for the Government of India to relook the existing schemes and overhaul them with a view to bring convergence and avoid multiplicity. The Government of India and the State Governments must revisit the grant of pensions for the elderly to make it more realistic

depending upon the availability of finances and the economic capacity of the Government of India and State Governments.

Thus, the Apex Court in this revolutionary decision has opened the door for a new era of jurisprudence for elders' rights and dignity. It is noteworthy that the court had based its directions on the basis of the foundations laid by it earlier in the landmark decisions of the court in the context of interpretation of Article 21 of the Constitution. In particular, the Court relied on the (i) right to dignity as an integral part of the right to life held in *Francis Coralie Muller v. Administrator, Union Territory of Delhi*,<sup>43</sup> *Aruna Ramchandra Shanbaug v. Union of India*,<sup>44</sup> *Common Cause v. Union of India*,<sup>45</sup> *K.S.Puttaswamy J.(Retd) v. Union of India*,<sup>46</sup> (ii) the right to shelter or right to reasonable accommodation held in *Shantistar Builders v. N. K. Totame*,<sup>47</sup> *Chameli Singh v. State of Uttar Pradesh*,<sup>48</sup> *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan*,<sup>49</sup> (iii) the right to health held in *State of Punjab v. Mohinder Singh Chawla*,<sup>50</sup> *Nagar Nigam v. A C Faheem Meat Exports (P) Ltd*,<sup>51</sup> and *Occupational Health and Safety Association v. Union of India*.<sup>52</sup>

It is hoped that the aforesaid public interest litigation will generate a change in mindset of the Government and will unleash a new proactive era for elders'

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<sup>43</sup> 1981 KHC 516.

<sup>44</sup> 2011 KHC 4220.

<sup>45</sup> 2018 KHC 6177.

<sup>46</sup> 2017 KHC 6577.

<sup>47</sup> 1990 KHC 734.

<sup>48</sup> 1996 KHC 721.

<sup>49</sup> 1997 KHC 1259.

<sup>50</sup> 1997 KHC 692.

<sup>51</sup> 2007 KHC 3168.

<sup>52</sup> 2014 KHC 4067.

rights and dignity.

The Hon'ble Apex Court thereafter in the said case considered the plight of aged persons in the backdrop of the COVID-19 pandemic and issued directions. It was argued that older people who are living alone are the worst sufferers and that they are not able to get medicines, masks, sanitizers and other essential goods and also that the caregivers of such persons are not equipped with personal protection equipment. The need for timely payment of old age pension to the aged was flagged. Importantly the court directed that all old age people who are eligible for pension should be regularly paid pension and that identified older people should be provided necessary medicines, masks, sanitizers and other essential goods by respective states. It was further directed that the caregivers of those old age homes should be provided personal protection and that appropriate sanitization should also be undertaken at the old age homes.

The Apex Court was also alerted about the fact that elderly people are not getting priority in the Government hospitals irrespective of their capacity to pay.

The Apex Court observed that the elderly people should be given priority in admission in Government hospitals and that in the event of any complaint by elderly people the hospital administration should take immediate steps to remedy their grievances.<sup>53</sup>

It is evident from the aforesaid discussion that the Hon'ble Supreme Court has widened the scope and ambit of the preamble tremendously through dynamic

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<sup>53</sup> *Ashwani Kumar (Dr.) v. Union of India and Others*, 2020 (5) KHC 235.



interpretation. Likewise, equality, protective discrimination and right to life have been given new meanings and hitherto unknown horizons by the Supreme Court. The Supreme Court has also enhanced the importance of the Directive Principles and has considered the unenforceable Directive Principles to be the “end” and the enforceable fundamental rights to be the “means” to reach the “end” and very importantly of late there is a movement to give indirect enforceability to many important directive principles through the realm of fundamental rights giving more potential and hope to the Directive Principles including Article 41.

#### **4.2. NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION (RECOMMENDATIONS)**

Significantly, the National Commission to Review the working of the Constitution was appointed in February 2000 by way of a resolution dated 22 February 2000 of the Ministry of Law, Justice and Company Affairs of the Government of India. The terms of reference of the Commission was to examine in the light of the experience in the past 50 years as to how best the Constitution can respond to the changing needs of efficient smooth and effective system of governance and socio-economic development of modern India within the framework of parliamentary democracy and to recommend changes if any that are required in the provisions of the Constitution without interfering with its basic structure or features.<sup>54</sup> The Commission observed that the vision of socio-economic change through the Constitution is reflected in its lofty preamble and

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<sup>54</sup> See 1 REPORT OF THE NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION, 3 (Universal Law Publishing Company Pvt Ltd, ed.2002).

that the preamble expresses the ideals and aspirations of a renaissance India.<sup>55</sup> It was observed that the scheme of the Constitution for realisation of the socio-economic agenda comprises of the justiciable fundamental rights as well as the non-justiciable directive principles.<sup>56</sup> Importantly, it was also observed that the judicial contribution to the synthesis and integration of the fundamental rights and the directive principles in the process of 'Constitutionalising' social and economic rights have been crucial to the realisation of the directive principles not only as a means to effectuate fundamental rights but also as a source of laws for a welfare state.<sup>57</sup> The Commission inter alia recommended the Right against Torture and Inhuman, degrading treatment or punishment as a distinct fundamental right and as a sub clause to Article 21. The Commission also recommended to an enforceable right to compensation for persons illegally deprived of the Right to Life and Personal Liberty.<sup>58</sup> Coming to the Directive Principles of State Policy it was observed that the founders of the Constitution considered the 'principles' as being 'fundamental' in the 'governance of the country' and which were to be applied in making laws. The Commission reminded advertent to the decisions of the Supreme Court that the principles are the 'conscience' and the core of the Constitution.<sup>59</sup> Very importantly the Commission held that an appropriate mechanism must be devised to oblige the state to take step by step action to progressively realise the principles to the

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<sup>55</sup> *Id.* at 58.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 59.

<sup>58</sup> *Id.* at 61.

<sup>59</sup> *Id.* at 68.

maximum extent within the resources of the state. The Commission recommended that the heading of Part IV of the Constitution should be amended to read as “Directive Principles of State Policy and Action.”<sup>60</sup> Adverting to the mandate of Article 41, the Commission stated that it has social security in its widest sense and the measure of the distance the country still has to travel to build a good society. The Commission instead of recommending a complaints procedure for realisation of the Directive Principles suggested constitution of a body of high status which reviews the existing level of implementation of the Directive Principles and which would estimate the extent of resources required in each state for realisation of economic, social and cultural rights like the right to work, right to health, the right to food, clothing and shelter and to make recommendations for allocation of adequate resources.<sup>61</sup> Finally coming to Fundamental Duties the Commission observed that Article 51A has travelled a great distance since its inception and that further consideration should be given to ways and means to popularise the knowledge and content of the fundamental duties and to effectuate them<sup>62</sup>. The Commission held that the Fundamental Duties are the foundations of human dignity and national character.<sup>63</sup> After recommending the sensitisation of people and creation of general awareness on Fundamental Duties among citizens the Commission also recommended the fostering of a spirit of family values and responsible parenthood in the matter of education, physical and moral wellbeing of children as an additional fundamental

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<sup>60</sup> *Id.* at 70.

<sup>61</sup> *Id.* at 75.

<sup>62</sup> *Id.* at 77.

<sup>63</sup> *Id.* at 78.

duty.<sup>64</sup>

Thus, going by the scheme of the Constitution it is evident that providing *public assistance* to the aged is considered to be only a guiding principle to be applied while enacting laws and most importantly such *public assistance* is made dependent upon the 'economic capacity and development' of the state. In other words, the sole provision for protection of the elderly is a totally toothless and ineffective provision which exists in the *suprema lex* as an ideal to be achieved on attaining economic capacity and development in very uncertain and indefinite terms.

It is remarkable that though Article 15(3) in Part III dealing with fundamental rights enable the state to make special provision for women and children there is no such provision for the aged. In fact, Article 15 prohibits discrimination on grounds of religion, race, caste, sex or place of birth and Article 15 (3) carves out an exception to the general rule against discrimination enabling the state to make special provisions for women and children considering their vulnerable status in society. In fact, “age” is also not made a facet of discrimination in Article 15 and Article 14 mandates that the state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

In sum the provisions in the Constitution are totally inadequate to cater to the manifold legal problems of elders in the current social milieu since “age” has

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<sup>64</sup> *Id.* at 80.

not expressly been made a facet of equality as well as discrimination in the realm of fundamental rights and also since “public assistance” for elders is only a guiding principle for legislation and further dependent on the economic capacity and development of the state. It is also noteworthy that Article 51A(f) dealing with fundamental duties makes it the fundamental duty of every citizen to value and preserve the rich heritage of India's composite culture which will definitely include respect for elders a seminal value norm of Indian culture. Finally, it is worth mentioning that both Article 243G dealing with the powers, authority and responsibilities of a Panchayath and Article 243W dealing with the powers, authority and responsibilities of Municipalities and the 11<sup>th</sup> and 12<sup>th</sup> schedules to the Constitution which enlist the subjects earmarked for Panchayaths and Municipalities respectively do not make mention of the aged even though women and child development figure in entry 25 in the 11<sup>th</sup> schedule. There is hence the dire need to amend the Constitution and incorporate specific rights for the elderly in the basic law.<sup>65</sup>

#### **4.3. CONCLUSION**

In the light of the aforesaid analysis, the following conclusions can be drawn in the context of the Constitution of India:

The Constitution of India conspicuously contains a sketchy outdated and toothless if not a blunt provision for protection of “elderly rights” which is totally

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<sup>65</sup> See Shashibala, *Rights of Senior Citizens*, 45 JCPS, 79 (2011); Dr. Rakesh Kr. Singh, *Rights of Senior Citizens: Need of the Hour*, 33, IBR 1-4, 127, 136 (2006).

inadequate to meet the exigencies of the contemporary social milieu in the context of the radical demographic transition in favour of the aged.

The existing provision is only a Directive Principle of State Policy or a yard stick for policy and legislation or a yard stick for potential policy and potential legislation which at best merely caters to “public assistance” for aged persons. Public assistance need be provided subject to the economic capacity and development of the state.

The Constitution of India does not contain express provisions for protection against “ageism” or “age” based discrimination as a facet of the right to equality in Article 14.

The Constitution of India does not mandate the right to social security, social insurance, social benefits, social assistance and social services as a fundamental right or even as a constitutional right and merely mandates “public assistance” subject to the economic capacity and development of the state as a guiding policy principle.

The Constitution of India does not prescribe the duty of children, the family and society to protect and care for elders under the head of Fundamental Duties.

The Constitution of India does not make provision for vital assistance for the aged like tax reliefs for the elderly or for other concessions like free public transportation, retirement pensions, medical aid etc.

Though the Constitution of India does not contain express provisions with respect to the rights of the aged and their dignity, the core constitutional philosophy of dignity of the individual is enshrined in the preamble and the fundamental rights in Part III which fully applies to the aged.

The constitutional courts and in particular the Apex Court has widened the ambit of the right to life in Article 21 to include all facets of human rights for dignified living which would enure to the aged also.

It is gratifying to note that recently the Apex Court has for the first time got occasion to deal specifically with a public interest litigation pertaining to the rights of senior citizens and its protection in *Ashwani Kumar (Dr.) v Union of India and Others*.<sup>66</sup>

It is gratifying that the Apex court has called for a report from all state governments with respect to the implementation of the MWPSA Act 1997 and has directed the Union Government to effectively monitor the implementation of the Act by the state governments as mandated by the Act.

It is satisfying to note that the Apex Court has granted due recognition and importance to the directive principles of state policy and fundamental duties while expounding and expanding the fundamental rights.

The recommendations of the National Commission to Review the working of the Constitution are welcome and in particular the recommendation to constitute a multi-member high level body to review the level of implementation

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<sup>66</sup>2019 (1) KHC 173.

of the Directive Principles of State policies for better implementation of all the directives.

The Commission has rightly given prime importance to Fundamental Duties and its publicity for increasing awareness on its provisions which is vital for instilling moral and cultural values in the younger generation for respecting and caring for the elderly which is a seminal value norm of Indian heritage and culture.

The Constitution is based on the outmoded scheme of need based “welfare” for the aged in terms of public assistance and it is not “rights” based as several other progressive world Constitutions. In fact, even the most common constitutional mandate of “social security” is conspicuously absent in the Constitution of India.

To conclude, though the Constitution of India mandates human dignity as a core philosophy, the basic law is deficient and regressive when it comes to express provisions for the aged in terms of rights and duties. The socio-cultural milieu of the nineteen forties explains the sketchy provisions. Though the Apex court has vibrantly expounded Article 21 and related provisions over the years it is only recently that the Court has directly dealt with the rights of the aged which itself is surprising. Even a cursory scan of world constitutions will reveal the wide ranging rights and duties expressly incorporated in various constitutions for the elderly as constitutional rights, fundamental rights and constitutional duties which study is undertaken below for a comparative perspective. The time has come for a total revamping of the supreme law to make it contemporary.



## **CHAPTER V**

### **STATUTORY LAW IN INDIA FOR THE PROTECTION OF ELDERS' RIGHTS: AN EVALUATION**

The statutory legal framework for the elderly in India comprises of the Constitution and the statutes dealing with the rights and welfare of the elderly. Traditionally the personal laws catered to the elderly especially parents based on religious and moral strictures. Accordingly, the Hindu personal law was the pioneer in statutory reforms. Other legislations followed suit and all these conventional statutes were rooted in the concept of maintenance. This chapter analyses the statutes in the realms of personal law and law of maintenance to critically analyse and understand the legal mechanisms and its efficacy. The exclusive legislation for the elderly i.e., the MWPSA Act of 2007 is dealt with in a separate chapter.

#### **5.1. PERSONAL LAWS OF VARIOUS RELIGIONS AND RIGHTS OF ELDERS**

It was found above that the rights of the aged in India are rooted in religion and morality. India is the cradle of several major religions like Hinduism. All religions mandate care for the aged and respect for the aged. This segment explores the rights of the aged under different religions.

##### **5.1.1. Hindu Adoption and Maintenance Act 1956**

The preamble to the Act states that it is an Act to amend and codify the law relating to adoption and maintenance among Hindus. Section 20 (1) of the Act

mandates that a Hindu is bound to maintain his aged or infirm parents. Section 20 (3) mandates that the aforesaid obligation of a Hindu extends only so far as the parent is unable to maintain himself out of his own earnings or other property and going by the explanation “parent” includes a childless stepmother. Section 3(b) defines 'maintenance' in inclusive terms, and it includes provisions for food, clothing, residence, education and medical attendance and treatment. Section 22 provides for maintenance of dependants of a deceased Hindu by the heirs of the deceased Hindu from out the estate of the deceased inherited by the heirs and going by the mandate of Section 21 dependants would include the father and mother of the deceased. Section 23 deals with the amount of maintenance that can be awarded, and it prescribes that maintenance can be awarded using the discretion of the court based on the factors mentioned in subsection 23 (2) for parents and subsection 23(3) for dependants including the father and mother. Importantly Section 23(2) (a) provides for considering the position and status of the parties and clause (b) of the reasonable wants of the claimant. Section 24 mandates that the claimant should be a Hindu and Section 25 also provides for alteration of maintenance on change of circumstances. Finally, Section 28 protects the right of the dependant to enforce maintenance on the estate of the deceased even after transfer of the estate provided the transferee has knowledge of the right or if the transfer is gratuitous.

A careful scan of the provisions of the Act reveals the following limitations. Firstly, the Act applies only to Hindus as defined in the Act. Secondly the claimant for maintenance should be a Hindu under the Act. Thirdly the obligation

to maintain aged or infirm parents only extends against parents who are unable to maintain themselves out of their own earnings or property. Fourthly right to claim maintenance as dependants of deceased children is subject to the criteria mentioned in Section 23(3) which includes the net value of the estate after deducting debts due out of the estate and provisions made in a will for the dependants and after considering the past relationship between the dependant and deceased.

In *Munni Devi v. Chhoti and Others*<sup>1</sup> it was held that the term aged or infirm has to be interpreted in the context of the parent's right to claim maintenance which is to be conditioned by the ability of the person seeking maintenance to maintain himself from his income or property. It was held that the idea of being aged or infirm is closely connected with the ability of a person to earn his livelihood and that there cannot be an absolute objective test for determining whether a person is aged or infirm. The interpretation aforesaid of the Hon'ble court is progressive and purposeful based on social realities. It is advisable not to fix a particular standard for age or ability and to define the true test based on ability of a person seeking maintenance to maintain himself or herself from his or her income or property and the ability of the person to earn his livelihood. In *Karthiyani v. Chandrika*<sup>2</sup> the Kerala High court held that by virtue of Section 20 of the said Act, a Hindu is under a legal obligation to maintain his aged parents whether or not he possesses property and that the obligation to maintain the aged

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<sup>1</sup> 1983 KHC 1008.

<sup>2</sup> 1991 KHC 189.

parent is personal and legal in character which arises from the very existence of the relationship between the parties. Importantly, the Court granted interim maintenance despite the absence of a specific provision for interim maintenance in the Act. This progressive interpretation for providing interim maintenance invoking Section 151 of the Code of Civil Procedure, is laudable and commendable as interim maintenance would provide succour to aged parents during the pendency of long drawn litigations. Though the progressive interpretations aforesaid are in the right direction the fact remains that the legislation has only limited application to govern persons professing Hindu religion.

In *Ganesh s/o Rajendra Kapratiwar*<sup>3</sup> the Bombay High Court held that under Section 20 of the Hindu Adoptions and Maintenance Act a son is liable to pay maintenance to his mother and that during the lifetime of the son the mother cannot claim maintenance from the grandchildren under Section 22 of the said Act. In *Santhanan's* case<sup>4</sup> the Madras High Court held that the court is conferred with wide discretion and powers in awarding interim maintenance to wives, children and parents and that the power to grant interim maintenance has to be read into the provisions of Articles 18, 20 and 23 of the Act. The same view was taken by the Kerala High Court in the ruling reported in *Karthiyani*.<sup>5</sup> The Courts have taken a realistic, pragmatic and liberal view while interpreting Section 23(2) of the Act which deals with quantum of maintenance. The Hon'ble High

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<sup>3</sup> *Ganesh s/o. Rajendra Kapratiwar and Others v. State of Maharashtra, and Another* 2010(4) KHC 610.

<sup>4</sup> *V. Santhanan v. S.Sathya and Others*, 2003 KHC 3846.

<sup>5</sup> *Karthiyani v. Chandrika*, 1991 KHC 189.

Court held in *Karunakaran Nair*<sup>6</sup> in the context of a claim for maintenance by the daughter that a meaningful amount by way of maintenance has necessarily to provide for many of the physical and social needs of the modern man. It was held that man does not live by bread alone and that clothing is equally important. Further in *Anil Kumar*<sup>7</sup> it was held that the mere fact that the defendant is not possessed of sufficient means does not in any way obliterate his liability under Section 20 and the question relating to his means may be relevant only in considering the quantum of maintenance. Though this case dealt with a claim of maintenance by a child against his father the principle holds good as against parents also.

In the recent ruling of the Apex Court reported in *Abhilasha v. Parkash and Others*<sup>8</sup> it was held while interpreting the provisions under the Section 20 of the Act and Section 125 of the Code of 1973 in the context of the right of maintenance of an unmarried daughter from her father that the right under Section 20 read with Section 3 (b) of the Act of 1956 contains a larger right which needs determination by a civil court as compared to a right under Section 125 of Cr. P C which aims to provide immediate relief to the applicant in summary proceedings before a Magistrate. On facts the court upheld the contention that an unmarried daughter would be entitled to claim maintenance from her father under Section 20 (3) of the Act provided she proves that she is unable to maintain herself.

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<sup>6</sup> *Karunakaran Nair v. Suseela Amma*, 1987 (2) KLT 666.

<sup>7</sup> *Anilkumar v. Gopikuttan Nair*, 1984 KLT 900.

<sup>8</sup> 2020 (5) KHC 235.

It was held by the Kerala High Court in *Suseela v. Dileep Kumar*<sup>9</sup> that a stepmother having a child is not entitled to claim maintenance under Section 20 of the Act since she cannot be considered as a “parent” and since the legislature has consciously included “childless stepmother” within the definition of parent.

In *Leelamma N P v. M. A. Moni*<sup>10</sup> the High Court of Kerala held that it is the obligation on the part of a son to maintain his aged father and mother by reason of personal obligation. It was held that though under old Hindu law the obligation was imposed on the son alone the present Hindu law extends this obligation on both sons and daughters. It was pointed out that it is trite that a son has to maintain his mother irrespective of the fact whether he inherits any property or not from his mother since he owes an obligation and duty, legal and moral on the basis of the relationship alone. The court relied on the dictum of the Apex Court in *Kirtikant D Vadodaria v. State of Gujarat and Another*.<sup>11</sup>

In *Deenbandhu and Another v. Birajho Bai*<sup>12</sup> it was held that a childless stepmother living alone and unable to maintain herself is entitled for maintenance from her stepsons under Section 20 of the Act.

Hence the case law on the provision though scarce in the realm of parent’s rights definitely gives a positive and progressive note. It is glaring that there are very few reported decisions pertaining to claim of maintenance by parents against children and the entire case law pertains to claim of maintenance against

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<sup>9</sup> 2019 (4) KHC 750.

<sup>10</sup> 2017 930 KHC 340.

<sup>11</sup> 1996 KHC 332.

<sup>12</sup> 2015 KHC 332.

husbands and wives and also by children against parents.

### **5.1.2. Maintenance under Mohammedan Law**

Mohammedan law mandates that children in *easy* circumstances are bound to maintain their poor parents although the latter may be able to earn something for themselves. A son though in strained circumstances is bound to maintain his mother if the mother is poor though she may not be infirm and a son who though poor and earning something is bound to support his poor father who earns nothing. Further a person is bound to maintain his paternal and maternal grandfathers and grandmothers if they are poor but not otherwise to the same extent as he is bound to maintain his poor father.<sup>13</sup>

### **5.1.3. Maintenance under Christian Law**

There is no specific statute dealing with maintenance for persons following the Christian religion. Hence, Christians are governed by the general secular law of maintenance under Section 125 of the Cr. P C of 1973.

## **5.2. CODE OF CRIMINAL PROCEDURE 1973**

Section 125 in Chapter IX of the Code of Criminal Procedure (here after Cr. P C) of 1973 deals with order for maintenance of wives, children and *parents*. Going by Section 125 (1) if any person *having sufficient means neglects or refuses* to maintain his *father or mother unable to maintain himself or herself* a Magistrate of the first class *may* upon proof of such neglect or refusal order

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<sup>13</sup> See MULLA, PRINCIPLES OF MOHAMEDAN LAW, 301, 302 (19<sup>th</sup> ed. 1990).

such person to make a monthly allowance at such monthly rate as such Magistrate thinks fit. The section was amended in 2001 by the Amendment Act 50 of 2001 whereby a second proviso was inserted enabling awarding of interim maintenance pending proceedings.<sup>14</sup>

Sub Section (3) of Section 125 mandates that if any person ordered to pay maintenance under sub section (1) *fails without sufficient cause* to pay maintenance, maintenance can be enforced by a warrant for recovery of maintenance as if it were a fine and also by imprisonment of the defaulter.

Significantly the provision enables a swift and cheap remedy against a person who despite means, neglects or refuses to maintain his father or mother unable to maintain himself or herself. The primary object of the section is to prevent vagrancy.<sup>15</sup>

In *Ramesh Chander Kaushal v. Veena Kaushal*<sup>16</sup> the Hon'ble Apex Court held that this provision is a measure of social justice falling within the constitutional sweep of Article 15 (3) and Article 39 enacted to protect the weaker sections like women and children. The Apex Court, speaking through V.R. Krishna Iyer J., in his inimitable style held as follows<sup>17</sup>:

The roots of the rule of law lie deep in the collective consciousness of a community and this sociological factor has a role to play in understanding provisions like Section 125 of the Criminal Procedure Code which seek to inhibit neglect of women and children, the old and the infirm.

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<sup>14</sup> See Code of Criminal Procedure Amendment Act, 2001 § 2.

<sup>15</sup> See 1 S.C. SARKAR, CODE OF CRIMINAL PROCEDURE, 301 (9<sup>th</sup> ed. 2007).

<sup>16</sup> AIR 1978 SC 1807.

<sup>17</sup> *Id.* at para 3, 9.



The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance.

Hence the seminal social relevance of the provision which incorporated the category of Parents which was conspicuously missing in Section 488 of the former Code of 1898 has been wonderfully expounded by the Apex Court in this landmark ruling. Importantly the Court negated the argument that Section 125 of the Code prescribed an outer limit of INR 500 towards maintenance as mentioned in the Section.

In *Fazlumbi v K. Khader*<sup>18</sup> the Hon'ble Supreme Court held that the section is a secular safeguard irrespective of the personal laws of the parties. In *Bhagwan Dutt v Kamala Devi*<sup>19</sup> the Hon'ble Apex Court laid down that the object of the provision is to compel a man to perform the moral obligation which he owes to society in respect of his wife, children and parents. It was also held that the jurisdiction of the Magistrate is preventive and not remedial and certainly not punitive. It was held in *Vijaya Manohar Arbat (Dr.) v. Kashirao Rajaram Sawai*<sup>20</sup> by the Hon'ble Apex Court that a daughter though married is bound to maintain her indigent father and the word his in Section 125 (1)(d) was interpreted to include son as well as daughter. However, the Apex court cautioned that before ordering maintenance the court must be satisfied that the daughter has sufficient means of her own independent of the means or income of her husband and that

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<sup>18</sup> AIR 1980 SC 1730.

<sup>19</sup> AIR 1975 SC 83.

<sup>20</sup> 1987 KHC 199.

the father or mother is unable to maintain himself or herself. It was rightly held that a daughter after her marriage does not cease to be a daughter of the father or mother and that it was the moral obligation of the children to maintain the parents. It was further held that purpose of Section 125(1) (d) is to enforce the social obligation of children and that there is no reason to exclude the daughter. In *Mahendra Kumar Gaikwad v. Gulabhai and Others*<sup>21</sup> it was held that the statutory claim for maintenance of the mother is not dependent on her having discharged her parental obligations during the childhood of the child. The Hon'ble Court repelled the argument of the son that his father was bound to maintain his mother. Importantly it was held that Section 125 of the Code does not contemplate preferential rights and that the rights conferred on the wife, children and parents under Section 125 of the Code are not mutually exclusive but co-extensive. Interestingly the court also repelled the argument of the son that the mother did not care for the education of the son during his childhood. The court for its reasoning quoted Manu as follows<sup>22</sup>

“The Aged parents, a virtuous wife and an infant child must be maintained even by committing a hundred misdeeds.”

In *Chakkingal Achuthan Kutty Nair and others v. Chakkingal Seetha Kutty Amma*<sup>23</sup> it was held that parents are entitled to claim maintenance from their daughters whether married or not provided the parents are unable to maintain

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<sup>21</sup> 2001 KHC 2259.

<sup>22</sup> *Id.* at para 11.

<sup>23</sup> 2014 (4) KHC 186.

themselves and provided the court is satisfied that the married daughter concerned has sufficient independent means independent of the means of her husband.

Since the basic requirement of the section is that a person should have “sufficient means” to be liable to pay maintenance these words assume immense importance. Fortunately, the judiciary has given a very purposeful and meaningful interpretation for these words. It was held that “means” does not signify only visible means and that if one is healthy and able bodied he must be held to have means to support his wife<sup>24</sup> It was held that a person cannot avoid his liability under Section 125 (1) merely on the ground that he has no tangible real property or income if he is otherwise able bodied and healthy and has capacity to earn and that the presumption should be that an able bodied healthy person is possessed of sufficient means.<sup>25</sup>

The next cardinal ingredient is “neglect” or “refusal” to maintain. The Supreme Court held in *Bai Tahira*<sup>26</sup> that neglect is a *sine qua non* for the application of Section 125 and it was held in *Purnasashi Devi*<sup>27</sup> that neglect, or refusal means “neglects or refuses” to maintain properly. It was held in *Mary M.P.*<sup>28</sup> that to satisfy Section 125 (1) the reason for neglect or refusal to maintain is irrelevant and that the fact of neglect or refusal to maintain alone is relevant under section 125 (1). The three factors to be established for claiming maintenance

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<sup>24</sup> *Ali Hussain v. Baby Fanda Kahtan*, 1998 ACJ 2762.

<sup>25</sup> *Durga Singh Lodhi v. Premabai w/o Durga Singh and Others*, 1990 ACJ 2065.

<sup>26</sup> *Bai Tahira A v. Ali Hussain Fissalli Chothia and Another*, AIR 1979 SC 362.

<sup>27</sup> *Purnasashi Devi v. Nagendra Nath Bhattacharjyee*, AIR 1950 Cal 465.

<sup>28</sup> *Mary M.P. v. Varghese*, 2008 (4) KLT 522.

by a wife against the husband under Section 125(1) were laid down by our Hon'ble High Court in *Kavungal Kooppakkattu Zeenath*.<sup>29</sup> They are (1) that the wife is unable to maintain herself (2) that the husband is having sufficient means and (3) that the husband refused or neglected to maintain the wife. These conditions under section 125 (1) will definitely apply *ipso facto* to parents under Section 125 (1) (d).

Coming specifically to the realm of parents it was held in *Ayyagari's case*<sup>30</sup> that a step- mother cannot claim maintenance from her step- son since under Hindu law “Mother” is one who has given birth to the child. A contra view was taken by the Karnataka High Court by holding that if a stepmother proves that she is living alone and is unable to maintain herself due to old age the stepmother can claim maintenance.<sup>31</sup>

The Hon'ble High Court held in *M.Asifa Beevi*<sup>32</sup> that a daughter must maintain her father if the father is unable to maintain himself.

In the case of *Mahendra Kumar Gaikwad*<sup>33</sup> it was held that the statutory claim for maintenance of mother as envisaged under Section 125 (1) (d) is not dependant on her having discharged her parental obligations during the childhood of the child. A similar view was taken in the case of a father in *Pandurang Bhaurao Dabhade v.*<sup>34</sup>

<sup>29</sup> *Kavungal Kooppakkattu Zeenath and Another v. Mundakkattu Sulfiker Ali*, 2008 (3) KLT 757.

<sup>30</sup> *Ayyagari Suryanarayana Vara Prasada Rao v. Ayyagiri Venkatakrisha Veni*, 1989 CrL. L.J 673.

<sup>31</sup> *Ulleppe and Others v. Smt. Gangabai*, ILR 2003 Kar 1946.

<sup>32</sup> *M. Asifa Beevi v. K. M. Sahile (Dr.)*, 1982 KLT 242.

<sup>33</sup> *Mahendrakumar Gaikwad v. Gulabhai and Others*, 2001 KHC 2259.

<sup>34</sup> *Pandurang Bhaurao Dabhade v. Baburao Baburao Dabhade, and Another*, 1980 KLJ 256.

Finally coming to the aspect of “maintenance” a progressive interpretation was given by the Apex Court in *Siraj Mohmad Khan Jan Mohamed Khan* case<sup>35</sup> wherein it was held that the concept of providing a wife merely with food, clothing and lodging as if she is only a chattel and has to depend on the sweet will and mercy of her husband has now become completely outdated and absolutely archaic.

The Apex Court in the recent decision reported in *Rajnesh v Neha and Another*<sup>36</sup> while interpreting Section 125 of the Cr. P C of 1973 laid down elaborate guidelines for awarding maintenance. By way of final direction, the Apex Court held that:

- i. Where successive claims for maintenance are made by a party under different statutes the Court should consider an adjustment or set off of the amount awarded in the previous proceedings while determining whether any further amount is to be awarded.
- ii. It is mandatory for the applicant to disclose the previous proceeding and orders passed therein in the subsequent proceeding.
- iii. The Affidavit of Disclosure of Assets and Liabilities annexed as Enclosures II & III as applicable has to be filed by both parties in all maintenance proceeding including pending proceedings.
- iv. For determining the quantum of maintenance, the Court shall take into account the criteria in Part B-III of the Judgment.

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<sup>35</sup> *Siraj Mohmad Khan Jan Mohamed Khan v. Hafizunnisa Yasinkhan*, AIR 1981 SC 1972.

<sup>36</sup> ILR 2020 (4) Kerala 579.

- v. In all maintenance cases maintenance will be awarded from the date of filing the application for maintenance.
- vi. The order or decree of maintenance may be enforced under Section 28 A of the Hindu Marriage Act 1956, Section 20(6) of the PWDV Act and Section 128 of Cr. PC as applicable. The order of maintenance may be enforced as a money decree of a Civil Court as per the provisions of Civil Procedure Code.

The aforesaid ruling has come as a boon to litigants who have initiated proceedings under different legislations for maintenance.

In the recent decision of the Apex court reported in *Sanjeev Kapoor v. Chandana Kapoor and others*<sup>37</sup> the court held that while dealing with an application under the provision the court is dealing with the marginalized sections of society and that the purpose is to achieve “social justice” which is the constitutional vision enshrined in the Preamble of the Constitution. It was pointed out that it is the bounden duty of courts to advance social justice and to adopt a “social context adjudication” approach instead of an “adversarial approach.”

It was held in *Syamala and Another v. Salim*<sup>38</sup> that Section 125 is not intended to provide for a full and final determination of the status and personal rights of the parties. The Kerala high court held that the order passed is tentative and is subject to the final determination of the rights in a civil court. It was

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<sup>37</sup> 2020 (2) KHC 345.

<sup>38</sup> 2019 (1) KHC 414.

reiterated that the provision was enacted to prevent vagrancy and destitution and that it gives effect to the natural and fundamental duty of a man to maintain his wife, children and parents so long as they are unable to maintain themselves.

The Kerala high court held in *Ivan Rathinam v. Milan Joseph*<sup>39</sup> that the jurisdiction conferred by Section 125 is more in the nature of a preventive rather than remedial jurisdiction and that it is certainly not punitive. It was asserted that the object is to compel a man to perform the moral obligation which he owes to society in respect of his wife and children.

In *Ambili v. Sarojini and Another*<sup>40</sup> the Kerala high court held that the expression “mother” in Section 125 Cr. PC denotes the biological mother and not the mother-in-law or the stepmother and that the mother-in-law is not entitled to get maintenance from the daughter in law under Section 125 (1) of Cr. PC.

In *Praveen v. Sabitha and Another*<sup>41</sup> the Kerala high court held that though under Section 125 (3) and the proviso, application has to be made to recover compensation within one year the ordinary remedy to recover maintenance through a civil action would be available. The court relied on the direction of the Apex Court in *Poongadi and Another v. Thangavel*<sup>42</sup> and it was also held that the provision of sentencing under Section 125(3) is a “mode of satisfaction” of the liability which can only be by actual payment. It was held that the sentencing is the means for achieving the end of enforcing the order for recovering the amount

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<sup>39</sup> 2018 (3) KHC 234.

<sup>40</sup> 2017 (4) KHC 277.

<sup>41</sup> 2017 (2) KHC 1003.

<sup>42</sup> 2013 KHC 4784.

of arrears and it is not a mode of discharging the liability.

In *Sathish Rai and Another v. Aarti Rai and Another*<sup>43</sup> it was held that though there is no embargo or bar in claiming maintenance under Section 125 Cr. P C and Section 12 of the PWDV Act 2005 it would not entitle the claimants to claim maintenance under both forums. It was held that even if the two forums have passed the order of maintenance, the subsequent order would be subject to adjustment of maintenance in the previous proceeding.

The Code of 1973 and the activist interpretations no doubt are welcome developments for elders' rights. However, it is a harsh reality that very few parents initiate litigations against their children for maintenance considering Indian familial values and norms. It is equally disturbing that such litigations even if initiated are long drawn and expensive for aged parents and more a bane than a boon as a legal remedy.

A careful scrutiny of the aforesaid case laws in the realm of Article 125 (1) (d) pertaining to parents will hence reveal the fact that the Courts have tried to infuse realism, efficacy and practicality considering the objective of the provisions while interpreting the provisions. The proposition that a parent can claim maintenance from the child irrespective of his carrying out his parental obligations speaks volumes about the anxiety of the court to implement the welfare provision which aims to prevent vagrancy and starvation of elders. Even a cursory glance of the section will reveal the fact that there are inherent

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<sup>43</sup> 2017 KHC 4367.



loopholes in the law which can impair its efficiency. Firstly, only if a person has “sufficient means” need he pay maintenance. Secondly only if the father or mother is unable to maintain himself or herself need the child maintain the parent. Thirdly *neglect or refusal* should be proved before a court of law with evidence.

### **5.3. PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT 2005**

The revolutionary legislation, the Protection of Women from Domestic Violence Act, 2005 provides a remedy under the civil law to protect elderly women from domestic violence” a phenomenon that is widely prevalent in Indian Society especially in Kerala but largely invisible in the public domain. The Act gave the widest possible interpretation to the term domestic violence in Section 3 to include physical abuse, sexual abuse, emotional abuse and economic abuse. The secular law caters to aged women in domestic relationships who have lived with the respondent in a shared household as defined in the Act. The welfare legislation empowers Judicial Magistrates to grant protection Orders<sup>44</sup>, Residence Orders<sup>45</sup> Monetary Reliefs<sup>46</sup> Custody Orders<sup>47</sup> and Compensation Orders.<sup>48</sup>

It was held by the Apex Court speaking through Deepak Misra J. in *Krishna*

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<sup>44</sup> See Protection of Women from Domestic Violence Act, 2005, § 18.

<sup>45</sup> See Protection of Women from Domestic Violence Act, 2005, § 19.

<sup>46</sup> See Protection of Women from Domestic Violence Act, 2005, § 20.

<sup>47</sup> See Protection of Women from Domestic Violence Act, 2005, § 21.

<sup>48</sup> See Protection of Women from Domestic Violence Act, 2005, § 22.

*Bhattacharjee v. Sarathi Choudhury and Another*<sup>49</sup> that the Act is a beneficial as well as assertively affirmative enactment for the realization of the constitutional rights of women and to ensure that they do not become victims of any kind of domestic violence. Having regard to the nature of the legislation, the Court directed trial courts to take a more sensitive approach while adjudicating claims under the Act. The Court set aside an order of the Maintenance Tribunal dismissing an application at the very threshold on the question of limitation. In *Vajresh Venkatray Anvekar v. State of Karnataka*<sup>50</sup> the apex court held that assault on a woman offends her dignity and that the Court should be sensitive to women's problems. The Court pointed out that there is a phenomenal rise in crimes against women and protection granted to women by the Constitution of India and other laws can be meaningful only if those who are entrusted with the job of doing justice are sensitized towards the problems of women in society. The case related to the offences of dowry death, abetment of suicide, and matrimonial cruelty. While upholding the conviction under Section 306 of IPC the court held that one or two assaults on a woman cannot be considered as an accepted social norm and the court highlighted the need for a sensitive approach by judges towards the problems of women.

It was held by the Kerala high court in *Vijayalakshmi Amma V K (Dr) and another v. Bindu V and Others*<sup>51</sup> that the proceedings under the Act are civil in nature and that the respondent is not an accused who is obliged to take bail.

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<sup>49</sup> 2015 KHC 4758.

<sup>50</sup> 2013 KHC 4003.

<sup>51</sup> 2010 (1) KHC 57.

The apex court held in *Sandhya Manoj Wankhade v. Manoj Bhimrao Wankhade and Others*<sup>52</sup> that female relatives of the husband can be arrayed as co-respondents in an application alleging domestic violence.

In *Kusum Lata Sharma v. State and Another*<sup>53</sup> it was held that a mother who is ill-treated by her son or daughter in law would be an “aggrieved person” and the son and the daughter in law would fall within the definition of “respondents.” It was held that a mother-in-law can file a complaint against her son or daughter in law as respondents.

In *Preceline George (Dr.) v. State of Kerala and Another*<sup>54</sup> the Kerala high court held that even where a claim of maintenance had already been granted under Section 125 Cr. PC or under any other law for the time being in force, a further order awarding maintenance can be granted provided the earlier maintenance granted is also taken into account in determining monetary relief under the PWDV Act. It was also held that even if all other relief sought under the Domestic Violence Act are not allowed still maintenance can be awarded under the Act.

Significantly the apex court held in *Bharat V.D v. Savita Bharat*<sup>55</sup> that the conduct of the parties even prior to the coming into force of the Act could be taken into consideration while passing an order under Section 18, 19 and 20 of the Act. On facts it was held that a wife who had shared a household in the past

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<sup>52</sup> 2011 (1) KHC 515.

<sup>53</sup> 2011 KHC 2921.

<sup>54</sup> 2011 (4) KHC 502.

<sup>55</sup> 2012 (1) KHC 610.

but was no longer doing so when the Act came into force would still be entitled to the protection of the Act.

It was held in *Satpal v. State and Another*<sup>56</sup> that the mere dismissal of the application under Section 12 of the Act will not debar the proceedings under Section 125 of the Cr. PC since under Section 26 (2) of the Domestic Violence Act reliefs under the Act are in addition to relief under other laws.

It was held in *Hamina Kang v. District Magistrate (UT) Chandigarh and Others*<sup>57</sup> that a residence belonging to the mother-in-law or father-in-law is not a shared household under the PWDV Act 2005 and that the daughter in law has no right of residence in such a house. The court relied on the dictum of the apex court in *S.R.Batra v. Taruna Batra*<sup>58</sup> wherein it was held that the house which exclusively belongs to the mother-in-law would not be the shared household of the daughter in law.

In *Raju Narayana Swamy v. Beena M.D*<sup>59</sup> the Kerala high court held that family court will have jurisdiction under the PWDV Act to grant relief to the victim of domestic violence only if there is an existing legal proceeding and an application under section 26 is filed therein. It was held that the family court cannot entertain an original application under section 12 of the said Act. It is noteworthy that section 26 gives considerable convenience to women litigants and it also avoids multiplicity of proceedings.

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<sup>56</sup> 2016 KHC 3979.

<sup>57</sup> 2016 KHC 3277.

<sup>58</sup> 2007 (1) KHC 536.

<sup>59</sup> 2017 (1) KHC 607.

In *Shalu Ojha v. Prashant Ojha*<sup>60</sup> the apex court held that maintenance proceedings under the Domestic Violence Act are summary in nature and that if aggrieved wife can file for maintenance under the Hindu Adoption and Maintenance Act or under Section 125 of Cr. P C.

In *Latha P.C. and others v. State of Kerala and Others*<sup>61</sup> Kerala High Court cautioned about the trend of misusing the provisions of the Act by unnecessarily roping in all relatives of the respondent. The court directed trial courts to scrutinize applications meticulously for arriving at a satisfaction regarding commission of domestic violence before issuing notices. The dictum will be a big boon to aged relatives of the respondent who are often unnecessarily dragged into litigations.

In the recent ruling reported in *Satish Chandra Ahuja v. Sneha Ahuja*<sup>62</sup> the apex court speaking through Ashok Bhushan J. held that “domestic violence is rampant in the country and that several women encounter violence in some form or the other every day. It was observed that it is the least reported form of cruel behaviour and that a woman resigns her fate to the never-ending cycle of enduring violence and discrimination as a daughter, a sister, a wife, a mother, a partner or a single woman in her lifetime. It was also observed that the reason why most cases of domestic violence are never reported is due to the social stigma of society and the attitude of the women themselves where women are expected to be subservient, not just to their male counterparts but also to the male

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<sup>60</sup> 2018 KHC 6527.

<sup>61</sup> 2020 (5) KHC 478.

<sup>62</sup> 2020 (5) KHC 496.

relatives.”<sup>63</sup>

The Apex Court rightly described the Act of 2005 as a milestone for protection of women in India. The court held that the interpretation of “shared household” on *S.R. Batra v. Taruna Batra*<sup>64</sup> does not lay down the correct law.

The court importantly held that the right to residence under Section 19 is not an indefensible right of residence especially when the daughter in law is pitted against father-in-law or mother-in-law. The court held that senior citizens in the evening of their life are also entitled to live peacefully not haunted by marital discord between their son and daughter in law. It was held that while granting relief under Section 12 or in any civil proceedings the court has to balance the rights of both parties.

Earlier in *Hiral P.Harsora and others v. Kusum Narottamdas Harsora and others*<sup>65</sup> the Apex Court struck down the expression “adult male” in Section 2(9) paving the way for incorporating females also as respondents.

The Act has become a crucial legal weapon for women especially elderly women for seeking redressal for all forms of elder abuse in domestic environment against children and relatives. The Act provides comprehensive and extensive remedies for redressal of domestic violence in all forms including compensatory orders and it is heartening that the Act provides speedy summary procedures for quick relief within a short time frame.<sup>66</sup>

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<sup>63</sup> *Id.* at para 30.

<sup>64</sup> 2007 (1) KHC 536.

<sup>65</sup> 2016 (5) KHC 15.

<sup>66</sup> *See* Protection of Women from Domestic Violence Act, 2005, §13.

In fact, elderly women in India and in particular in Kerala Society are largely confined to domestic environment and are by and large at the mercy of their children and relatives. They form the most vulnerable among the elderly population and the Act has tremendous potential in curbing physical, mental, emotional, economic and sexual abuse of elderly women. In this context, it is noteworthy that the Legal Services Authorities Act, 1987<sup>67</sup> mandates free legal aid to women as of right. Significantly the PWDV Act 2005, mandates that Police Officers, Protection Officers, Service Providers and Magistrates on receiving complaints of domestic violence should inform the aggrieved person of her right to free legal Services under the said Act.<sup>68</sup>

Unfortunately, all the aforesaid legislations combined with the personal laws could not provide effective redressal for the manifold problems of the elderly *via-a-vis* violation of their legal rights.

#### **5.4. LEGAL SERVICES AUTHORITIES ACT 1987 AND RIGHTS OF ELDERS**

Article 39A in Part IV of Indian Constitution incorporated by the Constitution (Forty Second) Amendment Act 1976 mandates equal justice and free legal aid. This vital directive seeks to ensure that the operation of the legal system promotes justice on the basis of equal opportunity and in particular provides for free legal aid by suitable legislation or schemes to ensure that opportunities for securing justice are not denied to any citizen by reason of

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<sup>67</sup> See Legal Services Authorities Act, 1987, §12,cl.c

<sup>68</sup> See Protection of Women from Domestic Violence Act, 2005, § 5, cl. c.

economic or other disabilities. Pursuant to this mandate Parliament enacted the Legal Services Authorities Act of 1987. The Act provides for the constitution of legal services authorities for providing free and competent legal services to the weaker sections of the society and also seeks to organise Lok-Adalats to secure that the operation of the legal system promotes justice on the basis of equal opportunity. “Legal Services” under the Act<sup>69</sup> includes the rendering of any service in the conduct of any case or other legal proceeding before any court or other authority or tribunal and the giving of advice on any legal matter. Importantly every person who has to file or defend a case shall be entitled to legal services under the Act if the person is (a) a member of the scheduled caste or scheduled tribe (b) a victim of trafficking in human beings or begar (c) a woman or a child (d) a person with disability as defined in the Persons with Disabilities (Equal opportunities Protection of Rights and Full Participation) Act 1995 (e) victim of mass disaster, ethnic violence, caste atrocity, flood, draught, earthquake or industrial disaster (f) industrial workman (g) persons in custody and (h) persons with annual income of less than INR three lakhs.

It is significant to note that though the elderly are weak and vulnerable physically and mentally only aged women are entitled to legal services under the Act as of right. Males among the elderly are entitled to free legal services only if they fall under any of the other enumerated categories the most general being the income criterion. In other words, males above sixty years as of right are not entitled to free legal services under the Act which is a major lacuna or

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<sup>69</sup> See Legal Services Authorities Act 1987, 2005, § 2, cl. c.



shortcoming considering the important constitutional mandate of equal justice and free legal aid. The elderly are in fact the weakest section of the society and depriving the elderly males of free legal services in the dusk of their lives is a blatant violation of the constitutional mandate to provide justice on the basis of equal opportunity. The elderly can be secure in their rights only if access to justice is within reach and only if the justice delivery system is made available to them for seeking redressal. Speedy adjudication of disputes both litigation as well as pre-litigation and settlement of disputes at the earliest preferably through pre-litigation is vital for protecting the rights of senior citizens. Often the elderly who get involved in the litigation are the victims of exploitation by lawyers and are also the victims of delayed adjudication due to various reasons. Hence it is highly essential that “age” is made a criterion for free legal services under the Act.

Significantly under the Act the Central Authority<sup>70</sup> can frame the most effective and economical schemes for the purpose of making legal services available under the Act. Accordingly, the central authority that is the National Legal Services Authority has framed **NALSA (Legal Services to Senior Citizens) Scheme**, 2016.

The Central authority has also framed the **NALSA (Legal Services to Disaster Victims through Legal Services’ Authorities) Scheme**, 2010 which is very pertinent in this contemporary era of the COVID 19 pandemic. The

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<sup>70</sup> See Legal Services Authorities Act 1987, § 4, cl. b.

Scheme aims to provide legal services to the victims of disasters both manmade and natural. Under the Scheme the DLSA has to coordinate with the health department for ensuring proper medical care and in coordination with the authorities under the Disaster Management Act, 2005. Preventing the spread of epidemics is one of the mandates of the Scheme. The geriatric population is highly vulnerable to COVID 19 on account of reduced immunity due to ageing. Further lockdown measures to curb the pandemic have resulted in worsening of social isolation and loneliness in the elderly population. This situation is associated with increased morbidity and mortality among the aged.<sup>71</sup> Studies have revealed that the elderly are in the highest risk of developing severe COVID 19 illness.<sup>72</sup> Unfortunately, Legal Services institutions have not been able to contribute under the Scheme for curbing the raging pandemic. It is however heartening to note that the Kerala High Court has directed that necessary measures should be taken for vaccinating Senior Citizens and bedridden patients at their homes. In a public interest litigation the Court observed that Senior Citizens have been facing many troubles during the pandemic. The Court adverted to Section 20 of the MWPSA Act of 2007 and stated that the State Government has a duty to provide medical support to the Senior Citizens.<sup>73</sup>

#### **5.4.1. NALSA (Legal Services to Senior Citizens) Scheme 2016**

In its background statement to the Scheme, NALSA has underlined the

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<sup>71</sup> See James Paul Pandarakalam, *Mental Health Problems Posed by Covid -19*, 7 GGS, 651 (2021), <https://crimsonpublishers.com/ggs/pdf/GGS.000651.pdf>.

<sup>72</sup> See Abdulraheem IS, Abdulraheem KS, *Vulnerability and Assessment of Needs of Older People in the Midst of COVID-19 Pandemic: A Mini Review*, 6 GGS, 646 (2021), <https://crimsonpublishers.com/ggs/pdf/GGS.000646.pdf>.

<sup>73</sup> See Ensure Home Vaccination for Elderly: HC, *The Times of India*, June 4, 2021, p 2.

fact that senior citizens constitute a class in themselves though not homogenous and that they are a reservoir of experience and knowledge. The myriad challenges, social, physical, mental, and economic unique to senior citizens are mentioned. NALSA after undertaking a survey of the existing legislations has underscored the vital fact that the benefits under the legislations and schemes have reached only a very few senior citizens and that often the senior citizens are unaware of their entitlements and in a condition unable to access the benefits. Though laws and schemes lay down the entitlements of senior citizens the beneficiaries have difficulties in availing their entitlements under the laws and schemes. Hence NALSA felt that Legal Services Institutions have an important role to play in ensuring access to the benefits of the schemes and legal provisions. Significantly NALSA adverted to Section 4 (1) of the said Act which enjoins the Central Authority to take appropriate measures for spreading legal literacy and legal awareness among the people and also in particular to educate weaker sections of the society about their rights, benefits and privileges guaranteed by social welfare legislations and administrative programmes and measures. It is pertinent that Section 7 (c) of the said Act enjoins the State Authority (KeLSA) to undertake preventive and strategic legal aid programmes.

The main objectives of the scheme are (a) to outline the basic rights and benefits that should be accorded to senior citizens (b) to strengthen legal aid and representation for senior citizens who are entitled under Section 12 in availing the benefits of various legal provisions which exist (c) to ensure access to various Government schemes and programmes to the senior citizens (d) to ensure that

the authorities and institutions under the MWPSA Act 2007 are established including old age homes (e) to create and spread awareness about the rights and entitlements of the senior citizens under various laws and Governmental schemes and programmes (f) to enhance capacities at all levels of panel lawyers, para legal volunteers, Government officers, police personnel and non-governmental organisations by organising training, orientation and sensitization programmes and (f) to undertake research and documentation to study various schemes, laws etc to find out gaps and to make suggestions to appropriate authorities. The ultimate objective of the scheme is to ensure that the senior citizens live a life of dignity and enjoy all the benefits and facilities which are due to them. The Plan of Action under the Scheme mainly envisages (a) Establishment of Tribunals and Appellate Tribunals under the MWPSA Act 2007, establishment of old age homes for senior citizens as contemplated under the Act both at the instance of SLSA's and DLSA's including carrying out of regular visits to the old age homes to ensure facilities and dignity for senior citizens (b) Establishment of Legal Services Clinics at Tribunals and Appellate Tribunals and in old age homes and ensuring availability of trained para legal volunteers in Legal Services clinics for assisting senior citizens and encouraging students in Legal Services clinics set up in villages and universities to visit old age homes and provide legal services to seniors in the society (c) Providing legal aid on priority basis to all senior citizens who are entitled to legal aid under Section 12 of the Act and using trained para legal volunteers as the interface between the senior citizens in the community and the Legal service institutions

(d) Identifying core regional and local issues faced by senior citizens and to seek solutions and use resources including coordination with the concerned Governmental agencies and facilitating creation of self-help groups among senior citizens (e) creation of a database of all existing laws, schemes, policies, regulations for senior citizens and publishing of information, booklets and dissemination of information and awareness including creation of a database of senior citizens for effective assistance through Para Legal Volunteers (PLV) and by providing security by coordinating with police authorities (f) Implementation of various schemes by disseminating information about policies, schemes, programmes etc to senior citizens and Government functionaries by liaising with law enforcement authorities to address security concerns of senior citizens and in particular by deputing PLVs to assist police authorities in registration of senior citizens, providing legal services which include information on different Government schemes and the benefits and ensuring benefits with the aid of PLVs from concerned authorities (g) Creation of awareness on rights and entitlement of senior citizens and creation of a culture sensitive to the rights of senior citizens and creating awareness on the moral duty of the children to care for senior citizens, organising awareness programmes cum health check-up camps for seniors and special registration drive for senior citizens (h) organisation of training and orientation programmes for panel lawyers and PLVs and all other stakeholders including Government functionaries, police personnel and NGOs and finally (i) observance of 1<sup>st</sup> October every year as the International Day for Older Persons by organising awareness programmes for creating awareness on

the rights and entitlement of senior citizens.

The NALSA (Legal Services to Senior Citizens) Scheme 2016 is a remarkable statutory scheme which has tremendous potential to empower and mainstream senior citizens in the society. It rightly underscores dignity of senior citizens and seeks establishment of a culture of sensitivity towards the rights and entitlement of senior citizens. It emphasises on creation of awareness on the rights and entitlement of senior citizens under the existing legislations, policies, schemes, programmes and directives and aims to bridge the beneficiaries and the authorities through its nationwide network of trained panel lawyers and specially trained para legal volunteers. Very importantly the scheme encourages the PLVs as foot soldiers for propagating awareness and as an interface between the legal services institutions and the senior citizens in the society. The Kerala SLA, DLSA's and TLSC's in Kerala can effectively implement the scheme for promoting and protecting the rights and dignity of senior citizens as the most appropriate machinery for generating legal awareness in laws, policies, schemes and programmes. The legal services clinics can render invaluable services to senior citizens who are entitled under Section 12 of the Act to legal services. "Legal Aid" can be broadened into the realm of welfare schemes and programmes to ensure that beneficiaries obtain the benefits of Government programmes and schemes. It is heartening to note that KeLSA has recently released a Handbook for Senior Citizens entitled **Anthasodeyulla Jeevithasayhanam** but a lot more can and has to be done by Legal Service Institutions towards "legal services" for Senior Citizens. The scheme is

definitely a step in the right direction and its tremendous significance and potential has to be realised for its effective implementation especially in Kerala where active coordination between Legal Services Institutions and Police can lead to effective implementation of policing<sup>74</sup> with respect to registration of seniors and periodic interaction with senior citizens in the locality for enhancing their protection. The Taluk Legal Services Committee (TLSC) at the grass root level can contribute tremendously towards the scheme by creating a panel of specially trained and sensitised panel lawyers and para legal volunteers on the laws, policies, schemes, programmes of senior citizens. Finally, the Scheme is perhaps the most effective weapon in the legal armoury today to create a new rights-based era for senior citizens. It is pertinent that a majority of the aged are illiterate and from rural backgrounds and are unaware of various schemes. Hence it is the obligation of social workers to create awareness among the aged.<sup>75</sup> Therefore legal services institutions can contribute tremendously for the aged.

### **5.5. THE HIMACHAL PRADESH MAINTENANCE OF PARENTS AND DEPENDANTS ACT 2001**

Act no 19 of 2001 was enacted to provide for the maintenance of parents, wives and children considering the tendency to neglect aged and infirm parents and dependents and the need to compel the young generation to perform their moral obligations which they owe to their families and aged and infirm parents.

The Act applies to all persons domiciled in the State of Himachal Pradesh

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<sup>74</sup> See Kerala Police Circular No. 16/2010 dated 11/3/2010 of PHQ Trivandrum.

<sup>75</sup> See Dr. Syed Maswood, "*Old Age a Curse!: Dearth of Enabling Laws to Protect this Vulnerable Group*" AIR Journal 103.

except Muslims.<sup>76</sup> An application for a maintenance order can be filed by any person who is unable to maintain himself and resident in the state to the Tribunal.<sup>77</sup> Parents and grandparents can file applications against their children or grandchildren and the maintenance that can be awarded cannot exceed Rs 5000 per month. An application can also be filed on behalf of the parent or grandparents by an approved person or organisation.<sup>78</sup>

The tribunal can pass a maintenance order if it considers the claim to be just and equitable primarily if the respondent is able to provide maintenance to the applicant after his own requirements and those of his spouse and children and if the applicant is unable in spite of the efforts on his part to maintain himself through work or from his property or other source.<sup>79</sup> The tribunal can award interim maintenance pending proceedings<sup>80</sup> and it can also order security for maintenance.<sup>81</sup> A maintenance order is enforceable as an order passed under Chapter IX of the Code<sup>82</sup> and the execution can be either by a tribunal or an ordinary court.<sup>83</sup> The tribunal under the Act has a presiding officer (Civil).<sup>84</sup> The tribunal has to decide applications within six months of filing.<sup>85</sup> Advocates are not permitted to appear before the tribunal.<sup>86</sup> Appeal from the tribunal lies to the

<sup>76</sup> See Himachal Pradesh Maintenance of Parents and Dependants Act, 2001, § 1, cl.3.

<sup>77</sup> See Himachal Pradesh Maintenance of Parents and Dependants Act, 2001, § 3.

<sup>78</sup> See Himachal Pradesh Maintenance of Parents and Dependants Act, 2001, § 3, cl. 2.

<sup>79</sup> See Himachal Pradesh Maintenance of Parents and Dependants Act, 2001, § 5.

<sup>80</sup> See Himachal Pradesh Maintenance of Parents and Dependants Act, 2001, § 6.

<sup>81</sup> See Himachal Pradesh Maintenance of Parents and Dependants Act, 2001, § 7.

<sup>82</sup> See Himachal Pradesh Maintenance of Parents and Dependants Act, 2001, § 11.

<sup>83</sup> See Himachal Pradesh Maintenance of Parents and Dependants Act, 2001, § 11 cl. 2.

<sup>84</sup> See Himachal Pradesh Maintenance of Parents and Dependants Act, 2001, § 14 cl. 2.

<sup>85</sup> See Himachal Pradesh Maintenance of Parents and Dependants Act, 2001, § 15 cl. 2.

<sup>86</sup> See Himachal Pradesh Maintenance of Parents and Dependants Act, 2001, § 15 cl. 5.



district judge whose decision will be final.<sup>87</sup> The State Government has the power of revision and can call for proceedings of the tribunal. However, the quantum of maintenance and its apportionment cannot be considered in revision.<sup>88</sup>

Finally, where any person transfers his property by way of gift or otherwise on condition that the transferee will provide the basic amenities and physical needs to the transferor and if such transferee refuses or fails to provide such amenities the transfer shall be deemed to be made by fraud or coercion or under undue influence and shall at the option of the transferor be void.<sup>89</sup> Further right to receive maintenance out of an estate can be enforced against transferees who have notice of the right or if transfer is gratuitous.<sup>90</sup> This law is the first statute enacted in India by a state. It turned out to be a model legislation and the Central Act i.e., the MWPSA Act 2007 has borrowed several of its provisions including the most important legal remedy for cancellation of certain conditional deeds. However, the Himachal Pradesh experience has shown that parents are generally hesitant to approach the court against their children and also that the Act was not used to the extent expected.<sup>91</sup>

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<sup>87</sup> See Himachal Pradesh Maintenance of Parents and Dependants Act, 2001, § 17.

<sup>88</sup> See Himachal Pradesh Maintenance of Parents and Dependants Act, 2001, § 16 cl. 2.

<sup>89</sup> See Himachal Pradesh Maintenance of Parents and Dependants Act, 2001, § 19 cl. 1.

<sup>90</sup> See Himachal Pradesh Maintenance of Parents and Dependants Act, 2001, § 19 cl. 2.

<sup>91</sup> See Anuradha Thakur, *Care of Senior Citizens and the Role of the State*, 43 EPW, No.17, 11, 12 (April 26, 2008).

### **5.5.1 The Himachal Pradesh Maintenance of Parents and Dependents Act 2001 vis -a-vis Maintenance and Welfare of Parents and Senior Citizens Act 2007 - A Comparison**

Even a cursory reading of the long title and preamble of the Himachal Pradesh Act will reveal the fact that the Act provides for maintenance of aged and infirm parents, wives and children. It casts a moral obligation on the younger generation which they owe to society to look after their family members. The Preamble to the Act mentions the Constitutional mandate under Article 41 and Article 38 and the need to provide “public assistance” in cases of old age. The Preamble also highlights the increasing tendency of the younger generation to neglect their aged and infirm parents. Further, the purpose is to ensure that the aged and infirm parents and dependants are not left destitute and compelled to lead a vagrant life.

The Central Act of 2007 on the other hand is wider in scope and ambit since it deals with both “maintenance” as well as “welfare” of parents and also since it deals with senior citizens who are not “parents.” Significantly though the 2007 Act seeks to provide for more effective provisions for maintenance and welfare guaranteed and recognised under the Constitution of India, it does not make mention of Article 38 or even Article 41. In fact, on a plain reading, it would appear that the Himachal Pradesh Act of 2001 is similar in scope and content to Section 125 Criminal Procedure Code 1973 (Cr. P C) as Section 125 also provides for maintenance to parents, wives and children. Quite remarkably, a reading of the statement of objects and reasons of the 2007 Act will reveal the

fact that it was enacted primarily to have a simple, inexpensive and speedy remedy for maintenance when compared with the remedy under Section 125 of Cr. PC which is described as both “time consuming” and “inexpensive” in the context of maintenance for parents.

In terms of application significantly the Himachal Pradesh Act excludes “Muslims” and applies to all persons domiciled in the territory of Himachal Pradesh while the Act of 2007 applies to all citizens of India irrespective of religion and also to citizens of India outside India.

The Himachal Pradesh Act elaborately defines “dependents” who form the main beneficiaries of the Act in Section 2 (d) but does not define “maintenance.” The Act of 2007 remarkably defines both “maintenance” and “welfare” and also “parents and senior citizen.”

While income below the level of “poverty line” is the criterion for applying for maintenance under the Himachal Pradesh Law inability to maintain oneself out of own earnings or property owned is the criterion under the Act of 2007. Further, while basic amenities and basic physical needs including but not limited to shelter, food and clothing is the criterion for maintenance under the Himachal Pradesh Act grandchildren are liable to maintenance only if the grand parent’s children’s estate cannot secure maintenance, while under the 2007 Act children and grandchildren are liable.<sup>92</sup>

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<sup>92</sup> See Section 2 d (i) of 2001 Act and Section 2(a) of 2007 Act.

Quite significantly as far as maintenance orders are concerned the Himachal Pradesh Act through provides for only half the amount i.e., INR 5000 per men sum compared to the 2007 Act has laid down detailed yardsticks or considerations for awarding maintenance in Section 5 which are not stated in the Act of 2007. Further, while “justice” and “equity” are the dominant considerations for awarding maintenance under the Himachal Pradesh Act “neglect” or “refusal” to maintain the parent is the dominant consideration in the “inquiry” contemplated under the 2007 Central Act.

Remarkably while the Himachal Pradesh Act enables the Tribunal to order security for monthly maintenance (Section 7) either by way of vesting any property in trustees upon trust or by depositing a minimum amount in a bank or by purchasing an annuity with an insurer no such provision exists in the Central Act of 2007.

While both statutes provide for alteration in the order of maintenance in cases of misrepresentation, mistake of fact or material change in circumstances<sup>93</sup> Section 9 of the Himachal Pradesh Act additionally gives a list of persons who can apply for variation.

The Himachal Pradesh Act notably declares in Section 10 that maintenance payable under the Act shall not be assignable or transferable or liable to be attached, sequestered, or levied upon in respect of any debt or claim which provision is absent in the MWPC Act of 2007.

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<sup>93</sup> See Section 9 of 2001 Act and Section 10 of 2007 Act.

As far as enforcement is concerned the Himachal Pradesh Act and the Central Act treats orders for maintenance as orders passed under Chapter IX of the Cr. PC 1973 and the Himachal Pradesh Act goes one step further and provides for execution not only through tribunals but also through ordinary courts.<sup>94</sup> Further Section 11(3) provides for attachment of salary of employees of Central Govt, State Govt, local authority or Govt Companies. Further sub section (4) of Section 11 provides for attachment to the extent of 1/3<sup>rd</sup> of salary and it also mandates that such attachment can be made regardless of territorial jurisdiction.

Persons entitled to file applications are dealt with in Section 12 & 5 of the Himachal Pradesh Act and the MWPSA Act of 2007 respectively. There is more clarity in the Himachal Pradesh Act of 2001<sup>95</sup> though the Central Act gives *suo moto* power to the tribunal to initiate proceedings.<sup>96</sup> While the maintenance officer is empowered to file an application under the Himachal Pradesh Act<sup>97</sup> the said officer is authorised to represent a parent if s/he so desires in the proceedings of the Tribunal or the Appellate Tribunal. The Himachal Pradesh Act remarkably caters to the requirement of an incapacitated applicant unlike the Central Act whereby any member of the family or any person in whose care the applicant resides can also file an application.<sup>98</sup>

Significantly unlike the Himachal Pradesh Act, the Central Act empowers the Tribunal to use coercive measures to procure the presence of respondents by

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<sup>94</sup> See Himachal Pradesh Maintenance of Parents and Dependants Act, 2001, § 11 cl. 2.

<sup>95</sup> See Himachal Pradesh Maintenance of Parents and Dependants Act, 2001, § 11.

<sup>96</sup> See Himachal Pradesh Maintenance of Parents and Dependants Act, 2001, § 5 cl. c.

<sup>97</sup> See Himachal Pradesh Maintenance of Parents and Dependants Act, 2001, § 12 cl. d.

<sup>98</sup> See Himachal Pradesh Maintenance of Parents and Dependants Act, 2001, § 12 cl. a, cl. b.

conferring magisterial powers for securing attendance of respondents and it also confers power on the Tribunal to hear and determine the case *ex parte*.<sup>99</sup> Further, the time stipulated under the Central Act for disposing a petition is 90 days as against six months in the Himachal Pradesh Act.<sup>100</sup> Both Acts prohibit representation through Advocates.<sup>101</sup> The Himachal Pradesh Act empowers the Maintenance Tribunal to dismiss frivolous and vexatious claims at the preliminary stage unlike the Central Act and it also empowers the Tribunal to make an order by consent of the parties.<sup>102</sup> The Central Act however empowers the tribunal to choose persons possessing special knowledge to assist it in its inquiry.<sup>103</sup>

Option of choosing remedy under the Central Act or Section 125 of Cr. P C 1973 and awarding of simple interest on maintenance are two provisions present in the Central Act but absent in the Himachal Pradesh Act.<sup>104</sup>

Very significantly while the Appellate Authority under the Himachal Pradesh Act is the District Judge, the appellate authority under the Central Act is the District Collector. While the Central Act entitles the applicant alone to file appeal the Himachal Pradesh Act entitles both the applicant and the respondent

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<sup>99</sup> See Himachal Pradesh Maintenance of Parents and Dependants Act, 2001, § 6 cl. 3, cl. 4.

<sup>100</sup> See Maintenance and Welfare of Parents and Senior Citizens Act 2007, § 5 cl.4; Himachal Pradesh Maintenance of Parents and Dependants Act, 2001, § 15 cl. 2.

<sup>101</sup> See Maintenance and Welfare of Parents and Senior Citizens Act 2007, § 17; Himachal Pradesh Maintenance of Parents and Dependants Act, 2001 § 15 cl.5.

<sup>102</sup> See Himachal Pradesh Maintenance of Parents and Dependants Act, 2001, § 15 cl. a, § 15 cl. f.

<sup>103</sup> See Himachal Pradesh Maintenance of Parents and Dependants Act, 2001, § 8 cl. 3.

<sup>104</sup> See Maintenance and Welfare of Parents and Senior Citizens Act 2007, § 12, §14.

to file appeal.<sup>105</sup> The Himachal Pradesh Act provides for revision by the Govt<sup>106</sup> unlike the Central Act where there is no provision for revision. Remarkably the main remedy under both the Acts is verbatim the same where under certain transfers are rendered void.<sup>107</sup>

However, the Central Act expressly confers jurisdiction on the tribunal while the Himachal Pradesh Act is silent on the forum. Interestingly the Central Act bars the jurisdiction of civil courts unlike the Himachal Pradesh Act which does not mention any bar.<sup>108</sup> Finally, the Central Act makes exposure and abandonment of senior citizens a penal offense<sup>109</sup> while there is no penal provision under the Himachal Pradesh Act.

#### **5.6. THE ASSAM EMPLOYEES PARENT RESPONSIBILITY & NORMS FOR ACCOUNTABILITY AND MONITORING ACT 2017 (PRANAM ACT 2017)**

The Assam Employees Parent Responsibility & Norms for Accountability and Monitoring Act, 2017 (PRANAM) Act seeks to provide for accountability of employees of the State Government in taking care of their dependant parents<sup>110</sup> and dependant divyang siblings.<sup>111</sup> The Act highlights in its preamble the fact

<sup>105</sup> See Maintenance and Welfare of Parents and Senior Citizens Act 2007, § 16; Himachal Pradesh Maintenance of Parents and Dependants Act, 2001, § 17.

<sup>106</sup> See Himachal Pradesh Maintenance of Parents and Dependants Act, 2001, § 16.

<sup>107</sup> See Maintenance and Welfare of Parents and Senior Citizens Act 2007, § 23, Himachal Pradesh Maintenance of Parents and Dependants Act, 2001, § 19.

<sup>108</sup> See Maintenance and Welfare of Parents and Senior Citizens Act 2007, § 127.

<sup>109</sup> See Maintenance and Welfare of Parents and Senior Citizens Act 2007, § 24.

<sup>110</sup> See Himachal Pradesh Maintenance of Parents and Dependants Act, 2001, § 2 cl. e. "Dependent Parents" defined in section 2(e) means the mother/father or both and dependent on his/her /their son/daughter because such parents do not have adequate source of income of their own.

<sup>111</sup> See Himachal Pradesh Maintenance of Parents and Dependants Act, 2001, § 2 cl. d

that respect and service to one's parents is a central obligation of children that is an integral part of the Indian family system. The Act seeks to rekindle family values and highlights the need for easily enforceable norms. It also seeks to provide for an enforceable morality so that the State Government employees would become a role model in the society. The Act covers all employees of the State Government and other organisations notified by the State Government. The Act makes it the responsibility of every employee to take care of their parent and "divyang siblings."<sup>112</sup> Accordingly, dependant parents/divyang siblings should apply to the designated authority and the designated authority for apportionment of salary can direct disbursement of amounts from the salary of the employee to the applicant on a monthly basis.<sup>113</sup> The applicants have to prove *prima facie* that they do not have an adequate source of income to live in a dignified manner. The applicants have to disclose the present income from all sources. The designated authority has to dispose of the application within 90 days after hearing both sides.<sup>114</sup> The designated authority has to determine the apportionment of salary and has to direct the disbursing officer of the employee to pay the salary. The apportioned amount should not exceed 10% of the monthly gross salary.<sup>115</sup> However, in exceptional cases the apportionment can be up to 15% of the monthly salary. If the application for apportionment of salary is not disposed of

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"Dependent divyang sibling" defined in section 2(d) means a person with disability or and person with disability having high support needs as defined under section 2(s) and 2(t) of the Rights of Persons with Disabilities Act 2016 notified by the Central Government and who is unmarried sibling (brother/sister) of an employee and do not have adequate income of their own to support their livelihood.

<sup>112</sup> See Himachal Pradesh Maintenance of Parents and Dependants Act, 2001, § 4.

<sup>113</sup> See Himachal Pradesh Maintenance of Parents and Dependants Act, 2001, § 5.

<sup>114</sup> See Himachal Pradesh Maintenance of Parents and Dependants Act, 2001, § 7.

<sup>115</sup> See Himachal Pradesh Maintenance of Parents and Dependants Act, 2001, § 8.



within 90 days, appeal can be filed before the appellate authority.<sup>116</sup> Appeals can also be filed from the orders of the designated authority by the employee/parent/sibling within one month to the appellate authority.<sup>117</sup> The appeal has to be decided within 60 days. The Act also mandates the establishment of the Assam State Employees PRANAM Commission.<sup>118</sup> The Commission can receive complaints from persons who are unable to file complaints before designated authority, or the appellate authority and also in cases where the complaints were rejected by the authorities as well as in cases where there is no response from the designated authority within the time frame. The Commission can also initiate enquiries and it has all the powers of a civil court. A second appeal will also lie before the Commission from the decisions of the appellate authority which appeal has to be disposed of within a period of 90-120 days.<sup>119</sup> The decision of the Commission is final. Significantly the Act also imposes penalties on the designated authority and appellate authority if the authority refuses to receive applications and if the authority does not dispose of applications within time. The penalty is Rupees 100 per day subject to a maximum of INR 25,000.<sup>120</sup> The Act allows the applicants to withdraw their applications or rescind the orders of the authority.<sup>121</sup> Finally, the Act provides for a State level monitoring body to closely monitor the implementation of the Act

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<sup>116</sup> See Himachal Pradesh Maintenance of Parents and Dependents Act, 2001, § 11.

<sup>117</sup> See Himachal Pradesh Maintenance of Parents and Dependents Act, 2001, § 12.

<sup>118</sup> See Himachal Pradesh Maintenance of Parents and Dependents Act, 2001, § 18.

<sup>119</sup> See Himachal Pradesh Maintenance of Parents and Dependents Act, 2001, § 22.

<sup>120</sup> See Himachal Pradesh Maintenance of Parents and Dependents Act, 2001, § 23.

<sup>121</sup> See Himachal Pradesh Maintenance of Parents and Dependents Act, 2001, § 24.

and lessen the hardship to sick and old dependant parents.<sup>122</sup> The monitoring body will also strive to widen the impact of the Act and to reinforce basic morality and family values among employees and thereby advance the influence of such values in society at large beyond the employees of the Government.

The Act most importantly highlights and underscores the core obligations of children to respect and care for parents the seminal value norm of Indian family system. It provides for a mechanism of enforceable morality for Government employees so that they will become a role model in the society. However, the cap of 10 -15% is very low considering the contemporary living standards. Further, adjudication is entrusted to executive authorities which has its own limitations. It is good that time frames are fixed for adjudication and that penalty is imposed on designated authorities and appellate authorities for wrongful refusal of applications and for inaction within the time frame. The state level monitoring body is a very good improvement since it tries to widen the impact of the Act and reinforce basic morality and family values. It is good that there is provision for second appeal. Hence on the whole, the Act is very revolutionary, and it is a very effective means to cater to the needs of parents and disabled siblings.

#### **5.6.1. The Assam Employees Parent Responsibility & Norms for Accountability and Monitoring Act 2017 vis-à-vis Maintenance and Welfare of Parents and Senior Citizens Act 2007 – A Comparison**

The PRANAM Act 2017 was enacted to ensure accountability of

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<sup>122</sup> See Himachal Pradesh Maintenance of Parents and Dependants Act, 2001, § 25.

employees of the State Government in looking after parents and dependants who are disabled where as the MWPSA Act 2007 was enacted to enforce the legal obligation of children and relatives to look after and maintain parents and senior citizens. The PRANAM Act 2017 hence does not cater to senior citizens *per se* and targets employed government servants alone for enforcing accountability through easily enforceable norms. The said Act seeks a method of enforceable morality for creating role models in society for emulation. While parents and senior citizens have to approach a Maintenance Tribunal for maintenance under the MWPSA Act of 2007, dependant parents and divyang siblings of government employees have to approach the Designated Authority for apportioned salary of the employee under the PRANAM Act 2017. Both the Authorities under the statutes have to dispose off applications within ninety days. While the maximum amount of maintenance under the MWPSA Act of 2007 is INR 10000/- per month the maximum limit for apportioned salary is 10% of the gross salary subject to the limit of 15% of gross salary in exceptional cases. While under MWPSA Act of 2007 only the applicants can file an appeal before the Appellate Tribunal, both the employee as well as the parent or divyang sibling can file an appeal before the Appellate Authority. The time limit for disposal of appeals under both the statutes is 60 days. Under the PRANAM Act 2017 there is an authority over and above the appellate authority which is the Assam State Employees PRANAM Commission and there is also a state level monitoring body to closely monitor the implementation of the provisions of the Act. There are no such higher authorities under the MWPSA Act of 2007. The PRANAM

Commission can entertain complaints against improper refusal or rejection of applications and appeals and delay in disposal of applications and appeals. Appeals can also be filed by both parties against the decision of the Appellate Authority before the Commission and the decision of the Commission is final. Hence a two-tier appeal mechanism is provided under the PRANAM Act 2017 unlike the MWPSA Act 2007. Further there is a state level monitoring body to monitor the functioning of authorities under the PRANAM Act 2017. The Commission can also impose penalty of INR 100/- per day for delay in disposal of applications and appeals by the designated authority and the appellate authority.

Hence on a comparative analysis it is evident that the PRANAM Act 2017 is a more efficient and effective legislation for quick monetary relief to beneficiaries unlike the MWPSA Act 2007 which lacks the enforceability of the PRANAM Act 2017 in terms of easy and quick monetary reliefs. The two-tier appeal mechanisms and additional monitoring mechanism under the PRANAM Act 2017 is commendable and worth emulating. The PRANAM Act 2017 is a legislation that can be emulated in Kerala among Government employees.

### **5.7. INCOME TAX ACT 1961**

The Income Tax Act has granted several concessions to senior citizens from time to time. Presently for the assessment year 2020-2021 for senior citizens between the age 60-80 years income up to INR 3,00,000/- per year is exempted from tax. For super seniors above the age of 80 years income up to INR 500,000/- per year is exempted from tax. Where the annual income is between 3-5 lakhs

for the 1<sup>st</sup> category the rate of tax is 5 per cent of the amount by which the total income exceeds INR 3 lakhs, and where the total income is between 5-10 lakhs it is INR 10,000/- plus 20% of the amount by which the total income exceeds INR 5 lakhs and where the income above INR 10 lakhs it is INR 1,10,000 plus 30% of the amount by which the total income exceeds INR 10 lacs. For persons above 80 years with annual income between 5 lakhs and 10 lakhs, the rate of tax is 20% of the amount by which total income exceeds INR 5 lakhs and for persons with annual income above INR 10 lakhs rate of tax is INR 1 lakh plus 30% of the amount by which the total income exceeds INR 10,00,000/-.

Apart from the aforesaid low rate of tax and exemption with respect to standard deduction the Act has provided other concessions also. Senior citizens who do not have business income are exempted from payment of advance tax. Hence interest under section 234 B for non-payment of advance tax and under section 234 C for non-payment of periodic instalments are not applicable.

From the financial year 2018-19 onwards in case of resident senior citizens deduction of INR 50,000/- is allowed on account of interest income under section 80 TTB. Additional deductions for medical benefits are also available. Accordingly, if a senior citizen has taken health insurance deduction of premium up to INR 50,000/- is permissible. Even if medical insurance is not taken the senior citizen can claim deduction of medical expenditure incurred subject to a limit of INR 50,000/-. Further in case of senior citizen an additional deduction of INR 60,000/- is available under section 80 DDB for medical treatment of specified diseases like cancer, AIDS etc.

The aforesaid exemptions and concessions granted by the Income Tax Act no doubt is a big boon for salaried seniors with pension income and interest income. It is hoped that higher exemptions and concessions will be granted in the future. It is highly necessary for enactment of special exemptions for the entire category of Senior Citizens considering the drastic decline in their income after retirement. Substantial concessions have to be granted either by way of basic tax exemptions or through block deductions.<sup>123</sup> It is pertinent to note that in many foreign jurisdictions like the United States of America several tax exemptions and concessions are granted to persons above 65 years. Besides tax counselling services are provided for senior citizens under the Tax Counselling for Elderly Program where IRS certified volunteers assist older taxpayers with basic tax returns preparation and electronic filing. The said programme specialises on tax issues faced by seniors normally including issues related to pensions and retirement benefits.<sup>124</sup>

## 5.8. CONCLUSION

The Hindu Adoption and Maintenance Act, 1956 the only personal law statute in the field has limited scope and applicability since it relates only to Hindus by religion and since it is confined to maintenance of Hindu parents and dependents alone. However unlike the MWPC Act of 2007, there is no upper limit for maintenance which is granted through the civil courts

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<sup>123</sup> See R.K.Varma, *Tax Incisions for Senior Citizens*, 179, CTR, 221, 226 (2003).

<sup>124</sup> See Emily Brandon, *10 Tax Breaks for People Over 50*, U.S. NEWS (Feb.9, 2021), <https://money.usnews.com/money/retirement boomers/slideshows/10-tax-breaks-for-people-over-50>.

The Cr. P C of 1973 though a secular law is not effective since the procedure is expensive and time consuming since the proceedings are conducted in JFCM/Family Courts.

The PWDV Act of 2005 has immense potential in protecting aged women from domestic violence since under the Indian context domestic violence is rampant against elderly women. However, the remedy has to be availed through the regular magistrate courts.

The Legal Services Authorities Act 1987 does not provide free legal aid to the aged men which is a major lacuna on a comparative analysis. The Act and especially the NALSA Legal Services to Senior Citizens Scheme of 2016 Scheme has tremendous scope and potential for protecting the rights of Senior Citizens by providing legal aid and legal awareness.

The Legal Services Authorities have not effectively intervened under the NALSA (Legal Services to Disaster Victims through Legal Services Authorities) Scheme, 2010 for curbing the pandemic of COVID 19 and aiding its victims as envisaged in the Scheme.

The Himachal Pradesh Maintenance of Parents and Dependents Act 2001 is an effective legislation for maintenance of parents since the Appellate Authority constituted is a Judicial Authority i.e., a District Judge. The law became the model law for the MWPSA Act of 2007 since the main remedy is the same for cancellation of documents.

The Assam Employees Parent Responsibility and Norms for Accountability

and Monitoring Act 2017 is an effective legislation that has limited application beneficial to parents and applicable only to Government employees and which ensures speedy monetary relief to the beneficiaries. However, the ceiling at 10 percent to 15 percent is low.

Though the Income Tax Act 1961 have provided exemptions and concessions for senior citizens the concessions are only minimal considering the drastic reduction in income of senior citizens after retirement and tax benefits under the Act are beneficial only to a minority of the elderly.

An Authority like the PRANAM Commission is an effective monitoring cum appellate remedy that can enhance the effectiveness of the Act for instilling accountability among Government servants.

To summarize, though there are a handful of statues catering to the elderly especially from the point of maintenance the statutes are not effective in advancing the rights of the elderly due to lack of awareness and due to the legalistic nature of the remedies through ordinary courts of law. The PRANAM Act of Assam is an effective legal mechanism for speedy and guaranteed monetary relief for the elderly. Fortunately, judicial interpretation of statutory provisions has been very progressive, practical and realistic. The tremendous scope of the PWDV Act of 2005 has to be publicized among the elderly for improving the statutory legal framework which is presently centered around maintenance and monetary reliefs.



## **CHAPTER VI**

### **THE MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS ACT 2007: A CRITICAL ANALYSIS**

The Criminal Procedure Code of 1973 for the first time incorporated provisions for maintenance of parents. However, the adjudicatory process through the regular Judicial First Class Magistrate Courts and Family Courts was long drawn and time consuming. Further only parents were entitled to maintenance and legislative focus was not on the elderly. International developments at the instance of the UN and in particular the commemoration of the international year of older persons by the UN in 1999 focused the limelight on the elderly and their plight. The legislature took cognizance of the demographic transition and the inadequacy of the existing legislations including the Criminal Procedure Code of 1973 for protecting the rights and dignity of the elderly. Accordingly Act 56 of 2007, the Maintenance and Welfare of Parents and Senior Citizens Act 2007 was enacted by the Parliament.

#### **6.1. HISTORICAL BACKDROP OF THE ENACTMENT**

The statement of objects and reasons of the Act reveals that the Act was enacted to create a solution for the grave social problem of neglect and abuse of the elderly in addition to filling up of the lacuna in the existing law namely the Cr. P C of 1973. It states that traditional norms and values of Indian society lays stress on providing care for the elderly and that due to the ‘withering’ of the joint

family system, a large number of elders are neglected by their families<sup>1</sup>. It further adds that though parents can claim maintenance under the Cr.P C of 1973, the procedure is time consuming and expensive and that there is a need to have a simple, inexpensive and speedy procedure for claiming maintenance. In fact going by the Bill which led to the Act, the main objective *interalia* was to provide for an appropriate mechanism for need based maintenance for parents and Senior Citizens in addition to providing better medical facilities, old age homes and mechanisms for protection of life and property of older persons.<sup>2</sup>

It is pertinent to note that the Act was enacted in 2007 at a time when there was much awareness on the rights of the elderly at the international level consequent to the world assemblies on ageing of 1982 and 2002 and also the commemoration of the international year of older persons by the UN in 1999. These events definitely impacted the developments in India and especially since the demographic transition vis-à-vis the aged was very sharp and manifest in India.

This legislation is hence a landmark and revolutionary law that for the first time focused on senior citizens as a class of vulnerable persons and on their welfare departing from the conventional focus on maintenance alone and that too for parents alone.

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<sup>1</sup> See THE MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS ACT, 2007, 1(Universal Law Publishing Co. Pvt. Ltd 2008).

<sup>2</sup> See GEORGE JOHNSON, DOMINIC JOHNSON, MAINTENANCE AND WELFARE OF SENIOR CITIZENS ACT & RULES, 12 (7th ed. 2016).

## 6.2. ANALYSIS OF THE SALIENT PROVISIONS AND LEGAL MECHANISMS

The long title to the Act states that the Act seeks to provide for *more effective* provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognised under the Constitution. Going by the definition clause (Section 2), the Act caters to two groups of beneficiaries (i) Parents & (ii) Senior citizens. While Parents refer to father or mother regardless of being a senior citizen, a senior citizen is defined as any Indian citizen above 60 years of age. While “maintenance” includes provisions for food, clothing, residence, and medical attendance and treatment, “welfare” means provisions for food, health care, recreation centres and other amenities necessary for senior citizens. Section 4 is the fulcrum of the Act where under a senior citizen including a parent who is unable to maintain himself out of his own earning or property can claim maintenance from the children or relatives as the case may be. The obligation extends to maintain the senior citizen or parent so that they can lead a ‘normal life’. A ‘relative’ of a senior citizen has to maintain the senior citizen provided, he is in possession of the property of the senior citizen, or in the alternative he would inherit the property of the senior citizen.

The Act constitutes Maintenance Tribunals for awarding maintenance.<sup>3</sup> The tribunal is an officer of the state not below the rank of a sub divisional officer and the appellate tribunal is an officer not below the rank of a district magistrate.<sup>4</sup>

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<sup>3</sup> See Maintenance and Welfare of Parents and Senior Citizens Act 2007, §7.

<sup>4</sup> See Maintenance and Welfare of Parents and Senior Citizens Act 2007, § 15.

The tribunal can award maintenance upto INR.10,000/- per month<sup>5</sup>and enforcement of orders is by the same method as envisaged under Chapter IX of the Code of 1973.<sup>6</sup> The Act gives an option to the claimant for claiming maintenance either under the Act or under the Code of 1973, but not under both.<sup>7</sup>

Apart from providing for maintenance, the Act also provides for welfare measures. Accordingly, the Act seeks to establish old age homes for the elderly<sup>8</sup> and also seeks to provide medical support for senior citizens.<sup>9</sup> Further the Act provides for creating awareness about the law among the public<sup>10</sup> and penalizes exposure and abandonment of senior citizens.<sup>11</sup>

Finally, the Act seeks to protect the property rights of senior citizens by authorizing the tribunal to declare certain conditional transfers of property made detrimental to the interests of parents and senior citizens as void.<sup>12</sup>

Hence going by the scheme of the Act it is evident that the Act has given primacy to:

- Maintenance of Parents and Senior Citizens
- Welfare of Senior Citizens

Welfare measures are contemplated only for Senior Citizens and maintenance is the only remedy made available for parents under the Act who

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<sup>5</sup> See Maintenance and Welfare of Parents and Senior Citizens Act 2007, § 9.

<sup>6</sup> See Maintenance and Welfare of Parents and Senior Citizens Act 2007, § 11.

<sup>7</sup> See Maintenance and Welfare of Parents and Senior Citizens Act 2007, § 12.

<sup>8</sup> See Maintenance and Welfare of Parents and Senior Citizens Act 2007, § 19.

<sup>9</sup> See Maintenance and Welfare of Parents and Senior Citizens Act 2007, § 20.

<sup>10</sup> See Maintenance and Welfare of Parents and Senior Citizens Act 2007, § 21.

<sup>11</sup> See Maintenance and Welfare of Parents and Senior Citizens Act 2007, § 24.

<sup>12</sup> See Maintenance and Welfare of Parents and Senior Citizens Act 2007, § 23.

are not Senior Citizens. The three important welfare measures contemplated are:

- establishment of old age homes
- medical support and
- measures for protection of life and property

The only penal provision is with respect to exposure and abandonment of Senior Citizens<sup>13</sup> which carries a punishment of imprisonment up to three months or fine of up to INR 5000/-. Importantly the Act specifically mandates that the provisions of the Act be given wide publicity through public media at regular intervals and that Government officials, police personnel and judicial officers are given sensitization.<sup>14</sup>

### **6.3. JUDICIAL APPROACH - ANALYSIS OF CASE LAW**

Since the legislation was enacted in 2007, there was an initial dearth of case law on the topic. However, the caselaw under the Act has grown considerably in recent years highlighting its contemporary importance.

The interpretation of various provisions of the MWPC Act of 2007 by various High Courts has been very progressive and purposive and in tune with the lofty social importance of the social welfare legislation. The Kerala High Court in *Jayashree v. State of Kerala and Another*<sup>15</sup> speaking through K. Ramakrishnan J., held that the Act was enacted to protect the Senior Citizens and parents and to make the moral obligation of the children to look after their

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<sup>13</sup> See Maintenance and Welfare of Parents and Senior Citizens Act 2007, § 24.

<sup>14</sup> See Maintenance and Welfare of Parents and Senior Citizens Act 2007, § 21.

<sup>15</sup> 2014 KHC 549.

parents into a legal obligation. The Court held that the purpose of the Act is not to punish the person neglecting to maintain the parents and respect a Senior Citizen but to make them to understand the responsibility and fulfil their responsibilities to the parents and Senior Citizens. The Court pointed out that in a country like India, where there is a culture to respect mother, father, and teacher and then God in that order of preference, there is a new thinking among some of the younger generation that keeping away their parents will bring happiness in life. The Court opined very aptly that the younger generation is forgetting the fact that they will also age one day and the pain they will have to undergo if their children show the same attitude to them. The Court quashed a criminal proceeding initiated by a father against his daughter since the daughter subsequently looked after the father and since the dispute was settled between the parties.

It was held in *Subramanya H.S. and Another v. H.S. Lekshmi and Others*<sup>16</sup> that ageing has become a major social challenge because of the decline in the joint family system and that while interpreting the Act and its provisions the object of the Act has to be kept in mind which is not to punish a person for neglect to maintain those whom he is bound to maintain but instead it is to provide a simple, inexpensive and speedy remedy to the parents and senior citizens who are in distress by a summary procedure. It was laid down that the provisions have to be liberally construed since the primary object is to give social justice to parents and senior citizens by compelling those who can support those who are unable to support themselves. The court emphasized the need for a short and

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<sup>16</sup> 2015 KHC 2057.

quick procedure under the Act instead of an elaborate procedure while interpreting Section 8 of the said Act.<sup>17</sup>

In *Paramjit Kumar Saroya v. Union of India and Another*<sup>18</sup> the Punjab and Haryana High Court speaking through Sanjay Kishan Kaul, C.J., undertook a meticulous analysis of the various provisions of the Act. It was held after a detailed analysis of the provisions that the matter is not so simple as the statement of objects and reasons to the Act states and pointed out that there are certain provisions which are bound to give rise to more complex legal issues where rights in immovable property are sought to be negated on pleas such as fraud, coercion and undue influence. The court pointed out that even presumptions are sought to be drawn by introducing a deeming provision. The court was referring to the fulcrum of the Act which is Section 23.<sup>19</sup> Importantly the court pointed out that the provisions of the Act need a re-look and eventually held that Section 16 (1)<sup>20</sup> of the Act is valid and must be read to provide for the right of appeal to any of the affected parties applying the principles of purposive interpretation and *causis omissus*. It is noteworthy that on a plain reading of Section 16 of the Act<sup>21</sup> right to appeal is granted only to a parent or a Senior Citizen and not to the

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<sup>17</sup> See Maintenance and Welfare of Parents and Senior Citizens Act 2007, § 8. Section 8 deals with summary procedure in case of inquiry by maintenance tribunals under the Act.

<sup>18</sup> 2014 KHC 3407.

<sup>19</sup> See Maintenance and Welfare of Parents and Senior Citizens Act 2007, § 23. Section 23 deals with Transfer of property which would be void in certain circumstances mentioned in the section.

<sup>20</sup> See Maintenance and Welfare of Parents and Senior Citizens Act 2007, § 16, cl. 1. Section 16(1) provides right of appeal to any senior citizen or parent aggrieved by an order of the maintenance tribunal.

<sup>21</sup> *Id.*

children, grandchildren or relatives. The Court incidentally adverted to the discrepancies in Sections 12<sup>22</sup> and 17<sup>23</sup> of the Act in addition to Section 16 of the Act in the context of Section 30<sup>24</sup> of the Act. The Court also held that Section 17 would not come in the way of legal representation on behalf of the parties after 15.6. 2011, in view of Section 30 of the Advocates Act<sup>25</sup> having come into force. Finally, the Court requested the Central Government to have a relook into the provisions of the Act in the context of Section 30.<sup>26</sup>

This decision assumes significance since it has undertaken a critical evaluation of the various provisions of the Act and in particular the limited right of appeal under Section 16 of the Act and also the statutory bar for advocates to appear before the tribunal. In this context, it is noteworthy that the Kerala High Court held in the ruling reported in *A. Latha Sumam. v. District Collector, Alapuzha and others*<sup>27</sup> that parties can engage lawyers of their choice to represent them before the tribunal and appellate authority constituted under the Act. Recently a division bench of the Kerala High Court confirmed the aforesaid interpretation in the ruling reported in *Suresh.K.G (Adv) v. Union of India*<sup>28</sup>

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<sup>22</sup> See Maintenance and Welfare of Parents and Senior Citizens Act 2007, § 12. Section 12 provides option regarding maintenance under the Act as well as Chapter IX of the Code of Criminal Procedure, 1973.

<sup>23</sup> See Maintenance and Welfare of Parents and Senior Citizens Act 2007, § 17. Section 17 bars legal practitioners from representing parties before maintenance tribunals and appellate tribunals.

<sup>24</sup> See Maintenance and Welfare of Parents and Senior Citizens Act 2007, § 30. Section 30 gives power to the central Government to give directions to the State Governments for carrying out the provisions of the Act.

<sup>25</sup> See Advocates Act, 1961 § 30. Section 30 provides right of audience for advocates before all courts and tribunals and it was notified with effect from 15.6.2011.

<sup>26</sup> 2014 KHC 3407 at Para 50.

<sup>27</sup> 2013 2 KLT.

<sup>28</sup> ILR 2021 (2) Kerala.



wherein a practicing Advocate challenged the vires of Section 17 of the Act on the ground that it is repugnant to Section 38 Advocates Act 1961 and Articles 19(1) (g) and Article 39A of the Constitution of India. The Division Bench of the Kerala High Court through S. Manikumar C.J., declared Section 17 as ultravires of Section 30 of Advocates Act, 1961 negating the main argument of the Union of India that participation of Advocates in the proceedings will jeopardize the objective of the Act to provide speedy and cost-effective mechanism for maintenance.<sup>29</sup> The Court held that the conciliator will not be a substitute for a lawyer.<sup>30</sup> The Court also held that the argument that the law makers foresaw the engagement of lawyers causing the prolonging of litigation and harassment of parents is unacceptable.<sup>31</sup>

*In Jayantram Vallabhdas Meswania v. Vallabhdas Govindram Meswania*<sup>32</sup> the Gujarat High Court through K.M. Thaker J., held that the term transfer in Section 23 would not only mean actual transfer of title and ownership but also possession of property. The court held that the term transfer of property in Section 23 of the Act should receive wide and liberal construction so as to include an act of allowing possession or occupation of premises provided it is without consideration. The Court highlighted the fact that the Act aims at providing protection *inter alia* to the life and property of elderly persons and also to provide for better medical facilities and to ensure physical and financial support. The

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<sup>29</sup> *Id.* at para 52.

<sup>30</sup> *Id.* at para 55.

<sup>31</sup> *Id.* at para 56.

<sup>32</sup> 2013 KHC 2615.

court upheld the decision of the Tribunal and the Appellate Tribunal to handover possession of part of the premises in the possession of the son without any consideration or rent to the father thus expanding the scope and ambit of Section 23. It is felt that this interpretation is in tune with the objective of the legislation.

In *Vincent v. Augustine and another*,<sup>33</sup> it was held by the Kerala High Court that Section 23 of the said Act can be invoked only in respect of conveyances effected after the commencement of the Act with effect from 24.08.2008. Accordingly, two impugned deeds of 14.1.2005 and 28.04.2005 were held not to come within the scheme of the Act. This interpretation though technically sound underscores the need for generating legal awareness on the legislation among the elderly since it applies only to prospective transfers after 24/08/2008.

In *Priti Dhoundial and Others v. Tribunal*<sup>34</sup>, the Delhi High Court through Shiv Narayanan Dhingra J., severely criticized the action of the Maintenance Tribunal in acting *suo moto* on a reference from an NGO by name ACIDEE (All India Centre for Development of Education and Environment) without proper authorization and without hearing the affected party, a renowned scholar Ms. Lotika Sarkar. After quashing the proceedings of the Tribunal, which cancelled the gift deed executed by Ms. Lotika Sarkar prior to the coming into force of the Act and even without hearing Ms. Lotika Sarkar the court advised the Government to ensure the competence of persons selected to Maintenance Tribunals and in particular to ensure that members have sound knowledge of law in addition to

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<sup>33</sup> 2013 (3) KHC 738.

<sup>34</sup> 2011 KHC 836.

basic knowledge of a fair trial in accordance with natural justice. Interestingly the tribunal had not undertaken any investigation on its own on the complaint. The tribunal also did not hear the affected party Ms. Lotika Sarkar and it also did not record the statement of Mr. Pradeep Kumar Singh, the so-called President of the said NGO and had passed an order merely on presumptions. Most importantly, the tribunal set aside a gift deed enacted prior to the coming into force of the Act contrary to the express mandate of Section 23 which has only prospective operation. The court rightly held that the order passed by the tribunal was highly unjust and totally biased. The court rightly advised the Government that before constituting the Maintenance tribunals the Government must ensure the competence of the members and should ensure that the members not only have basic knowledge of the law but also basic knowledge of a fair trial in accordance with natural justice and also that the members have respect for legislative enactments and the common man. This observation is incisive and highlights the key limitation in adjudication of vital proprietary rights by Tribunals manned by Sub-divisional officers of the executive without any knowledge of law or legal procedures.

In *Pawan Sharma v. State and Others*<sup>35</sup> the cardinal issue was whether an aggrieved person can file a petition for maintenance under section 5 selectively against some or any of his children. In this case, one of the sons opposed the order of the tribunal on the ground that the other son was not impleaded. The father of the aggrieved person contended that the other son was looking after him

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<sup>35</sup> 2013 2 KHC 914.

well. The court after construing Section 4(1) (i) and section 5(5) held in favour of the father to the effect that a petition for maintenance under section 5 can selectively be filed against some or any of his children.<sup>36</sup>

It was held by the Kerala Hon'ble High Court in *Najeeb v. Maintenance Tribunal and Another*<sup>37</sup> that the Legislature intended to ensure speedy and efficacious adjudication of maintenance claims and that section 16 of the Act which is very clear does not envisage an appeal by the respondent. The Court did not agree with the view taken in *Paramjit Kumar Saroya Case*<sup>38</sup> and held that an aggrieved respondent could maintain a petition under Article 226 or 227 of the Constitution. Similar view was taken in *Sneha Singh Sandhu v. Appellate Tribunal and Others*.<sup>39</sup>

In *Dhian Singh v. State of Punjab*<sup>40</sup> the Court held that merely because the mother is capable of drawing income from property maintenance cannot be denied to the mother since Section 4 does not impose any absolute bar against claiming maintenance in such cases. It was argued that since the respondent mother is enjoying equal share in the inherited property and is able to maintain herself, she is not entitled to maintenance.

In *Rajesh Kumar Bansraj Gandhi v. State of Gujarat and others*<sup>41</sup> it was

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<sup>36</sup> See Maintenance and Welfare of Parents and Senior Citizens Act 2007, § 4 cl 1(i), § 5 cl 5. Section 4 (1) (i) deals with persons against whom an application for maintenance under Section 5 can be filed and Section 5(5) enables impleadment of other persons liable to pay maintenance.

<sup>37</sup> ILR 2018 (3) Kerala 503.

<sup>38</sup> *Paramjit Kumar Saroya v. Union of India and Another*, 2014 KHC 3407.

<sup>39</sup> 2016 KHC 3695.

<sup>40</sup> 2017 KHC 3869.

<sup>41</sup> 2016 KHC 3804.

held that the predominant purpose of the Act was to grant maintenance and that an order for dispossession of the son from the house for harassing the mother is not in the context of the Act. The Court allowed the petitions filed by the son and daughter in law and set aside the order directing handing over of possession granted in favour of the respondent/mother. It was held that the purpose of providing maintenance is the predominant and pervasive applicability of the provisions and that the concept of maintenance primarily means monetary assistance. The Court found that the order passed against the son on the ground that the son was harassing the mother is not tenable and sustainable.

In *Balbir Kaur v. Presiding Officer cum Sub Divisional Magistrate of Maintenance and Welfare of Senior Citizens Tribunal of SCT Pehowa, District Kurukshetra and Others*<sup>42</sup> it was held that an application under Section 22 is maintainable by parents in law against daughter in law and that relationship has no connection with protection in Chapter V though it has nexus with maintenance in Chapter II. The primary question that had to be decided by the Court as a preliminary point was whether an application under Section 22 was maintainable by the parents in law against a daughter in law. Relying on Rule 23 in Chapter V of the Haryana Rules, the Court held that relationship is of no consequence with respect to Chapter V and that the application will be maintainable.

In *Ranjit Gopal Roy v. State of West Bengal and Others*<sup>43</sup> the Court held

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<sup>42</sup> 2016 KHC 2151.

<sup>43</sup> 2016 KHC 4013.

that while interpreting the provisions of the Act, one has to bear in mind the Preamble of the Constitution and the mandate of social and economic justice of all. The Court significantly upheld the order of the Tribunal for reinstatement of the mother and her daughter who was looking after the mother interpreting Article 21 of the Constitution.

In *Swami Thapasyananda v. Revenue Divisional Officer and others*<sup>44</sup>, it was held that though Section 23 of the Act deals with properties held by the parents and Senior Citizens it does not deal with their right vis-à-vis tenants and that the Tribunal has no jurisdiction to take away the rights conferred on a tenant under the concerned Rent Control Legislation. In this case, the Maintenance Tribunal had ordered eviction of a tenant in the petition filed by the Senior Citizen against her children. It was held that the Tribunal has no jurisdiction to take away the rights conferred on a tenant under the concerned Rent Control Legislation.

It was held in *Victoria Joseph v. Revenue Divisional Officer (Sub Collector)*<sup>45</sup> that the Tribunal has to resort to the procedure under section 125-128 of Chapter IX for enforcement of order of maintenance in the light of Section 11 of Chapter 11 of the Act.

It was laid down in *Kanakamma v. Revenue Divisional Officer*<sup>46</sup> that the Tribunal has no jurisdiction to decide *interse* dispute between husband and wife and that disputes arising out of special relationship and status cannot be decided

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<sup>44</sup> ILR 2016 (3) Kerala 672).

<sup>45</sup> 2018 (1) KLT SN 79.

<sup>46</sup> 2018 (2) KLT 79.

by the Tribunal even if the party approaching the Tribunal, is a Senior Citizen.

In this case the husband had approached the Maintenance Tribunal Chengannur for permission to reside in the house constructed by him and the Tribunal ordered the wife to provide a bath attached room for the husband. The wife challenged the order before the High Court of Kerala. The Kerala High Court speaking through Muhammed Mustaque J., after analyzing the scheme of the MWPSA Act 2007 held that the Act refers to the protection of the needs of Senior Citizens on account of ageing and that the Act ensures for dignity and confers protection on Senior Citizens to continue to live a life of self-fulfillment. The Court held that the question to be considered is whether the dispute has anything to do with the ageing of a Senior Citizen and if it has nothing to do with it then the Tribunal cannot assume the jurisdiction merely for the reasons that the person concerned is a Senior Citizen. Hence ultimately it was held that the dispute arising out of special relationship and status cannot be decided by the Tribunal even if the party approaching the Tribunal, is a Senior Citizen. Similar view was taken in *Ammini Antony v. District Collector and Others*.<sup>47</sup>

In *Maroli Santha v. Revenue Divisional Officer, Thalassery and Another*<sup>48</sup> it was held that even a conditional transfer of money will fall within the ambit of Section 23. In this case a mother had approached the Tribunal for return of INR 9,60,807/- handed over by her to her son allegedly on the assurance that the son will look after the senior citizen mother. The Tribunal closed the petition on

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<sup>47</sup> 2018 KHC 709.

<sup>48</sup> 2018 (2) KLT 15.

account of the fact that the mother was receiving family pension. The High Court after holding that money would fall under the definition of “property” set aside the order of the Tribunal and remanded the matter for fresh consideration.

In *Reju and Another v. Maintenance Tribunal, Trivandrum and Others*<sup>49</sup> the court upheld the argument that welfare measures can be adopted even against a person living with the mother of the respondent, if the relationship is accepted by the parties. Significantly, the court invoked Article 41 of the Constitution to give a wide interpretation to welfare under the Act and held that though there is no special provision for providing welfare the scheme of the Act gives room to the Tribunal to protect welfare.

Importantly in *Radhamani and Others v. State of Kerala and Others*<sup>50</sup> and in *Shabeen Martin and Another v. Muriel and Another*<sup>51</sup> the court held that the condition referred to in Section 23 of the Act has to be understood based on the conduct of the transferee and not with reference to the specific stipulation in the deed of transfer. It was held that there is hence no need for an express recital in the deed of transfer stipulating the conditions for seeking revocation of the deed. However, this view was held and found to be incorrect in the recent decision reported in *Subhashini v. The District Collector*.<sup>52</sup>

The full bench of the Kerala Hon'ble High Court held that unless there is an express provision for providing basic amenities and basic physical needs to a

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<sup>49</sup> 2016 (2) KHC 429.

<sup>50</sup> 2016 (1) KHC 9.

<sup>51</sup> 2016 (5) KHC 603.

<sup>52</sup> ILR 2020 (4) Kerala 177 (F.B).



Senior Citizen in the document of transfer, the document cannot be declared void by the Maintenance Tribunal for failure of transferee to provide basic amenities and basic physical needs to the Senior Citizen/parent.

The case was a reference made by a Division Bench to the Full Bench for resolving the divergent views of different Division Benches on the nature scope and effect of Section 23 of the Act. While it was held in *Shabeen Martin v. Muriel*<sup>53</sup> and in *Sundari v. Revenue Divisional Officer*<sup>54</sup> that an express recital is not required it was held in *Malukutty Ponnarassery v. P. Rajan Ponnarassery*<sup>55</sup> that the absence of an express recital to make provision of basic necessities and amenities to the transferor would divest the Tribunal of the Authority to declare void a transfer.

Significantly, the full bench on a detailed analysis of the statutory provisions and the provisions in the Transfer of Property Act 1881 held that it would be unsafe to look at religious texts or philosophical treaties for ascertaining the real impact of Section 23.<sup>56</sup> It was held that considering the scheme of the Act, Section 23 (1) stands out glaringly in contrast to the general scheme of the Act.<sup>57</sup> The Court held that the Legislature had intended deliberately to grant a very limited and restricted jurisdiction on the Tribunal constituted with an officer of the executive branch of the State not below the

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<sup>53</sup> 2016 5 KHC 603.

<sup>54</sup> 2018 KHC 4655.

<sup>55</sup> Judgment dated 28.11.2012 in WA No.2012 of 2012.

<sup>56</sup> *Id.* at para 17.

<sup>57</sup> *Id.* at para 20.

rank of a Sub Divisional Officer.<sup>58</sup> It was held that the Act does not enable the Tribunal to carry out a judicial adjudication as to the prevailing circumstances to infer or imply a condition for cancelling a gift deed. It was further held that the Tribunal cannot be a substitute for a Civil Court for the purpose of carrying out an inquiry as to the circumstances which led to the execution of the document.<sup>59</sup>

On facts, it was held that the reservation of life interest by the mother in the property gifted to the son along with the right to take usufructs from the property cannot be construed as an implied condition. The Court for its reasoning noted the provisions with respect to the prospective application of transfers which are subject to cancellation and also with respect to the need for ensuring publicity for the Act under Section 21.

Eventually, the full bench agreed with the decision in *Malukutty Ponnarassery v. P. Rajan Ponnarassery*<sup>60</sup> and held that *Shabeen Martin and Another v. Muriel and Another*,<sup>61</sup> and *Sundari v. Revenue Divisional Officer*<sup>62</sup> were wrongly decided. The Court approved *Radhamani v. State of Kerala*<sup>63</sup> since on facts there was a recital in the document akin to that required under Section 23(1).

The aforesaid view of the full bench has to be accepted considering the scheme of the Act and in particular the summary jurisdiction of the Maintenance

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<sup>58</sup> *Id.* at para 40.

<sup>59</sup> *Id.* at para 42.

<sup>60</sup> Judgment dated 28.11.2012 in WA No.2012 of 2012.

<sup>61</sup> 2016 (5) KHC 603.

<sup>62</sup> 2018 KHC 4655.

<sup>63</sup> 2016 (1) KHC 9.

Tribunal an executive authority having no legal knowledge and training. The aforesaid dictum once again brings into focus the dire need to increase awareness on the provisions of the Act. The finding that the Tribunal can only declare the deed as void and that the Civil Court has to grant the relief of possession makes the remedy complicated for litigants who again have to approach the Civil Court for taking possession. It would have been advisable for the Tribunal to grant possession also for a speedy and easy remedy. The aforesaid interpretation though legalistic would create serious practical difficulties for Senior Citizens if constrained to approach the Civil Court for a complete satisfaction of the legal remedy.

In *Deepak Sharma v. State of Rajasthan and others*<sup>64</sup> the court held that the MWPSA Act of 2007 is not without teeth and that the scope of Section 23 can be enlarged, and the Tribunal can hold enquiry as to who had provided funds for purchase of property. It was also held that the relief granted was not dependant on the prayer in the application. It was held that Indian idioms are ingrained in blood and views of Indian progeny by inculcating values in the son from the day the son is born in the dispute between father and son.

In *Janardhanan and Another v. Maintenance Tribunal Appellate Authority District Collector, Pathanamthitta and Others*<sup>65</sup> the court held that the Tribunal cannot order eviction of the son from the house in the petition filed by the mother since the Kerala Rules does not provide for eviction unlike the Haryana Rules.

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<sup>64</sup> 2016 KHC 4333.

<sup>65</sup> 2017 (5) KHC1.

The court reminded the essence of our culture and held that while every other culture may respect the old, Indian culture venerates the aged.

In this case, an aged mother approached the Maintenance Tribunal seeking eviction of her daughter and son in law from her house. The Tribunal allowed the prayer repelling the contention that the daughter is also a co-owner of the ancestral property which was held by the Appellate Tribunal. The daughter and son in law approached the High Court and the learned single judge dismissed their petition. In the Writ Appeal, D. Seshadri Naidu J., speaking for the Division Bench held that once the right to own or possess a piece of property is disputed by the members of a family which includes for instance the parents and children the Act becomes unavailable. Eventually the Court held that the order of eviction in the face of a civil court decree is erroneous and unsustainable, and the matter was remanded for fresh consideration.

In *Jayasree v. Union of India and Others*,<sup>66</sup> it was held that a child or person who is legally obligated to be in the care or protection of the parent Senior Citizen will be liable to maintain the Senior Citizen irrespective of whether the parent Senior Citizen is in the physical care of the said person. The court overruled the contention that the married daughter had to look after her parents in law in her matrimonial home.

In *Joice P v. Sub Collector and Maintenance Tribunal Nedumangad*<sup>67</sup> the court held that the tribunal had no jurisdiction to order enforcement of a

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<sup>66</sup> 2019 (1) KLT 375.

<sup>67</sup> 2018 (5) KHC 101.

maintenance order through the concerned SHO of the police station.

In *Manju G S v. K.N Gopinatha Pillai and others* <sup>68</sup>the court addressed the nature of power of the tribunal and the procedure to be followed by the tribunal. In the landmark ruling it was laid down that the legislative background and the object of conferring power on the tribunal clearly demands that the enquiry under the enactment is similar to the process adopted in an inquisitorial system. It was held that the tribunal has a duty to elicit the truth and to conduct an independent enquiry and further that the tribunal had to take measures to protect the wellbeing of Senior Citizens/parents. It was held that the tribunal is not actually deciding any dispute as in an adversarial litigation but is only taking measures to protect the Senior Citizen. It was held that the focus of the enquiry is not the protection of the Senior Citizens or parents. It was held that the scheme of the Act is not intended for dispute resolution but to promote measures to secure the welfare and interest of Senior Citizens and parents. It was held that a strict pleadings and evidence cannot be insisted.

In this case, the father approached the Maintenance Tribunal for revoking a deed executed in favour of his daughter. The Tribunal dismissed the application, and the Appellate Tribunal allowed the appeal. Daughter approached the High Court, and it was held on a consideration of the nature of enquiry to be conducted under Section 23 of the MWPSA 2007 Act that the enquiry is as contemplated in an inquisitorial system. It was held that the duty on the Tribunal under the MWPSA 2007 Act is to elicit the truth. It was held that the Tribunal is

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<sup>68</sup> 2020 (1) KHC 10.

actually not deciding any dispute like in an adversarial system but is only taking measures to protect the Senior Citizen. It was held that the scheme of the MWPSA Act of 2007 is not intended for dispute resolution but to promote measures to secure the welfare and interest of Senior Citizens and parents. The court eventually set aside the order of the Appellate Tribunal and remitted the matter to the Tribunal for reconsideration.

This decision has clarified the real nature of the inquiry to be conducted by the Tribunal and the practical and realistic interpretation will be in the best interest of the Senior Citizen and it will only help to advance the object of the legislation.

In *Thoppil Anto v. Glancin T.A*<sup>69</sup> it was held that District Magistrate has the power to order eviction under Rule 19 (2) (i) of the Kerala Rules 2009 to ensure the peaceful living of a Senior Citizen with security and dignity. The Court cautioned that the power has to be exercised very cautiously and that it has to be ensured that it is not made a weapon or tool to settle property disputes amongst siblings. Earlier the Court had held in *Thoppil Anto v. Glancin T.A and Others*<sup>70</sup> that the jurisdiction to order eviction is vested with the District Magistrate under Rule 19 and not with the Maintenance Tribunal for ordering eviction. Sri. Thoppil Anto a famous singer approached the Maintenance Tribunal for an order for evicting his son Glancin T. A. The Tribunal refused to grant the relief of eviction, but the Appellate Tribunal allowed the prayer directing T.A. Glancin to

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<sup>69</sup> ILR 2020 (4) Kerala 1038.

<sup>70</sup> 2020 (2) KLT 176.

vacate the building within six months. Aggrieved by order granting six months, Thoppil Anto approached the High Court. The High Court interpreting the duties and powers of the District Magistrate in Chapter V of the Kerala Rules of 2009 held that protection of property includes enjoyment of property which means to include the power to evict a person in occupation of a building not bound by any jural relationship created through legal contract or under statutory provisions. It was held that the District Magistrate can order eviction and can also delegate his power to his subordinate which includes the presiding officer of the Maintenance Tribunal. The Court set aside the Order of the Appellate Tribunal and directed the District Magistrate either to decide the matter or to relegate the parties to appear before the Maintenance Tribunal.

The aforesaid interpretation is progressive, and it will ensure speedy remedy to aggrieved Senior Citizens.

It was held in *Jose v. Maintenance Appellate Tribunal, Ayyanthole and Another*<sup>71</sup> that the appellate powers and functions under the Act can be assumed and rendered only by an officer of the rank of District Magistrate. It was held on facts that an officer of the rank of Sub Collector /Deputy Collector who was having additional charge of the post of District Collector/District Magistrate and who was actually inferior in rank to the regular incumbent could not be employed to assume the appellate jurisdiction.

A very progressive interpretation of the term maintenance was expounded

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<sup>71</sup> 2018 (3) KHC 873.

by the Kerala High Court in *Sheeja v. Maintenance Appellate Tribunal/District Collector, Thiruvananthapuram and Others*.<sup>72</sup>The question involved in the case was whether the wife of a deceased donee under a gift deed who in turn was the nephew of the Senior Citizen was under an obligation to maintain the Senior Citizen after the death of her husband. The Court held that the concept of “maintenance” under the Act is not merely offering money to a Senior Citizen but instead it is the providing of food, clothing, residence, medical attendance and treatment. The Court upheld the direction of the Maintenance Tribunal to the petitioner to offer residence to the Senior Citizen in the house that was conditionally gifted to her husband. Importantly, the Court took into consideration the admitted fact that the petitioner was in possession of the Senior Citizens property and the admission that her husband would have been duty bound to look after the Senior Citizens under the gift deed.

Recently the Apex Court in *Vanitha. S. v. Deputy Commissioner, Bengaluru Urban District and Others*<sup>73</sup>speaking through D.Y. Chandrachud J., in a case where an order of eviction of the daughter in law in the property owned by the father in law and mother in law was challenged held on a harmonious interpretation of the provisions of the MWPSA Act 2007 and the PWDV Act 2005 that the right of a woman to secure a residence order in respect of a shared household cannot be defeated by the simple expedient of securing an order of eviction by adopting the summary procedure under the MWPSA Act 2007. It was

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<sup>72</sup> 2018 (5) KHC 634.

<sup>73</sup> 2020 (6) KHC 749.



held that the over-riding effect for remedies under the MWPSA Act 2007 under Section 3 cannot be interpreted to preclude all other competing remedies and protections conferred under the PWDV Act 2005. It was held that in deference to the dominant purpose of both legislations, it would be appropriate for a Tribunal under MWPSA Act of 2007 to grant such remedies of maintenance as envisaged under Section 2 (b) of the MWPSA Act of 2007 that do not result in obviating remedies under other special statutes such as PWDV Act of 2005. It was held that Section 3 of the MWPSA Act of 2007 cannot be deployed to override and nullify other protections in law particularly that of a woman's right to a "shared household" under Section 17 of the PWDV Act of 2005.

The Court allowed the special leave appeal filed by the daughter in law and set aside the order of her eviction passed invoking the summary remedy under the MWPSA Act of 2007. It was held that the claim of the daughter in law regarding alleged "shared household" of the disputed property had to be determined by the appropriate forum.

The aforesaid ruling is a landmark decision on the rights of woman under the PWDV Act 2005. However, it is the considered view of the researcher that while considering the claim under the PWDV Act of 2005 due regard has to be given to the right of the Senior Citizen to lead a peaceful life in the property. Due weightage has to be given for the fact the Senior Citizen would be at a disadvantage if the daughter in law who is at loggerheads and who is estranged from the son of the Senior Citizen is granted right of residence in the same house. "Residence" would definitely mean a "peaceful residence" during the evening of

the life of the Senior Citizen.

Thus, the Judicial interpretations have been very progressive by and large in accordance with the scheme of the legislation.

Recently the Kerala High Court directed the RDO Ernakulam to expedite consideration of an application under Section 23 pointing out that it is essential to dispose applications under the Act in a time bound manner considering the objects and purpose of the MWPC Act 2007 and the summary procedure.<sup>74</sup>

Hence a scrutiny of the existing case law will reveal the fact that courts have been eager to give a meaningful and social justice-oriented approach while interpreting the new law. Significantly our Hon'ble high court has held<sup>75</sup> that the purpose of the Act is to transform a moral obligation into a legal obligation and further to make children understand their moral (now legal) responsibility and not to punish them. Hence there is hope and potential for the new law from the part of the judiciary going by the present trend of case law.

#### **6.4. THE KERALA MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS RULES 2009**

The Government of Kerala framed the Kerala Rules of 2009 under Section 32 of the Act.<sup>76</sup> Like the Act, the Rules are divided into seven chapters. Chapter I deals with definitions. Chapter II deals with the procedure for Maintenance

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<sup>74</sup> See Mahir Haneef. Senior Citizens' Applications Must be Heard Fast, Rules HC. *The Times of India*, May 6 2021, p 5.

<sup>75</sup> *Jayasree v. State of Kerala and Another*, 2014 KHC 549.

<sup>76</sup> See Notification GO (P) No 38/20009/SWD dated 28/8/2009 as SRO no 723/2009 in Kerala Gazette Ent no 1581 dated 29/8/2009.

Tribunals and conciliation officers. Significantly Rule 3(2) prescribes good knowledge of law as a qualification for conciliation officers even though the requirement is not prescribed for presiding officers of Maintenance Tribunals. The Rules prescribe mandatory conciliation prior to an enquiry.<sup>77</sup> Importantly a period of one month is prescribed for conciliation.<sup>78</sup> The Rules permit final order as per the terms of settlement in conciliation.<sup>79</sup> In the event of no settlement taking place the tribunal has to take evidence and after a summary enquiry has to pass the final order.<sup>80</sup> The mode of computation of maximum maintenance allowance is prescribed in Rule 14 according to which it should not exceed the monthly income from all sources of the opposite party divided by the number of persons in the family counting the applicant also as a member.<sup>81</sup> Chapter III prescribes the procedure before the Appellate Tribunal and Chapter IV prescribes the scheme for management of old age homes established under Section 19 in terms of physical facilities and operational norms as laid down in the schedule. The Rule also prescribes the criteria for selecting indigent inmates of old age homes. Chapter V is important since it lays down the duties and powers of the district magistrate.<sup>82</sup> Accordingly it is the duty of the district magistrate to ensure that life and property of senior citizens of the district are protected and that they are able to live with security and dignity.<sup>83</sup> It is also the duty of the district

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<sup>77</sup> See Kerala Maintenance and Welfare of Parents and Senior Citizens Rules, 2009, Rule 10.

<sup>78</sup> See Kerala Maintenance and Welfare of Parents and Senior Citizens Rules, 2009, Rule 11(11).

<sup>79</sup> See Kerala Maintenance and Welfare of Parents and Senior Citizens Rules, 2009, Rule 12(2).

<sup>80</sup> See Kerala Maintenance and Welfare of Parents and Senior Citizens Rules, 2009, Rule 13.(IV).

<sup>81</sup> See Kerala Maintenance and Welfare of Parents and Senior Citizens Rules, 2009, Rule 14.

<sup>82</sup> See Kerala Maintenance and Welfare of Parents and Senior Citizens Rules, 2009, Rule 19.

<sup>83</sup> See Kerala Maintenance and Welfare of Parents and Senior Citizens Rules, 2009, Rule 19 (2) (i).

magistrate to oversee the working of the Maintenance Tribunals and Maintenance Officers,<sup>84</sup> old age homes in the district<sup>85</sup> and to ensure regular and wide publicity for the Act.<sup>86</sup> Chapter VI importantly deals with protection of life and property of Senior Citizens<sup>87</sup> and in particular the Action Plan for protection of life and property of Senior Citizens. Finally, Chapter VII seeks to establish a state council of Senior Citizens to advise the State Government on effective implementation of the Act<sup>88</sup> and district committees at the district level for the same purpose.

The most important Rules are hence Rule 19 and Rule 20 regarding the duties of the district magistrate and the action plan for protection of life and property of Senior Citizens.

Unfortunately, the Authority that is vested with such seminal duties is an overworked and heavily burdened officer of the executive with multifarious duties, responsibilities including the administration of the entire district and hence the aforesaid duties cannot be performed by the Authority effectively. The Action Plan is dealt with separately considering its importance in the scheme of the Act and its implementation.

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<sup>84</sup> See Kerala Maintenance and Welfare of Parents and Senior Citizens Rules, 2009, Rule 19 (2) (ii).

<sup>85</sup> See Kerala Maintenance and Welfare of Parents and Senior Citizens Rules, 2009, Rule 19 (2) (iii).

<sup>86</sup> See Kerala Maintenance and Welfare of Parents and Senior Citizens Rules, 2009, Rule 19 (2) (iv).

<sup>87</sup> See Kerala Maintenance and Welfare of Parents and Senior Citizens Rules, 2009, Rule 20

<sup>88</sup> See Kerala Maintenance and Welfare of Parents and Senior Citizens Rules, 2009, Rule 21.

#### **6.4.1. The Action Plan for the Protection of Life and Property of Senior Citizens**

The Action Plan for the Protection of Life and Property of Senior Citizens in Part VII of the Kerala Rules<sup>89</sup> is meant for the protection of life and property of Senior Citizens which is a mandate of Chapter V of the MWPC Act of 2007. Considering the scope and ambit of the said Chapter, the Action Plan assumes tremendous significance in the context of our State where the number of widows, aged women, and elderly couples living alone are very high. Kerala and especially Pathanamtitta district in Kerala have a huge segment of elderly population living alone since their children and relatives are abroad. The Action Plan mandates that Police Commissioners and District Superintendents of Police should take all necessary measures for protection of life and property of Senior Citizens. Pursuant to the said plan, the Kerala Police has issued a circular<sup>90</sup> for effective implementation of the Action Plan which envisages a proactive role for the Police in protecting the rights of the elderly by various measures including the maintenance of a Register of Senior Citizens, the maintenance of a Register of Offences against Senior Citizens, periodic interaction with Senior Citizens living alone, effective community policing and sensitivity to complaints and problems of Senior Citizens. The Action Plan also envisages periodic publication of the steps being taken by the Police for protection of life and property of Senior Citizens. It is important to sensitise the police force on the problems of the aged

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<sup>89</sup> See Kerala Maintenance and Welfare of Parents and Senior Citizens Rules, 2009, Rule 20.

<sup>90</sup> See Circular No. 16/2010 dated 11/3/2010 of Police Headquarters, Trivandrum.

through training programmes. Feedback of the aged can also be gathered to improve the service of the police.<sup>91</sup>

It is pertinent to note that the Action Plan has not been effectively implemented across the state despite the police circular aforesaid. The Action Plan if implemented in letter and spirit has the potential to effectively cater to many of the problems faced by the elderly in our state especially with respect to protection of life and property.

## **6.5. MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS ACT OF 2007 – LACUNAS AND SHORTFALLS**

### **6.5.1. Shortfalls in the Act**

The demographic transition in society and the exponential growth of the aged population has unleashed a plethora of problems, both social and legal. Fortunately, the state machinery and society has awakened and has slowly risen from its slumber. If child rights and the rights of women were at the centre stage of public discourse in the last century, the rights of the aged and its protection has come to the limelight of human rights discourse in the contemporary era. The most compelling need of the hour is to strictly implement the mandate of Section 21<sup>92</sup> of the MWPSA Act of 2007 regarding measures for publicity and awareness for the welfare of Senior Citizens. It is an acknowledged fact that sufficient

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<sup>91</sup> See Thumpa Mukherjee, *Role of Police in Prevention of Crimes Committed Upon Senior Citizens*, 53, IPJ No.2, 43, 48,49 (2006).

<sup>92</sup> See Maintenance and Welfare of Parents and Senior Citizens Act 2007, § 21. Section 21 deals with measures for publicity and awareness on the provisions of the Act through public media including the television, radio and the print at regular intervals.

publicity has not been made for the Act and its provisions.<sup>93</sup> While litigations for maintenance for aged parents under the Cr.P C of 1973 are conventional, adversarial and time consuming, the enquires under the MWPC Act of 2007 by the Maintenance Tribunals are meant to be summary inquisitorial proceedings to be concluded within definite time frames<sup>94</sup> for speedy justice. Unfortunately, the Maintenance Tribunals are often manned by sub divisional executive officers who are often officers without legal knowledge and legal acumen and who are overburdened with manifold executive duties and responsibilities. The vital remedies for maintenance and protection of property call for sound judicial decisions which are likely to be compromised by executive officers who are overburdened with other executive duties.<sup>95</sup>

In the decision reported in *Priti Dhoundial and others v. Tribunal*,<sup>96</sup> the High Court holding that the Maintenance Tribunal acted beyond jurisdiction with respect to a case involving the property of the renowned scholar Mrs. Lotika Sarkar filed at the instance of an NGO, raised a serious doubt about the legal knowledge of the members of the Tribunal and their competence. Quite remarkably, it was held in the *Paramjit Kumar Saroya*<sup>97</sup> case, that the remedies under the MWPC Act of 2007 are not simple, but complex and that the

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<sup>93</sup> See Dr. Ajani Kanth, *The Maintenance and Welfare of Parents and Senior Citizens: A Critical Legal Study*, AIR Journal 209, 210 (2011).

<sup>94</sup> See Maintenance and Welfare of Parents and Senior Citizens Act 2007, § 5 cl.4. Section 5 (4) prescribes a time limit of 90 days for disposal of applications by the maintenance tribunal and Section 16(6) prescribes a period of 1 month for disposal of appeals by the appellate tribunals.

<sup>95</sup> See Manju Jamwal, *Recognising Rights of Senior Citizens: Recent Legislative Trends in India*, 4 PULJ, 51 (2010).

<sup>96</sup> 2011 KHC 836.

<sup>97</sup> 2014 KHC 3407.

Maintenance Tribunal has been granted authority to pass orders affecting the valuable property rights of citizens, highlighting the need for the judicious exercise of authority of the Maintenance Tribunals. Hence the biggest challenge is in enhancing legal awareness of the existing legislations among all segments of the population including the illiterate and the elderly in rural areas.

Though the State Government has formulated an Action Plan,<sup>98</sup> under the Rules of 2009 the plan is not implemented effectively by the Police Department. The public is also largely unaware of the plan and its purpose. Further, under the Kerala Rules<sup>99</sup> the District Magistrates have been conferred with the authority to ensure protection of life and property of senior citizens so that they can live with security and dignity in addition to various other duties including overseeing and monitoring the works of Maintenance Tribunals and Maintenance officers and the working of old age homes in the district. Needless to state, the aforesaid monitoring and implementation is also a big challenge for the officials considering the manifold magisterial and other executive duties of the office of the District Magistrate. Considering the wide spectrum of official duties of the District Magistrate it is virtually impossible to focus on the statutory mandate to ensure adequate publicity for the Act.<sup>100</sup> In fact, the dire necessity for public awareness on the MWPSA Act of 2007 stems from the fact that the Act and its provisions and in particular the seminal Section 23 has only prospective

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<sup>98</sup> See Kerala Maintenance and Welfare of Parents and Senior Citizens Rules, 2009, Rule 20.

<sup>99</sup> See Kerala Maintenance and Welfare of Parents and Senior Citizens Rules, 2009, Rule 19.

<sup>100</sup> See Jose Vikhas Yesudasan, *Aged Parents – Legal Protection*, 35, 36, 37 JDLS 152, 162 (2013, 2014, 2015).



application.<sup>101</sup> Here again the challenge is in effective implementation of the Act by the District Magistrates and sub divisional officers who are overburdened with manifold executive functions. The Act suffers from several other lacunas. Though neglect and abandonment of the aged is a heinous offence, the punishment of imprisonment of three months and fine of INR 5000/- is very meagre. The Act lacks deterrent value and penalty has to be made more stringent. Further the state governments have not implemented provisions regarding medical benefits and old age homes in the Act. That apart the right to file appeal is one sided and the respondents cannot file appeal.<sup>102</sup> It is also remarkable that the Act gives importance only to monetary relief and property and it does not cater to the physical and emotional needs. The Act should have been more comprehensive catering to all facets of the Rights of the Aged. Further, old age homes are contemplated only for destitute aged, leaving the aged with financial means who need accommodation without a remedy.<sup>103</sup>

With the exponential increase in the population of the aged, and in particular, the oldest old, above 80 years, there is the need to promote in right earnest, “Ageing in place” or ageing in one’s own home, since it is the most preferred and desired option for the aged, especially in Kerala and in the context of the mandate of the revised state policy of 2013. However, there is also the need to promote establishment of paid old age homes to cater to the increasing

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<sup>101</sup> *Vincent v. Augustine and Another*, 2013 3 KHC 738.

<sup>102</sup> See R.N. Mital and Dr. S.P Kinjwadekar, *Assessment of the Status of Implementation of the Maintenance and Welfare of Parents and Senior Citizens Act 2007*, 20 HIRDJ, No. 1, 29, 30 (January 2014).

<sup>103</sup> See Dr. Sanjay Gupta Sulkhana, *Maintenance and Welfare of Parents and Senior Citizens: A Critical Evaluation*, 4 PULJ, 65 (2010).

segment of the aged who have no children or relatives to look after and who can afford such payment. The concept of day care centres or “Pakalveedu” can also be encouraged even for the aged who are living in their own homes for better social interaction and mental and physical fitness and health. There is also the urgent need to create an independent regulatory body detached from the present orphanage control board to regulate all old age homes and to ensure that all old age homes are conducted as per the notified scheme and guidelines.<sup>104</sup> It is heartening to note that the Social Justice Department has come up with a new comprehensive guideline for regulation of old age homes run by the Government NGOs.<sup>105</sup> The challenge is to inculcate among the younger generation a sense of duty and responsibility to protect and care for the elderly firstly within the family and secondly in society through moral education and legal education. The impact of the legal remedies provided in the Act will mostly be confined to the educated and propertied classes in urban areas. It is doubtful whether the Act will benefit the rural poor.<sup>106</sup> Finally there is a very strong argument that the law has to be applied rigorously and that people have to be reminded of our great tradition of respecting and caring our parents and elders.<sup>107</sup>

#### **6.5.2. The Maintenance and Welfare of Parents and Senior Citizens (Amendment) Bill 2019**

The proposed Bill seeks to amend the MWPSC Act of 2007 in certain key

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<sup>104</sup> See Kerala Maintenance and Welfare of Parents and Senior Citizens Rules, 2009, Rule 18 and Schedule.

<sup>105</sup> See *The Times of India*, April 19, 2021, p 4.

<sup>106</sup> See Eluri Srinivasa Rao, *Empowering Senior Citizens*, 2 SCJ, 20, 21 (2008).

<sup>107</sup> See Pretty Jain, *The Maintenance and Welfare of Senior Citizens Act 2007- A Critical Analysis*, 19 ALJ 119 (2008-09).

areas considering the practical difficulties faced in implementation of the existing provisions. Accordingly, the following key amendments are proposed:

1. “Children” under Section 2(a) will include stepchildren, adoptive children, children in laws and the legal guardian of minor children.
2. “Relative” under Section 2(8) will include minors represented by their legal guardians.
3. “Parents” under Section 2(d) will include parents in law and grandparents.
4. “Maintenance” under Section 2(b) will include provision of healthcare, safety and security for parents and Senior Citizens to lead a life of dignity.
5. “Welfare” under Section 2(k) to include provisions of housing, clothing, safety and other amenities necessary for the physical and mental wellbeing of a Senior Citizen or parent.
6. Removal of the upper limit for maintenance of INR 10000 per month under Section 9(2) of the MWPSC Act of 2007.
7. Reducing the time limit for payment of maintenance from 30 days to 15 days under Section 13 of the MWPSC Act of 2007.
8. Allowing children and relatives also to file appeals against the orders of the Maintenance Tribunal under Section 16(1) of the MWPSC Act of 2007.
9. Enhancing the punishment for exposure and abandonment of Senior Citizens from 3 months to 6 months and INR5000/- to INR 10,000 under section 24 of the Act and imposing punishment of imprisonment up to one

month for enforcing payment of maintenance.

10. Authorising maintenance officers to ensure compliance of maintenance payment orders and to act as a liaison for parents and Senior Citizens under Section 18 of the MWPSA Act of 2007.
11. Enabling the setting up of old age homes and care homes by Government and private organisations subject to the requirement of registration and providing prescribed minimum standards under Section 19.
12. Requiring all hospitals including private hospitals to provide medical facilities for Senior Citizens and providing home care facilities for Senior Citizens with disabilities under Section 20.
13. Requiring every police station to have at least one officer not below the rank of Assistant sub inspector to deal with issues related to parents and Senior Citizens and constitution of a special police unit for Senior Citizens in every district headed by an officer not below the rank of deputy superintendent of police under Chapter V.

All the aforesaid amendments are laudable and will only serve to strengthen the law further apart from removing the lacunas in the law. There is the dire need to incorporate relatives who are in-laws also considering the social context of Kerala where a huge segment of the elderly are destined to spend their evenings of life with their in laws since the children would be employed abroad. The proposal to lift the upper limit of INR 10,000/- is also commendable and so also is the right granted to the children and the relatives to file appeals which was a

major lacuna in the law.

Unfortunately, the Bill has not been passed by the Parliament and it is hoped that the amendment bill will be enacted into law at the earliest.

### **6.5.3. Administrative Reforms Commission -III<sup>rd</sup> Report - (October 2018)**

The Commission took up analysis and review of selected legislations including the legislation for Senior Citizens and studied issues in its implementation. It also suggested measures to enable the State Government to extend better governance to the beneficiaries of the legislation. Importantly the Commission noted the fact that Kerala is greying faster than other states in India. It also noted that better awareness and availability of affordable and quality health care has increased life expectancy and brought the state's fertility rate to below replacement levels. The focal point of the Commission's exercise was the realisation that the nation has moved away from welfare legislations to rights-based legislation in its endeavour to ensure inclusive development.

The Commission after a detailed study of the implementation of the MWPSC Act of 2007 concluded that the Act has helped the Senior Citizens in a major way to establish their right to maintenance. Relying on a study by Help Age India it found that Kerala was better in terms of the system of filing the petitions and disposal of cases in Maintenance Tribunal constituted under the MWPSC Act of 2007. The Committee also highlighted the recommendations of the V.K.Beeran Committee appointed by the Government of Kerala which found that the tribunals are not functioning properly.

Some of the important issues identified by the Commission in implementation are the following:

- Limited awareness among the public about the Act.
- Lack of proper implementation by police authorities.
- Not adhering to timeline under the Act of 90 days for disposal of applications.
- Lack of monitoring system to assess compliance of orders by tribunal.
- Lack of proper monitoring of the functioning of tribunals and progress of provisions of the Act at the district and state level.
- Lack of staff and infrastructure in tribunals to meet the ever-increasing applications.
- Inadequate understanding of the Act and its provisions by the presiding officers of the tribunals.
- Improper conduct of conciliation process under the Act.
- Appearance of lawyers contrary to the provisions of the Act especially for respondents creates an imbalance in adjudication.
- Inadequacy of the amount of INR 10,000/- fixed for maintenance.
- Overcrowding of Government old age homes in Kerala

The following are the important recommendations of the commission:

- Organising mass awareness campaign by the social justice department to improve awareness of the Act.

- Effective implementation by police as contemplated under the Rules and Action plan.
- Effective coordination of functions of different Government departments and agencies.
- Clarification for procedure for ensuring effective enforcement of maintenance orders.
- Creation of a fund for granting interim relief to senior citizens considering the delay in adjudication.
- Imparting of training to presiding officers and staff members.
- Amending the rules to enable recording of statements of applicants in their residence in fit cases and use of video conferencing.
- All Government health care institutions right from PHC's to be made elder friendly.
- Undertaking a study on "Pakalveedu" to understand reasons for its success and failure in order to improve the institution.
- Increasing capacity of old age homes in Government sector.
- Caregivers in old age homes to be given training.
- Starting of old age homes by district panchayats and running of homes by Kudumbhasree.
- All public buildings and public transport to be made Senior Citizen friendly.

All the issues and all the recommendations in the report are valid and

realistic and it is sincerely hoped that the Government will give due consideration and regard to the recommendations. The Report most importantly highlights the need to focus on a rights-based regime instead of a welfare regime for Senior Citizens which is also the central theme of this study.

#### **6.5.4. Committee for the Welfare of Senior Citizens of the Kerala Legislative Assembly (2011-2014) - Recommendations**

The standing committee was formed on July 31, 2010, recognising the fact that the welfare of Senior Citizens is one of the most formidable problems of the 21<sup>st</sup> century and noting the fact that even though several laws have been enacted to protect Senior Citizens the authorities concerned are not implementing the laws.

The following are the main recommendations of the committee that mainly studied complaints and grievances against state level and district level councils and its working mechanisms, complaints regarding the functioning of Government and private old age homes and the utilization of funds earmarked for Senior Citizens.

The recommendations relate to the functioning of the committee during the period 20.10.2011 to 30.05.2012:

1. Formation of a separate cell for handling problems of Senior Citizens in the Social Welfare Department (in old age homes).
2. All welfare pensions to be disbursed through money orders. The financial assistance of members of the welfare schemes after death to be



enhanced to INR 5,000/-.

3. School curriculum to be revised to incorporate subjects on Senior Citizens welfare and protection.
4. Jagratha Samithis to be formed at Panchayat level to report cases of neglect and abuse of Senior Citizens.
5. Day care centers to be commenced at the three levels of Panchayats and funds to be provided in the budget for purchase of 10 cents.
6. Appointing a Nursing Assistant in old age homes for testing blood and urine of inmates regularly on monthly basis.
7. Strict implementation of the order of the Government (Home Department) for periodical visit of Senior Citizens living alone.
8. 30% fare concession for Senior Citizens in KSRTC buses.
9. Conducting training programmes jointly by Social Welfare Department and Panchayats for mental health improvement among family members.
10. Commencing paid Old Age Homes for accommodation for well off Senior Citizens to protect them from grave crimes like murder, robbery.
11. Appointing Block Development Officers at the Block Panchayat level as Maintenance Tribunals.
12. Establishment of Senior Citizens' courts in each District for expeditious disposal of cases involving Senior Citizens.
13. Commencement of Old Age Women's Homes under the Social Welfare Department.

14. Commencement of recreation centers and libraries for Senior Citizens at Panchayat level for improving physical and mental health of Senior Citizens.
15. Reducing the height of foot boards in public buses for facilitating easy access for Senior Citizens.

All the recommendations of the Assembly Committee are valuable, and it is hoped that the Government will implement the same at the earliest.

#### **6.5.5. Report of the Special Officer Appointed by the Government Sri. V.K. Beeran for Constitution of a Regulatory Board for Senior Citizens**

The Council of Ministers appointed the special officer with the rank of Advocate General on 13.05.2015<sup>108</sup> and directed that the report has to be submitted within 6 months on or before 05.05.2016. The Final Report dated 08.04.2016 of Sri. V. K. Beeran (Senior Advocate) is titled “Age Friendly Kerala.”

Earlier an interim report was submitted on 19.01.2016. The special officer significantly found that seventy percent of the problems of Senior Citizens and parents can be solved if the provisions of the Maintenance & Welfare of Parents and Senior Citizens Act 2007 and the Rules of 2009 are implemented in letter and spirit. It was highlighted in the report that due to unemployment problem in the state, large number of youth have migrated to different countries, which is a peculiar problem for the state. It is pointed out that since the state was unable to

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<sup>108</sup> See GO (MS) No.34/15/SJO on 21.05.2015, GO (Rt) No.662/15/SJO, dated 06.11.2015.

provide jobs, the youth were forced to abandon their old parents. It is also pointed out that, the foreign remittances sent by the youth from abroad are a huge resource for the state and its development. The Report hence argued that it was the responsibility of the state to protect and maintain its Senior Citizens in the aforesaid scenario. It was also highlighted that though there is a State Policy of 2013, nothing has been implemented from the policy and that the Government should implement various programmes in the policy within a time frame. The Report *inter alia* highlighted the need to constitute the regulatory board at the state level to monitor the functioning of authorities under the MWPSA Act 2007 and also the need to establish a separate department for Senior Citizens. Wide publicity was earned by the proceedings of the Special Officer and the Report.<sup>109</sup> In fact much prior to the appointment of Special Officer, there was a strong demand for such a board and a separate department.<sup>110</sup>

The important recommendations are:

1. Establishing old age homes cum day care centers in all legislative assembly constituencies.
2. Home nurses to be recruited and paramedical training to be given by societies registered in each assembly constituency and 50% subsidy to be given to Below Poverty Line (BPL) Senior Citizens.
3. Deputy Collectors, who are sub divisional officers competent to be

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<sup>109</sup> See Board for Welfare of the Elderly. *The Hindu*, November 29, 2015, Vayyojana Avakasha Samrakshanam: Regulatory Boardinnu Shuparsha. *Malayala Manorama* January 20, 2016.

<sup>110</sup> See Senior Citizens Seek Separate Department. *The Hindu*, September 26, 2011; Vayojjana Kshema Board Roopikarikkum: Manthri Muneer, *Malayala Manorama*, August 7, 2011.

additional district magistrates to be specifically notified as Maintenance Tribunals for a revenue district.

4. Constitution of a regulatory board at the state level for effective supervision and monitoring of functioning of authorities under MWPSA Act of 2007 and 2009 Rules. Board to have administrative supervision of all authorities. If any authority is neglecting duties, Board can intervene and take it up before superior authority or appellate forum or superior court.
5. Creation of a separate Government department called “Vayojana Vakuppu or “Senior Citizens Welfare Department” and a new directorate as “Directorate of Senior Citizens Welfare” and “District Office for Senior Citizens Welfare”.
6. Monthly pension to be enhanced to INR 2,000/- (60-79) and INR 3,000/- (above 80).
7. Nutritious food to be given to Senior Citizens, who are below poverty line through Anganwadies.
8. “Vayomithram” scheme of Kerala Social Security Mission to be extended to all towns and Panchayats and to the entire state.
9. Comprehensive State Legislation to be enacted invoking Article 41, 46 and 31(c) of Constitution. The proposed law should contain all aspects of welfare such as provision for food, provision for health care, provision for recreation centre, provision for protection of life and property and provision for abandonment of Senior Citizens (most

important recommendation)

The Legislation should cater specially to:

- i. Medical care of Senior Citizens.
  - ii. Vigilance Cell in each ward of local self-government institution (LSGI) for protection of life and property and sabhas of Senior Citizens to be constituted and convened regularly.
  - iii. Provision for protection of Senior Citizens in Transport (30% seat reservation) (50% fare concession).
10. Government to encourage “pay and stay” old age homes in the private sector.
  11. Monetary limit of INR10,000/- in MWPSA Act of 2007 to be taken away.
  12. Conducting periodical sensitisation and awareness training by Kerala Judicial Academy.
  13. Adverse decisions like *Paramjit Kumar Saroya v. Union of India and another*<sup>111</sup> regarding right of appeal and decision regarding legal representation to be taken up before Supreme Court.
  14. Proposed State Legislation to contain penal provision for punishment of disobedience of mandates under the Act by officials concerned.
  15. Government to take a liberal stand regarding sanction to prosecute officers, who are defying the directions of law under Section 166 of IPC.

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<sup>111</sup> 2014 KHC 3407.

16. In addition to budget support, Government to augment corpus fund of INR 1,000/- crore for welfare of Senior Citizens.

17. Unclaimed amount lying with nationalised banks may be claimed by the State Government for welfare of Senior Citizens along with unclaimed interest.

Though the MWPC Act of 2007 has several lacunas the fact remains that the new legislation is a giant positive leap ahead in the evolution of the rights and dignity of the aged. The legal mechanism especially under Section 23 has become a very popular remedy for the aged in Kerala.<sup>112</sup> There is also overwhelming opinion in society that the law is not being implemented properly.<sup>113</sup>

## 6.6. CONCLUSION

The MWPC Act of 2007 is a revolutionary legislation enacted exclusively for Maintenance and Welfare of Parents and Senior Citizens and as a legislative measure towards more effective provisions compared to the existing laws.

The MWPC Act of 2007 mainly focuses on Maintenance though it lays down certain welfare measures with respect to establishment of old age homes, medical care and protection of life and property of Senior Citizens.

Maintenance and Protection of Life and Property are the two vital legal remedies provided in the Act through Maintenance Tribunals manned by Sub

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<sup>112</sup> See Aarorumillatha Beevikku Thunaaayi RDO Utharavu Ethi. *Malayala Manorama*, July 10, 2011.

<sup>113</sup> See Law for Senior Citizens not being Implemented, *The Hindu*, December 22, 2015; Senior Citizens Act Needs a Push, *The Times of India*, December 14, 2017.

Divisional Officers and District Magistrates of the Executive Branch of Government.

Though the objective of the MWPSA Act of 2007 is to provide simple inexpensive and speedy remedy without the involvement of lawyers the remedies provided are legally complex necessitating long drawn litigations and the involvement of lawyers.

The Sub Divisional Officers who are entrusted with adjudicatory functions are over worked being authorities conferred with multifarious executive responsibilities and hence they cannot effectively discharge their functions under the MWPSA Act of 2007.

Though the adjudicatory process under the MWPSA Act of 2007 involves complex legal issues pertaining to transfer of property and conditional transfers, the Authorities invested with powers are not legally trained or qualified to render effective justice.

The MWPSA Act of 2007 suffers from several lacunas notable among them being the absence of a provision enabling the filing of Appeals under Section 16 by aggrieved respondents in the petitions, the loosely worded definitions under the Act, the authority for adjudication and the nominal penalty imposed for abandonment of Senior Citizens.

Though the objective of the MWPSA of 2007 was to enact a simple, inexpensive and speedy remedy and as a measure of more effective provisions the proceedings before the Maintenance Tribunals are complex and time

consuming. However, the law has definitely served as a more effective law since it exclusively deals with the maintenance and welfare of Senior Citizens.

The MWPC Act of 2007 has for the first time transformed the moral obligation of children and relatives to maintain Parents and Senior Citizens into a legal obligation making its enforceability difficult considering the social stigma of parents to litigate against their children.

Though the MWPC Act of 2007 has definitely improved and enhanced the legal framework for protection of elders' rights and dignity in Kerala the Legislation has been able to make an impact only in the realm of maintenance. The level of implementation and effectiveness of the legislation in the realm of welfare measures like establishment of old age homes, medical facilities and protection of life and property is very low.

The conferment of authority on the District Magistrates under the Kerala Rules of 2009 to implement the Act is impractical.

The Action Plan under the Rules though well drafted is not implemented properly.

The recommendations of the Kerala State Administrative Reforms Commission in its III<sup>rd</sup> Report titled "Welfare to Rights" has rightly reiterated the need for Government to step in proactively and protect the rights of Senior Citizens and to provide them an environment to live with dignity.

The III<sup>rd</sup> Report of the Administrative Reforms Commission has rightly reiterated the need for shifting from welfare-based jurisprudence to rights-based



jurisprudence.

All the recommendations of the Administrative Reforms Committee are welcome. In particular the recommendations for generating awareness on the provisions of the Act, the need for augmenting staff of the maintenance tribunals and the need for proper monitoring of the activities of the tribunals, appellate tribunals and authorities under the Act are commendable and they deserve urgent attention.

Though the judicial interpretation of the provisions by constitutional courts have been progressive by and large dictums enabling access to lawyers in tribunals contrary to the legislative mandate and insisting on express recitals in the deeds of conditional transfers are huge setbacks for the effective implementation of the MWPSA Act of 2007.

All the proposed amendments in the 2019 Amendment Bill are welcome and long overdue and it is hoped that the amendments will be enacted at the earliest.

The recommendation of the special officer Sri. V. K. Beeran (Senior Advocate) to constitute a regulatory board is commendable since the Board is proposed for effective supervision and monitoring of functioning of authorities under the MWPSA Act of 2007 and its Rules.

The finding of the Special Officer that seventy percent of the problems of Senior Citizens and parents can be solved if the MWPSA Act of 2007 and its Rules are implemented in letter and spirit is welcome and justified.

The recommendation of the special officer to notify Deputy Collectors specifically and exclusively as Maintenance Tribunals is a very practical suggestion since sub collectors and revenue divisional officers are presently overburdened with multifarious responsibilities and are unable to do justice to litigants.

The recommendation of the special officer to create a separate department in the Government for Senior Citizens in addition to a “Directorate of Senior Citizens Welfare” and “District Office for Senior Citizens Welfare” is commendable and deserves the urgent attention of the State Government.

Enactment of a comprehensive state legislation for Senior Citizens invoking Articles 41, 46 and 31(c) of the Constitution is a welcome recommendation of the special officer.

Recommendation of the Kerala Legislative Assembly Committee for formation of a special cell in the social justice department for handling problems of the aged in old age homes in the state is a welcome recommendation which has to be urgently implemented.

Recommendation of the Assembly Committee to revise the school curriculum to incorporate subjects on Senior Citizens welfare and protection is commendable. It will foster and enrich a culture of respect and dignity towards the aged.

Recommendation of the Assembly Committee for commencement of paid old age homes in the state for the aged who can afford stay in such homes is a

welcome step which is very relevant and needed in the contemporary context.

The recommendation of the assembly committee for establishment of Senior Citizens courts in each district for expeditious disposal of cases involving Senior Citizens is a valuable recommendation which has to be implemented urgently in the state.

The proposed Amendments of 2019 to the MWPSA Act of 2007 which includes children in-laws also within the ambit of the Act is welcome. The inclusion of stepchildren, adoptive children and legal guardian of minor children within the Act is welcome and so is the lifting of the upper limit of INR 10,000/- for maintenance along with the provision for appeal for respondents.

The Amendment Bill of 2019 includes regulation of private care homes for Senior Citizens and institutions providing home care services which is welcome and appreciable.

To sum up, the MWPSA Act of 2007 though a step in the right direction does not cater to the wide spectrum of rights of the elderly and further the remedies under the Act are grossly inadequate and ineffective apart from being complex and legalistic. There is a dire need for amendments and reforms before a shift in focus from maintenance based jurisprudence to rights based jurisprudence for the elderly.

## CHAPTER VII

### OTHER MECHANISMS FOR PROTECTION OF ELDERS' RIGHTS

The legal framework for the elderly comprises of statutory as well as non-statutory mechanisms. While the core legal framework comprises of statutes and its connected case law enforced through the courts of law, the policies, programmes and schemes of the executive wing of the Government are an equally important part of the legal framework. Policies are most vital since legislation is enacted based on the policies of the Government. While policies reflect the objectives of a government, legislations provide the legal and institutional framework to effectuate the policies. The efficacy of legislations largely depends on the content and scope of the policy on the topic. Likewise, the programmes and schemes of the Government which takes within its fold the welfare pensions and other schemes offer welfare measures vital for the aged to effectuate their rights. Hence welfare measures and executive programmes are more crucial for the livelihood and wellbeing of the aged, in fact more important in poor and developing countries than legislation and judicial process. It is however very important to bear in mind the fundamental fact that however excellent a policy statement may be as in the case of the national and state policies for the aged in India and Kerala as will be discussed in the Chapter, it will not assume the authority of legislation which alone defines the rights and duties of citizens.

## **7.1. POLICY PERSPECTIVES**

### **7.1.1. Indian National Policy on Older Persons 1999**

Indian National Policy on Older Persons (NPOP) seeks to assure older persons that their concerns are national concerns and that they will not live unprotected, ignored or marginalized. The policy aims to strengthen their legitimate place in society and helps older persons to live their last phase of life with purpose, dignity and peace. The Policy recognizes the need for affirmative action in favour of elders and considers sixty plus as a phase when the individual should have chances and opportunities to lead an active, creative, productive and satisfying life. Further the Policy believes in the development of social support system both formal as well as informal and recognizes that older persons are a resource to society. It believes in empowerment of older persons and their participation in decision making and recognizes the need for larger state budgetary allocation. Importantly the Policy emphasis the need for individuals, families, communities and institutions of civil society to join hands as partners and finally the policy emphasis the need for expansion of social and community services for older persons particularly women. The Policy also considers financial security, health care and nutrition, education, welfare, protection of life and property as core areas of intervention and strategy formulation apart from focusing on nongovernmental organizations, family, research, training of manpower and media. The Policy also deals with implementation, and it stresses the need for a very wide dissemination of the Policy on the basis of an active plan so that its features remain in constant public focus. The Ministry of Social

Justice and Empowerment has been designated the nodal ministry to coordinate all matters relating to the implementation of the policy. It also envisages setting up of a separate bureau of older persons as well as an inter-ministerial committee to coordinate matters and monitor the progress of the policy. It was also decided to formulate five year and annual action plans for each ministry and a three yearly detailed review by the nodal ministry. Further it was proposed to set up an autonomous National Council for Older Persons headed by the minister for Social Justice and Empowerment and an autonomous registered National Association for older persons having National, State and District offices. Finally, it was decided to encourage Panchayathi Raj Institutions to participate in the implementation of the National Policy and for addressing local level issues.

It is noteworthy that the NPOP was formulated pursuant to the UN General Assembly Resolution 47/5 for observing the year 1999 as the International Year of Older Persons.

#### **7.1.2. National Policy on Senior Citizens 2011**

The NPOP of 1999 was followed by *the National Policy on Senior Citizens 2011*. The National Policy on Senior Citizens 2011 looked at the increasing longevity of people and the lack of care giving and considered the fact that elderly women need special attention. It states that rural poor need special attention and further considers increasing advancement in technology. The Policy values an age integrated society and states that it will endeavour to strengthen integration between generations and further it believes in the development of a formal and informal social support system. The Policy states

that its focus areas will be women, in addition to promotion of concept of ageing at home by adopting preventive measures, making institutional care as the last resort, recognizing that Senior Citizens are a valuable resource for the country, promotion of long term savings, instruments and credit facilities, employment of elders in income generating activities after superannuation, implementation of the MWPSA Act of 2007 and setting up assisted living facilities for abandoned Senior Citizens. The Policy states that its areas of intervention shall be (1) Income Security in old age (2) Health Care, (3) Safety and Security, (4) Housing, (5) Productive ageing, (6) Welfare, (7) Multi-generational Bonding and (8) Media. Importantly the Policy under the caption “Implementation Mechanism” envisages the establishment of a Department of Senior Citizens under the Ministry of Social Justice and Empowerment, the establishment of Directorates for Senior Citizens in States and Union territories, a National Commission and State Commission for Senior Citizens, a National Council for Senior Citizens and further makes several Central Ministries like Home Affairs, Health and Family Welfare, Rural development, Urban Development, Youth Affairs and Sports, Railways, Science and Technology, Statistics and Programme Implementation, Labour, Panchayati Raj and Departments of Elementary Education and Literacy, Secondary and Higher Education, Road Transport and Highways, Public Enterprises, Revenue, Women and Child Development, Information Technology and Personal and Training liable to set up necessary mechanisms for implementation of the policy. Finally, the Policy also makes Block Development offices, Panchayati Raj Institutions and tribal councils

responsible for implementation of the Policy at their levels.

### **7.1.3. Kerala State Old Age Policy 2006**

The first policy formulated by our State Government aims to safeguard the independence, self-fulfilment and dignity of the elderly. It emphasised the financial, health, social and emotional empowerment of the elderly. It sought effective intervention for elders who needed special care like elders above 80 years, widows, disabled elders and abandoned elders. The Policy also sought for promotion of intergenerational bonding and a comprehensive scheme in addition to cheap health facilities for the aged. It recognised the seminal role of non-governmental organisations and local self-governments. Under legal protection measures the policy highlighted the special responsibility of the police department and sought sensitivity from police personnel. It envisaged creation of district councils for complaint redressal, free legal aid for elderly and enacting of a special law to prevent elder abuse.

### **7.1.4. Revised Kerala State Policy for Senior Citizens 2013**

The Revised State Policy for the Senior Citizens pointed out that the characteristic social phenomenon in Kerala is a high percentage of widows in the population. The Policy asserted that financial security is the basic requirement of the aged and underscored the fact that the highest number of welfare pensions are available in Kerala. It was stated that though the aged are by and large healthy and though one fourth of the aged are still working the health of the aged population above 70 years is a matter of serious concern.



The Policy focussed mainly on the following areas:

- Eighty plus aged category.
- Widows.
- Unmarried aged.
- Aged without relatives.
- Handicapped and weak aged.
- Terminally ill aged.
- Aged living alone.

It recognised the contribution of the aged to society. It was stated that the aged had a right to freedom, self-fulfilment, and dignity in addition to the right to obtain an opportunity for contributing to social development. The Policy aims to empower the aged, socially, health-wise, financially, and emotionally so that they can lead a confident and contented life. The Policy also stressed the importance of intergenerational bonding and the need to encourage families to look after elders. The policy also envisaged a comprehensive pension scheme and health insurance. It also envisaged expeditious disposal of maintenance cases and facilities for employment of the aged by providing training. The reservation of seats in public transport systems is also envisaged in addition to retirement schemes and counselling prior to retirement.

The Policy after highlighting that the family is the most important source of informal social security also stressed on institutional care through old age homes whose demand have increased considerably in the recent years. It also

pointed out the role to be played by Panchayathi Raj institutions and NGOs. While Panchayathi Raj institutions were envisaged as the basic implementing agencies for welfare schemes and pensions, NGOs were given a prominent role since the Government, the local bodies, and the family cannot by themselves deliver justice to the aged.

Importantly the Policy specifically dealt with legal protection where the role of the police has been underlined. The police were given a special responsibility for dealing with crimes against elders and in particular to show maximum accommodation and sympathy particularly in cases relating to women. Further the policy under this head envisaged legal aid for Senior Citizens and even the enactment of a new law by the state legislature for protection of elders from abuse. Issuance of identity cards to the aged population through the social justice departments for availing various benefit schemes, earmarking of funds by the state planning board for schemes for elders through the local self-government departments, concessions and rebates for the elderly in cultural, recreational , and entertainment centres, providing of lifts in railway stations, age friendly buildings and providing opportunity for retired persons who are willing to work for national development are the other measures envisaged in the Policy document.

The Revised State Old Age Policy of 2013 in its preface importantly declares that it is the duty of society to look after the welfare of Senior Citizens and apart from love, respect, health and financial security the focus should be on providing suitable employment for the elderly. The Policy states that

Government intervention alone is not effective for solving many issues and states that all agencies private and Government should act in coordination along with the family. Very importantly the policy envisaged an age integrated society as the need of the hour so that the elderly can live a life of peace and dignity.

Significantly the Policy stated that the aged have to be given all the rights enjoyed by others and in particular the rights enshrined in the UN principles for older persons and the fundamental rights. The Policy underscores the need for creating a palliative care network both in rural and urban areas jointly with volunteer organisations to look after bedridden elders and to encourage enrolment in medical insurance at a young age as an improvement to the policy of 2006. The Policy also envisaged various measures for the health of elders which include distribution of free medicines for the aged, facilities for free dialysis, special programs for Dementia, Alzheimers, and Parkinsons diseases, palliative care for cancer and arthritis, and the expansion of the “vayomithram” program conducted in corporations and municipalities to panchayaths. The policy also mentioned housing facilities for abandoned and single Senior Citizens in rural and urban areas, low interest housing loans, creation of employment opportunities including the establishment of an employment directorate for the aged, levy of social security cess for creating a fund for the aged, a help-line for the aged in all cities, community cum day care centres in all block panchayaths, promoting the establishment of old age homes and improvement of standards in old age homes by ensuring effective control by the Social Justice Department instead of the present control by the Orphanage

Control Board functioning under The Orphanages and other Charitable Homes (Supervision and Control) Act 1960, active involvement and intervention of Panchayathi Raj Institutions and assistance for NGOs for implementation of programs and schemes pertaining to the aged.

Very importantly the Revised Policy of 2013, reiterated the need for legal protection and security for the aged after mentioning that the aged are most vulnerable to the actions of anti-social elements and are often victims of cheating and abuse from family members on account of disputes relating to movable and immovable property. As an additional measure the policy underscored effective implementation of the MWPSA Act of 2007 and in particular the need for ensuring adequate publicity for the legislation. The Revised Policy underlined the duty of the state to give protection to life and property of elders and envisaged a “Vayojana Suraksha” scheme to be implemented by the home department, an “Elderline” network to be started under the control of the police department for providing help of individuals and NGOs for the needy, and the connection of “Elderline” with the “Vayomithram” program of the State Government.

The Kerala State Revised Old Age Policy of 2013 which revised and improved the policy of 2006 considers it the duty and responsibility of society to look after the elderly aged above 60 years. It mandates necessary action to ensure that the elderly can live with dignity in society by catering to their health and financial security and in particular by ensuring employment opportunities for the elderly. The policy highlights the remarkable demographic feature in Kerala which is a large number of widows among the elderly and the large proportion

of illiteracy among the elderly and the fact that about 30% of the state population live below the poverty line. The policy promotes ageing in one's own home and advocates prevention rather than cure and views institutional care as the last resort. The policy views the elderly as a valuable resource of society and seeks to ensure equal opportunities for the elderly in addition to participation. The policy aims to establish Old age homes in every district for housing and protecting abandoned elders. It also envisages a palliative care network for door-to-door services for rural and urban areas and the inclusion of elderly issues in school and college curricula.

Very importantly the policy recognises the fact that ageing is not an unexpected life phenomenon and that since it is a predicted certainty, persons of young age and persons on the verge of becoming elderly are also the concern of the policy and for whom a planned, secure and healthy retirement is of prime importance.

Under legal protection and security measures, the Policy highlights the vulnerability of the elderly in terms of abuse and exploitation both domestic and in society, for money and property. The policy considers it the duty and responsibility of the State Government to protect the life and property of senior citizens. The policy mandates special attention by the police authorities in protecting the elderly and in dealing with the cases of the elderly, especially elderly women, elderly persons and elderly couples living alone and envisages creation of service bureaus for online redressal of complaints in addition to creating a network called Elder Line for providing services for the elderly. The

policy seeks to establish a council at the district level for considering complaints of the elderly and their speedy disposal. It also underlines the directions of the Honourable Supreme Court and the High Court to expedite disposal of litigations pertaining to the elderly. Very significantly it mandates the strict and effective implementation of the MWPSA Act of 2007 and wide publicity for the Act. The policy states that measures will be taken for providing free legal aid for the elderly and even declares that a new legislation will be enacted for protecting the elderly from abuse. Further the policy seeks to implement a scheme for protecting senior citizens by name “Vayojana Suraksha” at the instance of the home department.

The Government of Kerala approved the revised policy<sup>1</sup> for formulating various programs and schemes for the welfare of the elderly and their protection and as a guiding Magna Carta for future actions. Hence the revised state policy of 2013 which refined and enhanced the ambit of the first policy of 2006 primarily underscores the effective implementation of the MWPSA Act of 2007 and the need for wide publicity for the legislation.

The Revised Kerala State Policy notably mirrors the core ideals of the National Policy of 2011. It vividly articulates the social maladies of our state *vis-à-vis* the elderly and gives prime importance to the welfare of widows, aged women, and the oldest among the old especially persons above 80 years of age who form a distinct class in themselves as the most vulnerable among the aged. Unfortunately, despite the lofty aspirations enumerated in the policy document

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<sup>1</sup> See GO MS No 37/2013 dated 6.5.2013 of Social Justice Department, Thiruvananthapuram.

hardly anything has been done on the ground for the betterment of the oldest old and aged widows barring the programmes mentioned below. Though initially there was a clamour for implementation of the policy it did not materialise as expected.<sup>2</sup> Since the policy views institutional care as the last resort, which is ideal in the context of our state it is vital to promote intergenerational bonding through value education from the primary school level. There is also the dire need to generate employment opportunities for the elderly post retirement by commencing employment exchanges dedicated for the elderly. Presently barring professionals like doctors, architects, lawyers etc only a negligible segment of the elderly procure employment after retirement. It is noteworthy that the state government has not so far taken concrete steps for pain and palliative care for the aged suffering from diseases like cancer which is on the rise in Kerala despite the mandate of the state policy. Palliative care is crucial for improving the public health of the elderly.<sup>3</sup> The huge resource pool of talent experience and wisdom of the elderly post retirement still remains untapped in Kerala despite the revised policy of 2013. Further the policy has had no impact whatsoever on expediting pending litigations pertaining to the elderly despite directions of the Apex Court and the High Court of Kerala.

In fact, coming to the sphere of litigation involving the elderly, it is important to ensure expeditious disposal of pending litigations especially of

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<sup>2</sup> See Samsthanathu Vayoijana Nayam Nadapillakkum, *Malayala Manorama*, May 1 2013.

<sup>3</sup> See generally Dr. Rakesh. Kr Singh, *Rights of Senior Citizens: Need of the Hour with Special Reference to the Maintenance and Welfare of Parents and Senior Citizens Bill 2007*, 4 JCPS, 114 (2007).

persons above 80 years of age so that such litigants can enjoy the fruits of their decrees during their lifetime. The justice delivery system would be a mockery and a travesty of justice if the aged are denied speedy justice. Unfortunately, despite several guidelines and circulars,<sup>4</sup> there has not been any significant progress in the realm of disposal of pending litigations of the elderly.<sup>5</sup> Data received from the High Court of Kerala<sup>6</sup> with respect to cases involving and against Senior Citizens for the period 2010 to 2019 reveals the following facts. Quite remarkably for the year 2010 the High Court had categorised cases of “older citizens” for the age group 65 years and above and the data collated for 2019 pertained to “crimes against Senior Citizens” and not “cases involving Senior Citizens.” The figures for the years 2010, 2015, and 2019 reveal an exponential growth in total pendency of cases involving Senior Citizens especially criminal cases during the period 2010 to 2015. Though the figures for 2019 are partial and one sided it reveals only a marginal reduction in total pendency of cases during the year 2019. The statement hence reveals huge filing and pendency of cases and particularly criminal cases involving and against Senior Citizens pointing to the need to devise mechanisms for pendency reduction. There is also the need for a complete and correct documentation of pending litigations involving Senior Citizens for effective monitoring and follow up action. Apart from the aforesaid, the area of elder abuse of aged women

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<sup>4</sup> See Office Memorandum of the High Court of Kerala No. D3-4287/2014 (2) dated 23/06/2014.

<sup>5</sup> See Keralathillae Kodathikallil Kettikidakkuna Caseukkal, *Malayala Manorama*, December 11, 2017, Muthirna Powranmarudeyyum Vidhavakalludaeyyum Caseukkalkku Munganana Nalkannam, *Malayala Manorama*, June 22, 2015.

<sup>6</sup> See Appendix 3.



requires immediate attention in Kerala. Older women live longer than men and are highly vulnerable to abuse since they live alone especially widows. A study conducted by Help Age India revealed that violence against women does not stop with old age.<sup>7</sup>

It is however heartening to note that the Kerala High Court has recently started taking keen interest in expediting pending litigations pertaining to Senior Citizens. In *Shiju Joy. A v. Nisha*,<sup>8</sup> the Court issued detailed guidelines in the form of directions to expedite cases pending before the Family Courts in the State which also includes cases pertaining to maintenance. The Court directed inter alia that maintenance cases have to be dealt with promptly. The Division Bench comprising of Muhammed Mustaque J., and C. S. Dias J., held that in cases involving Senior Citizens, if the Family Court is of the view that the outcome of such cases will have direct impact on the rights of the Senior Citizens, the Family Court shall make every endeavour to dispose such cases within the outer limit of six months of appearance of parties.

The new trend of sensitivity towards Senior Citizens is welcome and it should be implemented in other fields of litigation also.

Last but not the least the effective implementation of the MWPC Act of 2007 remains an illusion considering the abysmally low awareness on the provisions of the Act and the inordinate delay in disposal of matters by the tribunals, the conciliators, and the appellate tribunals under the Act disregarding

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<sup>7</sup> See generally Dr. Ferdons Arabegum, *Elder Abuse and Wellbeing of Older Women*, 20 HIRDJ, No.2, 33 (May 2014).

<sup>8</sup> ILR 2021 (2) Kerala 227.

the specific timeframes in the Act discussed above.

## **7.2. PROGRAMMES AND SCHEMES**

While Policies portray the vision and aspirations of the Government the mandates of the policies are implemented through Programmes and Schemes. Hence any evaluation of the policies will be incomplete without an assessment of the Programmes and Schemes rooted in the policies. Both the Central Government and the State Government have effectuated various Programmes and Schemes inspired by the Policies which are discussed below.

### **7.2.1. Central Government**

The Department of Social Justice and Empowerment of the Government of India under the Ministry of Social Justice and Empowerment is the nodal department co-ordinating all activities for the welfare of Senior Citizens and its target group includes Senior Citizens. Within the department, the Social Defence Bureau mainly caters to Senior Citizens. The National Institute of Social Defence (NISD) is a nodal training and research institute in the field of social defence, and it is a central advisory body for the ministry of social justice and empowerment. It develops preventive, curative and rehabilitative tools, programs and policies in the field of social defence and also undertakes research training, consultancy, documentation and publication in the field. The welfare of Senior Citizens constitutes one of the main objectives of this autonomous body.<sup>9</sup> The Bureau implements an **integrated program for older persons** which aims

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<sup>9</sup> See NATIONAL INSTITUTE OF SOCIAL DEFENCE, <http://nisd.gov.in/> (last visited May.10 2021).

at providing support for capacity building of Government/Non-Government organisations, Panchayathi Raj Institutions, local bodies and the community at large. Under this programme grants are given for running and maintenance of old age homes, day care centres, mobile day care units, and multi facility care centers for older widows. The programme aims to improve the quality of life of Senior Citizens by providing basic amenities like shelter, food, medical care, and entertainment opportunities. The Programme encourages productive and active Ageing.

The Bureau also implements the **Vayoshreshtha Samman**, a scheme of National awards to eminent Senior Citizens and institutions involved in distinguished services for elderly persons. The National Institute of Social Defence was established as a nodal institute for training and research in the field of social defence and it also caters to older persons.

The Government of India has also implemented the **National Social Assistance Scheme (NSAS)** to effectuate the mandate of Article 41 of the Constitution. The National Social Assistance Scheme implemented with effect from August 15, 1995 introduced the National Policy of Social Assistance to the poor and it aims at ensuring a minimum national standard for social assistance. The programme presently comprises of **the Indira Gandhi National Old Age Pension Scheme (IGNOAPS)**, **the Indira Gandhi Widow Pension Scheme (IGNWPS)**, **the Indira Gandhi National Disability Pension Scheme (IGNDPS)**, **the National Family Benefit Scheme (NFBS)** and **the National Maternity Benefit Scheme (NMBS)**. This welfare programme is administered

by the Ministry of Rural Development and is being implemented both in rural as well as urban areas. The said National Old Age Pension Scheme is the most important Social Security Scheme catering to financial security of the elderly. The minimum eligibility age for beneficiaries under the scheme is fixed as 60 years. The monthly pension is INR 200/- as Central Government contribution for persons between 60 and 79 years and INR 500/- for persons above 80 years. The Scheme however caters to only a limited number of beneficiaries and it involves complex administrative procedures<sup>10</sup>. The Central Government has also implemented the **National Programme for Health Care of the Elderly (NPHCE)** through the Ministry of Health and Family Welfare. The main objective of the programme is to provide preventive, curative and rehabilitative services to the elderly persons at various levels of the health care delivery system of the country. It also aims to strengthen the referral system and to develop specialised manpower and to promote research in the field of diseases relating to old age. The aforesaid programme includes health promotion, preventive services, diagnosis and management of geriatric medical problems, day care services, rehabilitative services and homebased care. At the district level, the NPHCE aims to provide dedicated health facilities in district hospitals, community health centres, primary health centres and sub centres and the facilities envisaged are either free or highly subsidised. Under the **Annapoorna Scheme** free food grains up to 10 kilograms are provided to destitute elders above 65 years. The Ministry of Finance of the Government of India has also

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<sup>10</sup> See generally Moneer Alam, *Ageing, Old Age Income Security and Reforms: An Exploration of Indian Situation* 39, EPW, No.33, 3731, 3734 (August 14, 2004).

implemented the **Varishtha Pension Bhima Yogana (VPBY)** a social security scheme through the Life Insurance Corporation of India intended to give an assured minimum pension on a guaranteed minimum return on the subscription amount of the Senior Citizens.

**Pradhan Manthri Viovandana Yojana (PMVVY)** is a government pension scheme that was launched in May 2017 with the aim to provide social security for Senior Citizens. The scheme aims to protect the elderly from a fall in the interest income due to market fluctuations. The pension scheme was open until March 31, 2020. The scheme provides an assured rate of interest of 7.40% per annum. Pension is payable at the end of each selected period during the policy term of 10 years. This is a very viable pension scheme for the aged due to assured periodic returns.

**Rashtriya Vayorishi Yojana (RVY)** is a Central Government scheme initiated for the benefit of Senior Citizens who fall below the poverty line. The scheme seeks to provide assisted living devices and physical aids to Senior Citizens. The scheme is being implemented in selected cities by the Central Government in cooperation with the Artificial Limbs Manufacturing Corporation. This scheme is very useful for mainstreaming physically challenged Senior Citizens in society.

**Senior Citizen Welfare Fund (SCWF)** is a fund established under the Finance Act 2015. The fund has to be utilised for schemes aimed at the promotion of welfare of Senior Citizens in accordance with the National Policy on Older Persons. The fund is operated by the Ministry of Social Justice and

Empowerment. Unclaimed money lying under small savings schemes, employees provident fund, public provident fund schemes or policies maintained by insurance companies and accounts of coal mines provident fund. The fund is a major boost to welfare activities of the Central Government.

Recently the Parliamentary standing committee on Rural Development slammed the Central Government's laxity in raising the meagre amount of welfare pensions for Senior Citizens in its Report to Parliament. The Committee was baffled to observe the meagre amount of assistance under the National Social Assistance Programmes (NSAP) at INR 200/- to INR 500/- per month. The committee recommended to look into the issue and to hasten the process to increase the assistance amount.<sup>11</sup>

Recently, the Central Government has decided to launch a **mid-day meal scheme** for indigent elders. It has also decided to support startups prepared to work for welfare of the old and also self-help groups who will offer reskilling for Senior Citizens as part of a comprehensive outreach programme. A **Poshan Abhiyan for Elderly** scheme for nutritional requirements of the destitute is being planned by the Central Government, which envisages a hot cooked meal every day for elders who are not in old age homes. The programmes will be implemented through selected Municipalities and Panchayats. Significantly, the programmes are proposed by the inter-ministerial committee (IMC) for implementation of the **Senior Citizens Welfare Fund (SCWF)**.

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<sup>11</sup> See Special Correspondent. Parliamentary Panel Flags Centre's Meagre Pensions, *The Hindu*, March 10, 2021, p1.

Under the “startup” programmes, equity support will be provided for innovative start-ups for providing products, processes and services for the welfare of the elderly. Under the livelihood and skilling initiatives for Senior Citizens, it has been decided to set up 5000 self-help groups that will provide the elderly a platform to share their time constructively for carrying out activities that result in marketable products. Finally, the Social Justice Ministry is also planning to set in motion an employment exchange for Senior Citizens under the banner **Senior Able Citizens for Re-Employment in Dignity (SACR, ED)**.<sup>12</sup>

Recently the Department of Social Justice and Empowerment under the Ministry of Social Justice and Empowerment implemented the **National Action Plan for Welfare of Senior Citizens (NAPSrC)**<sup>13</sup> as an umbrella scheme for the Senior Citizens with effect from April 1, 2020. The vision of the scheme is to enable a country which is committed to protecting, caring and providing for the welfare and wellbeing of its elderly. The mission of the scheme is to create an ecosystem where all Indians can age gracefully and live a life of dignity with focus on concerted and synergized action on the existing and emerging needs of Senior Citizens.

The scheme focuses on the following development objectives: (i) Financial Security (ii) Healthcare and Nutrition (iii) Shelter and Welfare (iv) Protection of Life and Property of Senior Citizens (v) Active and Productive Ageing with

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<sup>12</sup> See Ambika Pandit, Government to Launch Mid-day Meal Scheme for Elderly. *The Times of India*, February 7, 2021, p 10.

<sup>13</sup> See MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT, <https://grants-msje.gov.in/display-napsrc> (last visited May.10 2021).

intergenerational bonding and skill development (vi) Accessibility, transport and age friendly environment (vii) Awareness generation and capacity building (viii) Promoting Silver Economy for senior friendly industrial goods and services (ix) Research and Study, and (x) Project Management.

There are four sub schemes under the umbrella scheme, and they are:

- a. Scheme for Integrated Programme for Senior Citizens (IPSrC)
- b. State Action Plan for Senior Citizens (SAPSrC)
- c. Convergence with initiatives of other Ministries/Departments in Government of India in the field of Senior Citizens Welfare (CWMSrC) and
- d. Media, Advocacy, Capacity building, Research and Study, Pilots and any other project aimed towards the welfare of the Senior Citizens and falling under the scope and coverage of the NAPSrC through NISD, National Institute of Social Defense for Senior Citizens (NISDSrC). The NAPSrC will be implemented by the Senior Citizens Division and the National Institute of Social Defense in the Department of Social Justice.

It is hoped that the Action Plan will usher in a new era of dignity and rights for Senior Citizens in the country. It is pertinent that the Action Plan has given a participatory role for the State Government and it is up to the State Government to evolve a State level Action Plan considering the regional requirements of the State.

Apart from the above said schemes the Government of India has also implemented the National Pension System as a core programme through Pension



Fund Regulatory and Development Authority Act, 2013. The system is a mandatory privately managed fully funded system to provide sustainable and efficient old age income with reasonable return to the employees recruited from January 2014. Through the system the government has tried to implement reforms in this sector.<sup>14</sup> It is pertinent to note that the pension system does not help the vast majority of the poor aged who are unable to contribute to their retirement and to the pension system. In fact about 85% of the total workforce is in the unorganized sector with little or no formal old age income security.<sup>15</sup>

### **7.2.2. Kerala State Government**

At the state level, the nodal department is the Department of Social Justice. The Department initiates and implements welfare programmes and services and provides social security for the aged through a network of organisations, residential institutions, and non-institutional schemes. The Department also ensures proper implementation of the MWPSA Act of 2007 through the Social Justice Directorate. The Directorate provides financial aid like welfare pensions. The department had also set up the Kerala Social Security Mission (KSSM)<sup>16</sup>, the first organisation of its kind in the country to cater to the social security needs of the aged. The Social Security Mission has as its mission, to organise social security programmes all over the state, to extend services and support to the aged

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<sup>14</sup> See generally Dr. Zaheeruddin Dr. Roshan Ara, *Indian National Pension System: Is the Topsy Turvy of Social Security in Terms of Privatisation*, 42, IBR 97,98,99 (2015).

<sup>15</sup> See generally Rajeev Ahuja, *Old-Age Income Security for the Poor*, 38, EPW 3873 (September 2003).

<sup>16</sup> See KERALA SOCIAL SECURITY MISSION, <http://www.socialsecuritymission.gov.in/> (last Visited Aug.2 2015).

and to formulate and implement schemes for the protection of the aged.

**Vayomithram**, launched in 2010-11 is a notable scheme implemented by the KSSM which provides health care and support for the elderly, aged above 65 years residing in corporations/municipalities in the state. The project mainly provides free medicines through mobile clinics, palliative care services, a help desk and it also organises other services like conducting medical camps, entertainment programmes, sponsorship programmes, special day programmes and counselling services in project areas. The scheme which was commenced initially in Thiruvananthapuram and Kollam Corporations was extended to 12 district headquarters later. The Scheme has gained considerable popularity considering the medical benefits.<sup>17</sup> There is a demand to implement the Scheme in all panchayats in the state and the Government is fortunately planning to implement the Scheme throughout Kerala in all municipalities.<sup>18</sup>

Apart from the Vayomithram scheme, the Social Security Mission also deals with elderly care services, whereby the Mission, provides care providers to needy welfare institutions like old age homes and Asha Bhavans.

The Mission also implemented the **Aswasakiranam Scheme** launched in 2010 which envisages assisting the care givers of physically and mentally disabled bed ridden patients who are family members or relatives of bed ridden patients since these care givers are not in a position to take up employment for

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<sup>17</sup> See Keralam Vaiyodhika Samooham Ashwasam Eekkan Viomithram. *Malayala Manorama* July 23, 2011; Viomithram Vanvijayam. *Malayala Manorama*, October 1, 2016; Order issued on Viomithram. *The Hindu*, September 19, 2011.

<sup>18</sup> See Muzhuvan Nagarasabhakalillekkum Viomithram Vyapipikkum. *Malayala Manorama*, November 13, 2016.

self-sustenance. This assistance is in addition to the welfare pension given to the bed ridden patient. It is pertinent to note that the aged needs care and that caregivers needs support of the state.<sup>19</sup>

The Social Justice Department also implements schemes and programmes both of the Central Government and the State Government. The Central schemes are the Grants in Aid programmes for older persons, integrated programmes for older persons, Vayo Shreshta Samman for the aged and the State schemes include assistance to local self-governments to commence old age homes and day care centres, in addition to the proper implementation of the MWPSA Act of 2007. The Directorate of Social Justice is the main arm of the Department which acts as the Nodal Agency for implementing several programmes of the Central Government and the State Government. The vision of the Directorate is to build a balanced society by providing rights-based services to the disadvantaged sections of society including the aged, so that the aged can lead a normal and useful life in society. Further, the Directorate creates awareness among the public about the welfare measures adopted by the state.

The social justice department has implemented a scheme called “**Vayomadhuram**” for free supply of glucometers to Senior Citizens under the below poverty line category. This was pursuant to the finding that there is a huge number of diabetics patients among Senior Citizens are in Kerala.

“**Vayoamritham**” is a scheme of the social justice department that provides

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<sup>19</sup> See Old Age Needs Care, Caregivers Needs Support. *The Hindu*, August 1, 2010.

free ayurveda treatment to the inmates of all Government old age homes under the department. Under the scheme the services of a medical officer and attendees are provided to the inmates.

Yet another scheme implemented by the social justice department is titled “**Mandahasam.**” Under the scheme dentures are supplied free of cost to Senior Citizens who are below the poverty line. The intention of the scheme is to alleviate the problems faced by Senior Citizens on account of absence of teeth like nutritional deficiency and other physical and mental problems.<sup>20</sup>

The social justice department has commenced an ambitious scheme to rejuvenate the “Pakalveedu” under the local self-government department by providing more infrastructure and facilities in such institutions to be known as “**SayamPrabha Homes.**” Accordingly, the department has commenced activities in 82 SayamPrabha homes in different districts.<sup>21</sup> The department is planning to convert one SayamPrabha home in each district as a model home and as an initial step has designated the SayamPrabha home in Neyyantinkara municipality in Thiruvananthapuram district and in Chengottukavu panchayat in Kozhikode district as model homes. The homes will cater to health issues and health care nutritional requirements and nutritious food, physiotherapy, income augmenting activities, counselling, help desk, recreational activities, medical equipment for mobility and other aids, computer education and awareness programmes.

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<sup>20</sup> See Pallukaati Chirikkandae, Sarkar Villikkunnu. *Malayala Manorama*, September 20, 2018.

<sup>21</sup> See 70 Pakalveedukal Sayamprabha Homukal Aakum: Manthri Shailaja. *Malayala Manorama*, October 1, 2019.

“**Therivuvelicham**” is another scheme that is implemented by the department for rehabilitation of Senior Citizens who are destitute and living in public roads and streets. The scheme is being implemented in Ernakulam district in association with an NGO.

**Navajeevan** is a scheme of the State Government for providing financial assistance to persons between the age of 50 to 65 years who have unsuccessfully registered themselves before employment exchanges in the state. The objective is to give subsidy for financial assistance to unemployed persons for taking up self-employment ventures. The financial assistance is granted by way of subsidised loans and this is a very progressive scheme in accordance with the state policy for generating employment for Senior Citizens. In fact, there is a good proportion of the aged who are eager to lead productive lives even after retirement.<sup>22</sup>

Apart from the aforesaid schemes the department has also implemented a programme by name **Second Innings Home Project**. The main objective of the project is to upgrade the level of facilities provided to old age homes in the state to make it at par with national standards. The pilot project was commenced in Kannur district and it has been implemented in Malappuram and Kollam districts. The department has initiated steps to implement the programme at all old age homes in the state under the department.

Significantly the department has the onerous responsibility to effectively

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<sup>22</sup> See Please Don't Invoke the 'Retired' Tag it Hurts. *The New Indian Express*, October 2, 2010.

implement the MWPSA Act 2007. As part of improving the working of the Act the department has recently appointed one **technical assistant** each to assist the Maintenance Tribunals. A **state level coordinator** has also been appointed to monitor and supervise the functioning of technical assistants. The technical assistants have to assist the tribunals in their work and are responsible for the conduct of adalats, medical camps and conduct of awareness programmes. The technical assistants have to liaison with old age homes, and they have to ensure financial, medical and legal aid for inmates.<sup>23</sup> The appointment of technical assistants on contract basis in the 21 Revenue Divisional Offices notified as Maintenance Tribunals is a major initiative which will enhance the efficiency of the Tribunals.

Pursuant to the COVID 19 pandemic the department has taken all necessary precautions and measures to prevent the spreading of the disease among Senior Citizens especially in old age homes. Considering the vulnerability of the aged population, the department implemented the **Grand Care Project**. As part of this project Senior Citizen cell was established in each district and a call centre was also commenced for solving the problems faced by Senior Citizens in the aftermath of COVID-19. The call centre is functional from 9 am to 6 pm every day providing succour to the aged.

Recently the Social Justice Department decided to provide food kits to the elderly as part of a nutritional support scheme by name “**vayoposhanam**”

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<sup>23</sup> See Order No. 96/2018 dated 23.02.2018 of the Social Justice (c) Department, Thiruvananthapuram.

pursuant to the action of the centrally sponsored National Action Plan for Senior Citizens. The Programme will be piloted in the SayamPrabha Homes that are conducted by the Department. It was understood that lack of balanced diet and good nutrition causes loss of bone density, muscle mass and other ailments in the elderly. The scheme envisages one food kit for two months to the eligible elderly.<sup>24</sup>

Apart from the aforesaid programmes the Social Justice Department has introduced Yoga therapy and Music therapy in all government old age homes. The Department also opened a call center in all districts with 10 lines to assist Senior Citizens during the Covid 19 pandemic. The Department is also planning to commence a “Help Line” for Senior Citizens similar to “Child Line” in Thiruvananthapuram.

It is heartening to note that the report of the 11<sup>th</sup> Pay Commission for State Government employees has recommended an additional pension of INR1,000/- per mensem for pensioners above 80 years in the form of batta.<sup>25</sup>

It is also satisfying to note that the Government has introduced the postal ballot system for the aged above 80 years.<sup>26</sup>

Even a cursory scan of the various central and state programmes and schemes will reveal the sensitivity, concern and commitment of the executive arm of the Government in promoting the welfare of the elderly. All the

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<sup>24</sup> See Staff Reporter. Nutritional Support for Elderly in Kerala. *The Hindu*, February 2 2010, p 10.

<sup>25</sup> See Staff Reporter. Vardhipicha Shanbalam April Muthal.. *Malayala Manorama*, January 1, 2021, p 1.

<sup>26</sup> See Elders Can Now Vote Via Postal Ballot, *The Times of India*, October 13, 2019.

programmes and schemes are commendable. However, the outreach of many programmes is minimal, and steps are to be taken for widening the net of beneficiaries of the programmes by increasing publicity and awareness at the grassroot level. The Kudumbhasree programme can be effectively utilised for aged care and it is satisfying that steps are taken in this regard lately.<sup>27</sup> It is also very important to ensure uniformity in age criterion for various programmes and schemes fixing the age as 60 years which is not done presently. There is a compelling need to develop programmes that create effective mechanisms which facilitate immediate family members, extended family members and other social organisations in elderly care. A comparative study of the physiological and pshyco social dimensions of elderly in old age homes and home settings conducted by Help Age India reveal the need for such mechanisms.<sup>28</sup>

### 7.2.3. Other Welfare Schemes

1. The Ministry of Railways has implemented separate ticket counters for Senior Citizens aged 60 years and above at passenger reservation centres and has also implemented fare concession of 30% for males and 50% for females aged above 60 years.
2. The Ministry of Finance has granted income tax exemptions for senior citizens and benefits with respect to deductions under Section 80D of the

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<sup>27</sup> See Kudumbhasree Plans Foray into Elder Care Sector. *The Times of India*, April 20, 2018; Muthirnavarkku Prathyekam Ayyalkootangalum Aayi Kudumbhasree. *Malayala Manorama*, April 6, 2016; Now Kundumbhasree to Move into Home Nursing Sector. *The New Sunday Express*, August 4, 2013.

<sup>28</sup> See Nitasha Sharma, Dr.DevendarKumar Rana, *A Comparative Study on Physiological and Pshyco- Social Functions of Elderly Residing in Home and Old Age Institution* 18 HIRDJ, No.2, 9, 19 ( May 2012).



Income Tax Act 1961 for payment of medical insurance premium.

3. The Department of Pensions and Pensioner Grievances has set up a pension portal to enable Senior Citizens to obtain information regarding the status of their applications and to lodge complaints relating to pension.
4. The Ministry of Health and Family Welfare has implemented the following programmes (i) separate queues for older persons in Government hospitals (ii) commencement of two National Institutes of Ageing in Delhi & Chennai (iii) setting up of Geriatric departments in 25 medical colleges.<sup>29</sup>
5. The Kerala State Road Transport Corporation and the private sector has reserved 20% seats for Senior Citizens in buses. Unfortunately, seat reservation is not implemented.<sup>30</sup>
6. Reverse Mortgage Loans are loans granted by banks to Senior Citizens against mortgage of house property normally for a period of 20 years. The loan amount normally up to 60% of the value of the property is disbursed to the title holder in instalments which becomes a source of income and social security for Senior Citizen. The Senior Citizen need not repay the loan during his lifetime. On the death of the borrower the loan can be repaid by the legal representatives, and they can redeem the property. In the alternative the bank can sell the property and recover the loan amount.

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<sup>29</sup> See MINISTRY OF HEALTH AND FAMILY WELFARE, <https://www.mohfw.gov.in/> (last visited May.10 2021).

<sup>30</sup> See Public Transport Systems are not Elderly-Friendly in Kochi. *The Times of India*, September 14, 2017; Bussukalil Vayyojanagalude Seat Samvaranam Urappakkanam. *Malayala Manorama*, September 14, 2017; Bussukallile Seat Samvaranam: Parishodana Karshanamakunnu. *Malayala Manorama*, August 5, 2015.

This is a very useful social security measure for Senior Citizens who have clear title to immovable properties, and it is gaining popularity in India.<sup>31</sup>

Even a cursory scan of the several programmes and schemes meant for Senior Citizens implemented by the Central Government and State Government will reveal the concern and commitment of the executive for effectuating the manifold rights and dignity of the aged. However, it's also noteworthy that several mandates of the national and state policies still remain on paper without implementation. The Kerala state policy is very progressive and has provided several measures for advancing the rights of the aged. The State Government unfortunately has not implemented all the measures. For instance, the State Government has not yet established an employment exchange exclusively for Senior Citizens and it has also not established a dedicated elder line service for Senior Citizens. A study by Help Age India on the elderly in Kerala has revealed that about half the population of elderly are healthy and below the age of 70 years. This segment of the aged are abled and are experts in their chosen fields and hence society can use their abilities and manpower in a fruitful way. The study recommended programmes and policies for involvement of the elderly in development activities.<sup>32</sup> This recommendation has to be implemented. It is also necessary for public sector banks to provide a fixed rate of interest for Senior Citizens.<sup>33</sup>

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<sup>31</sup> See Reverse Mortgage: Munkaruthal Ellathae Viramichavarkkayi. *Malayala Manorama* April 26, 2011.

<sup>32</sup> See Dr. Shailaja. L, *Determinants of Elder Abuse in Kerala: An Empirical Analysis* 29 HIRDJ No.3 5,15 (October 2014).

<sup>33</sup> See M. Krishnan, *Minimum Interest Rate at 9% P.A on Senior Citizens' Fixed Deposits with Public Sector Banks: A Suggestion* 189 CPR No.3, 99, 103 (2004).

### **7.3. ROLE OF STATUTORY COMMISSIONS**

Statutory commissions are specialised agencies formed for the welfare of various vulnerable groups in the society. Even though Senior Citizens on account of their age are physically and mentally vulnerable, no commission has been appointed so far for the welfare of Senior Citizens. However, Commissions have been constituted under statutes for the welfare of women, for the disabled and for protection of human rights under different statutes. The Human Rights Commission at the state level is perhaps the most important body that has the mandate to protect the rights and dignity of Senior Citizens. The State Women's Commission catering to women's welfare and the State Commissioner for Persons with Disabilities catering to the disabled are also directly involved in protecting and promoting the rights and dignity of Senior Citizens. Hence the role of these statutory commissions is analysed separately.

#### **7.3.1. Kerala State Human Rights Commission**

The Kerala State Human Rights Commission is constituted under Section 22 of the Protection of Human Rights Act 1993. The said Act was enacted for better protection of human rights by establishments of the National Human Rights Commission (NHRC), State Human Rights Commission (SHRC), and Human Rights Courts. Importantly "Human rights" under the Act<sup>34</sup> means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the international covenants and enforceable

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<sup>34</sup> See Protection of Human Rights Act 1993, § 2 cl. d.

by Courts in India. “International covenants” means the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) and such other covenant or convention adopted by the General Assembly of the UN as notified by the Central Government. Going by the mandate of section 21(5) a State Commission may enquire into violation of human rights only with respect to matters pertaining to entries in List II and List III of the seventh schedule to the Constitution. Under Section 12 read with Section 29<sup>35</sup> the Commission can enquire *suomoto* or on a petition presented to it by a victim or any person on his behalf on complaints of violation of human rights or its abetment or negligence in the prevention of such violation by a public servant. Further the Commission can intervene in any proceeding involving allegation of violation of human rights pending before a court with the approval of such court. The Commission can review the safeguards provided by the Constitution and laws for protection of human rights and recommend measures for effective implementation. The Commission *inter alia* has the mandate to spread human rights literacy among various sections of the society and promote awareness of the safeguards available for the protection of rights through publications, media, seminars and other available means. The Commission can visit any jail or institutions under the control of the State Government where persons are detained or lodged for purposes of treatment, reformation or protection and to study the living

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<sup>35</sup> See Protection of Human Rights Act 1993, § 29. Section 29 of the Act makes certain provisions in the Act relating to the National Human Rights Commission applicable to the State Human Rights Commission.

conditions of inmates and to make recommendations to the Government. The Commission can also study treaties and other international instruments on human rights and make recommendations for their effective implementation.

The Commission is vested with the powers of a Civil Court<sup>36</sup> for the inquiry and it can use the services of any officer or investigation agency of the Central Government or State Government with the concurrence of such Government for the purpose of investigation pertaining to the enquiry.<sup>37</sup> The Commission can also call for information or report from the Central or State Government while enquiring into complaints. <sup>38</sup> where the inquiry discloses the commission of violation of human rights or negligence in the prevention of violation of human rights by a public servant. The Commission may recommend to the concerned Government or authority (a) to make payment of compensation or damages to the complainant or the victim (b) to initiate proceedings for prosecution or such other action.<sup>39</sup> The Commission can approach the Supreme Court, or the High Court concerned for directions. The Commission can also recommend the concerned Government at any stage of the enquiry for grant of immediate interim relief to the victims. The Commission has to send a copy of its enquiry report together with its recommendations to the concerned Government or authority and the concerned Government or authority shall forward its comments on the report including the action taken or proposed to be taken on the report to the

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<sup>36</sup> See Protection of Human Rights Act 1993, §13.

<sup>37</sup> See Protection of Human Rights Act 1993, §14.

<sup>38</sup> See Protection of Human Rights Act 1993, § 17.

<sup>39</sup> See Protection of Human Rights Act 1993, § 18.

Commission. Finally, the Commission shall publish its enquiry report together with the comments of the concerned Government and the action taken on the recommendations of the Commission.

Thus, the State Human Rights Commission is mainly a recommending body which can only recommend to the Government steps to be taken in cases of violation of human rights after conducting inquiry and investigation.

The Kerala State Human Rights Commission has on many occasions made significant recommendations to the Government with respect to protection of elders' rights. For instance, the former Commission member Mr. Mohanadas had after visiting an old age home in Ernakulam District recommended to the Government to improve the living conditions in old age homes. The Kerala State Human Rights Commission has also intervened with respect to the long working hours of the staff of an old age home in Thavanoor in Malappuram district and the pitiable condition of old age homes in Ernakulam. The Commission has also intervened on the issue of welfare pensions and the need for setting up special Revenue Divisional Officers (RDO) as Maintenance Tribunals for effective disposal of cases.

The Commission though has done good and appreciable work in the realm of elders rights can act as a monitoring mechanism and an effective recommendatory body at the state level.

It is heartening to note that there is a proposal to constitute a Secretary level Monitoring Committee headed by the Additional Chief Secretary (Home) and the Law Secretary for monitoring the implementation of the recommendations

made by the Commission from time to time.<sup>40</sup> It is sincerely hoped that all the recommendations made by the Commission pertaining to Senior Citizens will be implemented by the State Government at the earliest. Significantly the National Human Rights Commission has constituted a Task Force to deal with complaints of the elderly.<sup>41</sup>

### **7.3.2. Human Rights Courts**

Importantly the Act also seeks to establish in each district a court of session as the Human Rights Court for speedy trial of offences arising out of violation of Human rights.<sup>42</sup> The contribution of Human Rights Courts however is very minimal due to lack of public awareness on the existence and scope of the special court. The pendency of cases in the special court is also minimal making it ineffective.

### **7.3.3. Kerala State Women's Commission**

The Kerala Women's Commission Act 1990 was enacted to provide for the constitution of a Women's Commission to improve the status of women in the State of Kerala and to enquire into unfair practices affecting women. The Women's Commission unlike the Human Rights Commission is primarily concerned with unfair practices committed on women and like the latter is a recommendatory body that can make recommendations to Government. "Unfair

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<sup>40</sup> See Staff Reporter. Manshyavakasha Commission Uthravukkal Sarkar Nadapakkunudo Ennu Neerikshikkan Samithi. *Malayala Manorama*, January 17, 2021, p 5.

<sup>41</sup> See Paratha Sarathy Adhya, Dr. Sanjeev Kumar Tiwari, *International Movement for Welfare of Senior Citizens vis-à-vis Indian Perspective* 41 IBR, 95, 103 (2014).

<sup>42</sup> See Protection of Human Rights Act 1993, § 30.

Practise”<sup>43</sup> under the Act has the widest possible ambit and it takes in all fundamental rights and freedoms political, economic, social, cultural, civil or constitutional and also includes mental or physical torture or sexual excesses on women. Significantly the Commission has the statutory mandate to investigate and report on issues of importance concerning women and the lacunae, inadequacies or shortcomings in the existing laws and also to suggest remedial and corrective measures.<sup>44</sup> The Commission also has the mandate to monitor the working of the existing legislations and to identify areas that are ineffective.<sup>45</sup> Further, the Commission has the mandate to recommend to the Government the welfare measures to be adopted for ameliorating the condition of women. Hence the Women’s Commission has a major role to play in the protection of rights and dignity of Aged women in Kerala.

It is heartening to note that the Kerala Women’s Commission has started taking active interest of late in the realm of aged women’s rights and dignity<sup>46</sup> mainly through the conduct of Adalats. However, it’s worth mentioning that the Kerala Women’s Commission has not specifically focused its attention and activities on aged women. It is also noteworthy that the Commission has not documented its activities and programmes on the basis of age till date.

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<sup>43</sup> See Kerala Women’s Commission Act 1990, § 2 cl. i.

<sup>44</sup> See Kerala Women’s Commission Act 1990, § 16 cl. iii (a).

<sup>45</sup> See Kerala Women’s Commission Act 1990, § 16 cl. iii (b).

<sup>46</sup> See Women’s Panel Concerned Over Abandoned Parents, *The Times of India*, September 20, 2018.



#### 7.3.4. Kerala State Commissioner for Persons with Disabilities

The State Commissioner was appointed under Section 60 of the Act<sup>47</sup>. The Commissioner has to take steps to safeguard the rights and facilities made available to persons with disabilities<sup>48</sup> and he has to co-ordinate with the department of the State Government for the Programmes and Schemes for the benefit of persons with disabilities<sup>49</sup>. The Commissioner also has the mandate to look into complaints with respect to matters relating to deprivation of rights of persons with disabilities<sup>50</sup> and the non- implementation of laws for the welfare and protection of rights of persons with disabilities.<sup>51</sup> Similar provisions are contained in the new Act of 2016 i.e., the Rights of Persons with Disabilities Act, for appointing a State Commissioner<sup>52</sup>. The State Commissioner under the new Act has more powers to review the existing laws and for inquiry into cases of deprivation of rights of persons with disabilities<sup>53</sup> in addition to promoting awareness of the rights of persons with disabilities.<sup>54</sup> The commissioner has also been mandated to monitor the implementation of provisions of the Act<sup>55</sup> and the utilisation of funds disbursed by the State Government for the benefit of persons with disabilities.<sup>56</sup> Thus the State Commissioner for Persons with Disabilities has an important role to play in protecting the rights of Senior Citizens with

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<sup>47</sup> See The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995.

<sup>48</sup> *Id. at* § 61 cl. c.

<sup>49</sup> *Id. at* § 61 cl. a.

<sup>50</sup> *Id. at* § 62 cl. a.

<sup>51</sup> *Id. at* § 62 cl. b.

<sup>52</sup> See The Rights of Persons with Disabilities Act, 2016, § 79.

<sup>53</sup> *Id. at* § 80 cl. b.

<sup>54</sup> *Id. at* § 80 cl. f.

<sup>55</sup> *Id. at* § 80 cl. g.

<sup>56</sup> *Id. at* § 62 cl. b.

disabilities. Quite remarkably though the Act of 2016 makes provision for women and children with disabilities<sup>57</sup> to ensure that women and children with disabilities enjoy their rights equally with others no provision is made in the Act for “Senior Citizens” among the disabled. This is a grave lacuna considering the fact that the Act was enacted pursuant to the ratification of the UN Convention on the Rights of Persons with Disabilities of 2006 by India on October 1, 2007 and considering the fact that the said convention specifically caters to the aged with disabilities.<sup>58</sup>

Importantly Article 28 of the said convention dealing with Adequate Standard of Living and Social Protection specifically mandates to ensure access for older persons with disabilities to social protection programmes and poverty reduction programmes.

The State Commissioner for persons with disabilities has not so far conducted any exclusive programmes for Senior Citizens among the disabled and its focus has been on the disabled across all age groups. Since old age aggravates disabilities, it is advisable for the State Commissioner to give special focus and importance to the issues and problems of the aged population among the disabled and to find solutions for such problems.

#### **7.4. ROLE OF SENIOR CITIZENS ASSOCIATIONS AND FORUMS**

There are innumerable Senior Citizens associations and forums both

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<sup>57</sup> *Id. at* § 4.

<sup>58</sup> *See* The Preamble to the Convention on the Rights of Persons with Disabilities 2006, cl. p. which deals with age-based discrimination of persons with disabilities.

registered and unregistered mostly of pensioners along the length and breadth of Kerala. Presently there are about three Senior Citizens Federations functioning in the state to which the associations are affiliated. The Federations and Associations which are mostly non-political mainly focus on the general wellbeing of their members. The associations and forums mainly conduct periodical get-togethers and meetings for discussing their common issues and for entertainment activities. They hold medical camps and tours for the members. Some of them engage in charity work and social assistance programs for bedridden elders. Presently the associations and federations are not involved in consultations with the Government for policy formation. They do not receive any funds or grants from the state and are not heard while deciding programmes and schemes for elders. Only few associations take active interest in the rights and dignity of the aged and make serious interventions by filing applications before the Maintenance Tribunal for aggrieved elders.

The activities of two Associations were considered for the study. The first is the Federation of the Senior Citizens Associations of Kerala (FOSCAK). The Federation was formed in 1966 in Thiruvananthapuram and was registered under the Travancore Cochin Literary, Scientific and Charitable Societies Act of 1995. The Memorandum of Association and Byelaws of the Federation reveals that the main object is to bring together the welfare organisations of Senior Citizens in Kerala and to co-ordinate their activities to (i) look after and promote the material, emotional and cultural welfare and sustenance of Senior Citizens (ii) to provide a forum for exchanging ideas and experiences, for collecting and

disseminating information on matters of interest to Senior Citizens for the betterment of the community (iii) to hold conferences, seminars exhibitions etc. to print and publish newsletters and other communications for acquainting the community, the Government and other organisations with the common problem of the aged (iv) to carry out such other objects chosen by the Federation for welfare of the elderly.

The Federation has submitted several representations to the Government of India and Kerala regarding the framing of the National and State Policies and the Welfare measure for Senior Citizens. It was successful in persuading the Central Government in granting several concessions to Senior Citizens with respect to rail travel, Income tax etc. The Federation is actively conducting several activities in Thiruvananthapuram, Kollam, Pathanamthitta, Kottayam, Ernakulam and Idukki Districts.

Senior Citizens Forums at the local level are largely focusing on “active ageing” measures like conducting of get-togethers, award functions, seminars, awareness programmes, medical camps and commemoration of Senior Citizens Day. The Kollam Elders Forum for instance is an association registered in the year 2000 (Reg.No.722/2000) based in Thevally, Kollam. The Association going by its souvenir by name “Santhwanam” published in 2016 mainly provides assistance to its members like medical assistance, police assistance, ambulance assistance to alleviate the sufferings of its members to lead a happy retired life. The Forum also conducts several cultural programmes for its members. It conducts seminars and awareness programmes, establishes, “Pakal Veedus” and

alerts the Central and State Government on the need to implement several welfare measures for Senior Citizens.

Hence Senior Citizens Federations and Associations are mostly confined to the conduct of get-togethers, award functions, medical camp, seminar, awareness programmes and occasional interference in the issues of the elderly at the local level.

This situation has to change, and the Government has to consult and closely interact with Senior Citizens Federations and Associations as an important stakeholder while formulating policies, programmes and schemes for the elderly.

#### **7.5. ROLE OF NON-GOVERNMENTAL ORGANISATIONS**

Non- governmental institutions have a vital role to play in the realm of rights and dignity of the aged and especially in the sphere of non-statutory mechanisms. Both the National Policy of 2011 and the State Policy of 2013 have highlighted the cardinal role to be played by NGOs in implementing the policies. The NPOP of 1999 specifically mentions the role of non-governmental organisations (NGO) under the key area of intervention with respect to “Health Care and Nutrition.” Accordingly, the NGOs will be encouraged and assisted through grants and other means to provide ambulatory services, day care and health care to complement the efforts of the state. Further under the head of “welfare” non institutional services by voluntary organisations will be promoted. Assistance will be provided to voluntary organisations for construction and maintenance of old age homes, for day care centers, multi-service citizens centers, reach out services and supply of disability related aids and appliances.

Under “Protection of Life and Property” such organisations will be assisted to provide protective services, helpline services and legal aid. The Policy specifically enumerates the role to be played by NGOs on the premise that the state alone cannot provide all services needed by older persons. Very importantly the National Policy recognised the NGO sector as a very important institutional mechanism to provide user friendly affordable services to complement the endeavours of the State. It states that there will be continuous dialogue and communication with NGOs on ageing issues and on services to be provided.

The Kerala State Revised Policy of 2013 in its vision segment underscores the need for collaboration of NGOs with Government agencies for effectuating the policy. The Policy also recognised the seminal role played by NGOs for implementing welfare programmes for the aged. The role to be played by NGOs in commencing old age homes considering the ever-increasing demand for such homes is highlighted under the segment of Housing. The Policy also specifically mentions the role of NGOs considering the limitations of the Government machinery. NGOs are given the role of starting old age homes and day care centers and the implementation of welfare schemes both central and state. Free or subsidised grant of land to NGOs is also envisaged. NGOs are also mandated to spread awareness on laws and schemes for the aged.

Presently only a handful of NGOs like Help Age India and Age Care India are actively engaged in the welfare of the aged in India and they are mostly focusing on medical care and aged care services. Help Age India, an NGO accredited to the UN also conducts studies and surveys on important issues like

elder abuse which are relied upon by the Government and other agencies for policy formulation and other important purposes. It is noteworthy that even in the national policy the study conducted by Help Age India is mentioned. Hence at the National level it is heartening that NGOs are playing an important role both in creating awareness as well as in providing services to the elderly.<sup>59</sup>

At the international level NGOs like Global Alliance on the Rights of Older Persons (GAROP) a network of over 380 members in about 80 countries are doing commendable work in association with the Open-Ended Working Group (OEWG) on ageing of the UN in the realm of policy formulation and implementation through accreditation. The “Age with Rights” campaign of GAROP preparatory to the 11<sup>th</sup> UN OEWG session of 2021 is commendable. So also, is its campaign for a UN Convention on the Rights of Older People.

In Kerala though there are several NGOs registered with the Orphanage Control Board under the Social Justice Department only a handful are actively involved in the welfare of the aged. Majority of the NGOs unfortunately exist solely for obtaining grants from the Governments and the old age homes conducted by such NGOs are deficient in terms of infrastructure and facilities.<sup>60</sup> The Gandhibhavan International Trust NGO established in 2005 based in Kollam is engaged in the field of aged care. The NGO received the prestigious Yayo Shresta Samman for 2019.<sup>61</sup> Significantly a free legal aid clinic is functioning

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<sup>59</sup> See Indira Dev Prakash, *Elder Abuse: Global Response and Indian Initiatives*, 62 IJSW, No.3 446, 459 (July 2001).

<sup>60</sup> See Special Correspondent, Facilities for the Aged to be Expanded. *The Hindu*, July 22, 2010; R. Ramabhadran Pillai. Safe Havens for the Elderly. *The Hindu*, December 3, 2011.

<sup>61</sup> See GANDHIBHAVAN INTERNATIONAL TRUST, <https://www.gandhibhavan.org/> (last visited Apr.4 2021).

under the supervision of KeLSA in Gandhibhavan which was considered for the study as a national award winner.

Though there are a handful of such vibrant NGOs it is remarkable that even registered NGOs are not consulted by the Government prior to formulation of policies, programmes and schemes. There is hardly any communication or interaction between NGOs and the Government as envisaged in the Policy. Even such leading NGOs are not working in collaboration with the Government for the welfare of the aged. Hence urgent attention is needed in the core area and the Government and NGOs have to work hand in hand in close collaboration sharing grants, resources and manpower for effective implementation of the mandates of the Kerala State Policy of 2013. On a comparison of the statutory and non-statutory mechanisms it is evident that the latter has been more effective and popular due to its monetary content and its wider net of beneficiaries. The Executive has initiated schemes to cater to the varied rights of the aged which is remarkable.

## **7.6. CONCLUSION**

The National Policy on Older Persons (NPOP) of 1999 is a trendsetting, landmark development since it is the first formal document laying down the national policy perspective on Senior Citizens drawing national attention to the subject and assuring Senior Citizens that their concerns are national concerns and it rightly aimed to ensure that Senior Citizens lived their last phase of life with purpose, dignity and peace.

The National Policy on Senior Citizens 2011, which continued the



mandates of the 1<sup>st</sup> Policy laid focus on elderly women and the elderly in rural areas who are poor besides emphasizing on the need for intergenerational bonding and promotion of home-based care and support and “ageing in place.”

The National Policy on Senior Citizens of 2011 has aptly focused on key areas including effective implementation of the MWPSA Act of 2007.

The key mandate to establish a separate department for Senior Citizens and directorates for Senior Citizens has not been implemented thus far.

Both the NPOP of 1999 and the National Policy on Senior Citizens of 2011 are well drafted visionary policies with in-depth analysis and are a reflection of international policy developments in the Indian perspective and if implemented properly will definitely advance the rights of Senior Citizens in India.

The Kerala State Old Age Policy of 2006 and the Revised State Policy for Senior Citizens of 2013 are well drafted policy documents in tune with the National Policy mandates and are well suited for Senior Citizens considering the socio-economic and legal requirements of Kerala and in particular widows, aged women and rural and destitute Senior Citizens without support.

The Revised State Old Age Policy of 2013 apart from highlighting the focus areas of the National Policy of 2011 stresses the need to provide suitable employment for the elderly and to include the contribution of elders in social development and considers elders as a precious resource of society. It mandates an employment exchange for the aged. The Policy mandate focusing on legal aid has not been implemented so far.

Though the National and State Policies are very progressive and visionary they largely remain as paper policies without effective implementation or enforcement of all its stipulations.

The National level programmes and schemes of the Central Government especially the National Old Age Pension Scheme is beneficial for Senior citizens and the Vayoshreshta Samman acts as a motivator for concerted action by individuals and Organizations in the field.

The Kerala Social Security Mission is doing commendable work and its programmes like Vayomithram, Aswaskiranam, Mandahasam, Vayoamrutham, Vayomadhuram and Navajeevan are good initiatives for Senior Citizens. However, the Vayomithram Scheme is made applicable only to persons above 65 years which is a lacuna and further there is the need to increase publicity and awareness on the programmes and schemes for the Social Justice Department and to ensure that benefits reach the deserving aged population.

The other Programmes and Schemes like Airline fare concession and Railway fare concession are beneficial for Senior Citizens. However, more Income Tax Benefits can be granted to Senior Citizens and their care givers considering the drastic reduction in income post retirement since the current benefits are very meagre.

Though there is a scheme for 20 % reservation of seats in public transport for Senior Citizens the programme is not implemented effectively. There is the need for strict implementation of existing seat reservation scheme in public transport especially in buses.

There is the need to ensure an age friendly and safe living environment in public offices, public spaces, roads and public transport and the present environment especially public transport and roads are hostile to the safety and security of elders.

The Kerala State Human Rights Commission though has done good and appreciable work in the realm of elders' right can act as a monitoring mechanism and an effective recommendatory body at the State level in case of human rights violation involving the elderly.

The Kerala Women's Commission has only recently focused on the rights of Senior Citizens and their protection. The Commission has intervened in a few cases of elder abuse in its Adalaths related to aged women. The Commission has to actively intervene in all issues pertaining to the legal rights of aged women since aged women especially widows constitute a major segment of elderly in Kerala.

Both the Kerala State Human Rights Commission and the Kerala State Women's Commission are recommendatory bodies that can only make recommendations to the Government. However, both Commissions can act as effective watchdogs when it comes to protection of the rights of Senior Citizens and can make timely interventions and effective recommendations in addition to spreading legal awareness.

The Human Rights Courts constituted under Section 30 of the Protection of Human Rights Act, 1993 are presently not effective due to lack of public awareness. The number of cases filed are very minimal and there is the need to

generate public awareness on the special courts and its Statutory mandate considering the scope and purpose of the special court.

Senior Citizens Associations and Forums at the Taluk, District and State levels are not proactive in the issues dealing with Senior Citizens and are not an effective lobbying force on policy matters and other issues concerning Senior Citizens. Such Associations are not taking active involvement in issues of violation of rights of Senior Citizens, and they can also take effective measures before the Authorities concerned and in ligations before the Tribunals. Such Associations and Forums are presently confined to conducting seminars, get togethers, meetings and medical camps alone.

Non-governmental organisations have to play an active role in implementing welfare programs of the government as envisaged in the National and State policies.

Though the National and State Policies have given a prime role to NGOs, the mandate remains on paper without implementation. The State Policy rightly envisaged collaboration between NGOs and the Government for Policy implementation in addition to effectuating Government Welfare Schemes through NGOs. Both the mandates are not implemented till date.

Ironically the “other” mechanisms are the most vibrant when it comes to remedies for the aged in the legal framework. The monetary benefits in the form of welfare pensions are the most sought after of remedies. The Policies are prophetic but largely remain on paper. It is time to implement all the mandates of the policies for a holistic improvement of the legal framework.

## **CHAPTER VIII**

### **ELDERS' RIGHTS IN VARIOUS JURISDICTIONS - A KALEIDOSCOPIC VIEW**

The rights of the aged and mechanisms for its legal protection are highly developed in several foreign jurisdictions. It was found above in the previous chapter that several regional human rights treaties are very progressive and vibrant in terms of elaborate provisions for the rights of the aged and its protection. The rights of the aged and its protection mechanisms is at a nascent stage in India as will be analysed during the course of the study. The level of development and the efficacy of the legal mechanisms in India for the protection of the rights of the aged can be gauged only through a comparative study of the legislations in foreign jurisdictions. The Constitution of a country is the basic “mother” law, and all legislations are enacted pursuant to the principles of the Constitution and subject to the legal parameters circumscribed by the Constitution. Hence the legislations in foreign jurisdictions are analysed firstly in terms of the Constitution and secondly in terms of the relevant statute. This Chapter hence undertakes an analysis of the Constitutions and Statutes in selected jurisdictions keeping in mind regional representation at a global level, the level of development of the legal system and the demographic composition of the aged.

#### **8.1. PROVISIONS FOR THE ELDERLY IN VARIOUS CONSTITUTIONS**

A survey of the world Constitutions will reveal the glaring fact that the majority of them contain provisions for “social security”. While the Constitution

of the People's Republic of Bangladesh<sup>1</sup> contains a similar provision for "public assistance" it expressly mentions the term "social security"<sup>2</sup> in the provision contained under the "Fundamental Principles of State Policy" akin to our Directive Principles of State Policy.

Similar provision with respect to "public assistance" can be found in the Constitution of the Kingdom of Denmark<sup>3</sup> which provides such assistance for persons unable to support themselves, provided they comply with the obligations imposed by the concerned statute. Thus, the Constitutions of Bangladesh and the Kingdom of Denmark contain provisions for "public assistance" akin to the Constitution of India. Interestingly the Constitution of Bangladesh uses both the terms "social security" and "public assistance." The term "social assistance" is used in the Constitution of South Africa.<sup>4</sup> The Constitutions of South Africa and the Islamic Republic of Pakistan<sup>5</sup> resemble the Constitution of India in that they seek to effectuate the right to public assistance within the limits of available resources of the respective countries.

Provisions for "social security" are contained in a majority of the world Constitutions. While some Constitutions like that of the Kingdom of Bhutan,<sup>6</sup>

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<sup>1</sup> See M.V. PYLEE, CONSTITUTIONS OF THE WORLD, 71, (2<sup>nd</sup> ed. 2007).

<sup>2</sup> *Id.* at 73. See Article 15 (d).

<sup>3</sup> *Id.* at 371.

<sup>4</sup> *Id.* at 1317.

<sup>5</sup> *Id.* at 1019.

<sup>6</sup> See NATIONAL ASSEMBLY OF BHUTAN, [https://www.nab.gov.bt/en/business/constitution\\_of\\_bhutan/](https://www.nab.gov.bt/en/business/constitution_of_bhutan/) (last visited Apr.4 2021).

Japan,<sup>7</sup> Islamic Republic of Pakistan,<sup>8</sup> South Africa,<sup>9</sup> Sri Lanka,<sup>10</sup> Cambodia<sup>11</sup> do not contain express provisions for social security for old age persons, the Constitutions of the People's Republic of Bangladesh,<sup>12</sup> Republic of China,<sup>13</sup> Kingdom of Nepal,<sup>14</sup> Constitution of the Swiss Federation,<sup>15</sup> Constitution of Argentina,<sup>16</sup> Belgium,<sup>17</sup> The Arab Republic of Egypt,<sup>18</sup> The Republic of Italy,<sup>19</sup> Netherlands,<sup>20</sup> Russian Federation,<sup>21</sup> Kingdom of Saudi Arabia,<sup>22</sup> Republic of South Korea<sup>23</sup> and Sweden<sup>24</sup> contain express provisions for "social security" for aged persons. Thus, the provision for "social security" is the most common feature found in world Constitutions for protection of the elderly. The emphasis differs from state to state, and the variations are interesting if not remarkable.

While the Constitution of the Islamic Republic of Pakistan<sup>25</sup> provides for compulsory social insurance as means of social security, the Constitution of the Swiss Federation<sup>26</sup> mandates that the Federation and the Cantons should strive to ensure that every person is insured against the economic consequences of old

<sup>7</sup> *Id.* at 848.

<sup>8</sup> See M.V. PYLEE *supra* note, 1 at 1019.

<sup>9</sup> See M.V. PYLEE *supra* note, 1 at 1317.

<sup>10</sup> *Id.* at 1514.

<sup>11</sup> *Id.* at 309.

<sup>12</sup> See M.V. PYLEE *supra* note, 1 at 71.

<sup>13</sup> *Id.* at 340. Adopted on 4.12.1982.

<sup>14</sup> *Id.* at 939.

<sup>15</sup> *Id.* at 1606. Adopted on 18.12.1998 and in force from 1.1.2000.

<sup>16</sup> *Id.* at 13. Adopted in 1853.

<sup>17</sup> *Id.* at 139. Adopted in 1970.

<sup>18</sup> *Id.* at 387. After the amendments ratified on May 22, 1980, by referendum.

<sup>19</sup> *Id.* at 817. Adopted on 22.12.1947 and effective from 1.1.1948.

<sup>20</sup> *Id.* at 994.

<sup>21</sup> *Id.* at 1182. Adopted on 12.12.1993.

<sup>22</sup> *Id.* at 1214. Adopted in March 1992.

<sup>23</sup> *Id.* at 1441. Adopted on 17.7.1948.

<sup>24</sup> *Id.* at 1578.

<sup>25</sup> See M.V. PYLEE *supra* note, 1 at 1019.

<sup>26</sup> See M.V. PYLEE *supra* note, 1 at 1606.

age. The Constitution of Argentina<sup>27</sup> mandates that the state shall grant benefit of social security of an integrated nature, and that it should not be waived. It provides for compulsory social insurance. The Constitution of the Arab Republic of Egypt<sup>28</sup> guarantees social and health insurance services and right to pension for aged persons. Aged workers are entitled to adequate insurance under the Constitution of the Republic of Italy.<sup>29</sup> The Constitution of Kuwait<sup>30</sup> ensures aid and services for aged citizens in addition to social security, social aid and medical care.

The Constitutions of the Swiss Federation,<sup>31</sup> Brazil<sup>32</sup> and the Russian Federation<sup>33</sup> contain detailed provisions for the elderly vis-à-vis social security. The Constitution of the Russian Federation<sup>34</sup> lays down a Constitutional principle which directs that state support should be provided for elderly citizens in addition to development of a system of social service, Government pensions and other social security guarantees under Rights and Liberties of Man and Citizen.<sup>35</sup> It mandates that everyone shall be guaranteed social security in old age. Further, state pensions and social benefits should be established by laws and voluntary social insurance and development of additional forms of social security should be encouraged.<sup>36</sup>

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<sup>27</sup> *Id.* at 13.

<sup>28</sup> See M.V. PYLEE *supra* note, 1 at 387.

<sup>29</sup> See M.V. PYLEE *supra* note, 1 at 817.

<sup>30</sup> *Id.* at 861. Adopted on 11.11.1962.

<sup>31</sup> See M.V. PYLEE *supra* note, 1 at 1606.

<sup>32</sup> *Id.* at 193.

<sup>33</sup> See M.V. PYLEE *supra* note, 1 at 1182.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* Chapter 2 Clause 39 (1).

<sup>36</sup> *Id.* Chapter 2 Clause 39 (2) and 39(3).



The Constitution of the Swiss Federation<sup>37</sup> lays down as a social goal that every person has to benefit from social security. It is yet another goal for the Federation and the Cantons to ensure that every person is insured against the economic consequences of old age. Under the Title “Federation Cantons & Municipalities” in Chapter 2 dealing with powers pertaining to social security it mandates that the Federation shall take measures for an adequate social security for the elderly, which shall be based on three pillars namely:

- i. Federal old age survivors and disability insurance
- ii. Employee pension plans
- iii. Provision by individuals for their own future.

The Federation has to ensure that the said insurance and pension plans serve their purpose durably. The Federation has to oblige the Cantons to exempt old age institutions connected with insurance from taxation. Tax relief has to be granted to persons insured and their employers. The Federation with co-operation from the cantons has to encourage savings for the future. Finally, while legislating regarding old age insurance and pension, the Federation has to ensure that the insurance is mandatory, that pension must cover basic living expenses appropriately and that the pension shall be adapted to the development of prices. That apart the Federation also has to support efforts to assist the elderly.

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<sup>37</sup> See M.V. PYLEE *supra* note, 1 at 1606.

The Constitution of Brazil<sup>38</sup> provides for retirement pension as a social right. Social security going by the Constitution comprises an integrated set of initiatives by the branches of Government and by society aimed at ensuring the rights to health social security and social assistance. Under social benefits the Constitution provides social security plans for the elderly, retirement welfare benefit and social assistance. Importantly social assistance will be rendered to all needy persons regardless of contribution to social security. It has as its objective the protection of elderly persons and seeks to guarantee a monthly benefit of one minimum wage to elderly persons who prove that they are incapable of providing for their own support. Finally, the Constitution is exceptional in that it specifically lays down the duty of the family, the society and state to assist the elderly ensuring their participation in the community, defending their dignity and wellbeing and guaranteeing their right to life.<sup>39</sup> The Constitution duly mandates that assistance programs for the elderly shall be carried out preferably in their homes and it is the third dimension of constitutional duty that those above 65 years of age are guaranteed free urban public transportation.<sup>40</sup>

The aforesaid survey of the world Constitutions vis-à-vis “social security” provisions will lead to the following broad conclusions:

1. The majority of the world Constitutions provide for “social security” for the elderly.

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<sup>38</sup> See M.V. PYLEE *supra* note, 1 at 193.

<sup>39</sup> *Id.* Chapter 7, Article 229.

<sup>40</sup> *Id.* Chapter 7, Article 230.

2. A few Constitutions however do not expressly provide for “social security” for the aged though they impliedly do so.
3. Fewer Constitutions like the Indian Constitution prescribe “social security” within the limits of the state’s economic capacity and development.
4. A couple of Constitutions namely the Constitution of the Islamic Republic of Pakistan and the Constitution of Argentina provide for compulsory social security for the elderly.
5. Three Constitutions namely the Constitution of Brazil, the Constitution of the Russian Federation and the Constitution of the Swiss Confederation provide commendable and detailed provisions for social security for the elderly.

It is noteworthy that very few Constitutions have dealt with protection of elders under “constitutional rights and duties” as against a matter of constitutional or state policy. This sublime treatment under the head of rights can be found in the Constitutions of Nepal,<sup>41</sup> South Africa,<sup>42</sup> Swiss Confederation,<sup>43</sup> Brazil,<sup>44</sup> and Republic of Iraq.<sup>45</sup> The Constitution of Brazil<sup>46</sup> aims to promote the wellbeing of all without prejudice as to “age” among other considerations.

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<sup>41</sup> See M.V. PYLEE *supra* note, 1 at 939.

<sup>42</sup> See M.V. PYLEE *supra* note, 1 at 1317.

<sup>43</sup> See M.V. PYLEE *supra* note, 1 at 1606.

<sup>44</sup> See M.V. PYLEE *supra* note, 1 at 193.

<sup>45</sup> *Id.* at 770.

<sup>46</sup> See M.V. PYLEE *supra* note, 1 at 193.

Here again, age is a facet of the right to equality. The Constitution of the Republic of Iraq<sup>47</sup> provides an undertaking by the state to provide the largest scale of social securities for all citizens in case of old age as a fundamental right. Likewise, it is the constitutional right of every person in the Commonwealth of Puerto Rico<sup>48</sup> to receive social protection during old age as per its Constitution which lists the aforesaid right under its Bill of Rights.<sup>49</sup>

A few Constitutions are even more remarkable for having provided the constitutional duty on youngsters to care for the elderly. Major children have a duty to support and assist their parents under the Constitution of the People's Republic of China.<sup>50</sup> Similar provisions can be found in the Constitutions of Brazil,<sup>51</sup> Cambodia<sup>52</sup> and the Russian Confederation.<sup>53</sup> While the constitutional duty of children to take good care of their elderly mother and father is linked to Khymer traditions in the case of Cambodia<sup>54</sup>, employable children above the age of 18 should care for their non-employed parents under the Constitution of the Russian Confederation.<sup>55</sup>

From the aforesaid discussion with respect to the protection of elders through rights and duties in world Constitutions it can be safely concluded that constitutional rights and duties in this realm are contained only in a handful of

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<sup>47</sup> See M.V. PYLEE *supra* note 1, at 770.

<sup>48</sup> See M.V. PYLEE *supra* note 1, at 1163.

<sup>49</sup> *Id.* Article II.

<sup>50</sup> See M.V. PYLEE *supra* note 1, at 340.

<sup>51</sup> See M.V. PYLEE *supra* note 1, at 193.

<sup>52</sup> See M.V. PYLEE *supra* note 1, at 309.

<sup>53</sup> See M.V. PYLEE *supra* note 1, at 1182.

<sup>54</sup> See M.V. PYLEE *supra* note 1, at 309.

<sup>55</sup> See M.V. PYLEE *supra* note 1, at 1182.

Constitutions and further that the Constitutions that prescribe “duties” are fewer in number compared to those that prescribe “rights.”

The aforesaid analysis and discussion also reveals that the Constitution of Brazil is in fact the most ideal, progressive and meritorious of all Constitutions in the realm of “elderly rights” both in terms of quality and quantity of the provisions contained therein with respect to protection of elders. The Constitution of Brazil contains the entire gamut of provisions namely rights against discrimination on the ground of age, right to retirement pension, retirement welfare benefits, social assistance for elderly in addition to social security and duty of major children to help and assist parents in old age. Most importantly it is the duty of society, state and family to assist the elderly to ensure their participation in the community to defend their dignity and well-being and to guarantee their right to life. It is noteworthy that the Constitution of India pales into insignificance when it comes to express provisions for the aged on a comparative analysis.<sup>56</sup>

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<sup>56</sup> See C.M.Jariwala, *The Older People’s Law in India: A Critical Overview*, 42, IBR, No.2, 1, 3 (April -June, 2015).

CLASSIFICATION ON THE BASIS OF CONSTITUTIONAL RIGHTS AND DUTIES						
Countries	Fundamental Right	Nature of Right	Constitutional Right	Nature of Right	Constitutional Duty	Nature of Duty
South Africa			Yes	Prohibits Age Discrimination		
China					Yes	Duty to care for elders
Brazil			Yes	Retirement Pension as a social right	Yes	Duty of family and society to assist the elderly
Iraq	Yes	Social Security as a fundamental right to all citizens during old age				
Puerto Rico			Yes	To receive social protection during old age		
Cambodia					Yes	Duty to care for elders
Russian Federation					Yes	Duty to care for non employed parents by major employable children

**Table: 8.1**

The aforesaid table illustrates the nature of Right and Duty in different Constitutions. The aforesaid Constitutions have elevated the rights of the aged into constitutional rights expressly in their Constitutions. The Constitution of Iraq is remarkable since it has elevated the right to social security for the aged as a fundamental right. Some of the Constitutions have also expressly specified the duty of the family and society to take care of the elderly. Conspicuously the Constitution of India is silent both in terms of rights and duties.

<b>CLASSIFICATION ON THE BASIS OF BENEFITS UNDER THE CONSTITUTION FOR ELDERERS</b>												
<b>Countries</b>	<b>Social Security</b>	<b>Social Insurance</b>	<b>Health Insurance</b>	<b>Social Assistance</b>	<b>Public Assistance</b>	<b>Public Assistance subject to Resources</b>	<b>Pension</b>	<b>Tax Benefits</b>	<b>Social Benefits</b>	<b>Elderly Assistance</b>	<b>Medical Care</b>	<b>Free Urban Public Transport</b>
<b>Bangladesh</b>		✓										
<b>Denmark</b>	✓	✓										
<b>South Africa</b>				✓								
<b>Pakistan</b>		✓			✓							
<b>China</b>	✓											
<b>Nepal</b>	✓											
<b>Swiss Confederation</b>		✓					✓	✓	✓	✓		
<b>Argentina</b>	✓											
<b>Belgium</b>	✓											
<b>Egypt</b>	✓	✓	✓				✓					
<b>Italy</b>	✓	✓										
<b>Netherlands</b>	✓											
<b>Saudi Arabia</b>	✓											
<b>South Korea</b>	✓											
<b>Sweden</b>	✓											
<b>Kuwait</b>	✓									✓	✓	
<b>Brazil</b>	✓			✓			✓			✓		✓
<b>Russian Federation</b>	✓											

**Table: 8.2**

The aforesaid table illustrates the different types of benefits conferred by Constitutions of various countries. Notably the most common benefit is the benefit of Social Security. Social Insurance is the next most common benefit. It is remarkable that some Constitutions have conferred specific benefits such as tax benefits, medical benefits and transportation benefits for the elderly even in their Constitutions. Notably the Constitution of India has only provided for “public assistance” and that too within the limits of the economic capacity of the state.

## **8.2. STATUTORY MECHANISMS IN OTHER JURISDICTIONS: A COMPARITIVE STUDY**

A survey of statutes pertaining to the aged in foreign jurisdictions will give valuable insights on the legal mechanisms prevalent in different parts of the world. Though India legislated for the aged only in 2007, several nations enacted laws for the aged decades back. This segment undertakes an analysis of statutes for the aged in various jurisdictions across the world for a comparative perspective.

### **8.2.1. USA: Older Americans Act 1965**

The United States of America has one of the oldest statutes that exclusively deal with the aged namely the Older Americans Act of 1965. Going by the ‘declaration of objectives’ the Act seeks to provide for the following:

1. Adequate income in retirement.
2. Best possible physical & mental health for the aged.
3. Suitable housing for the aged.
4. Restorative services for the aged who require institutionalised care.



5. Employment opportunities without age discrimination.
6. Retirement in health, honour and dignity.
7. Participation in civil, cultural, educational & recreational opportunities.
8. Efficient community services including access to low-cost transportation.
9. Immediate benefit from proven research knowledge.
10. Freedom, independence and free exercise of individual initiative in planning and managing the lives of the elderly and protection against abuse, neglect and exploitation.

Going by the long title the Act seeks to provide assistance in the development of programs to help older persons through grants to the states for community planning and services. The Act also aims to achieve training through research development or training project grants and seeks to establish within the department of health, education and welfare an operating agency to be designated as 'the Administration on Ageing (AOA).'

The Older Americans Act of 1965 (OAA) was the first federal initiative for providing comprehensive services for older adults. It established the National Ageing Network comprising of the Administration on Ageing (AOA) at the federal level, state units on ageing at the state level and area agencies on ageing at the local level and the network provides funding for programmes under the Act.

The Older Americans Act considers persons who are sixty years old or above as old persons<sup>57</sup> and the Act has established in the office of the Secretary of Health and Human Services an AOA<sup>58</sup> headed by the Assistant Secretary for Ageing. The AOA is mandated to implement the Act except Title V which is administered by the Department of Labour.<sup>59</sup>

The Act also mandates nutrition education and the implementation of integrated health promotion and disease prevention programmes<sup>60</sup> and the conduct of pension counselling and information programmes and provides grants for providing outreach information, counselling and assistance on pensions and the establishment of a National Pension assistance helpline.<sup>61</sup>

The Act also provides for grants for State and Community Programmes on Ageing (Title III) the purpose being to give assistance and encouragement grants to state agencies and area agencies for commencing comprehensive programmes on Ageing. The underlying principle behind such grants is to secure and maintain maximum independence and dignity in a home environment for persons capable of self-care, for removing individual and social barriers to economic and personal independence, for providing care to vulnerable adults<sup>62</sup> in addition to supportive services. Supportive Services under the Act includes programs for grant

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<sup>57</sup> See Older Americans Act, 1965, § 102 cl. 40.

<sup>58</sup> See Older Americans Act, 1965, Title II.

<sup>59</sup> See Older Americans Act, 1965, § 201.

<sup>60</sup> See Older Americans Act, 1965, § 214.

<sup>61</sup> See Older Americans Act, 1965, § 215.

<sup>62</sup> See Older Americans Act, 1965, § 301.

to States for health, education, training, recreation, welfare, information, transportation services, language translation services, adequate housing including residential repair and renovation installation of security devices, service for avoiding institutionalization, legal assistance services, counselling, tax counselling, financial counselling, services for physical and mental health like physical activity, music therapy, art therapy, dance therapy services for health screening for detecting and preventing illness, services for pre-retirement counselling, and post retirement needs like life style changes, legal matters, leisure time etc, services for assistive devices and technology devices, services to encourage employment including job and second career counselling, crime prevention services, victim assistance programmes, services for prevention of elder abuse, health and nutrition education services, services to support family members providing voluntary care services for guardians of elders, services for interaction between student and elders, in home services for frail elders including Alzheimer's patients and activities to promote lifelong learning including distance education.<sup>63</sup>

The purpose of the Nutritional Services under the Act is to promote health and wellbeing by providing access to nutrition and other disease prevention and health promotion services to delay onset of adverse health conditions from poor nutrition or sedentary behaviour.<sup>64</sup> The Program includes (1) Congregate Nutrition Services (2) Home delivered Nutrition Services.<sup>65</sup>

The Act also envisages the National Family Caregivers Support Program a

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<sup>63</sup> See Older Americans Act, 1965, § 321.

<sup>64</sup> See Older Americans Act, 1965, § 330.

<sup>65</sup> See Older Americans Act, 1965, § 331.

multifaceted system of support services for family caregivers, older relatives and grandparents. The caregivers have an important role to play under the scheme of the OAA.<sup>66</sup>

The Act further envisages activities for health, independence and longevity.<sup>67</sup> The purpose of the programmes is to expand knowledge and understanding of the older population and the ageing process, to promote use of innovative ideas and best practices and to increase awareness of citizens of all ages of the need to assure responsibility for their own longevity.<sup>68</sup> It includes career preparation,<sup>69</sup> computer training,<sup>70</sup> improving technical assistance for transportation, and multi-generational activity. It further provides for multi-disciplinary centres of gerontology incorporating ageing information into teaching of biological, behavioural and social sciences within colleges and universities and by providing multi-disciplinary health services in communities.

Importantly, the Act provides for Demonstration and Support Programmes for Legal Assistance for Older Persons<sup>71</sup> by providing a national legal assistance support system to State and area agencies which includes case consultations, training and provision of substantive legal advice and assistance. The elderly has various legal needs and hence legal assistance programmes are extremely useful for elders' rights.<sup>72</sup> The Act recognises "ageing in place" within the naturally

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<sup>66</sup> See PETER J.SPRAUSS, ROBERT WOLF, DANA SHILLING, AGEING AND THE LAW (1996).

<sup>67</sup> See Older Americans Act, 1965, Title IV.

<sup>68</sup> See Older Americans Act, 1965, § 401.

<sup>69</sup> See Older Americans Act, 1965, § 412.

<sup>70</sup> See Older Americans Act, 1965, § 415.

<sup>71</sup> See Older Americans Act, 1965, § 420.

<sup>72</sup> See LAWRENCE A FROLIK, ALISON BARNES, ELDER LAW: CASES AND MATERIALS, (6th ed. 2015).

occurring retirement community. Finally, under services regime the Act provides for the Older Americans Community Services Employment Program to promote economic self-sufficiency for unemployed low income persons above 55 years with poor employment prospects.<sup>73</sup> The Act also caters to Vulnerable Elders' Rights Protecting Activities<sup>74</sup> and establishes the office of Long Term Care Ombudsman<sup>75</sup> to identify and investigate and resolve complaints and to ensure access to services apart from monitoring the development of laws and facilitating changes in laws. The Act specifically caters to prevention of elder abuse programmes, neglect and exploitation through various programmes<sup>76</sup> mainly by providing public education and outreach to identify and prevent elder abuse by ensuring co-ordination of services by promoting State laws on elder abuse, by prompt initiation of investigation on complaints by ageing persons specially trained in problems of elder abuse through co-operation of law enforcement agencies, courts and other agencies providing services by enabling older adults to participate in decisions regarding their welfare and by supporting multi-disciplinary elder Justice.

The Act further provides for the State Legal Assistance Development Program<sup>77</sup> for State leadership in securing maintaining legal rights of older persons for helping older individuals understand their rights and for improving the quality and quantity of legal services.

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<sup>73</sup> See Older Americans Act, 1965, Title V.

<sup>74</sup> See Older Americans Act, 1965, Title VII.

<sup>75</sup> See Older Americans Act, 1965, § 712.

<sup>76</sup> See Older Americans Act, 1965, § 721.

<sup>77</sup> See Older Americans Act, 1965, § 731. Section 731.

Finally, the Act provides for comprehensive State elder justice systems<sup>78</sup> which is an integrated, multi-disciplinary and collaborative system for addressing elder abuse neglect and exploitation. The Program co-ordinates efforts of public health, social service and law enforcement authorities.

Hence the OAA of 1965 is an elaborate, extensive and comprehensive legislation that caters to the entire gamut of elders' rights and dignity which can be taken as a model legislation in this realm for the broad spectrum of rights catered by the statute. However, despite the OAA, surveys have revealed that 76% of Americans who has private employment were worried about their retirement prospects and 88% were of the view that America is facing a retirement crisis.<sup>79</sup>

The Act that was signed into law by President Lyndon Johnson on July 14, 1965, was amended and reauthorized on several occasions. The last reauthorization was through the supporting Older Americans Act of 2020 which amended the Act to authorise appropriations for OAA Programmes for the financial years 2020 to 2024.

Importantly, the Reauthorisation of 2020 gives privacy to

- i. Social determinants of health i.e., economic and social conditions influencing difference in health status and
- ii. Social isolation and loneliness.

Hence, the intent of the OAA is to promote the dignity of older adults by

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<sup>78</sup> See Older Americans Act, 1965, § 752.

<sup>79</sup> See David A. Pratt, *Too Big to Fail: The US Retirement System in 2019*, 27 ELDER. LJ 327, 328 (2019).

providing services and support that enable the aged to remain independent and engaged within their communities. It focuses attention on offering assistance to persons with the greatest social or economic need. Unfortunately, over the years due to inadequate funds eligible Senior Citizens under the Act face waiting periods for many OAA services in most states in America. The success of the comprehensive legislation depends on state funding of programmes which is a huge financial burden for the state exchequer and the biggest challenge for the Act. In fact, social security is the largest single source of income for elderly Americans.<sup>80</sup>

The Legislation though a “model law” worth emulating is not financially viable for a developing country like India.

Apart from the Older Americans Act of 1965 the individual states in the US have been enacting their own statutes for the aged from the 1980’s.<sup>81</sup>

### **8.2.2. Australia: Aged Care Act 1997**

The primary statute in Australia for the elderly is the Aged Care Act of 1997. The main objective behind the enactment is to provide for funding of “aged care.” The statute takes care of the quality of care, the types and level of care and the accountability of providers of care. The statute ensures access to affordable care to all persons in need, promotes high quality of care and accommodation, protects health and wellbeing of recipients and help the recipients to enjoy the

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<sup>80</sup> *Ibid* at 330.

<sup>81</sup> *See* NATIONAL CENTER ON ELDER ABUSE, [www.ncea.aoa.gov](http://www.ncea.aoa.gov) last visited March 8, 2015).

same rights with others. Importantly, the main objective of the Act is to promote ageing in place.<sup>82</sup>

The Act mandates that the Commonwealth should give financial support through payment of subsidies for aged care. The Act also lays down responsibilities of approved Providers of Care and lays down the different kinds of subsidies. The Act contemplates grants for establishment or enhancement of aged care services like residential care grants and for support services like advocacy grants.<sup>83</sup> Under the Act “aged care” is provided by approved providers<sup>84</sup> and only approved providers are entitled to subsidies.<sup>85</sup> Approved Providers are allocated places or areas of operation<sup>86</sup> on the basis of allocation principles.<sup>87</sup> Significantly, the Act caters to “person with special needs”<sup>88</sup> which includes:

- i. People from Aboriginal communities.
- ii. People who live in rural or remote areas.
- iii. People who are financially or socially disadvantaged.
- iv. People who are homeless or at risk of becoming homeless.
- v. Parents who are separated from their children by forced adoption or removal.
- vi. Lesbian, gay, bisexual, transgender and inter sex people.<sup>89</sup>

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<sup>82</sup> See Aged Care Act, 1997, Division 2 - Objects 2.1.

<sup>83</sup> See Aged Care Act, 1997, Division 3.

<sup>84</sup> See Aged Care Act, 1997, Division 8.

<sup>85</sup> See Aged Care Act, 1997, Division 7.

<sup>86</sup> See Aged Care Act, 1997, Division 11.

<sup>87</sup> See Aged Care Act, 1997, Division 12.

<sup>88</sup> See Aged Care Act, 1997, Division 11.3.

<sup>89</sup> See Aged Care Act, 1997, Division 11-3.



The Act provides approval of care recipients for receiving either residential care or home care and subsidy for care.<sup>90</sup> Under the Act eligibility is provided for

- Residential Care
- Home Care
- Flexible Care<sup>91</sup>

The Act also envisages extra service places under the residential care category for higher standard of accommodation, food and services at a higher fee.<sup>92</sup> Flexible care is care provided in a residential or community setting through an aged care service that addresses needs of care recipients in alternate ways to the care provided through residential care services and home care services.<sup>93</sup> The Act fixes responsibilities on approved providers which include the responsibility to report alleged and suspected assaults to the police and the secretary. The staff members of residential care providers have the responsibility to report assault. “Reportable Assault” means unlawful sexual contact or unreasonable use of force or assault that constitutes an offence.<sup>94</sup> The Act also provides grants for advocacy to create awareness on rights of recipients and providers in addition to grant for community visitors.<sup>95</sup> The Act has established an “Aged Care Commissioner” to oversee complaints on the basis of principles governing the

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<sup>90</sup> See Aged Care Act, 1997, Division 19.1.

<sup>91</sup> See Aged Care Act, 1997, Division 21-1.

<sup>92</sup> See Aged Care Act, 1997, Division 30.

<sup>93</sup> See Aged Care Act, 1997, Division 49-3.

<sup>94</sup> See Aged Care Act, 1997, Division 63-1AA.

<sup>95</sup> See Aged Care Act, 1997, Division 81 & 81.

Act.<sup>96</sup>

Hence importantly, the Act caters to “aged care” which means either “Residential Care” or “Home Care” or “Flexible Care” which under the Act means services or accommodation and services provided to a person, whose physical, mental or social functioning is affected due to age. The Government of Australia is the primary funder and regulator under the Act. The department of health is responsible for the operation of the Act. Significantly, the Act does not prescribe a minimum age requirement for aged care even though the Act targets people who are 65 years old and above. The department of health and the Aged Care Quality and Safety Commission regulate the quality of aged care services.

Though the legislation is commendable on account of the elaborate “care” mechanisms provided for the aged the legislation cannot be emulated in our country due to financial disparity. However, the provision for elders with special needs is truly worth replicating in the Indian context. Likewise, the responsibility of residential aged care providers to report assault can be replicated in India in old age homes.

### **8.2.3. China: Law of the People’s Republic of China on the Protection of Rights and Interests of the Aged 1996**

China, officially the People's Republic of China is the world's most populous country with a total population of 1.44 billion people compared to 1.38 billion population in India in 2020.<sup>97</sup>

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<sup>96</sup> See Aged Care Act, 1997, Division 95 A.

<sup>97</sup> See STATISTICS TIMES, <http://statisticstimes.com/demographics/china-vs-india-population.php>; (last visited Jan 17, 2021).

The law of the People's Republic of China on Protection of the Rights and Interests of the Aged of 1996 is the legislation that caters to the elderly in China. The Legislation was enacted in accordance with the Constitution to protect the lawful rights and interests of the elderly and to promote Chinese values of respecting and providing for the Elderly.<sup>98</sup> The “Elderly” for the purpose of the Act are citizens of or above the age of 60 years.<sup>99</sup> The Act mandates that the state and society have to take measures to improve the social security system regarding the elderly.<sup>100</sup> It mandates that the state has to protect the lawful rights and interests of the elderly. Accordingly, the elderly has a right to obtain material assistance from the state and society. Discrimination, insulting, maltreating or forsaking the elderly are prohibited. The elderly also have a right to enjoy achievements in social development.<sup>101</sup> The Act mandates that Government at various levels should incorporate undertakings, related to the elderly in their plans for national socio-economic development and to increase investment in such undertakings.<sup>102</sup> Importantly, the Act mandates that it is the duty of entire society to protect the lawful rights and interests of the elderly.<sup>103</sup> The Act further mandates publicity and education on the need to establish social values in which

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<sup>98</sup> See Law of the People's Republic of China on the Protection of Rights and Interests of the Aged, 1996, Article 1.

<sup>99</sup> See Law of the People's Republic of China on the Protection of Rights and Interests of the Aged, 1996, Article 2.

<sup>100</sup> See Law of the People's Republic of China on the Protection of Rights and Interests of the Aged, 1996, Article 3.

<sup>101</sup> See Law of the People's Republic of China on the Protection of Rights and Interests of the Aged, 1996, Article 4.

<sup>102</sup> See Law of the People's Republic of China on the Protection of Rights and Interests of the Aged, 1996, Article 5.

<sup>103</sup> See Law of the People's Republic of China on the Protection of Rights and Interests of the Aged, 1996, Article 6.

elderly are respected.<sup>104</sup> It stipulates that organisations of young people, schools, kindergartens shall carry out education in ethics among young people and children on the importance of respecting and providing for the elderly. It also stipulates education on the legal system to children and youth. The Act mandates that Government at all levels have to award organisations, families and individuals for outstanding achievements<sup>105</sup> and further that elders should observe law and discipline.<sup>106</sup> The Act contains specific provisions for maintenance and support by families in Chapter II. Accordingly, the elderly is to be provided for mainly by families and family members.<sup>107</sup> The supporters are mainly sons and daughters and persons under a legal obligation to provide for elderly and the supporters have to pay the medical expenses of the elderly.<sup>108</sup> Sons and daughters should not seize houses of the elderly and replace the elderly without their consent.<sup>109</sup> Further supporters have to arrange housing and should not compel the elderly to move to inferior houses. The Act stipulates that if supporters do not do their duty, the elderly can seek alimony. The elderly and their spouse have a duty to support each other.<sup>110</sup> Interestingly, the Act protects

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<sup>104</sup> See Law of the People's Republic of China on the Protection of Rights and Interests of the Aged, 1996, Article 7.

<sup>105</sup> See Law of the People's Republic of China on the Protection of Rights and Interests of the Aged, 1996, Article 8.

<sup>106</sup> See Law of the People's Republic of China on the Protection of Rights and Interests of the Aged, 1996, Article 9.

<sup>107</sup> See Law of the People's Republic of China on the Protection of Rights and Interests of the Aged, 1996, Article 10.

<sup>108</sup> See Law of the People's Republic of China on the Protection of Rights and Interests of the Aged, 1996, Article 12.

<sup>109</sup> See Law of the People's Republic of China on the Protection of Rights and Interests of the Aged, 1996, Article 13.

<sup>110</sup> See Law of the People's Republic of China on the Protection of Rights and Interests of the Aged, 1996, Article 16.

the freedom of marriage and supporters are not relieved after marriage.<sup>111</sup> Elders can also dispose their personal property as per law.<sup>112</sup>

Chapter III of the Act deals with social security measures. Accordingly, the state has to establish an old age insurance system to ensure basic needs of the elderly.<sup>113</sup> Importantly, pensions according to law are guaranteed and the pensions have to be increased with economic development, increase in wages and living standards.<sup>114</sup> Local Government in urban areas have to provide relief to elders without income or work and in rural areas such persons have to be looked after by collective economic organisations.<sup>115</sup> Importantly, the Act mandates the state to establish medical insurance systems for medical care and Guarantee Medical care benefit.<sup>116</sup> Local Governments have to provide aid for the ill who have no supporters and free treatment has to be encouraged.<sup>117</sup> Further the State has to promote research in Geriatrics and Health Education<sup>118</sup> and the special needs of the elderly have to be taken into consideration while building public facilities and residential quarters.<sup>119</sup> Elders have the right to receive

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<sup>111</sup> See Law of the People's Republic of China on the Protection of Rights and Interests of the Aged, 1996, Article 18.

<sup>112</sup> See Law of the People's Republic of China on the Protection of Rights and Interests of the Aged, 1996, Article 19.

<sup>113</sup> See Law of the People's Republic of China on the Protection of Rights and Interests of the Aged, 1996, Article 20.

<sup>114</sup> See Law of the People's Republic of China on the Protection of Rights and Interests of the Aged, 1996, Article 21.

<sup>115</sup> See Law of the People's Republic of China on the Protection of Rights and Interests of the Aged, 1996, Article 23.

<sup>116</sup> See Law of the People's Republic of China on the Protection of Rights and Interests of the Aged, 1996, Article 25.

<sup>117</sup> See Law of the People's Republic of China on the Protection of Rights and Interests of the Aged, 1996, Article 26.

<sup>118</sup> See Law of the People's Republic of China on the Protection of Rights and Interests of the Aged, 1996, Article 28.

<sup>119</sup> See Law of the People's Republic of China on the Protection of Rights and Interests of the Aged, 1996, Article 30.

continuous education<sup>120</sup> and the state and society have to carry out cultural sports and recreational activities of a mass character.<sup>121</sup> The Act seeks development of community service facilities, the development of a tradition of mutual aid between neighbours and it encourages volunteers.<sup>122</sup> Further the Act mandates preferential treatment for elders in public transport and places of interest.<sup>123</sup> The media, i.e., radio, film, TV, newspapers have to serve the elderly by covering their rights and interests<sup>124</sup> and finally and very significantly the Act mandates legal aid for the elderly for litigations, delayed payment of cost of lawsuits, discounts, exemptions etc.<sup>125</sup>

Chapter IV of the Act deals with participation in social development. The Act mandates the State and society to attach importance to knowledge, skills and experience of the elderly.<sup>126</sup> Significantly the elderly have to participate in the promotion of socialist, cultural and ethical progress on voluntary basis. The elderly have to be encouraged to help educate the young and children on socialism, patriotism, collectivism, hard work and traditions. Elders have to pass on cultural, scientific and technical knowledge. They have to conduct

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<sup>120</sup> See Law of the People's Republic of China on the Protection of Rights and Interests of the Aged, 1996, Article 31.

<sup>121</sup> See Law of the People's Republic of China on the Protection of Rights and Interests of the Aged, 1996, Article 32.

<sup>122</sup> See Law of the People's Republic of China on the Protection of Rights and Interests of the Aged, 1996, Article 35.

<sup>123</sup> See Law of the People's Republic of China on the Protection of Rights and Interests of the Aged, 1996, Article 36.

<sup>124</sup> See Law of the People's Republic of China on the Protection of Rights and Interests of the Aged, 1996, Article 38.

<sup>125</sup> See Law of the People's Republic of China on the Protection of Rights and Interests of the Aged, 1996, Article 39.

<sup>126</sup> See Law of the People's Republic of China on the Protection of Rights and Interests of the Aged, 1996, Article 40.

consultancy services and have to engage in business and production. The Elderly have to establish public welfare activities. They have to maintain public order and mediate disputes between people.<sup>127</sup>The Act mandates that the lawful earnings of the elderly from their work are to be protected.<sup>128</sup>

Finally, Chapter V of the Act deals with legal responsibility and accordingly when the rights are infringed the matter has to be referred to the department or people's court.<sup>129</sup> Departments, organisations and state functionaries who impair rights have to be educated and are to be corrected.<sup>130</sup> In the event of disputes over support with family members lawsuit has to be filed before people's court.<sup>131</sup> Mediation is contemplated by neighbourhood and village committees. The Courts have the authority to order advance execution.<sup>132</sup> The Act mandates that if there is violence or serious violations connected with marriage or support criminal responsibility can be fixed<sup>133</sup> and if family members steal, defraud, seize, extract, or damage property, they have to be punished as per Regulation on Administrative Penalty for Public Security and if crime is involved as per the criminal law.<sup>134</sup>

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<sup>127</sup> See Law of the People's Republic of China on the Protection of Rights and Interests of the Aged, 1996, Article 41.

<sup>128</sup> See Law of the People's Republic of China on the Protection of Rights and Interests of the Aged, 1996, Article 42.

<sup>129</sup> See Law of the People's Republic of China on the Protection of Rights and Interests of the Aged, 1996, Article 43.

<sup>130</sup> See Law of the People's Republic of China on the Protection of Rights and Interests of the Aged, 1996, Article 44.

<sup>131</sup> See Law of the People's Republic of China on the Protection of Rights and Interests of the Aged, 1996, Article 45.

<sup>132</sup> *Id.*

<sup>133</sup> See Law of the People's Republic of China on the Protection of Rights and Interests of the Aged, 1996, Article 47.

<sup>134</sup> See Law of the People's Republic of China on the Protection of Rights and Interests of the Aged, 1996, Article 48.

Very importantly, this exceptional legislation which is enacted in accordance with constitutional provisions is primarily based on rights and interests of the elderly and several important facets of the rights of elders are expressly catered to in the Act. The Act emphasis maintenance and support by families. It highlights social security measures by the State and the duty of society to protect elders. The Act is special in emphasising the active involvement of the elderly in social activities and also in inculcating traditional values and legal literacy among children and the youth. The Act is a model legislation for India which can definitely incorporate its rights-based jurisprudence and its social security provisions.

#### **8.2.4. Singapore: The Maintenance of Parents Act 1995 and The Vulnerable Adults Act 2018**

Singapore has two important legislations for the aged. They are:

##### ***8.2.4.1. The Maintenance of Parents Act 1995***

The legislation was enacted for the maintenance of parents by their children. There are two main authorities under the Act (i) The Commissioner for Maintenance of Parents (ii) Tribunal for Maintenance of Parents. An application under the Act can be filed by any person domiciled and residing in Singapore of or above 60 years of age, who is unable to maintain himself adequately.<sup>135</sup> The Act provides for monthly allowance or periodical payment or lump sum payment. Significantly, even persons below 60 years of age can apply if he is suffering from infirmity of body or mind. Under the Act before filing an

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<sup>135</sup> See The Maintenance of Parents Act, 1995, § 3.



application for adjudication by the Maintenance Tribunal, the application has to be referred to the Commissioner for review. In such application, the Commissioner can refer the parent to the relevant Government authority or refer the dispute for conciliation or take other measures and if the application is not settled, an application has to be filed before the Maintenance Tribunal.<sup>136</sup> Importantly, the Maintenance Tribunal is a multi-member body comprising of the President, up to four Vice Presidents and not less than two members. The President and the Deputy President are persons qualified to be District Judges or persons who are District Judges.<sup>137</sup> Incapacitated applicants can file application through family members or authorised person or person who care for such applicants.<sup>138</sup> The Maintenance Tribunal can pass orders for Maintenance if it is just and equitable.<sup>139</sup> A parent will be considered unable to maintain himself if his income cannot provide basic amenities and physical needs like shelter, food, medical costs and clothing. The respondent should be able to maintain the applicant after meeting his own requirements and of his spouse and children. Significantly, if the applicant has abandoned, abused or neglected the respondent, the application can be dismissed on such proof by the respondent, or the Tribunal can reduce the maintenance in such cases. The Maintenance Tribunal before hearing shall refer the dispute to a Conciliation Officer for mediation and the Tribunal can also pass an order on the basis of a settlement agreement. The orders of the Maintenance Tribunals are deemed to be orders made by the Family Court

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<sup>136</sup> See The Maintenance of Parents Act, 1995, § 12.

<sup>137</sup> See The Maintenance of Parents Act, 1995, § 13.

<sup>138</sup> See The Maintenance of Parents Act, 1995, § 11.

<sup>139</sup> See The Maintenance of Parents Act, 1995, § 5.

and are enforced in the same manner as orders passed against wives and children under the Women's Charter.<sup>140</sup> The proceedings of the Tribunal have to be in camera<sup>141</sup> and the parents cannot be represented by Advocates.<sup>142</sup> The Tribunal is not bound by the rules of evidence and an appeal lies to the High Court from the orders of the Tribunal on questions of law or mixed questions of law and fact by both sides.<sup>143</sup> The High Court also has the power of revision which can be exercised *suomoto* or on application,<sup>144</sup> where the quantum of maintenance cannot be agitated. The Tribunal can state a special case to the High Court on questions of law<sup>145</sup> and there is no further appeal from the High Court unless the High Court reserves a question to the Court of Appeal as a question of law of public importance.

The Scheme of the Act evidences the fact that the primary purpose of the Legislation is to secure Maintenance for parents by children and the system of review by the Commissioner before adjudication by the Tribunal is very practical. The Tribunal is manned by District Judges and there is a right of appeal for both sides before the High Court, which is also a very effective method for judicial redress.

The Act has some similarities with the MWPSA Act 2007 but is far better in terms of remedy since there are two effective Authorities and since the

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<sup>140</sup> See The Maintenance of Parents Act, 1995, § 10.

<sup>141</sup> See The Maintenance of Parents Act, 1995, § 19.

<sup>142</sup> See The Maintenance of Parents Act, 1995, § 14.

<sup>143</sup> See The Maintenance of Parents Act, 1995, § 18.

<sup>144</sup> See The Maintenance of Parents Act, 1995, § 17.

<sup>145</sup> See The Maintenance of Parents Act, 1995, § 16.

Tribunals are manned by District Judges. However, welfare measures are not contemplated under the jurisdiction of the Tribunal as under the MWPSA Act 2007.

#### **8.2.4.2. *The Vulnerable Adults Act 2018***

The legislation was enacted for safeguarding vulnerable adults from abuse, neglect and self-neglect. The Act provides for governmental intervention for protecting “vulnerable adults” as a last resort when family and community interventions fail.

Under the Act a “vulnerable adult” includes any individual aged 18 years and above (including the aged) with mental or physical disabilities and who is unable to protect himself from abuse, neglect or self-neglect on account of the said disabilities. “Abuse” includes physical abuse, emotional or psychological abuse.<sup>146</sup> “Neglect” means lack of provision for essential care like food, clothing, medical aid, lodging and other necessities of life to the extent of causing personal injury or physical pain or injury to physical or mental health. “Self-neglect” means failure to perform essential tasks of daily living like eating, dressing and seeking medical aid or living in grossly unsanitary and hazardous conditions or suffering from malnutrition or dehydration or suffering from an untreated physical or mental illness. The Director is responsible for administration of the Act.<sup>147</sup> The Director can appoint a Protector and approved Welfare Officers and Enforcement Officers.

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<sup>146</sup> See The Vulnerable Adults Act 2018, § 2 cl. (a) (b).

<sup>147</sup> See The Vulnerable Adults Act 2018, § 3.

The general principle of the Act mandates that in all matters relating to the Act, the welfare and best interests of the vulnerable adult must be the first and paramount consideration.

Under the Act, an application can be made to the Court for various orders in cases, where vulnerable adults have experienced or is in danger of abuse, neglect or self-neglect and in cases where orders are necessary for protection and safety of vulnerable adults.<sup>148</sup>

The Court can pass various orders including:

- i. Committing the vulnerable adult to a place of temporary care or protection or care of a fit person for a period less than six months.
- ii. Order committing vulnerable adult to a place of safety or to a fit person for more than six months.
- iii. Order requiring person to produce vulnerable adult at specified medical or dental facility to enable further committal to place of temporary care or to fit person.
- iv. Order restraining abuser from further abusing the vulnerable adult.
- v. Order granting vulnerable adult right to exclusive occupation of premises in which vulnerable adult resides.
- vi. Order prohibiting person from visiting or communicating with vulnerable adult and
- vii. Order requiring persons including vulnerable adult to attend counselling

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<sup>148</sup> See The Vulnerable Adults Act 2018, § 12.

or other programmes.<sup>149</sup>

Persons not complying with the orders will have to face penal consequences and expedited orders can be passed in cases of Imminent danger to vulnerable adult.<sup>150</sup> The Act provides for places of temporary care and protection for vulnerable adults, places of safety, fit persons and for a Review Board.<sup>151</sup> The Minister can designate such premises and the Review Board is for ensuring a proper care plan for a vulnerable adult in such places. The unlawful removal of a vulnerable adult from a place of temporary care and protection or place of safety is a penal offence.<sup>152</sup> The Act prohibits publication of information leading to identification of vulnerable Adults.<sup>153</sup> Finally, pursuant to the Act enhanced punishment has been prescribed for offences against vulnerable adults as stipulated in the Penal Code of Singapore.<sup>154</sup>

The legislation is very effective for protecting vulnerable adults and the very concept of vulnerable adult is worth emulating since it caters to the serious issue of elder abuse in all forms. The two legislations together create a comprehensive legal protection regime for parents and vulnerable adults among Senior Citizens even though there is no specific legislation for welfare of Senior Citizens as under the MWPSA Act 2007.

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<sup>149</sup> See The Vulnerable Adults Act 2018, § 14.

<sup>150</sup> See The Vulnerable Adults Act 2018, § 15.

<sup>151</sup> See The Older Persons Act, 2006, § 19 and 20.

<sup>152</sup> See The Older Persons Act, 2006, § 21.

<sup>153</sup> See The Older Persons Act, 2006, § 22.

<sup>154</sup> See The Older Persons Act, 2006, § 74 cl. A.

### **8.2.5. South Africa: The Older Persons Act 2006**

The statute that caters to the aged in South Africa is the Older Persons Act of 2006 (Act 13 of 2006). It is pertinent that the Constitution of the Republic of South Africa 1996 under its Bill of Rights has provided for access to adequate housing, healthcare, food, water and social security subject to the available resources of the state. It is also pertinent to note that the aged in South Africa like in other African countries do not enjoy these rights due to factors like poverty and corruption and due to the non-justiciability of such economic, social and cultural rights.<sup>155</sup>

The legislation was enacted to deal effectively with the plight of older persons by establishing a legal framework aimed at promoting empowerment and protection of older persons and the promotion and maintenance of their status, rights, wellbeing, safety and security.

Going by the preamble, the legislation was enacted to effect changes to the existing laws relating to older persons in order to facilitate, accessible, equitable and affordable services to older persons and to empower older persons to continue to live meaningfully in a Society that recognizes them as important sources of knowledge, wisdom and experience.

Under the Act “older person” means a male 65 years or older and a female 60 years or older.<sup>156</sup> The Act defines a “frail older person” as a person in need of 24-hour care due to a physical or mental condition which renders him or her

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<sup>155</sup> See O.S.Oyelade, T.A Ogunleye, *Creating Old Peoples Friendly Society: Promoting Economic, Social and Cultural Rights of Old People in Nigeria*, 1(4) NUJS L. Rev 605 (2008).

<sup>156</sup> See The Older Persons Act, 2006, § 1.

incapable of caring for himself.<sup>157</sup>

The main objects of the Act are:

- a. Maintaining and promoting status, wellbeing, safety and security of older persons.
- b. Maintaining and protecting the rights of older persons.
- c. Shifting emphasis from institutional care to Community based care to ensure that older persons stay at home as far as possible.
- d. Regulating and maintaining of services and residential facilities.
- e. Combating abuse of older persons.<sup>158</sup>

The Act mandates that the rights of older persons under it supplements the rights as per the Bill of Rights.<sup>159</sup> The general principles of the Statute are (i) to consider the best interest of the older person in all actions, proceeding and decisions. (ii) to respect the inherent dignity of older persons (iii) to treat older persons fairly and equitably (iv) to protect older persons from unfair discrimination on the ground of health, status and disability and (v) to adopt a conciliatory problem-solving approach instead of confrontation in problem solving to avoid delay.<sup>160</sup>

The Act lays down the rights of older persons which are in addition to the rights stipulated in Section 9 of the Constitution of the Republic of South Africa

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<sup>157</sup> *Id.*

<sup>158</sup> *See* The Older Persons Act, 2006, § 2.

<sup>159</sup> *See* The Older Persons Act, 2006, § 4.

<sup>160</sup> *See* The Older Persons Act, 2006, § 5.

and the specific rights are:

- To participate in community life.
- To participate in inter-generational programmes.
- To establish and participate in structures for older persons.
- To participate in income generating activities.
- To live in an environment catering to changed capacities.
- To access opportunities that promote optimal level of social, physical, mental and emotional wellbeing.<sup>161</sup>

The Act lays down Principles for provision of services and accordingly, services are to be provided in an environment that recognises:

- Contribution of elders.
- Promotes participation in decision making.
- Recognises multidimensional needs.
- Ensures access to information.
- Promotes development in rural and urban areas.
- Prevents exploitation.
- Promotes respect and dignity.
- Receives priority.
- Ensures rehabilitation.

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<sup>161</sup> See The Older Persons Act, 2006, § 7.



- Accessibility.<sup>162</sup>

The Act specifically grants the right to (a) reside at home as long as possible (b) pursue opportunities for full development of potential (c) benefit from family and community care in accordance with the cultural values of society.<sup>163</sup>

Significantly, the Act envisages community based programmes for (a) economic empowerment (b) recreational opportunities (c) information, education and counselling for HIV, Alzheimer, Dementia, (d) spiritual, cultural, medical, civic and social services, (e) nutritionally balanced meals, (f) skills and capacity for livelihood, (g) professional services and care and rehabilitation for independent living (h) multipurpose community centres and (i) Intergenerational Programmes .

The Act also envisages home based care programmes for frail elders on hygiene and physical care, professional support, respite care, information, education and free health care to frail persons.<sup>164</sup>

The Act provides for registration of community-based care and support services<sup>165</sup> and for residential facilities.<sup>166</sup> It also provides for rights in residential facilities.<sup>167</sup> Further, the Act provides for the establishment of residents committees a representative body of residents, staff and public in residential facilities.<sup>168</sup> The Act mandates that there should be no discrimination in

<sup>162</sup> See The Older Persons Act, 2006, § 9.

<sup>163</sup> See The Older Persons Act, 2006, § 10.

<sup>164</sup> See The Older Persons Act, 2006, § 11.

<sup>165</sup> See The Older Persons Act, 2006, § 12, 13.

<sup>166</sup> See The Older Persons Act, 2006, § 16-23.

<sup>167</sup> See The Older Persons Act, 2006, § 16.

<sup>168</sup> See The Older Persons Act, 2006, § 20.

residential facilities for admissions and that the consent of the old person is required for admission.<sup>169</sup> The Act also provides for monitoring of registered residential facilities by social workers.<sup>170</sup> The Act provides for protection of older persons in need of care and protection and lays down norms for persons in need of care and protection.<sup>171</sup> The Act mandates that persons who come across such persons have to report to a social worker and the Director General who in turn have to take necessary action for removal of such person to hospital or a place of shelter.<sup>172</sup> Further, the Act mandates that persons who suspect abuse have to notify the Director General or the Police and that the said Authorities have to act after conducting investigation.<sup>173</sup> In the event of abuse a written notice has to be given to the offender by the Police calling upon the offenders to appear before the Magistrate. The Court has to consider the circumstances and hear the offender. The Court can issue orders prohibiting entry into the house of the elderly or from having contact with the elderly. Disobedience of orders will amount to an offence.<sup>174</sup> Enquiring into abuse has to be conducted by a Magistrate<sup>175</sup> and any person who abuses is guilty of an offence.<sup>176</sup> Finally, the Act mandates a Register of Abuse of Older Persons and the offenders registered are barred from operating residential facilities and from providing community

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<sup>169</sup> See The Older Persons Act, 2006, § 21.

<sup>170</sup> See The Older Persons Act, 2006, § 22.

<sup>171</sup> See The Older Persons Act, 2006, § 25 cl. 5.

<sup>172</sup> See The Older Persons Act, 2006, § 25 cl. 4.

<sup>173</sup> See The Older Persons Act, 2006, § 26.

<sup>174</sup> See The Older Persons Act, 2006, § 27.

<sup>175</sup> See The Older Persons Act, 2006, § 29.

<sup>176</sup> See The Older Persons Act, 2006, § 30

based care.<sup>177</sup>

Significantly, the progressive and well drafted legislation has made specific provisions for rights of older persons and has evolved the concepts of “frail old persons,” “older persons in need of care and protection” and the concept of “best interest of older person.” The Act has shifted emphasis from “Institutional care to community-based care.” The Act laid down National Standards for adult services and principles for provision of services. It evolved community-based programmes and highlights the need for Rehabilitation. The Act also caters to elder abuse through Magistrate Courts and creates a register of abuse of older persons. In sum, the legislation is one of the best legislations that is “rights based” and which also caters to elder abuse and almost the entire spectrum of rights of the aged as evolved in international law.

#### **8.2.6. Japan: The Act on Social Welfare for the Elderly 1963 and The Long-Term Care Insurance Act 1997**

Japan has the highest population of the aged among all the nations of the world. Almost a third of its population is over 65 years.<sup>178</sup> Japan has a staggering 80,450 centenarians going by the statistics announced by the Ministry of Health, Labour and Welfare.<sup>179</sup> Japan is also well known for its high life expectancy, which is 87.1 for women and 81.1 for males going by data published by the WHO

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<sup>177</sup> See The Older Persons Act, 2006, § 31.

<sup>178</sup> See WEFORM, [www.weform.org/agenda/2019/09/elderly-oldest-population-world-Japan/](http://www.weform.org/agenda/2019/09/elderly-oldest-population-world-Japan/) (last visited Jan.15, 2021).

<sup>179</sup> See NIPPON, <https://www.nippon.com/en/japan-data/400822/> (last visited Jan.15, 2021).

for 2018.<sup>180</sup>

Though Japan commenced social security measures in 1945 as part of the post second world war recovery efforts and though Japan succeeded in enrolling all its citizens in public health insurance and public health plans in 1961, the first major legislation for welfare of the aged was enacted in 1963 i.e., the Act on Social Welfare for the Elderly of 1963. Prior to the said Act, families used to take care of the elderly and only elders, who were poor with no one to look after were considered by the public assistance “nursing homes.” The Act continued to support such nursing homes for the elderly (*Yogo rojin hoomu*) and it also established intensive care homes for the elderly (*tokuyo*). The Act was the first major step for long term care of the elderly. The main emphasis under the Act was to create intensive care homes for the elderly.

In 1973, Japan decided to offer free health care for the elderly. However, there arose a huge financial burden and this led to the enactment of the Health and Medical Services Act for the Aged in 1983, which abolished free health care for the elderly, and which required the elderly to make a moderate payment for services. This Act also played an important role in long term care. Apart from sharing the burden of medical expenses for persons above 70 years, the Act catered to medical services from prevention to rehabilitation and municipalities started offering free medical check-up for the elderly. In 1987, the Act was amended to establish intermediary facilities to cater to the elderly between being

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<sup>180</sup> See WORLD LIFE EXPECTANCY, [www.worldlifeexpectancy.com/japan-life-expectancy](http://www.worldlifeexpectancy.com/japan-life-expectancy) (last visited Jan.15, 2021).

hospitalised and at home and in 1991, the Act introduced the “visiting nursing system” for homecare.

In 1989, Japan introduced a ten-year strategy to promote health and welfare for the elderly known as the “Gold Plan” for setting up infrastructure necessary to provide health and welfare services for the elderly by 2000. Pursuant to the “Gold Plan” a “New Gold Plan” was introduced in 1994, a new ten-year strategy for improvement of in-home long-term care. The following are the two landmark statutes for the elderly in Japan.

#### ***8.2.6.1. The Act on Social Welfare for the Elderly 1963***

The revolutionary Act on social welfare for the elderly of 1963 was enacted to clarify the principles governing welfare for the elderly and to complement measures for elderly persons necessary for the maintenance of physical and mental Health and stabilization of livelihood.<sup>181</sup> The Act was based on three Principles:<sup>182</sup>

- i. The elderly who has contributed to the development of society for many years and who have abundant knowledge and experience should be respected and their healthy and comfortable lives secured.
- ii. Elderly persons shall maintain their physical and mental health at all times, and they have to participate in social activities by taking advantage of their knowledge and experience.
- iii. Elderly should be given an opportunity to engage in suitable work

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<sup>181</sup> See Act on Social Welfare for the Elderly, 1963, Article 1.

<sup>182</sup> See Act on Social Welfare for the Elderly, 1963, Article 2, 3.

depending on their performances and capabilities.

Under the Act, it is the responsibility of the State and Local Government to promote welfare of the elderly.<sup>183</sup> The Act mandated commemoration of Senior Citizens Day and Senior Citizens Week to widen interest on Senior Citizens and to motivate elders to have better lives.<sup>184</sup> i.e., September 15 as Senior Citizens Day and September 15-21 as Senior Citizens Week and called for implementation of projects and programmes on the said Day & Week. Under the Act, welfare measures were meant for persons aged 65 and above and for care givers who care for the elderly. Persons below age of 65 were also considered if they had special needs.<sup>185</sup> The Municipalities had to establish welfare officers for the Act.<sup>186</sup> Municipalities had to take measures like home services, community-based services, long term in-home care and support, facility services, long term preventive care services and support and home-based nursing care.<sup>187</sup> It had to establish Nursing Homes for the elderly.<sup>188</sup> Municipalities had to conduct programmes to promote welfare of elderly like educational seminars and recreational events and had to promote research and development in ageing.<sup>189</sup> The Municipalities had to commence In Home Elderly support Services.<sup>190</sup> Under the Act other than prefectures and municipalities, social welfare corporations could establish nursing homes for the elderly and intensive care

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<sup>183</sup> See Act on Social Welfare for the Elderly, 1963, Article 4.

<sup>184</sup> See Act on Social Welfare for the Elderly, 1963, Article 5.

<sup>185</sup> See Act on Social Welfare for the Elderly, 1963, Article 5-4.

<sup>186</sup> See Act on Social Welfare for the Elderly, 1963, Article 5-5, Article 6.

<sup>187</sup> See Act on Social Welfare for the Elderly, 1963, Article 10-3.

<sup>188</sup> See Act on Social Welfare for the Elderly, 1963, Article 11.

<sup>189</sup> See Act on Social Welfare for the Elderly, 1963, Article 13.

<sup>190</sup> See Act on Social Welfare for the Elderly, 1963, Article 14.

homes for the elderly, welfare home for the elderly and low-cost homes for the elderly.<sup>191</sup> The Minister for Health Labour and Welfare had to prescribe standards for management of nursing homes and intensive care homes.<sup>192</sup> Further the Act mandates establishment of elderly day care centres<sup>193</sup> and short term inpatient facility for elders.<sup>194</sup> The Act provides for welfare plan for the elders by municipalities<sup>195</sup> and by prefectures.<sup>196</sup> The Act also seeks to establish fee based homes for the elderly<sup>197</sup> and finally the Act lays down penal provisions for violation of certain provisions.<sup>198</sup>

This legislation is remarkable in terms of providing public assistance for the elderly by Local Authorities and bodies in a comprehensive manner catering to short term and long-term needs of elderly both at home and in Institutions.

Japan has hence realised the need for shifting from state funded public assistance through prefectures and municipalities to a system of insurance for long term care of the elderly from the age of 40 years onwards which is very practical and effective. However, this system is not practical in India at least at present considering the poor financial status of a majority of elders in our country and the huge financial burden it will pose on the governments both Central and State.

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<sup>191</sup> See Act on Social Welfare for the Elderly, 1963, Article 15.

<sup>192</sup> See Act on Social Welfare for the Elderly, 1963, Article 17.

<sup>193</sup> See Act on Social Welfare for the Elderly, 1963, Article 20-2.

<sup>194</sup> See Act on Social Welfare for the Elderly, 1963, Article 20-3.

<sup>195</sup> See Act on Social Welfare for the Elderly, 1963, Article 20-8.

<sup>196</sup> See Act on Social Welfare for the Elderly, 1963, Article 20-9.

<sup>197</sup> See Act on Social Welfare for the Elderly, 1963, Article 29.

<sup>198</sup> See Act on Social Welfare for the Elderly, 1963, Article 38, 39 to 43.

### ***8.2.6.2. The Long Term Care Insurance Act 1997***

In 1997, the Long Term Care Insurance Act was enacted, and the revolutionary Act came into force in 2000.

The Act made a paradigm shift from “municipality assigned” welfare and services under the earlier law to “user's choice” of welfare and services under the new Law. The new system was “user oriented” and emphasis was on the fact that the elderly could receive integrated health, medical and welfare services from diverse agents based on their own choice rather than being assigned by municipalities. The new law adopted the insurance method for addressing long term care and under the Act there were two categories of persons:

- (i) Persons aged 65 and above (primary insured persons).
- (ii) Persons aged 40 and above to 64 years (secondary insured persons).

The premium paid by the said insured would cover half of the funding for the system and the remaining half would be met by the national, prefectural and municipal Governments. The municipalities were the insurers. The long-term insurance became a system operated through cost sharing giving it more public acceptability and also the broadening of the beneficiaries to include citizens of all economic levels. Under the new system, municipalities evolve long-term plans and charge premium on the basis of services provided. Importantly, the long-term care insurance system aims to integrate medical and welfare services that were provided under the Act on social welfare for the elderly of 1963 and the Health and Medical Services Act of 1983. The long-term care Insurance



system as a rule offers long term care services to persons above 65 years on the basis of “certification” after “screening” by the authorities. The person who needs long term care has to apply to the Municipality for “screening.” “Screening” is carried out on the basis of nationally established certification standards. Extent of services needed is based on “certified” level of need. A care plan is then prepared for services by certified care Managers, who are trained specialists. The new “user oriented” contract-based system is more convenient and popular.

### **8.2.7. Mauritius: The Protection of Elderly Persons Act 2005**

Mauritius or the Republic of Mauritius is an island on the south eastern coast of Africa in the Indian Ocean. Mauritius has a diverse population and about half of the population in this African country profess Hinduism and Mauritius has the highest concentration of Hindus in Africa. Hence Mauritius shares religious and cultural values with India.

The legislation for the elderly in Mauritius is the Protection of Elderly Persons Act of 2005 (Act 16 of 2005). The law was enacted for setting up a legal and administrative framework for greater protection and assistance to elderly persons.

Under the Act “elderly person” means a person who has attained the age of 60 years.<sup>199</sup> The legal mechanism under the Act operates through an Elderly

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<sup>199</sup> See The Protection of Elderly Persons Act, 2005, § 2.

Network,<sup>200</sup> a Monitoring Committee,<sup>201</sup> Elderly Persons Protection Unit<sup>202</sup> and Elderly watch.<sup>203</sup>

The Protection of the Elderly Network the Apex Body consists of

- Chairperson of the Monitoring Committee.
- Officer in charge of the Unit.
- Representative of every Elderly watch.
- Chairperson on the Rodrigues Committee for the Elderly. (Rodrigues is an autonomous island which is a part of the Republic of Mauritius.)

The main objects of the elderly network are:

- i. Ensuring promoting and sustaining the physical, psychological, emotional, social and economic protection of elderly person.
- ii. Ensuring promoting and sustaining the wellbeing of elderly persons so that they can play a meaningful role in society.

The main functions of the elderly network are:

- a. To advice the Minister on Policies which will encourage elderly persons.
- b. Co-ordinate activities of various bodies.<sup>204</sup>

The Monitoring committee for the Elderly:

- Supervises operations of the unit and elderly watch and gives general

<sup>200</sup> See The Protection of Elderly Persons Act, 2005, § 3.

<sup>201</sup> See The Protection of Elderly Persons Act, 2005, § 4.

<sup>202</sup> See The Protection of Elderly Persons Act, 2005, § 6.

<sup>203</sup> See The Protection of Elderly Persons Act, 2005, § 2.

<sup>204</sup> See The Protection of Elderly Persons Act, 2005, § 3.

directions.

- Provides adequate resources and facilities for proper operation of the unit and elderly watch.<sup>205</sup>

The Elderly Persons Protection Unit is under the administrative control of a public officer designated by the Permanent Secretary. The Unit discharges the following functions:

- i. Organising public awareness and sensitisation campaign on rights of elders and need for protection and assistance.
- ii. Receiving complaints from elderly who are in need of protection or assistance.
- iii. Applying to the Courts for a protection order in cases where there is a real danger or threat to the life of the elderly.
- iv. Assisting in arranging admission to a residential care home.
- v. Ensure that every elderly watch gets proper feedback on situation of the elderly who need protection or assistance.<sup>206</sup>

Significantly, the public officer in the protection unit has power to inspect premises, to seek information and to examine records. The officer can also obtain warrants from the Magistrate in cases of abuse. The officer can also require any person to attend any place or to provide any information.<sup>207</sup>

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<sup>205</sup> See The Protection of Elderly Persons Act, 2005, §4.

<sup>206</sup> See The Protection of Elderly Persons Act, 2005, §

<sup>207</sup> See The Protection of Elderly Persons Act, 2005, §

The main functions of elderly watch are:

- Promoting welfare of elderly persons in the region.
- Providing support to families that need assistance and protection.
- Endeavour to prevent acts of abuse of elders.
- Report cases of repeated abuse of an elderly person to an officer of the unit.

The elderly watch mainly consists of volunteers working for the care of elders appointed by the minister. It also consists of member of the council of Senior Citizens and public officers designated by the minister. Elderly watch is administered by a managing committee.<sup>208</sup>

Protection orders can be issued by the Court, when the Court is satisfied on oath that the officer in charge of the unit has reasonable cause to believe that an elderly person has suffered abuse. The Court can issue a protection order restraining the respondent from the conduct of abuse and by ordering good behaviour.<sup>209</sup> On receipt of an application, notice will be issued to the respondent to appear within 14 days and the case will be considered as a civil case. The Court can pass an interim elderly protection order before hearing the respondent. The Court can, if necessary, order police protection and both sides can apply for revocation or variation of the order.

Importantly, the Act also mentions penal offences. Accordingly, any person

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<sup>208</sup> See The Protection of Elderly Persons Act, 2005, § 8.

<sup>209</sup> See The Protection of Elderly Persons Act, 2005, § 9.

who wilfully subjects an elderly person to ill treatment either physical or verbal or subjects an elderly person to prolonged mental or emotional harassment or intentionally causes pecuniary loss or material prejudice shall be considered to have committed an act of abuse. Any person who commits an act of abuse or wilfully fails to provide an elderly person under his care with food, medical attention, shelter and clothing or fails to comply with a protection order shall be considered to have committed an offence, which on conviction attracts a fine not exceeding Rs.50,000/- and imprisonment not exceeding two years.

The legislation of Mauritius is commendable for its monitoring mechanism at the grass root level through the system of elderly watch, comprising of volunteers, who watch the community vigilantly and report instances of elder abuse. The legal mechanism of redressal through public officers and the court is also a very practical method than can be adopted in developing countries like India. It is pertinent that there is the dire need for a formal organisation that closely monitors cases of elder abuse in India and in Kerala since elder abuse is often not reported by the victims due to cultural factors and social stigma.<sup>210</sup> However, the Act is mainly focused on elder abuse and not on welfare measures. It is noteworthy that the Act promotes awareness on the rights of elders and their legal protection.

#### **8.2.8. Brazil: Statute of the Elderly 2003**

Brazil as found above has elaborate provisions in its Constitution for the

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<sup>210</sup> See Rosamma Veeton, *Elder Abuse in the Urban Context*, 62, IJSW, No.3, 480, 488 (July 2001).

protection of the rights and dignity of the elderly. Besides, Brazil has one of the most progressive and comprehensive “rights” based legislations for the elderly namely the Statute of the Elderly of 2003.

The Statute of the Elderly 2003 was enacted for regulating the rights guaranteed to people who are 60 years and above.<sup>211</sup> The Act mandates that the elderly shall enjoy all fundamental rights inherent to the human person and that they enjoy all opportunities and facilities for the preservation of physical and mental health, moral, intellectual, spiritual and social improvement under conditions of freedom and dignity.<sup>212</sup> The Act states that it is the obligation of the family, the community, society and the public power to ensure the elderly with absolute priority the realisation of the rights to life, health, food, education, culture, sports, leisure work, citizenship, freedom, dignity, respect and family and community co-existence.<sup>213</sup> The Act stipulates that no elderly person has to be the object of any kind of negligence, discrimination, violence, cruelty or oppression and that any attempt to their rights by action or omission will be punished. Under the Act, it is everyone's duty to prevent the threat or violation of the rights of the elderly.<sup>214</sup> It is the duty of every citizen to inform the competent authority of any form of violation of this Law which is witnessed or which a person is aware of.<sup>215</sup> The National, State, Federal, District and Municipal Council of Elderly have to ensure compliance of the rights of the

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<sup>211</sup> See Statute of the Elderly, 2003, Article 1.

<sup>212</sup> See Statute of the Elderly, 2003, Article 2.

<sup>213</sup> See Statute of the Elderly, 2003, Article 3.

<sup>214</sup> See Statute of the Elderly, 2003, Article 4.

<sup>215</sup> See Statute of the Elderly, 2003, Article 6.

elderly.<sup>216</sup>

The Act enlists the Fundamental rights of the Elderly<sup>217</sup>, which are:

- (a) Right to life.<sup>218</sup>
- (b) Right to Freedom, Respect and Dignity.<sup>219</sup>
- (c) Food.<sup>220</sup>
- (d) Right to health and comprehensive health care by the Unified Health System.<sup>221</sup>
- (e) Education, Culture and Sports & Leisure.<sup>222</sup>
- (f) Professionalism and work.<sup>223</sup>
- (g) Social security.<sup>224</sup>
- (h) Social Assistance from the age of 65 years to persons without any means of subsistence or from family which shall be one minimum wage.<sup>225</sup>
- (i) Housing.
- (j) Transportation.

Significantly, under the right to transportation, person above 65 years are entitled to free guaranteed transportation in public urban and semi-urban

<sup>216</sup> See Statute of the Elderly, 2003, Article 7.

<sup>217</sup> See Statute of the Elderly, 2003, Title II.

<sup>218</sup> See Statute of the Elderly, 2003, Chapter 1.

<sup>219</sup> See Statute of the Elderly, 2003, Chapter II.

<sup>220</sup> See Statute of the Elderly, 2003, Chapter III.

<sup>221</sup> See Statute of the Elderly, 2003, Chapter IV.

<sup>222</sup> See Statute of the Elderly, 2003, Chapter V.

<sup>223</sup> See Statute of the Elderly, 2003, Chapter VI.

<sup>224</sup> See Statute of the Elderly, 2003, Chapter VII.

<sup>225</sup> See Statute of the Elderly, 2003, Chapter VIII.

transport. Ten percentage of seats are reserved for the elderly. It is the discretion of the local authorities to provide free transportation to persons aged between 60 and 65 years. Priority has to be given to the elderly while boarding and 5% of spaces in public and private parking lots are reserved for the elderly.

The statute also caters to protection measures for the elderly whenever the rights recognized in this law are threatened or violated.<sup>226</sup> The statute envisages an Elder Care Policy<sup>227</sup> (Title IV) and it prescribes obligations of service entities<sup>228</sup> and principles for long term institutional programmes.<sup>229</sup> Importantly, the statute prescribes free legal aid for the elderly.<sup>230</sup> The Act also contemplates certain administrative offences<sup>231</sup> and judicial intervention of irregularities in service entities.<sup>232</sup>

Importantly, the statute caters to “Access to Justice.”<sup>233</sup> Accordingly, specialised and exclusive courts for the elderly are to be established.<sup>234</sup> Priority has to be given to processes and procedures and for execution of judicial acts to elders above 60 years.<sup>235</sup> The priority will not cease with death, and it will extend to the spouse. Elders have been guaranteed easy access to seats and boxes in visible places with readable characters.

The statute has established a Public Ministry to initiate civil enquiries and

<sup>226</sup> See Statute of the Elderly, 2003, Article 43, Title III.

<sup>227</sup> See Statute of the Elderly, 2003, Title IV.

<sup>228</sup> See Statute of the Elderly, 2003, Article 50.

<sup>229</sup> See Statute of the Elderly, 2003, Article 49.

<sup>230</sup> See Statute of the Elderly, 2003, Article 51.

<sup>231</sup> See Statute of the Elderly, 2003, Chapter IV, Title IV.

<sup>232</sup> See Statute of the Elderly, 2003, Chapter VI, Title IV.

<sup>233</sup> See Statute of the Elderly, 2003, Title V.

<sup>234</sup> See Statute of the Elderly, 2003, Article 70.

<sup>235</sup> See Statute of the Elderly, 2003, Article 71.



public civil action for protection of rights, for initiating investigation of illicit acts and violation of rights, for ensuring respect for legal rights and for Inspecting public and private service entities.<sup>236</sup> Fines collected under the law will revert to the elderly fund where applicable and in its absence to the municipal social assistance fund linked to elderly care.

Finally, the statute enlists various crimes against the elderly.<sup>237</sup> Accordingly, failure to provide assistance to the elderly,<sup>238</sup> abandoning elderly in hospitals and health homes,<sup>239</sup> exposing the elderly to danger,<sup>240</sup> preventing access to public office by denying job or work and refusing service or assistance,<sup>241</sup> failure to comply with court orders,<sup>242</sup> appropriating or diverting assets, earnings or pension,<sup>243</sup> denying reception of elderly,<sup>244</sup> retaining magnetic bank account card and other documents,<sup>245</sup> conveying derogatory information or injurious images,<sup>246</sup> coercion to donate, hire, test or grant a letter of authority<sup>247</sup> and notarial acts without proper legal representation<sup>248</sup> are criminal offences.

The statute of the elderly of Brazil is a remarkable legislation that highlights the importance of “rights” of the elderly and its legal protection. It caters to a

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<sup>236</sup> See Statute of the Elderly, 2003, Chapter II, Title V.

<sup>237</sup> See Statute of the Elderly, 2003, Title VI.

<sup>238</sup> See Statute of the Elderly, 2003, Article 97.

<sup>239</sup> See Statute of the Elderly, 2003, Article 98.

<sup>240</sup> See Statute of the Elderly, 2003, Article 99.

<sup>241</sup> See Statute of the Elderly, 2003, Article 100.

<sup>242</sup> See Statute of the Elderly, 2003, Article 101.

<sup>243</sup> See Statute of the Elderly, 2003, Article 102.

<sup>244</sup> See Statute of the Elderly, 2003, Article 103.

<sup>245</sup> See Statute of the Elderly, 2003, Article 104.

<sup>246</sup> See Statute of the Elderly, 2003, Article 105.

<sup>247</sup> See Statute of the Elderly, 2003, Article 106.

<sup>248</sup> See Statute of the Elderly, 2003, Article 108.

whole spectrum of elders' rights and also provides a legal machinery for enforcement of the rights. It contains detailed penal provisions for violation of rights and remarkably gives emphasis to free legal aid and legal assistance for the elderly. The statute is revolutionary in providing for specialized and exclusive courts for the elderly and in incorporating an elder care policy in the legislation. This legislation can be taken for as a role model legislation for guidance and critical analysis of various legislations in India including the MWPSA Act of 2007. There is presently a strong argument for creating an International Older Persons Human Rights Index (IOPHRI) for a comparative assessment at the national level of the human rights regimes across nations. The IOPHRI is designed to identify and measure national legislation regarding the legal rights of older persons including measures to prevent discrimination, neglect, abuse and violence. The IOPHRI will provide a comparative and measurable scale at the international level.<sup>249</sup>

### 8.3. CONCLUSION

Provision for "social security" is the most common provision seen in world Constitutions for the aged.

Many Constitutions have incorporated provisions for social insurance, social assistance, tax reliefs and medical aid.

Protective measures and welfare measures for the aged are incorporated as Constitutional Rights, Fundamental Rights and Social Rights in various

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<sup>249</sup> See Benny Spanier, Israel Doron, *From Well-Being to Rights: Creating an International Older Persons' Human Rights Index (IOPHRI)*, 24 ELDER. LJ 245 (2017).

Constitutions.

Few Constitutions prescribe a constitutional duty of the youth to care for the elderly.

Rights and duties pertaining to Senior Citizens are contained specifically only in a handful of Constitutions and the Constitutions that prescribe the “duties” are fewer than those that prescribe “rights”.

The Constitution of Brazil is found to be the most ideal progressive and meritorious of all Constitutions studied in the realm of rights of Senior Citizens both in terms of quality and quantity of the provisions contained therein with respect to protection of elders.

All jurisdictional statutes have given primacy to elder abuse and to “ageism” or age-based discrimination.

The statutes of different countries also reflect its close nexus with the culture and history of the land in addition to its traditions and value systems.

The oldest and the most detailed legislation studied is the Older Americans Act of 1965 of the USA which provides for a detailed national network of community-based services which includes housing, restorative services, long term care services, retirement and pension counseling, nutrition services, health promotion and disease prevention programmes, legal assistance services, crime prevention and victim assistance programmes, employment opportunities, access to low-cost transportation, participation in community-based services and protection against abuse, neglect and exploitation through a central Agency by

name AOA.

The Older Americans Act of 1965 has catered to the entire gamut of rights of the aged both positive from health and medical need to legal aid and negative rights including elder abuse through its programmes at the community level and in particular has given primacy to “Ageing in Place” and “Active Ageing” by giving and providing various support services for the aged to mainstream them in society.

The Legal Assistance Development Programme aimed at securing and maintaining legal rights of older persons and for improving quality and quantity of legal services is the most commendable programme under the Older Americans Act, 1965.

The American legislation, i.e., the Older Americans Act, 1965 though worthy of emulation cannot be applied in our Indian context since it mainly involves huge governmental funding through grants for various community programmes which is not financially feasible in our developing nation.

The Maintenance of Parents Act 1995 of Singapore is very similar to the Indian domestic law, i.e., the MWPSA Act of 2007 since the legislation constitutes Maintenance Tribunals for awarding maintenance to parents. However, the authorities are not executive officers but district judges and further there is appeal and revision before the High Court and Court of Appeal which is worth following.

The concept of “vulnerable adult” envisaged in the Vulnerable Adults Act

2018 of Singapore is commendable since it protects persons above 18 years with disabilities from abuse, neglect and self-neglect.

The Statute of the Elderly 2003 of Brazil is a comprehensive legislation that caters to all facets of the rights of Senior Citizens. It is based on constitutional provisions and contains fundamental rights, protection measures, elder care, policy, access to justice provisions and penal provisions. The statute is worth emulating considering its comprehensive approach.

The Aged Care Act 1997 of Australia is commendable for the regulation of aged care services both in institutions and at homes. The practice of regulatory caregivers and care recipients can be emulated in the Indian context and especially in Kerala where the Orphanage Control Board hardly has any regulatory hold over old age homes and its inmates in the private sector. The responsibility of care providers to report abuse to law enforcement authorities and concept of persons with special needs can be replicated in India.

The law of the People's Republic of China on the Protection of Rights and Interests of the Aged 1996 is a statute which was enacted in accordance with the Constitution for improving social security for the aged and highlights the fact that it is the duty of society and the state to protect the lawful rights and interests of the aged.

The law of the People's Republic of China on the Protection of Rights and Interests of the Aged notably advocates ethical education among children and youth for respecting and caring for the aged in addition to legal education among children and youth which is worth emulating and it notably mandates the state

and the society to attach importance to the knowledge, skill and experience of the aged and the rights of elders to enjoy achievements in social development which also is worthy of emulation.

The Older Persons Act of 2006 of South Africa is a very progressive legislation that has evolved the concepts of “best interests of the aged” “older persons in need of care and protection” and “frail older persons.”

The Older Persons Act of 2006 of South Africa is revolutionary since it is “rights based,” since it effectively caters to elder abuse through judicial process, since it effectively regulates institutional care and since it prescribes various community programmes and services and home-based care programmes.

Japan the country with the largest aged population has transitioned from fully state sponsored care for the elderly to long term care through insurance commencing from the age of 40 years under the Act of 1997 which system is not practical for India considering the financial disparity between the two nations. However, the system of elderly day care centers and paid homes for the elderly can be replicated in Kerala. The role of municipalities in Japan can be assumed by local self-government institutions in Kerala.

The Protection of Elderly Persons Act 2005 of Mauritius, a country with a sizable Hindu Community and which shares common religions and cultural values with India, is a commendable legislation for its extensive national and regional network of agencies comprising of volunteers created for detecting elder abuse and for prosecuting offenders.

The Statute of the Elderly of 1983 of Brazil is the most progressive and forward-looking statute which enlists fundamental rights of the aged, which penalizes acts violative of the rights of the aged, and which advocates exclusive courts for the aged and access to justice for the aged in addition to free legal aid and legal assistance. The Statute even caters to free transportation and reservation of parking spaces for the aged. The legislation is a model legislation that India can emulate and adopt and it exposes the gross inadequacies of the MWPSA Act 2007.

In sum, the illuminating survey of world Constitutions and statutes for the aged exposes the regressive nature of the Constitution of India in terms of provisions for the aged. It also exposes the limitations of the MWPSA Act 2007 in terms of a “rights” based legal regime. There is a need for a total revamping of the legal architecture both constitutional and statutory for establishing a rights-based regime instead of a “needs” based regime based on “public assistance” by the state.

**CHAPTER IX****LEGAL PROTECTION OF ELDERS' RIGHTS: AN EMPIRICAL STUDY**

The adequacy and efficacy of the existing legal framework for protection of the rights and dignity of “Senior Citizens” cannot be gauged or assessed completely without an empirical study. A purely doctrinal study based on primary legal materials like statutes and case laws will be a “half baked” research endeavour which will not furnish useful insights and inferences on the topic of high social importance. Hence considering the nature and scope of the research topic and its high social significance especially in the context of the demographic transition mentioned earlier it was felt most appropriate to test the efficacy of the existing legal framework through “social response” by conducting a survey from the highly heterogeneous group of “Senior Citizens.” Though “Senior Citizens” legally would fall into a single broad category of all persons in society above 60 years, the group is in fact highly heterogeneous since the issues related to this group vary across different age brackets. The economic, social and health issues for instance of persons between the age groups 60-70, 70-80 and 80-90 are totally distinct and diverse. Hence a broad empirical study of Senior Citizens across all age brackets was undertaken for the purpose of the study which was mainly based on satisfaction of personal and property rights, level of legal awareness, involvement in maintenance and other litigation and the adequacy of the existing legal mechanisms for effectuating the rights of Senior Citizens.



### **9.1. THE HYPOTHESIS**

The research hypothesis that had to be tested through the empirical study is as follows.

**“The existing legal framework comprising of statutory and non-statutory mechanisms is inadequate for protection of the various rights and dignity of senior citizens in Kerala.”**

### **9.2. GEOGRAPHICAL AREA OF THE STUDY**

Though the exclusive central law, i.e., the MWPC Act of 2007 is applicable throughout India except the state of Jammu and Kashmir and though the subjects of the study, i.e., “Senior Citizens” are present in all states and union territories, the study is confined to Kerala geographically since Kerala has the highest population of the elderly in India as stated earlier. Within Kerala which is an almost uniformly developed state in terms of socio-economic and cultural parameters respondents were selected both from urban and rural areas. Respondents were selected from all the three major cities of Thiruvananthapuram, Ernakulam and Kozhikode in addition to three major towns of Kannur, Thrissur and Kollam. All the six corporation areas of Thiruvananthapuram, Kollam, Cochin, Thrissur, Kozhikode and Kannur were covered for the study. In terms of rural areas, the study was mostly confined to Mavelikara in Alappuzha District and Thiruvalla in Pathanamthitta District.

### **9.3. SELECTION OF RESPONDENTS (POPULATION SAMPLE)**

The social, economic, health and legal issues pertaining to Senior Citizens vary from one age group to another. Accordingly, apart from urban and rural

areas respondents were selected from different age brackets. Further the issues differ on the basis of education and literacy. Hence Respondents were selected from all categories like totally illiterate persons, manual labourers, literate persons, highly educated persons, professionals, retired government employees, retired private employees, doctors, lawyers and retired Judges. In order to make the sampling representative of the entire population, Respondents were selected from all age brackets and from different strata of society in terms of parameters like education, health, income, and employment. Data was collected from a total of 366 Respondents who were selected accordingly for the study and their general profile and characteristics are as follows:

#### 9.4. PERSONAL PROFILE OF RESPONDENTS

Parameter	Category	Numbers	Percentage
<b>GENDER</b>	Males	183	50
	Females	183	50
<b>Total</b>		366	100

**Table: 9.1**

Parameter	Category	Numbers	Percentage
<b>AGE</b>	Age 60-70	188	51.4
	Age 70-80	148	40.4
	Age 80-90	25	6.8
	Age Above 90	5	1.4
<b>Total</b>		366	100

**Table: 9.2**

Parameter	Category	Numbers	Percentage
<b>MARITAL STATUS</b>	Living with Spouse	175	47.8
	Widow/ Widower	141	38.5
	Single	45	12.3
	Remarried	5	1.4
<b>Total</b>		366	100

**Table: 9.3**

Parameter	Category	Numbers	Percentage
<b>EDUCATION</b>	Class X	119	33
	Class V	74	20
	Illiterate	43	12
	Professional Degree	43	12
	Graduation	38	10
	Class 12/ Pre-Degree	29	8
	Post-Graduation	20	5
<b>Total</b>		366	100

**Table: 9.4**

Parameter	Category	Numbers	Percentage
<b>EMPLOYMENT</b>	Retired Government Employment	57	16
	Private Employment	64	17
	Self-Employment	20	6
	No Employment	45	12
	Agricultural Employment	180	49
<b>Total</b>		366	100

**Table: 9.5**

Parameter	Category	Numbers	Percentage
<b>INCOME</b>	Govt Pension	139	38
	Other Pensions	70	19
	Income from children and relatives	65	18
	Agricultural Income	37	10
	Business Income	28	8
	Manual Labour Income	27	7
<b>Total</b>		366	100

**Table: 9.6**

Parameter	Category	Numbers	Percentage
<b>RESIDENCE</b>	Own House	217	59
	Rented House	10	3
	Living in Son's/ Grand-son's house	56	15
	Living in daughter's / grand-daughter's house	16	4
	Living in Relative's house	15	4
	Living in Old Age Home	50	14
	No place to live	2	1
<b>Total</b>		366	100

**Table: 9.7**

Parameter	Category	Numbers	Percentage
<b>ILLNESS</b>	Other age-related illness	215	59
	Occasional Ailments	67	18
	No specific illness	39	11
	Alzheimers disease	22	6
	Life threatening ailments	16	4
	Parkinson's disease	7	2
<b>Total</b>		366	100

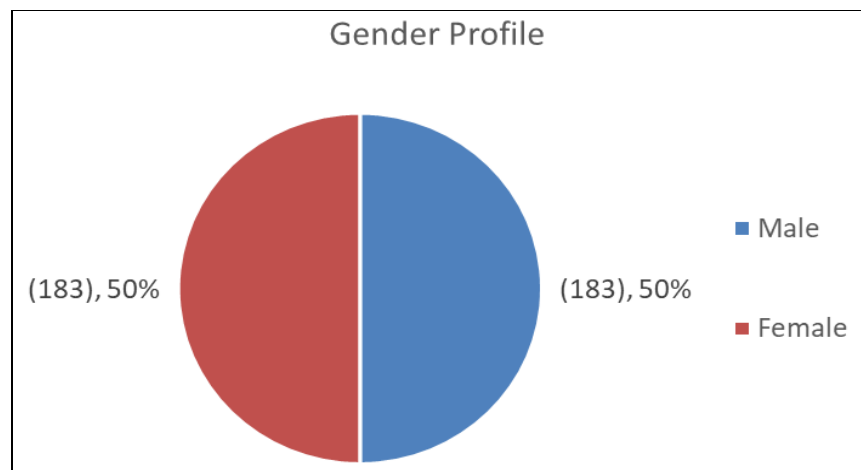
**Table: 9.8**

#### 9.4.1. Analysis of Personal Profile of Respondents

The personal profile of the respondents is shown in the pie charts below (Figs. 9.1-9.8). In these Pie charts, the absolute number of respondents in each category are given within brackets and the corresponding percentages are also given for each of the categories.

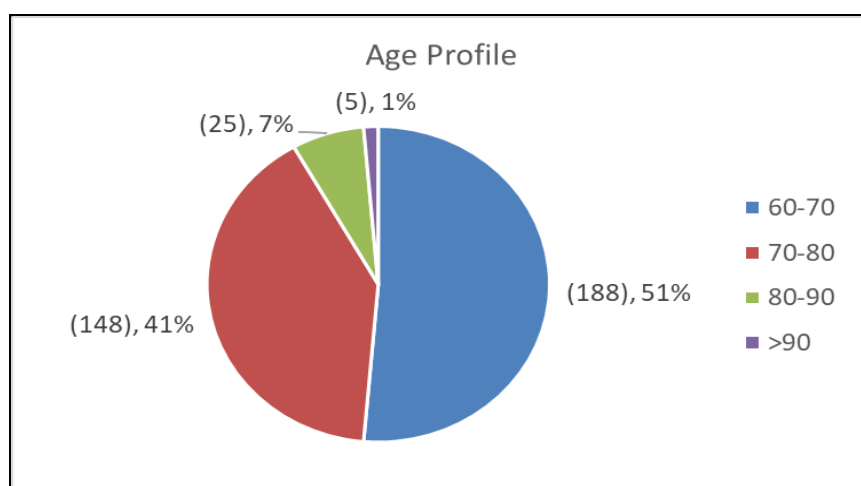
### i. Gender Profile

The survey covered an equal number of males and females (183 each). This equality was a coincidence. However, it helps in the survey being unbiased with respect to gender. It is pertinent to note that the population of aged women is more in Kerala than aged men. As per the 2011 census, the sex ratio is 1084 females per 1000 males.<sup>1</sup>



**Figure: 9.1**

### ii. Age Profile

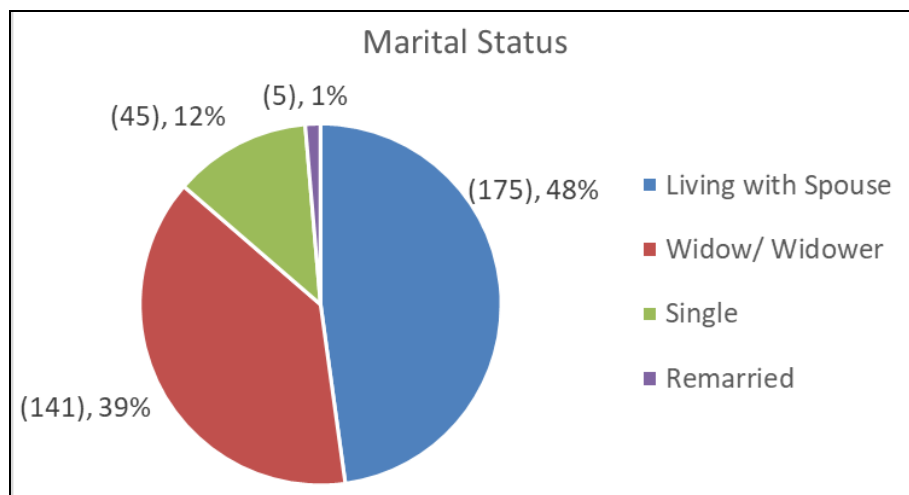


**Figure: 9.2**

<sup>1</sup> CENSUS 2011, <https://www.census2011.co.in/census/state/kerala>. (last visited May 21, 2021).

The maximum number of respondents belonged to the “youngest old” category of 60-70 years (51%) followed by the next segment of 70-80 years (41%). This reflects the age pyramid statistics of population and the fact that legal framework requirements are more for these segments. The fact that the “oldest old” are mostly immobile and confined to their houses is also pertinent. The survey was conducted mostly around Courts and Maintenance Tribunals frequented by Senior Citizens.

### iii. Marital Status Profile

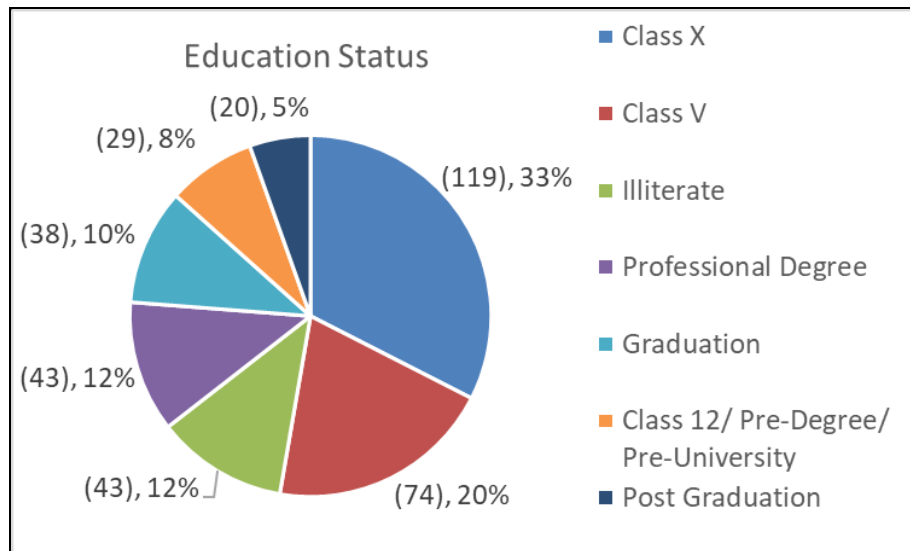


**Figure: 9.3**

The study shows that the maximum number of respondents interviewed were living with their spouses (48%) followed by widows/widowers (39%). This reveals the fact that the majority still have the company and support of their spouses pointing to the importance of “aging in place” which is the motto of our policies. It also highlights the need to strengthen legal awareness on the importance of “ageing in place.” It also highlights the importance of improving informal home-based care. Since a large fraction of the senior citizens are

widows/widowers, the legal framework should focus more on this segment especially widows who face multiple disabilities due to gender and age. There is a need to focus on single Senior Citizens also.

#### iv. Education Status Profile

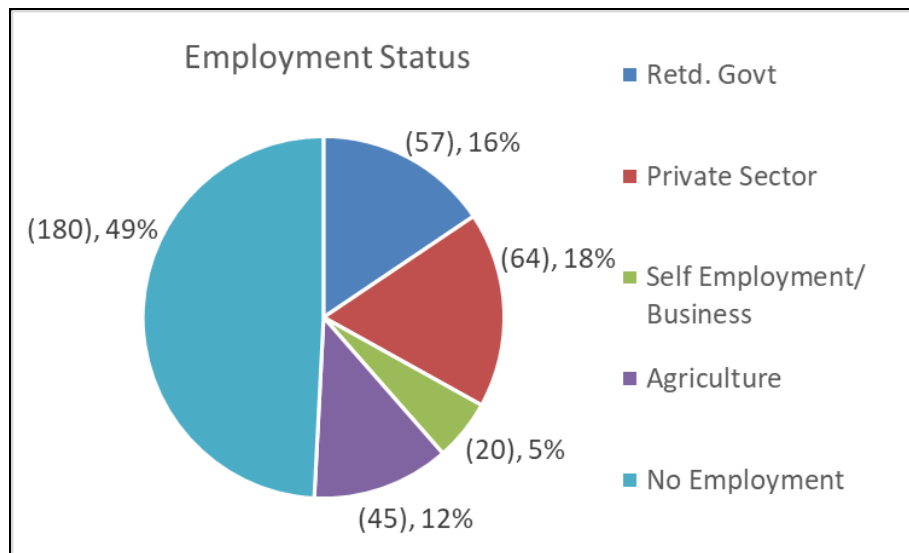


**Figure: 9.4**

The maximum number of respondents interviewed had education up to class X (33%) followed by respondents with education up to class V (20%). Professional degree holders and postgraduates represented 12% and 5% respectively, of the population in this study. This highlights the need for spreading legal awareness of laws and legal remedies. The proportion of illiterate respondents was 12%. The total percentage of respondents who are not highly educated or aware was 65% (Illiterate, Class 5 and Class X) which can explain the total lack of response to a majority of questions. The proportion of professionals in the survey was 12% and this covered several lawyers and doctors. It is important to spread legal literacy at the school level for maximum

efficacy. It is pertinent that the total literacy rate in Kerala as per the 2011 census is 93.91%.<sup>2</sup>

#### v. Employment Profile

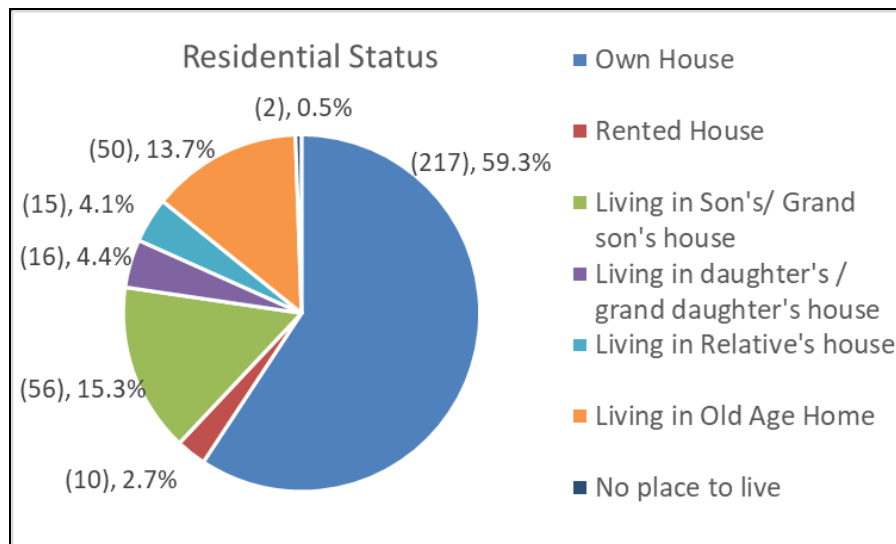


**Figure: 9.5**

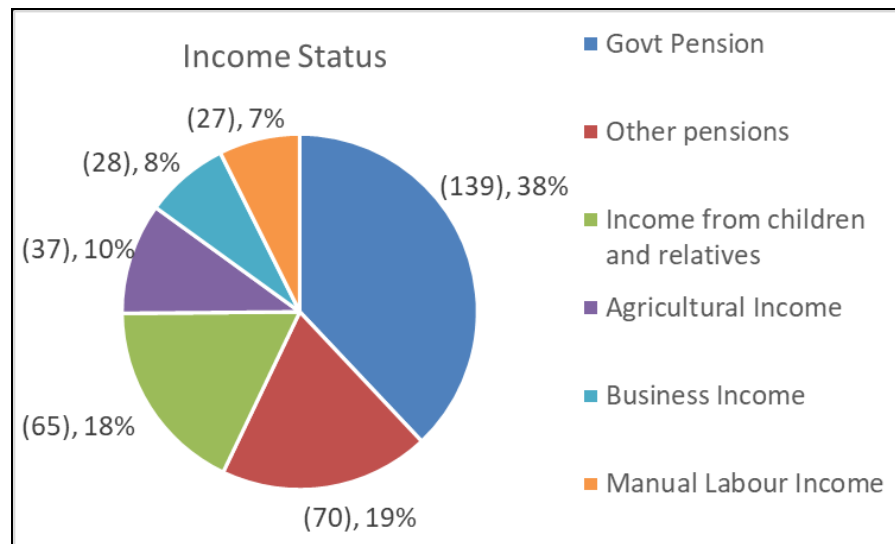
The maximum number of respondents (49%) had no employment and only a minority (16%) were retired Government servants with pension. The private employees constituted 18% and that is the second highest number of respondents. This highlights the need for generating employment opportunities for various age segments of Senior Citizens and the need for higher welfare pensions and other retirement benefits. The State should create more avenues for skill development and for utilizing the knowledge and experience of the Senior Citizens. A good number of Senior Citizens depend on agriculture and there should be adequate focus on the welfare of this sector.

<sup>2</sup> *Id.*

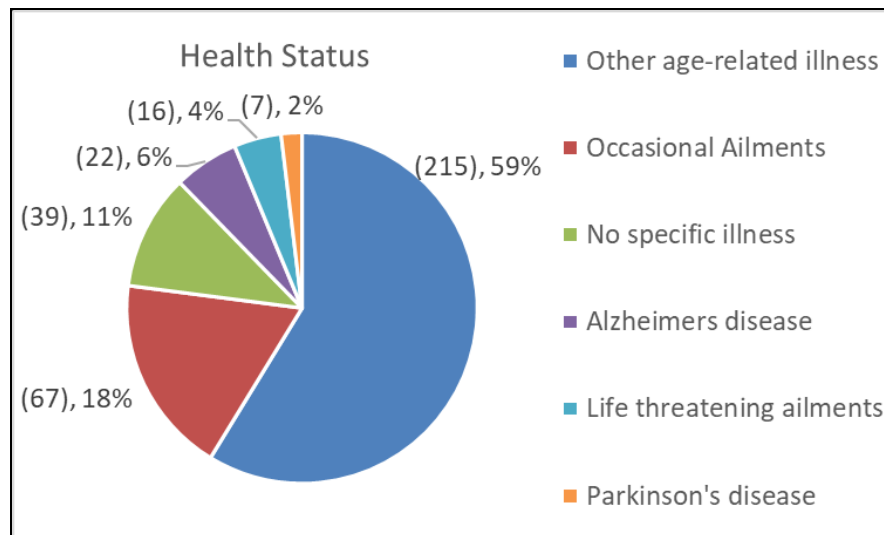


**vi. Residence Profile****Figure: 9.6**

Majority of the respondents (59.3%) were living in their own homes. A small minority (13.7%) were living in old age homes and 0.5% had no place to live. Significantly while a majority of 15.3% were living with sons only 4.4% were living with daughters. This reflects the socio-economic and cultural scenario of Kerala and the traditional cultural preference for the aged to live with sons. It highlights the importance of ageing in place, the need for home-based care and protection and also the need to spread legal awareness among children and the youth. There is a compelling need to focus on caregivers and their welfare. Schemes like Ashwasakiranam have to be promoted to encourage caregivers at home who bear the brunt of informal care in home settings. Focus on old age homes is also needed since a good number of Senior Citizens live in such homes.

**vii. Income Profile****Figure: 9.7**

Coming to income, a major share of the Respondents (38%) were persons with Government Pension Income in the category of service pensioners followed by 19% with other pensions comprising of welfare pensions. Almost a fifth of the respondents were dependent on their children and relatives (18%). This highlights the need to increase welfare pensions and also the need to evolve income generating schemes and saving schemes for Senior Citizens. It also highlights the need to give financial assistance to caregivers and benefits like leave and tax benefits for children and relatives who are supporting the aged in their families. The relatively high proportion of the respondents with Government service pension is probably because of the places where the survey was conducted. The field survey was conducted mainly centered around courts and tribunals near Government treasuries which are frequented by elders with pension income.

**viii. Health Profile****Figure: 9.8**

A majority of the respondents, 59% had regular age-related ailments like arthritis, low vision, loss of hearing capacity etc. followed by 18% of the respondents having occasional ailments. Minority of 4% had life threatening ailments like Cancer and 6 % had Alzheimers disease. This is a pointer to the need for more efficient health care for Senior Citizens especially for age related ailments and the need for more Geriatricians and geriatric care especially in Government hospitals. A notable feature is 11% of respondents had no illness pointing to the health status of a major segment. The Government can focus on “active ageing” measures for this productive segment of Senior Citizens who can contribute immensely to social development.

**9.5. TOOLS OF STUDY**

The tool used for the empirical study is a semi-structured questionnaire. The general questionnaire for Senior Citizens is appended as Annexure 1. The questionnaire for Maintenance Tribunals is appended as Annexure 2.

### **9.5.1. Questionnaire for Senior Citizens**

The detailed semi structured questionnaire for Senior Citizens contained a total of 70 questions divided into IX sections. Section 1 pertains to personal data, Section II pertains to satisfaction of personal rights and its entitlements, Section III pertains to satisfaction of property rights and its entitlements, Section IV pertains to legal awareness, Section V pertains to litigations in general, Section VI pertains to property and maintenance litigation before family Court/JFCM, Section VII pertains to property and maintenance litigation before Maintenance Tribunal and Section VIII pertains to efficacy of legal remedies. The final Section IX was a general question calling upon the respondents to provide their valuable feedback and for suggestions for improving the legal framework for elder rights and dignity in India and in Kerala in particular.

The questionnaire was designed to elicit responses on the core areas of the study, which are as follows:

1. The level of satisfaction of the Personal Rights of Senior Citizens.
2. The level of satisfaction of Property Rights and in particular the settlement of property in favour of children on conditions and the extent of compliance of conditions.
3. The crucial factor of legal awareness of the general population of Senior Citizens on the existing legislations. In particular awareness on the Indian Constitution, Cr. P C of 1973, Hindu Adoption and Maintenance Act 1956, PWDV Act 2005, and the MWPSA Act of 2007 were dealt with.

4. The efficacy of existing legislations can be tested primarily through the study of litigations pertaining to Senior Citizens. Hence the extent of access, involvement and experience of the litigation landscape was explored. In particular the experience of the legal system through litigation for Senior Citizens and the efficacy of legal remedies was explored.
5. The efficacy of legal remedies under the legal system was probed into in the context of satisfaction with the legal system for protection of elders' rights, "access to justice" for elders, the extent to which the legal system protects the dignity of elders in Kerala vis-à-vis other states in India and as to whether the existing laws, the legal system and its remedies protects the rights and dignity of elders.
6. The relative contributions of the legislature, the executive and the judiciary, the role of legal services institutions, the role of NGOs and the efficacy of the conventional and old legislation for maintenance, i.e., Cr. P C of 1973.

A significant number of respondents especially from the rural areas of study had "no response" when answering a majority of questions probably due to lack of awareness or lack of conviction and hence a major portion of questions were unanswered by the respondents. The unanswered questions were separately accounted under the head of "No response" which speaks volumes about the total lack of awareness among the respondents about their legal rights and remedies.

### 9.5.2. Questionnaire for Maintenance Tribunals

A limited study of the working of three Maintenance Tribunals under the MWPSA Act 2007 was conducted to gauge the efficacy of the legal mechanisms under the Act. The relatively backward district of Alleppey and more developed district of Kollam were chosen for the study. Kollam district headquarters is a corporation area and the Alleppey district headquarters is a municipal area. Responses to the semi-structured questionnaires were collected from the Maintenance Tribunals at Kollam, Alleppey and Chegannur. The semi structured questionnaire included 41 questions including suggestions.<sup>3</sup> Questions focused mainly on the following key areas.

1. Past experience of the presiding officers in the field of adjudication.
2. Frequency of sittings of the Maintenance Tribunal.
3. Role of conciliation officers.
4. Adherence to time frame for disposal of applications.
5. Range of maintenance awarded in Indian Rupee.
6. Number of appeals preferred from the orders of Maintenance Tribunals.
7. Appearance of lawyers before the Maintenance Tribunals.
8. Number of orders passed under section 23 of the Act for cancellation of deeds.

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<sup>3</sup> See Appendix 2.

9. Applications filed for protection of life and property under Section 22 and 23.
10. Effectiveness of remedies under the MWPSA Act, 2007.
11. Suitability of the office of sub divisional officer for adjudication under the MWPSA Act

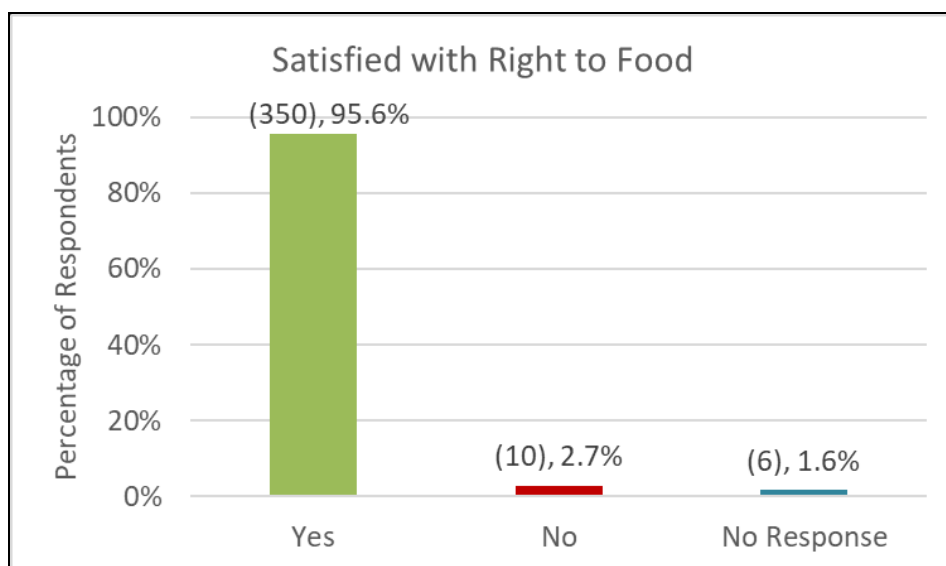
## 9.6. ANALYSIS OF DATA (GENERAL QUESTIONNAIRE)

The feedback data for each of the questions in the Survey is presented in the following sections. The actual number of respondents and the corresponding percentage value for the options is mentioned above each of the bars in the bar charts.

### 9.6.1. Rights Entitlement (Personal Rights)

This segment of study dealt with the extent of satisfaction of major Personal Rights both positive and negative of Senior Citizens.

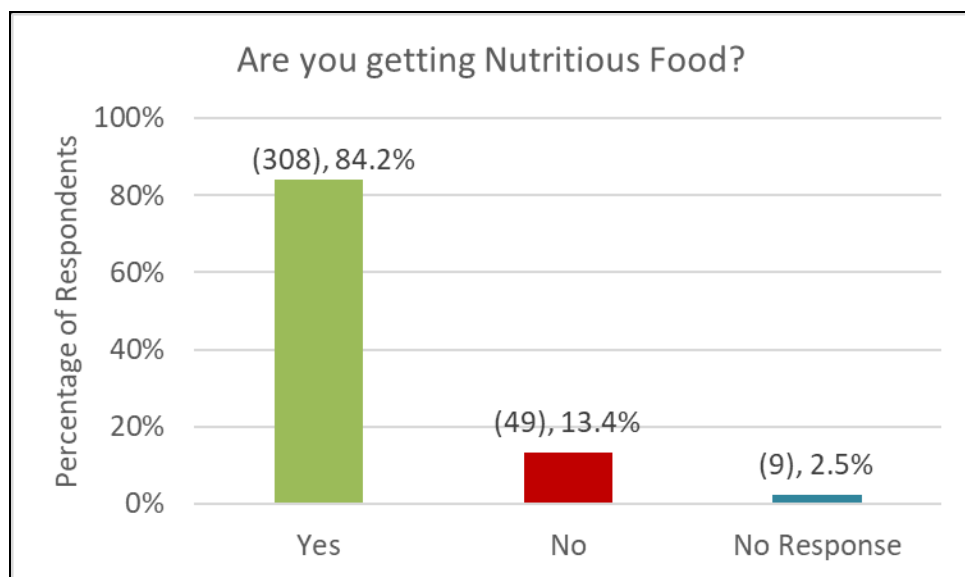
#### 1. Right to Food



**Graph: 9.1**

As shown in Graph 9.1, the study reveals that the majority of the respondents (95.6%) were satisfied with their most basic right to food, and it speaks volumes about the satisfactory socio-economic conditions, the high standard of living in Kerala and the high per capita income. The small segment who was dissatisfied points to the need to ensure that this basic need is met for all Senior Citizens. The new mid-day meal scheme is remarkable in this regard.

## 2. Right to Nutritious Food

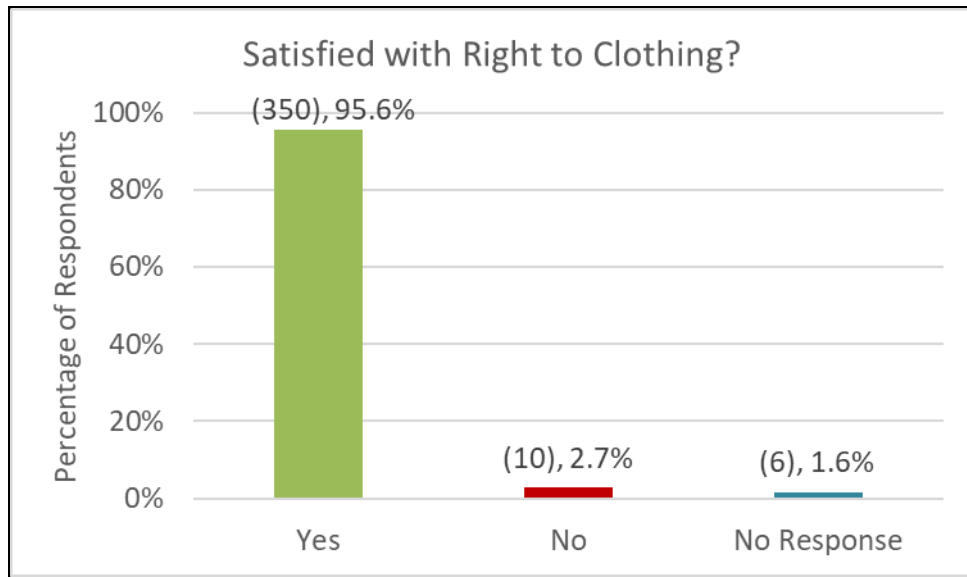


**Graph: 9.2**

Majority of the respondents (84.2%) were satisfied with their right to obtain nutritious food as seen from Graph 9.2. The efficient public distribution system in Kerala is a major positive factor. The fact that 13.4% were dissatisfied highlights the need to take action in this regard. The **Vioposhanam** Scheme will benefit the needy if properly implemented. There is also the need to generate awareness on the need for nutritious food for elders among care givers.



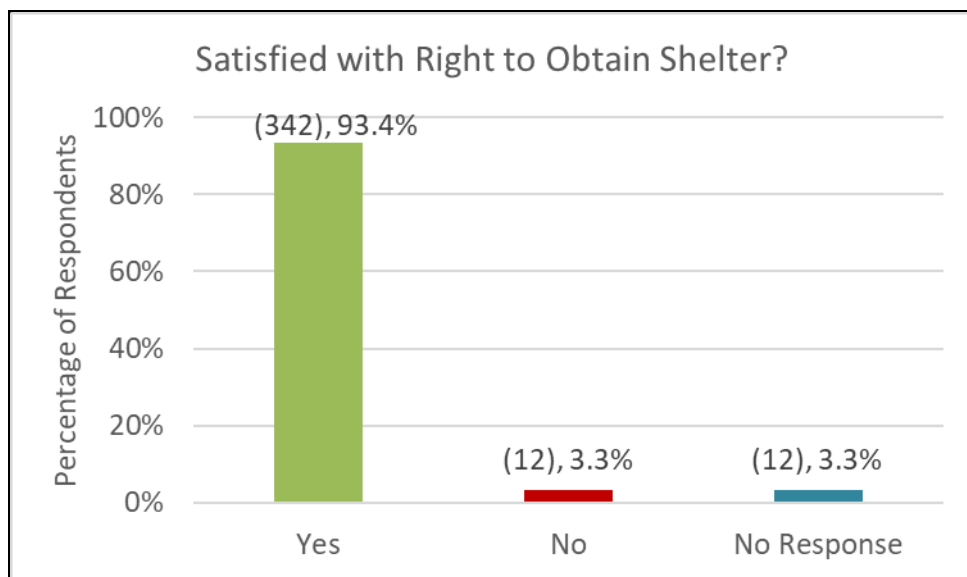
**3. Right to Clothing**



**Graph: 9.3**

The majority of the respondents were satisfied with this basic human right (95.6%) again pointing towards the relatively high per capita income and living standards in Kerala. It is also noteworthy that considering the overall climate in Kerala the need for warm clothing for the aged is minimal.

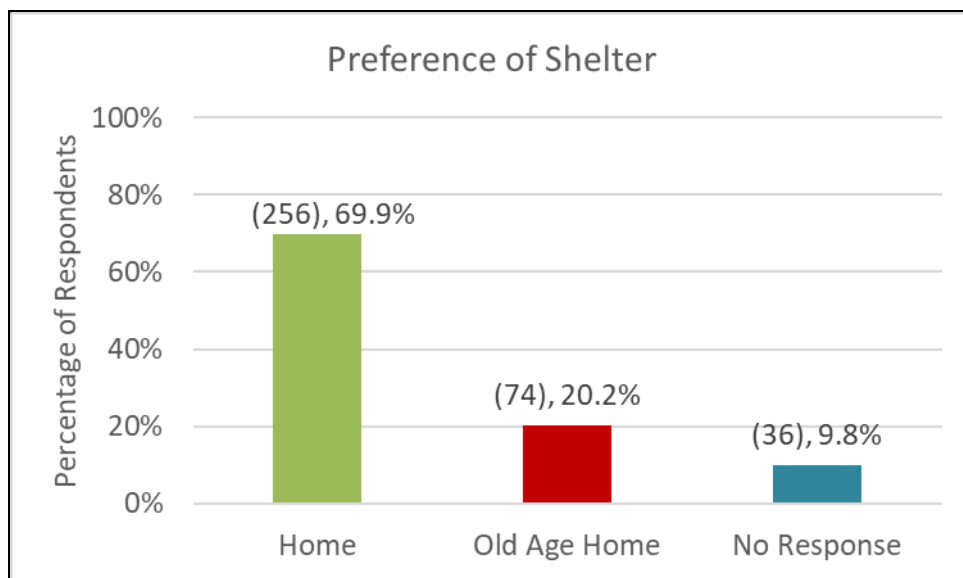
**4. Right to Shelter**



**Graph: 9.4**

Majority of the respondents (93.4%) were satisfied with their basic right to shelter again pointing to the high socio-economic indices in Kerala. The fact that the majority are residing in their own houses is an added advantage.

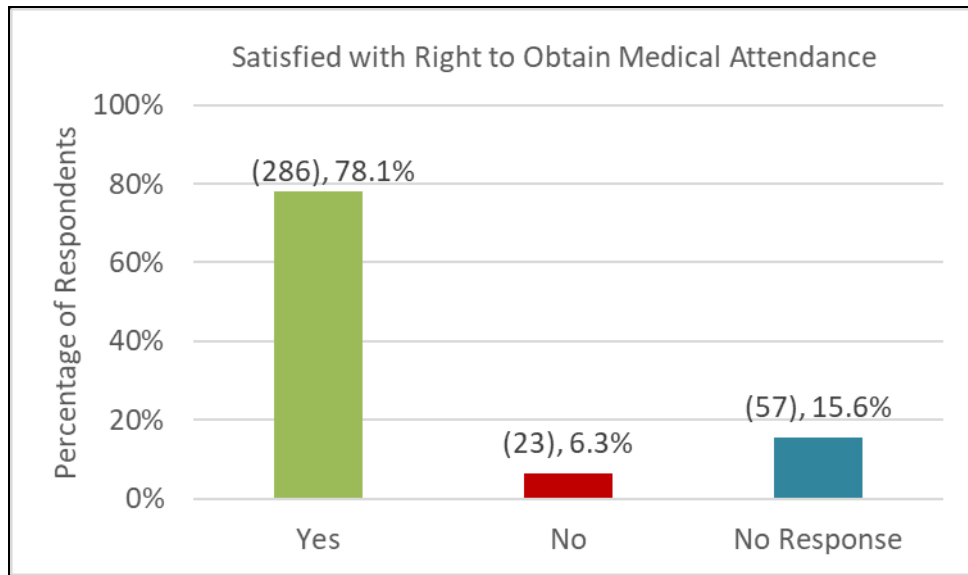
## 5. Choice of Residence



**Graph: 9.5**

Only a minority (20.2%) preferred to stay in old age homes and majority (69.9%) preferred to stay in their own homes. This reflects the general social preference of the aged to live in their own houses and the general dislike and social stigma against living in old age homes which is resorted to only in extreme situations as the last resort. The importance of promoting informal care and “ageing in place” is evident in this feedback. However, there is the need to improve infrastructure in old age homes and there is also the need to commence paid old age homes.

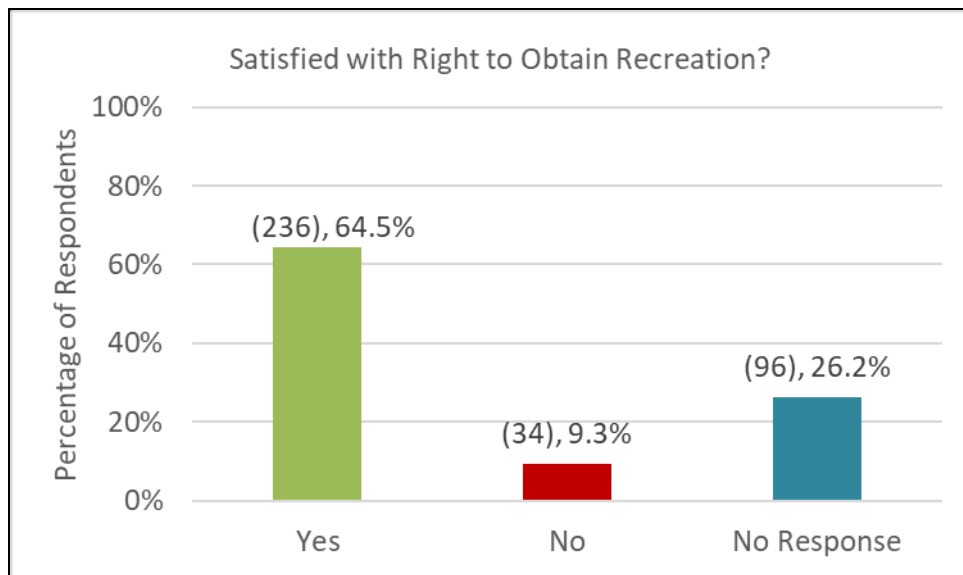
## 6. Right to Medical Attendance and Treatment



**Graph: 9.6**

Majority of the respondents (78.1%) were satisfied of this valuable right. 6.3% were dissatisfied and together with the 15.6% who did not respond, points to the need to improve medical attendance and treatment for Senior Citizens especially in the Government sector. There is a dire need to improve treatment for the elderly in primary health centers and family health centers by appointing more geriatricians. The mandates of Section 20 of the MWPC Act 2007 with respect to medical care of Senior Citizens have to be strictly implemented.

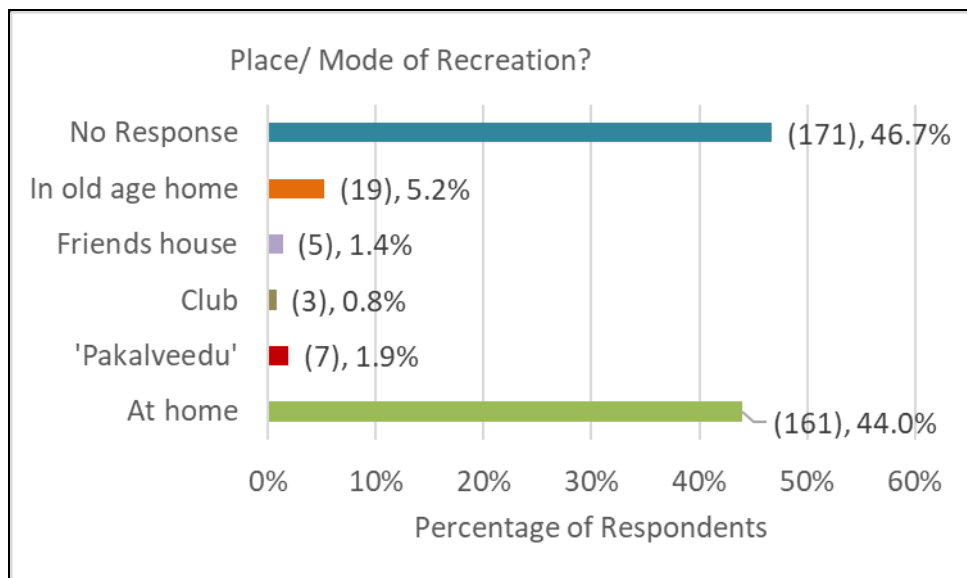
## 7. Right to Obtain Recreation



**Graph: 9.7**

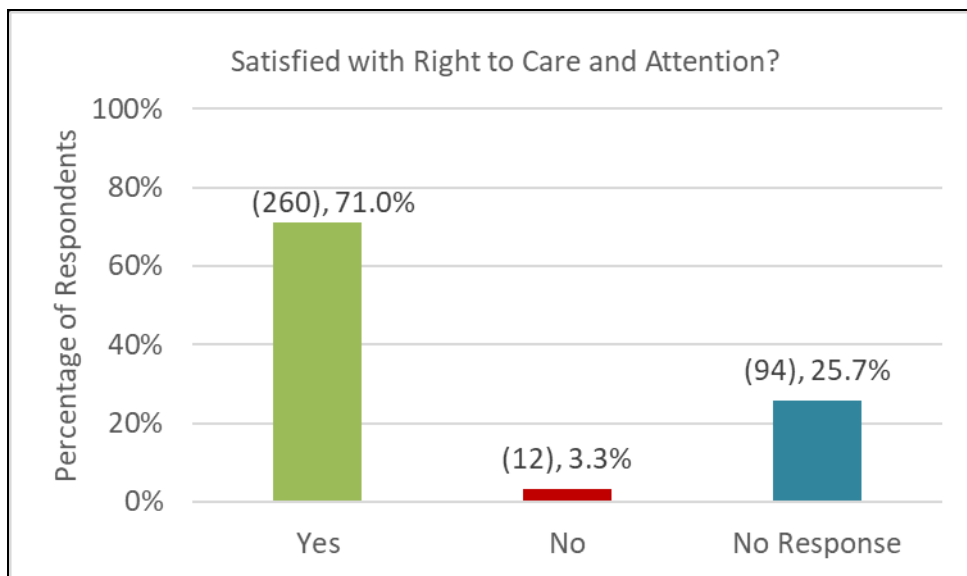
Majority (64.5%) of respondents were satisfied with regard to this valuable right. However, 9.3% were dissatisfied and 26.2% had no response which indicates the lack of awareness on the need for recreation for the aged. The Government notably is taking steps through “**Sayam Prabha home project**” and “**Pakalveedu**” to promote recreation which has also to be promoted in homes and in institutions alike. Awareness on the importance of recreation has to be generated among the caregivers and family members since the majority live in their own houses.

With regard to place of recreation majority of the respondents (44%) had recreation at home followed by 5.2% in old age homes. Here again 46.7% had no response indicating total lack of awareness about recreation, its need and its avenues. The feedback highlights the need to generate awareness on the importance of recreation.



**Graph: 9.8**

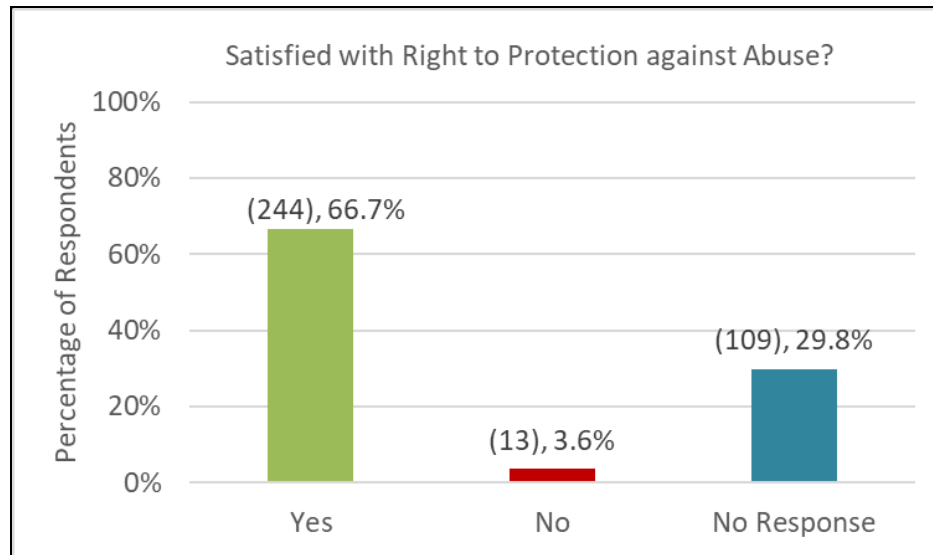
**8. Right to Care and Attention**



**Graph: 9.9**

Majority of the respondents (71%) were satisfied with respect to this very valuable right of the elderly indicative of the social scenario in Kerala and the attitude of the youth and relatives. It is noteworthy that majority of the respondents were living with their spouses.

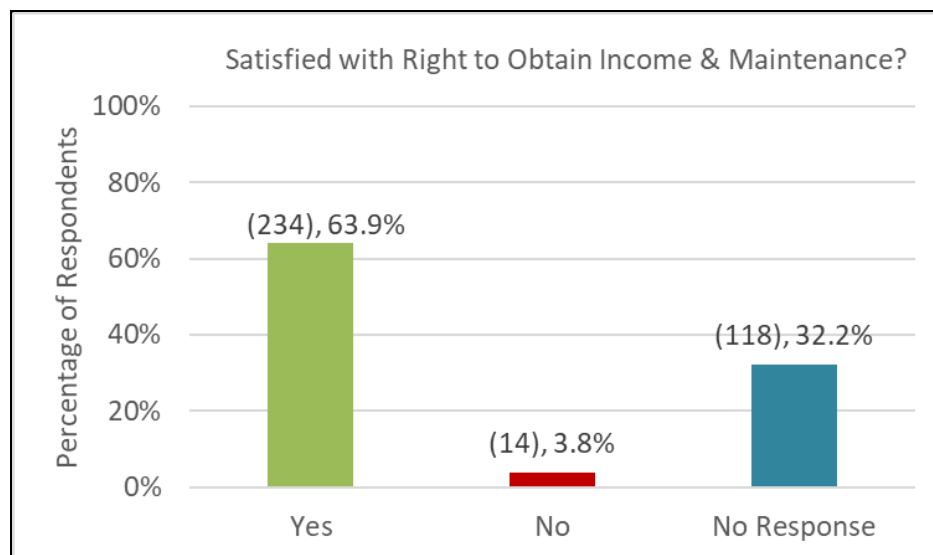
**9. Right to Protection Against Physical and Mental Abuse**



**Graph: 9.10**

Majority if the respondents (66.7%) were satisfied of this valuable right indicative of the low incidence of elder abuse in Kerala. Here again, 29.8% had no response which can be interpreted as lack of awareness or conviction to admit about abuse. There is a need to generate awareness on the PWDV Act 2005 to curb the menace.

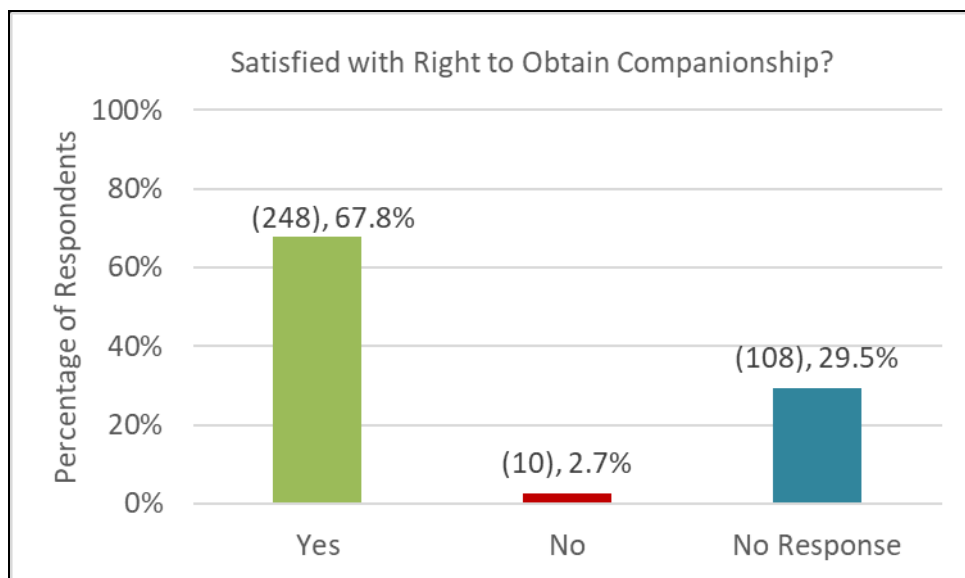
**10. Right to Obtain Adequate Income and Maintenance**



**Graph: 9.11**

Majority of the respondents (63.9%) were satisfied with this right. The feedback speaks about the high socio-economic development indices in Kerala. Here again 32.2% had no response indicating lack of awareness or conviction. There is scope for generating more avenues for income for the aged.

### 11. Right to Obtain Companionship



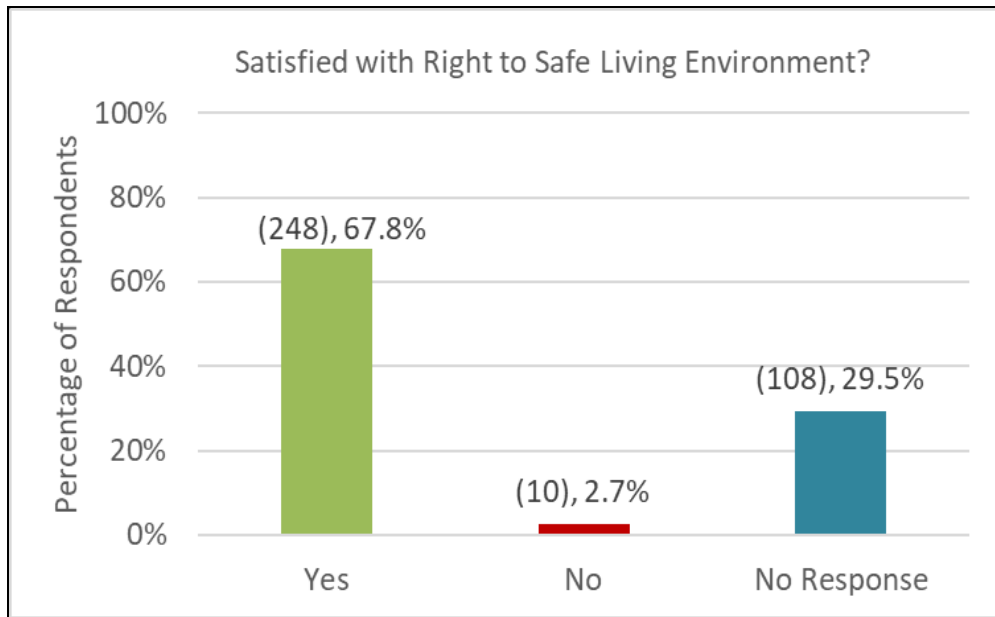
**Graph: 9.12**

Majority of the respondents (67.8%) were satisfied with respect to this right. Here again 29.5% had no response indicating lack of awareness or conviction. Notably majority of the respondents were living with their spouses.

### 12. Right to Safe Living Environment

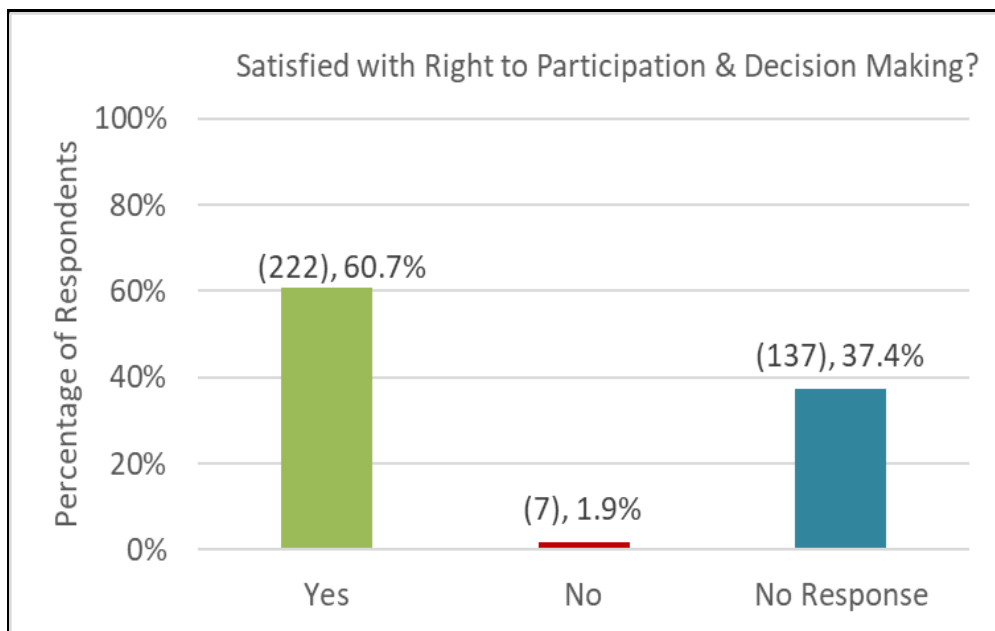
Majority of the respondents (67.8%) were satisfied of the right to safe living environment. Here again 29.5% had no response indicating lack of awareness or conviction. There is the need to generate awareness on the rights of the aged vis-à-vis safe living environment. The response of the majority is based on a

limited understanding of the Right to safe living environment and without being aware about the scope and ambit of such an environment



**Graph: 9.13**

**13. Right to Participation and Decision Making**

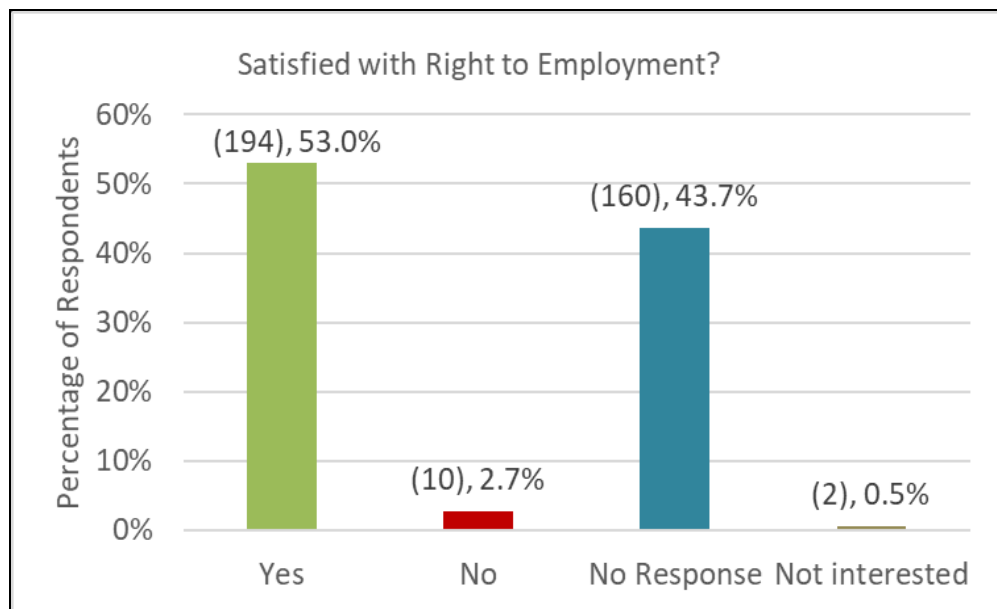


**Graph: 9.14**



Majority of the respondents (60.7%) were satisfied of this right. Here again 37.4% had no response indicating lack of awareness or conviction. The general societal norm of respecting the views of elders in the family has possibly contributed to this feedback.

**14. Right to Obtain Employment**



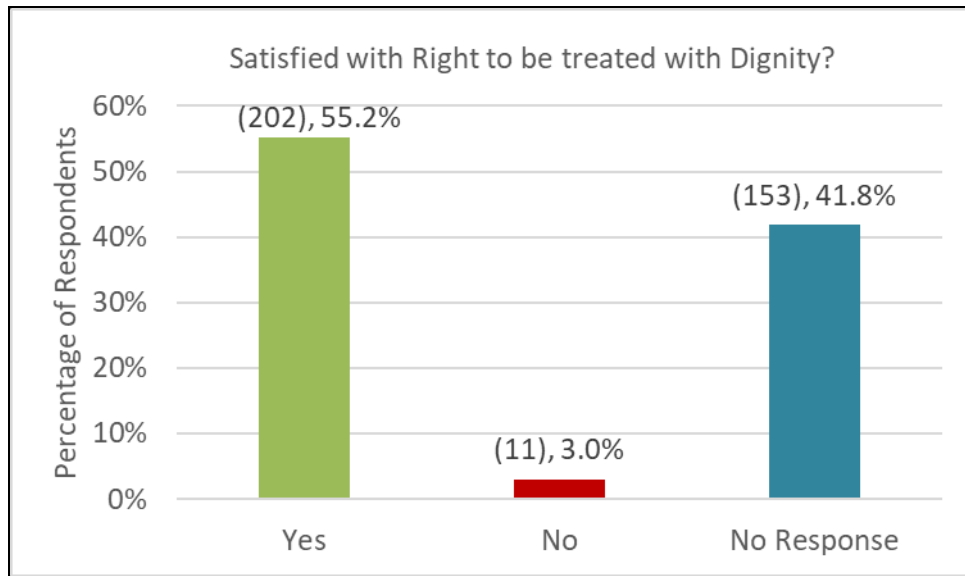
**Graph: 9.15**

Majority of the respondents (53%) were satisfied of this right. Here again 43.7% had no response indicating lack of awareness or conviction. There is the need to generate awareness on the need for post-retirement employment for the aged for promoting healthy and active ageing. The general tendency not to work post retirement especially among pensioners is a factor that led to this result.

**15. Right to be Treated with Dignity**

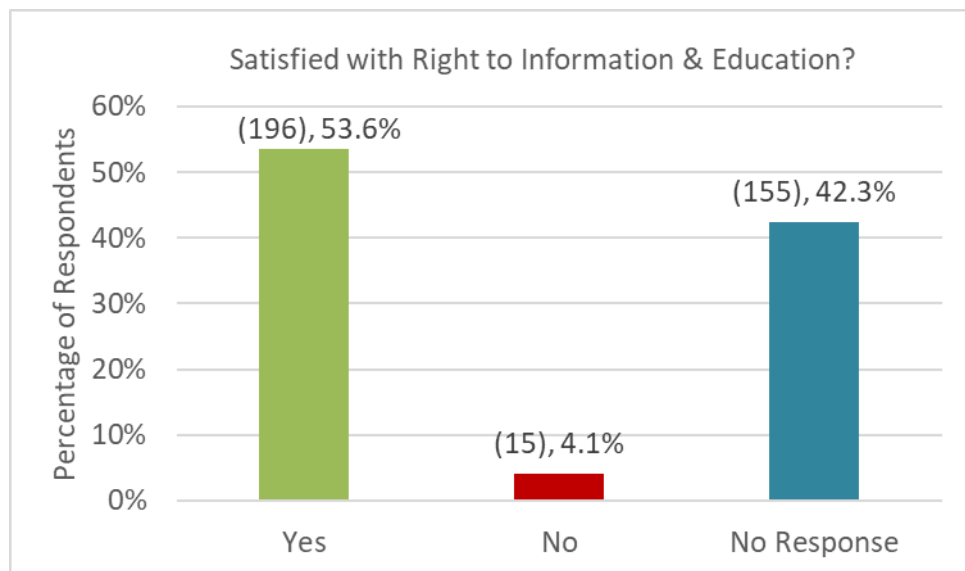
Majority of the respondents (55.2%) were satisfied of this right. Here again 41.8% had no response indicating lack of awareness or conviction. This very

important question significantly met with 41.8% of no response indicating the poor awareness of the meaning and need for a dignified life for the aged. It is however heartening that 55.2% were satisfied of their right which is a positive indication. It is possible that the majority were unaware of the multi-dimensional concept of dignity.



**Graph: 9.16**

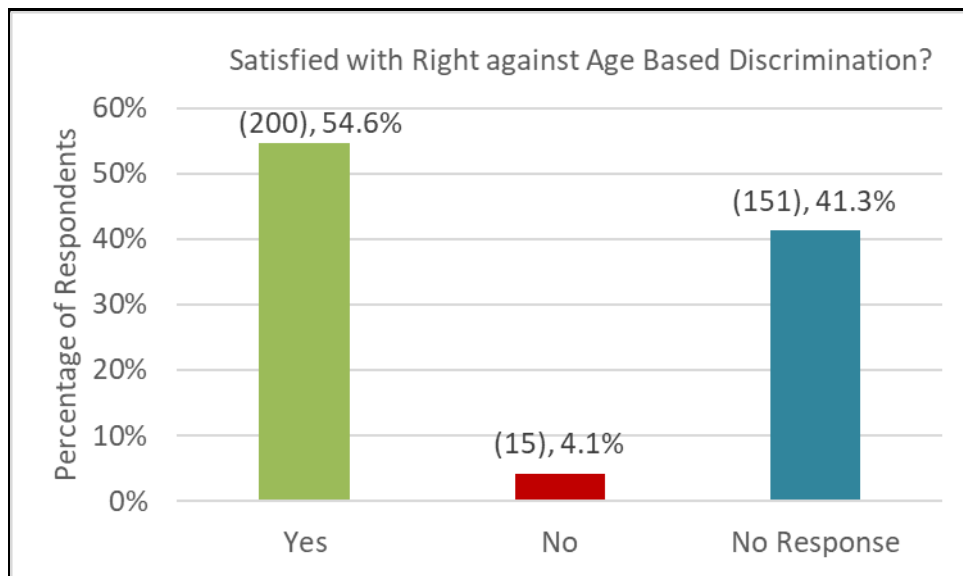
**16. Right to Information and Education**



**Graph: 9.17**

Majority of the respondents (53.6%) were satisfied of this right. Here again 42.3% had no response indicating lack of awareness or conviction. Information is mostly from newspapers and from audio-visual media. There is a need to generate computer literacy among the aged for internet access and E-governance.

### 17. Right Against Age Based Discrimination (Ageism)



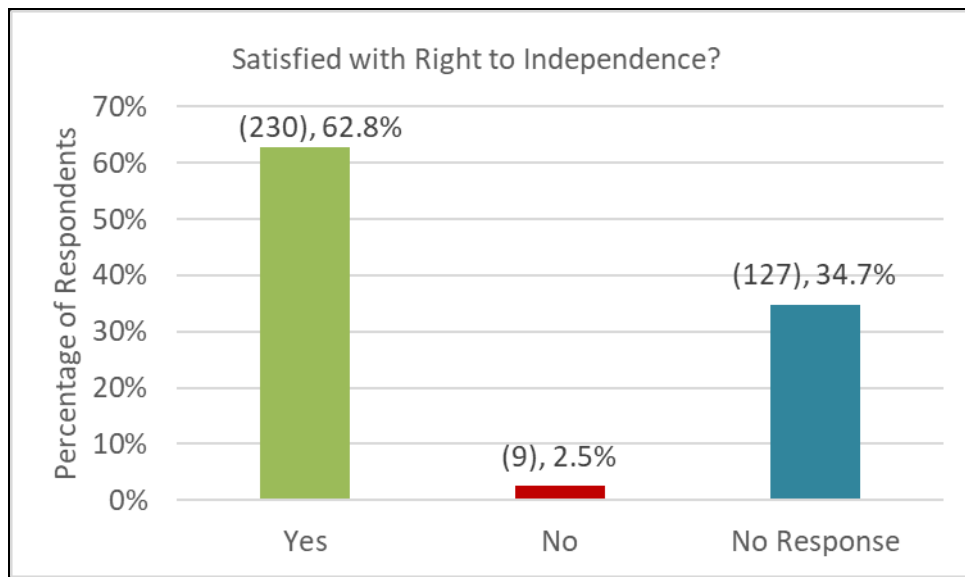
**Graph: 9.18**

Majority of the respondents (54.6%) were satisfied of this right. Here again 41.3% had no response indicating lack of awareness or conviction. There is the need to generate awareness on the concept of “ageism or age-based discrimination” and its adverse consequences especially in the realm of employment opportunities.

### 18. Right to Independence

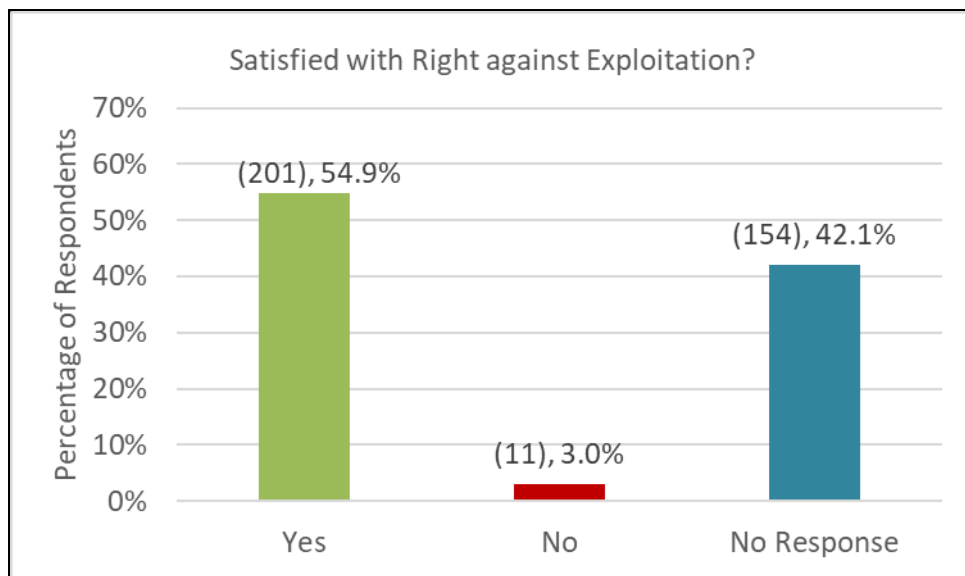
Majority of the respondents (62.8%) were satisfied of this right. Here again 34.7% had no response indicating lack of awareness or conviction. Independence

is a multi- dimensional concept and it is doubtful whether the feedback is based on a holistic idea of the term.



**Graph: 9.19**

**19. Right Against Exploitation Physical, Mental & Financial**

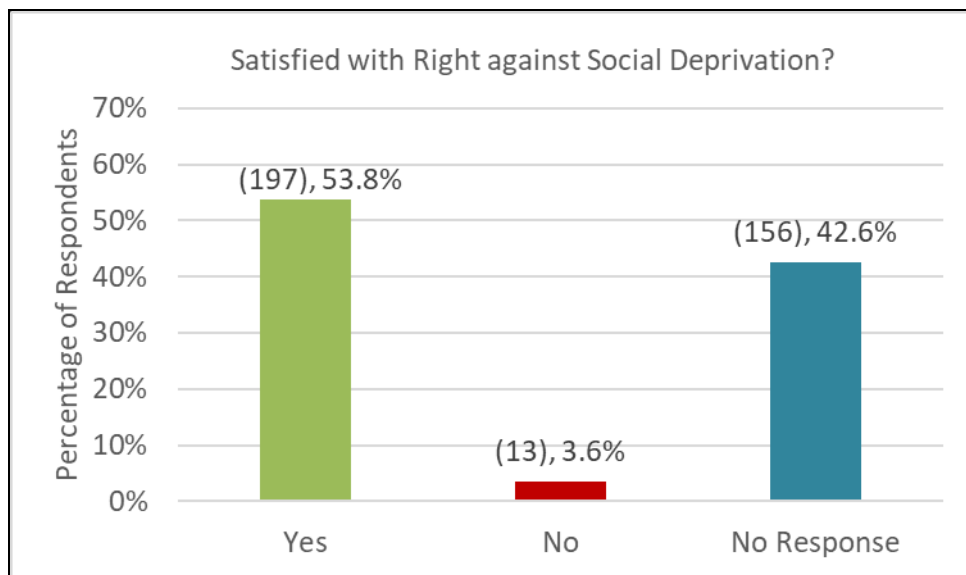


**Graph: 9.20**

Majority of the respondents (54.9%) were satisfied with respect to this right. Here again 42.1% had no response indicating lack of awareness or conviction. This again is a pointer to the general societal values and culture that respects

the aged. The feedback though a positive indication is doubtful considering the surveys conducted by NGOs like Help Age India as discussed in Chapter 1. The feedback also reveals the general cultural trend not to disclose abuse allegations against children or relatives.

## 20. Right Against Social Exclusion and Deprivation

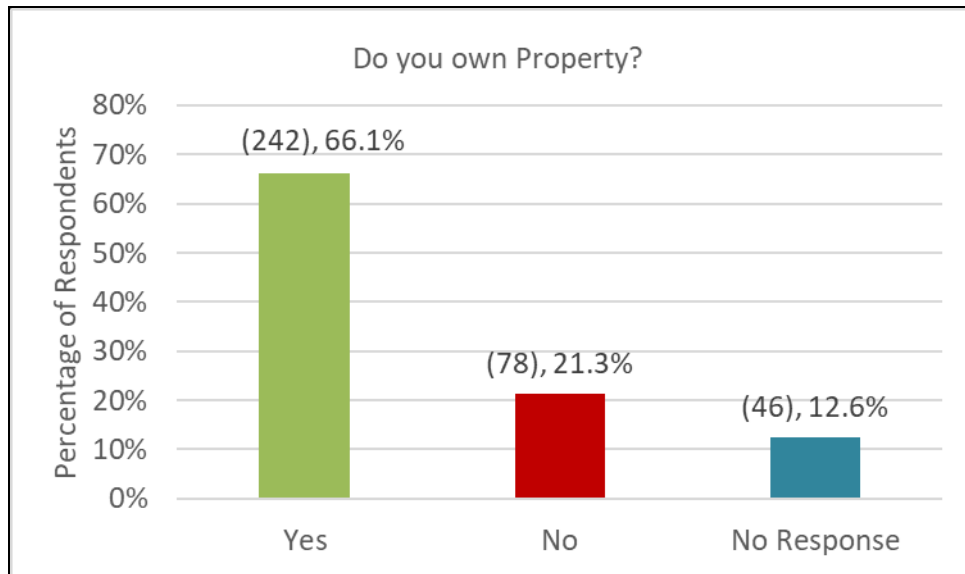


**Graph: 9.21**

Majority of the respondents (53.8%) were satisfied of this right. Here again 42.6% had no response indicating lack of awareness or conviction. There is the need to generate awareness on the need for main streaming elders and to promote intergenerational bonding. Social exclusion can in many cases be voluntary and self-imposed due to circumstances which is also not advisable. Care givers should be made aware of the need to have Senior Citizens included in family gatherings and functions. Care givers can also sensitize the Senior Citizens on the benefits of inclusiveness.

## 9.6.2. Rights Entitlement (Property Rights)

### 1. Ownership of Property

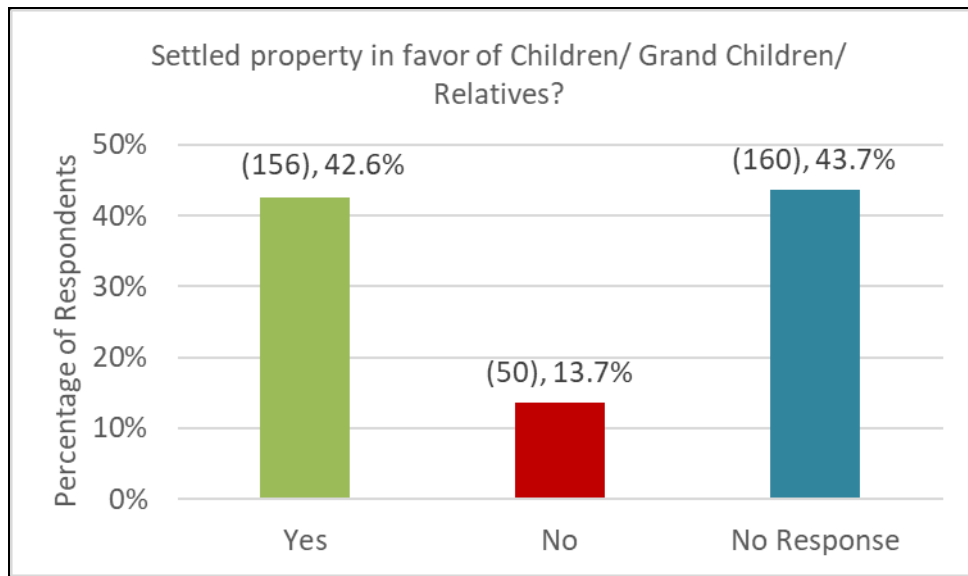


**Graph: 9.22**

Majority of the respondents (66.1%) owned property pointing to the high socio-economic indices and standard of living in Kerala. However (21.3%) did not own property pointing to the vulnerability and dependence of a major segment and the need for social security and institutional support. It is pertinent that elders who do not own property are not entitled to the protective legal mechanism under Section 23 of the MWPSA Act of 2007.

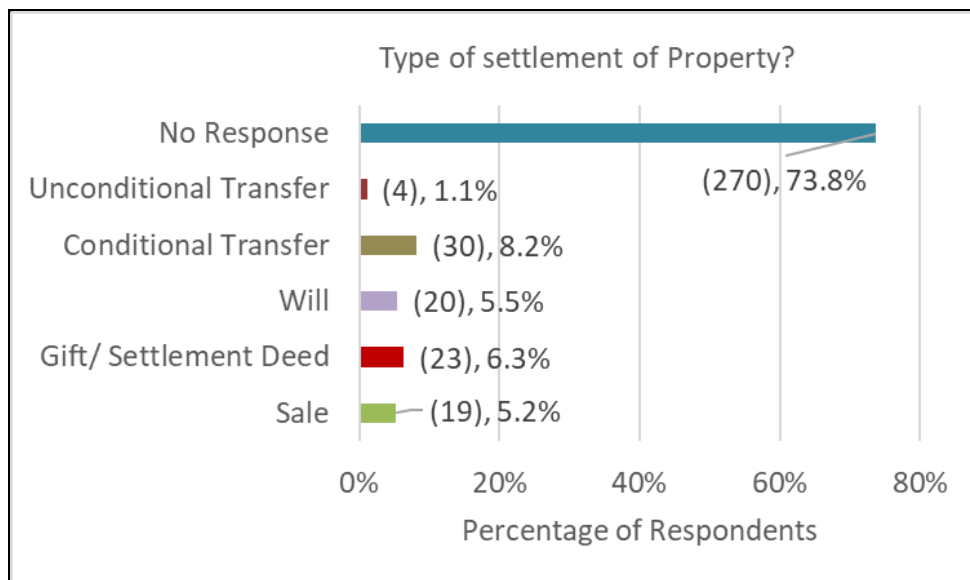
### 2. Settlement of Property Children/ Grandchildren

Majority of the respondents (42.6%) had settled properties and only 13.7% had not settled properties pointing to the general trend to settle properties. This also highlights the need for legal awareness of the MWPSA Act of 2007, its legal mechanisms and its vital importance in the legal framework.



**Graph: 9.23**

**3. Type of Settlement**

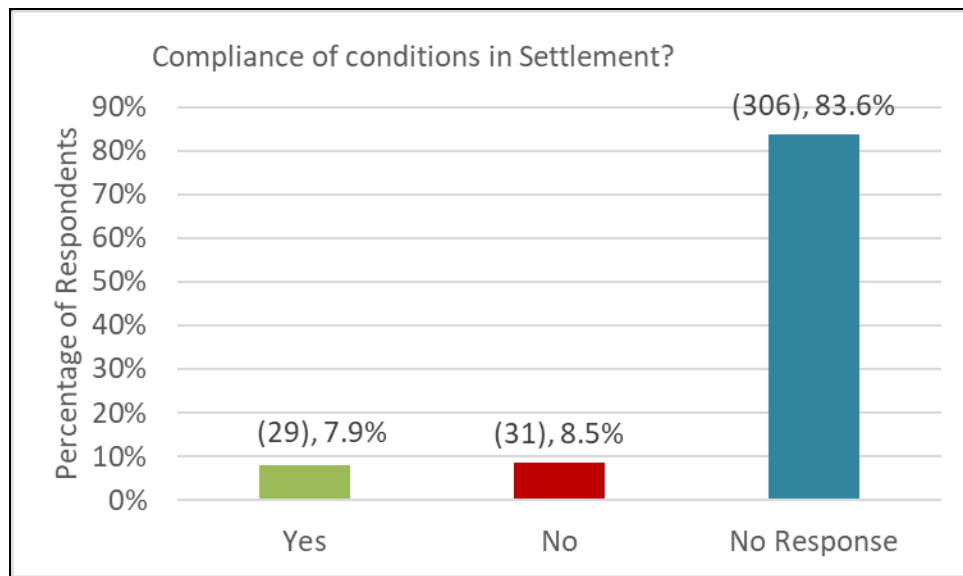


**Graph: 9.24**

Majority of the settlements (8.2%) among those who responded, were conditional transfers pointing to the importance of legal awareness of the MWPSA Act of 2007 and its remedies. 73.8% of respondents had no response pointing to the general lack of legal awareness on the types of settlement. The feedback does

not reflect the number of deeds that contained express recitals which is currently a legal requirement for relief.

#### 4. Compliance of Conditions in Property Settlements



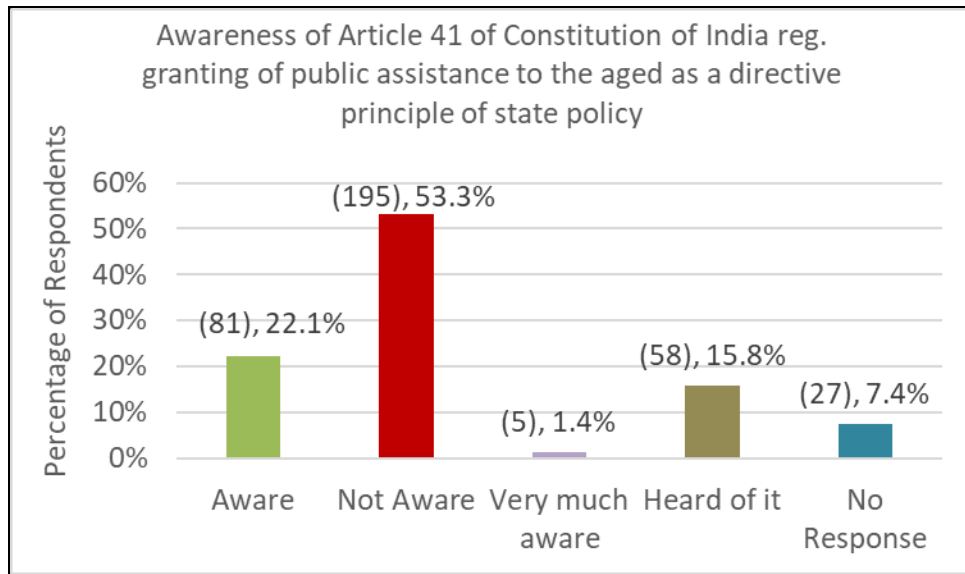
**Graph: 9.25**

Almost similar numbers were seen for respondents who felt conditions were complied as compared to those who felt conditions were not complied, with 7.9% and 8.5 % respectively for the two cases. This speaks about the need to generate awareness on the MWPSA Act of 2007 and its legal remedies especially Section 23. Since the Act has only prospective application and since express conditions are to be incorporated, there is a need for enhancing awareness on the Act. This is also a pointer to the general trend not to comply with conditions express or implied.



### 9.6.3. Legal Awareness

#### 1. Constitution of India – Article 41



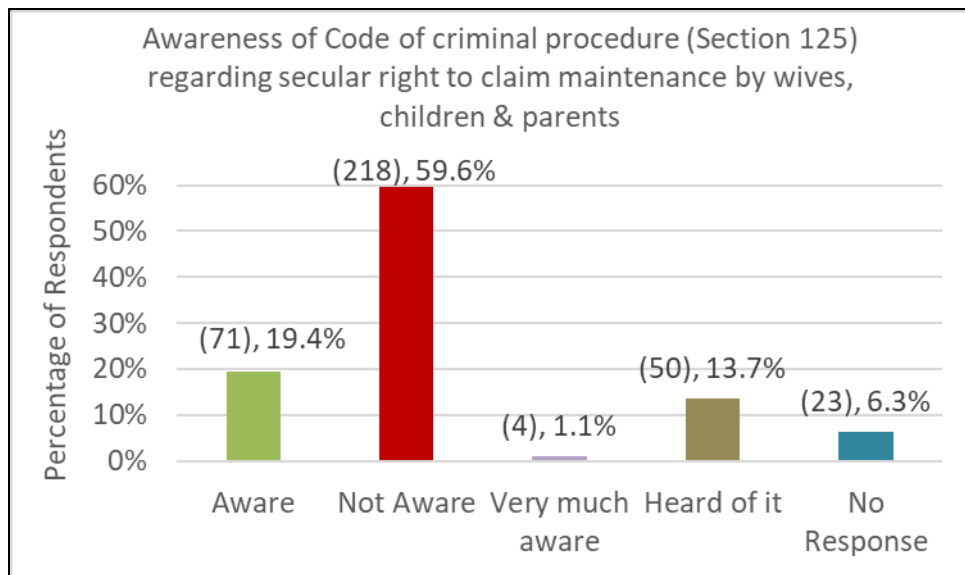
**Graph: 9.26**

Majority of the respondents (53.3%) were unaware even of our basic law the Constitution and Article 41 therein highlighting very low legal awareness of the representative general population of the aged. Legal literacy has to be imparted at the school level with refresher trainings at different levels to create general awareness on the Constitution. The potential of KeLSA is significant in this regard.

#### 2. Code of Criminal Procedure (Section 125)

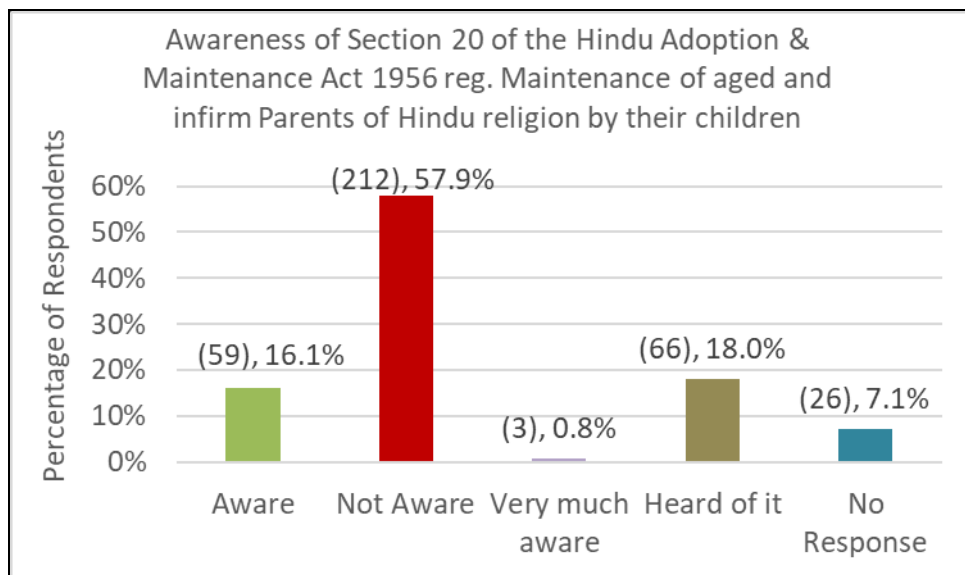
Majority of the respondents (59.6%) were unaware of the provision for maintenance of parents in the Cr. P C of 1973, the conventional law for maintenance of parents. This speaks volumes about the general awareness of the legal

framework for elders since the majority were unaware of the basic law for claiming maintenance from children.



**Graph: 9.27**

**3. Section 20 of the Hindu Adoption and Maintenance Act 1956**

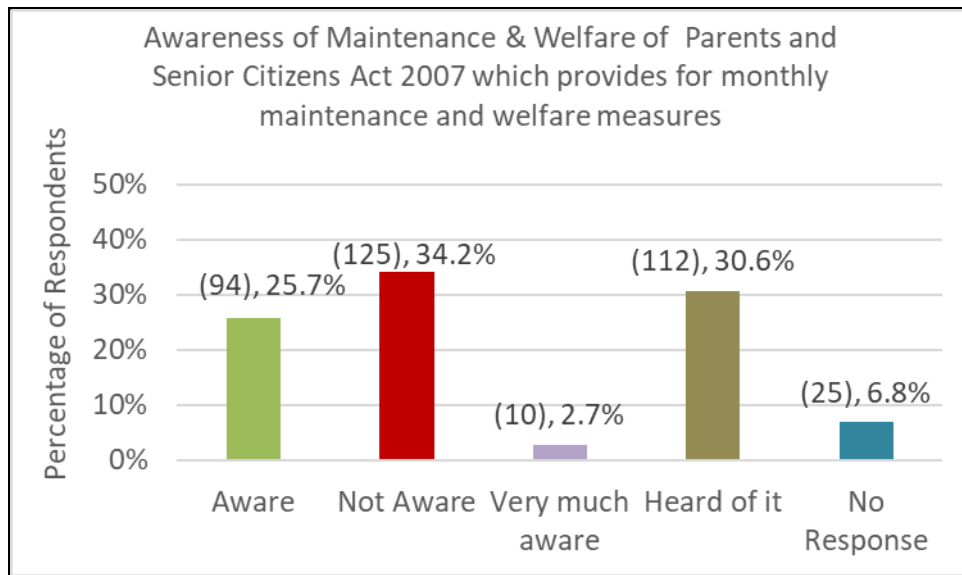


**Graph: 9.28**

Majority of the respondents (57.9%) were unaware of the provision for maintenance of Parents in the Hindu Adoption and Maintenance Act, 1956 meant

for persons belonging to Hindu religion. It is noteworthy that though the law was enacted 65 years ago, it has hardly had any impact as a legal remedy for aged parents.

#### 4. Maintenance and Welfare of Parents Senior Citizens Act, 2007



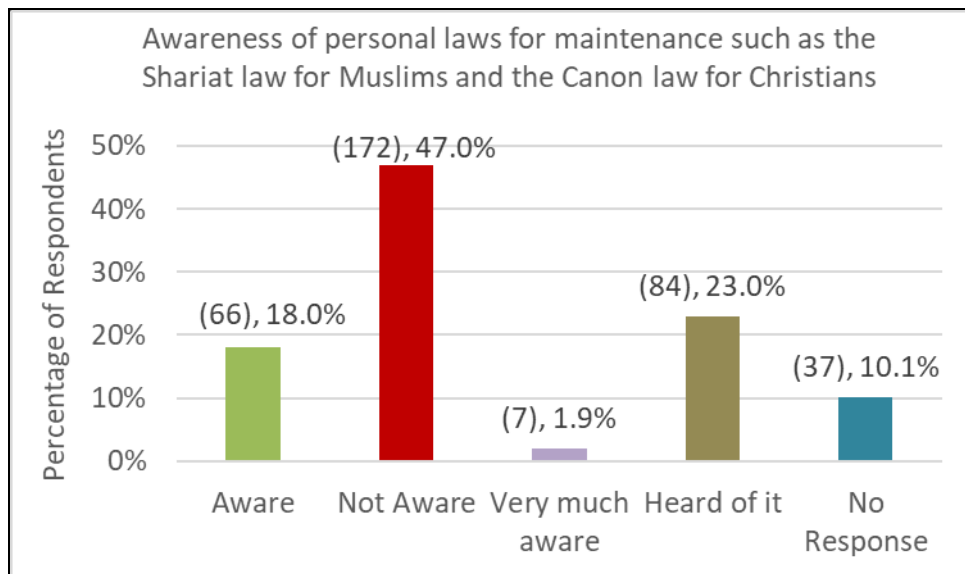
**Graph: 9.29**

Surprisingly though a majority (34.2%) of the respondents were unaware of this revolutionary law, the awareness on the MWPSA Act of 2007 was relatively high (25.7%) compared to other legislations. This points to the dire need to enhance legal awareness on the Act. It also reveals a newfound sensitivity and inquisitiveness on new age legislations compared to older legislations.

#### 5. Personal Laws for Maintenance : Shariat Law / Canon Law

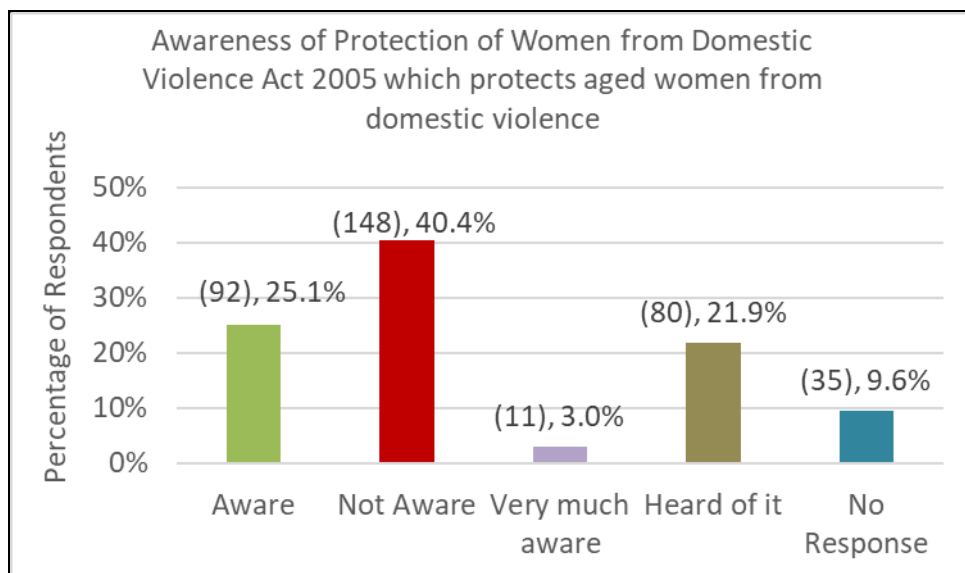
Majority of the respondents (47%) were unaware of the provision for maintenance of Parents in the personal laws. Interestingly 23% of respondents had heard of the personal laws and 18% were aware about it and a minority was

very much aware of these laws. It is pertinent that such laws linked to religion have a profound effect compared to positive legislation



**Graph: 9.30**

**6. Protection of Women from Domestic Violence Act, 2005**

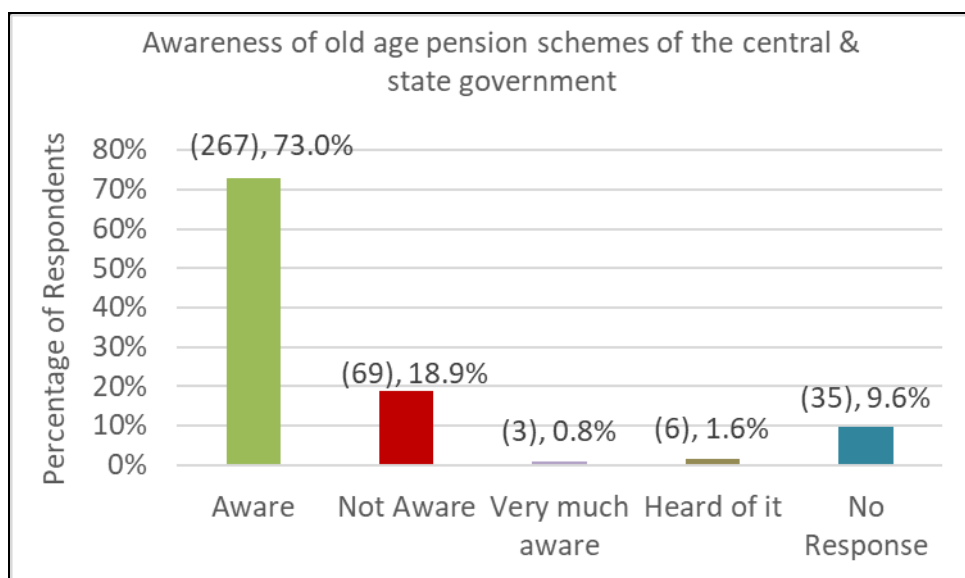


**Graph: 9.31**

Majority of the respondents (40.4%) were unaware of the provision for monetary reliefs for women in the PWDV Act of 2005. 21.9% of respondents

had heard of the law. This points to the need to enhance legal awareness of the law. The law has immense potential for preventing domestic violence. Unfortunately, the immense scope of the Act for the aged has not come to the limelight. However, access to the legal system for aged women will hugely depend on the efficacy of legal services institutions.

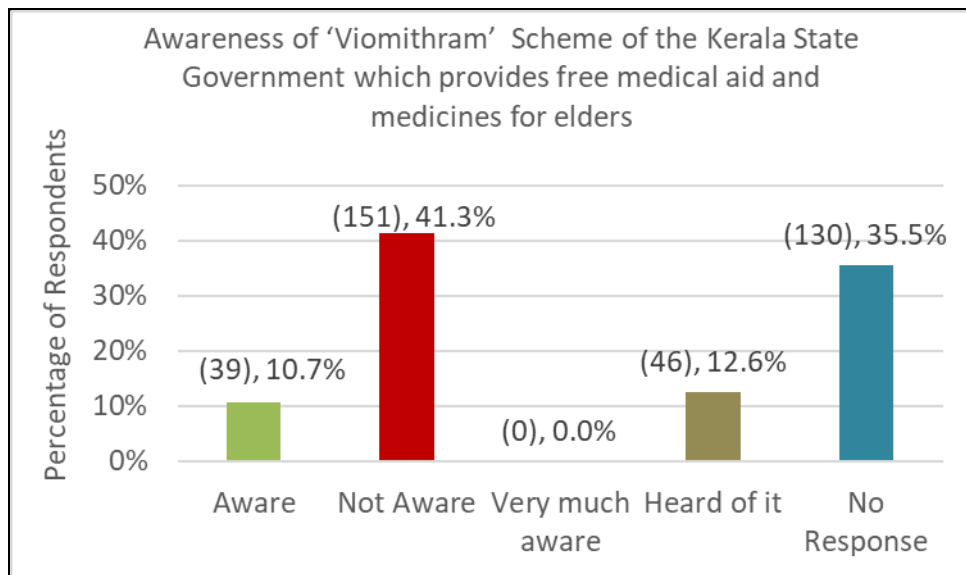
## 7. Old Age Pension Schemes (Central Government & State Government)



**Graph: 9.32**

Compared to the awareness on legislations, the awareness on old age pension schemes is significantly high at 73% indicating the high level of awareness of livelihood supporting schemes of the Government which directly affects income and livelihood compared to legal remedies which are expensive, time consuming and which are generally not preferred due to ignorance and technicalities.

## 8. Awareness of “Viomithram” Scheme



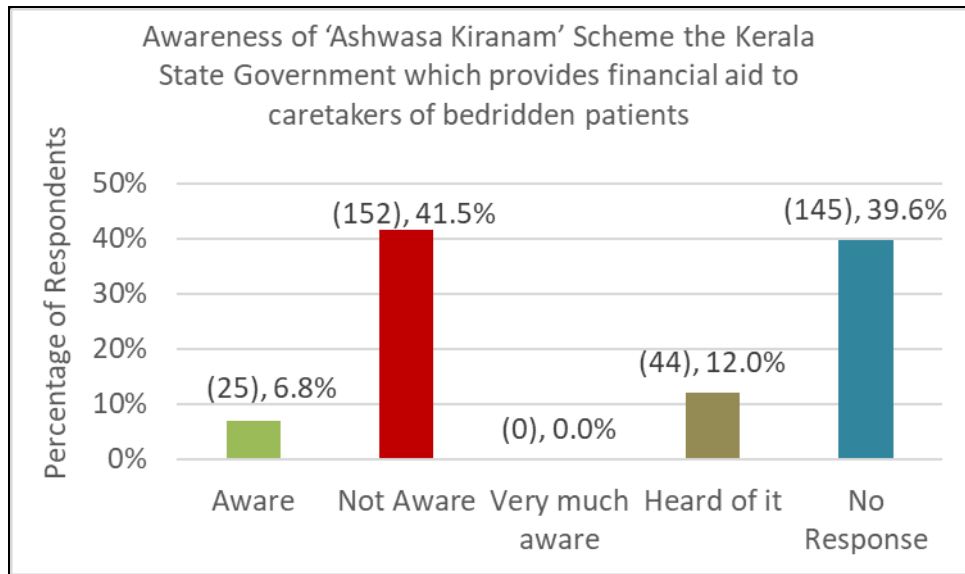
**Graph: 9.33**

Even though the general awareness on pension schemes was high the level of awareness on the ambitious scheme of the Kerala Social Security Mission was low as 41.3% of the respondents were not aware of the scheme. This highlights the need for increasing awareness. The Scheme has to be effectively implemented in all panchayats in the state and persons aged 60 years have to be included in the Scheme.

## 9. Awareness of “Aswasa Kiranam” Scheme

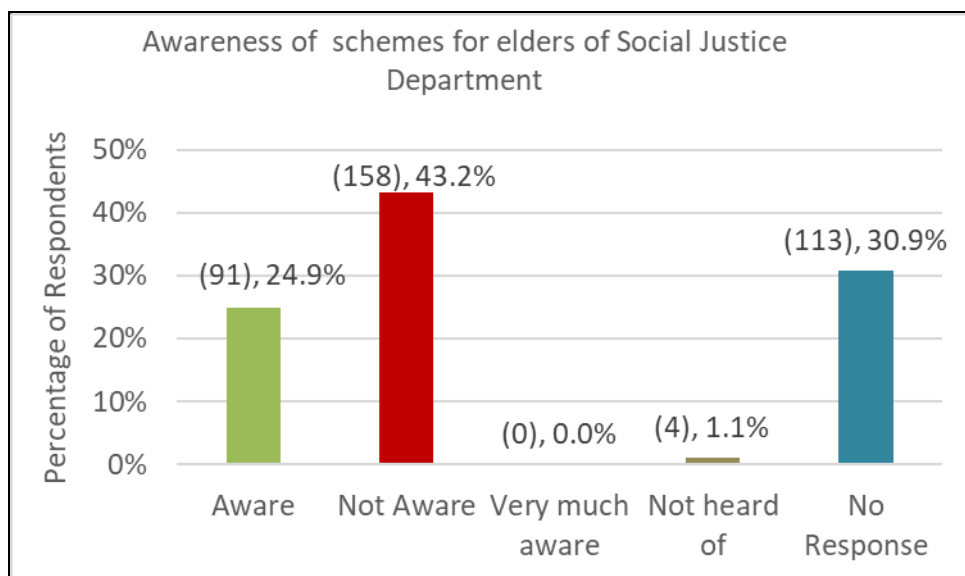
Even though the general awareness on pension schemes was high, the level of awareness on this social security scheme was also low, 41.5% of the respondents being not aware. This highlights the need for increasing awareness on the scheme for caregivers. There is a dire need to evolve such beneficial schemes for

caregivers as majority of the aged in Kerala are looked after by such informal caregivers



**Graph: 9.34**

**10. Awareness of Schemes for Elders of the Social Justice Department**

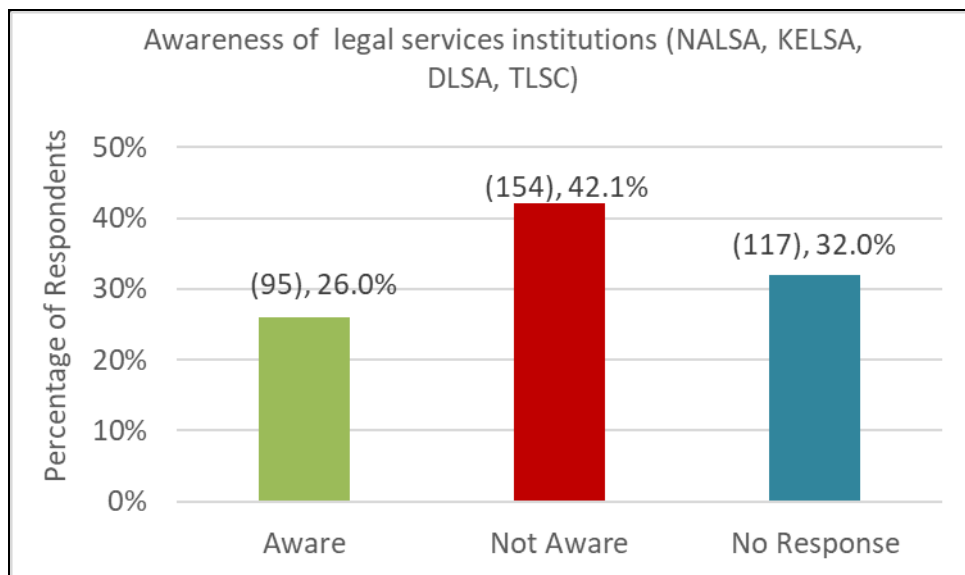


**Graph: 9.35**

Even though the general awareness on pension schemes was high, the level of awareness on the social security scheme by the social justice department was

also low, 43.2% of the respondents being not aware. This highlights the need for increasing awareness through the local self-government institutions, Kudumbashree and Asha workers. Legal services institutions can also contribute in a major way.

### 11. Awareness of Legal Services Institutions (NALSA, KeLSA, DLSA, TLSC)

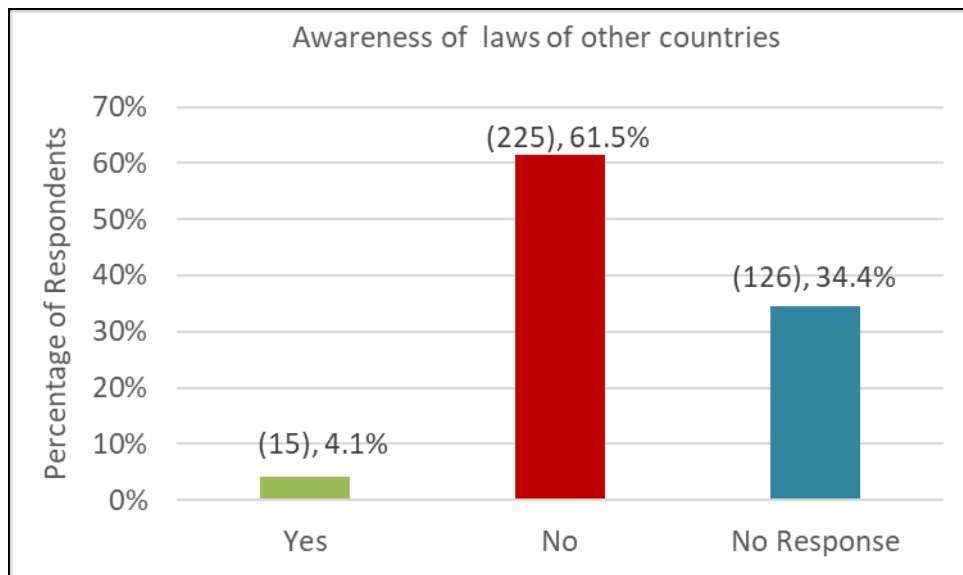


**Graph: 9.36**

The awareness about these vital institutions was low with 42.1% not aware of them and 26% aware of such institutions. There is the urgent need to promote awareness on the institutions and its activities particularly about free legal aid. The Taluk legal services committees and para legal volunteers can play a proactive role for legal aid and legal awareness.



## 12. Awareness of Elderly Laws of Other Countries

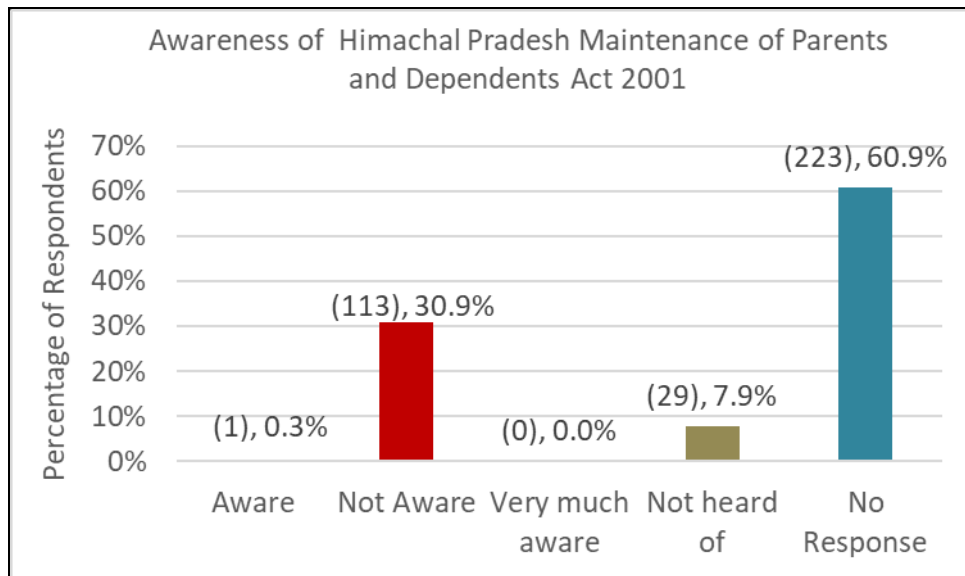


**Graph: 9.37**

Majority of the respondents (61.5%) were totally oblivious to the laws for the aged of other countries pointing to the general lack of awareness on the rights of the aged. It also speaks about the level of interest on the topic and also about lack of literacy. Awareness was mostly linked to expatriate children and relatives in a small fraction of the respondents.

## 13. Awareness of Himachal Pradesh Maintenance of Parents and Dependents Act, 2001

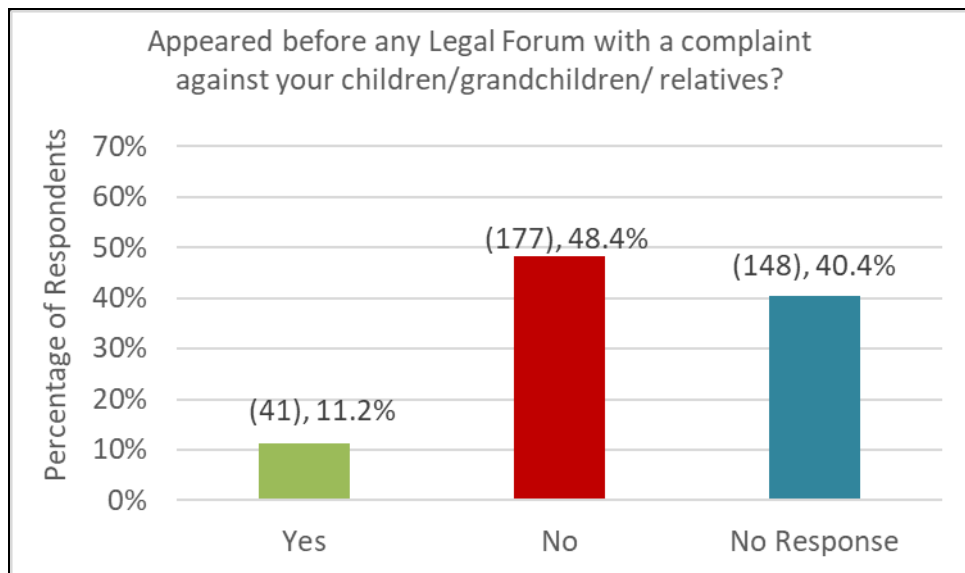
Majority of the respondents (60.9%) were totally unaware of the legislation for Himachal Pradesh pointing to the general lack of awareness on the rights of the aged and even legislations on the topic in other states in India.



**Graph: 9.38**

**9.6.4 Litigations (General)**

**1. Whether Preferred Complaints against Children/ Grandchildren/ Relatives?**

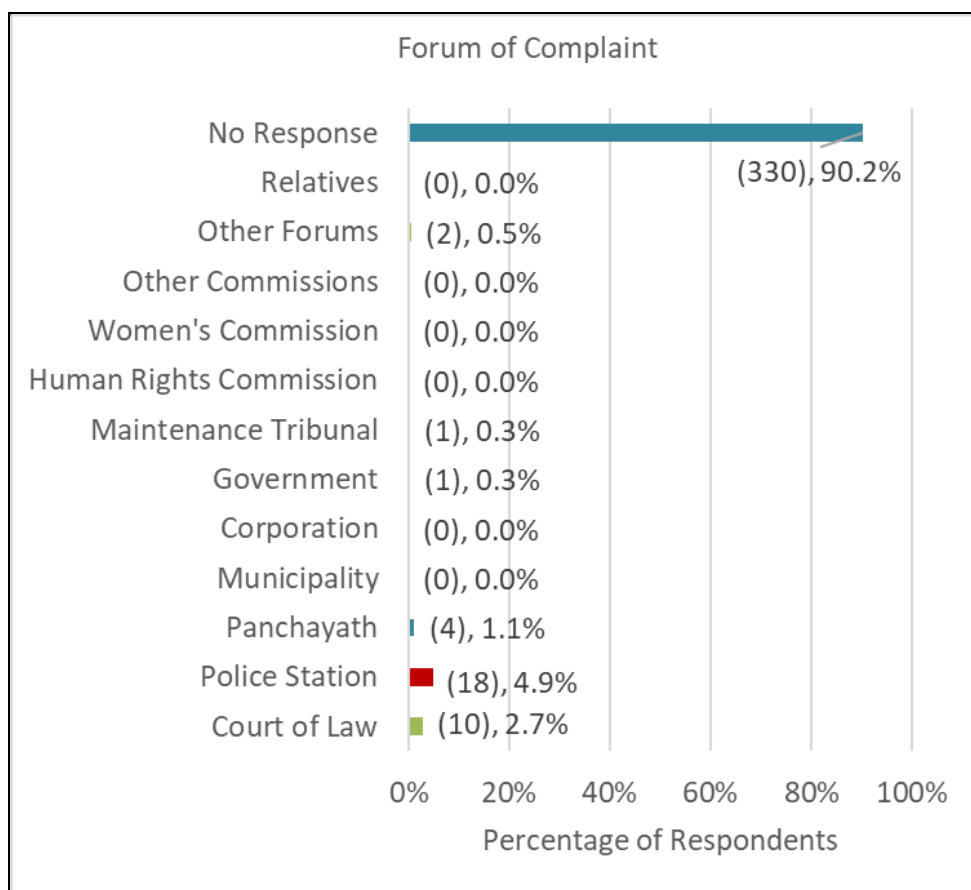


**Graph: 9.39**

Majority of the respondents (48.4%) had not preferred complaints against their children pointing out the basic mindset of parents and elders in Kerala

which is not to file complaints against their children. It speaks about the lack of awareness also as 40.4% had no response. This is a fundamental lacuna in the system which is rooted in culture and values and which cannot be changed easily. Complaints are filed only as a last resort. Media reports indicate that even in unbearable situations complaints are not filed against children.

**2. Preferred Forum to Raise Complaint.**



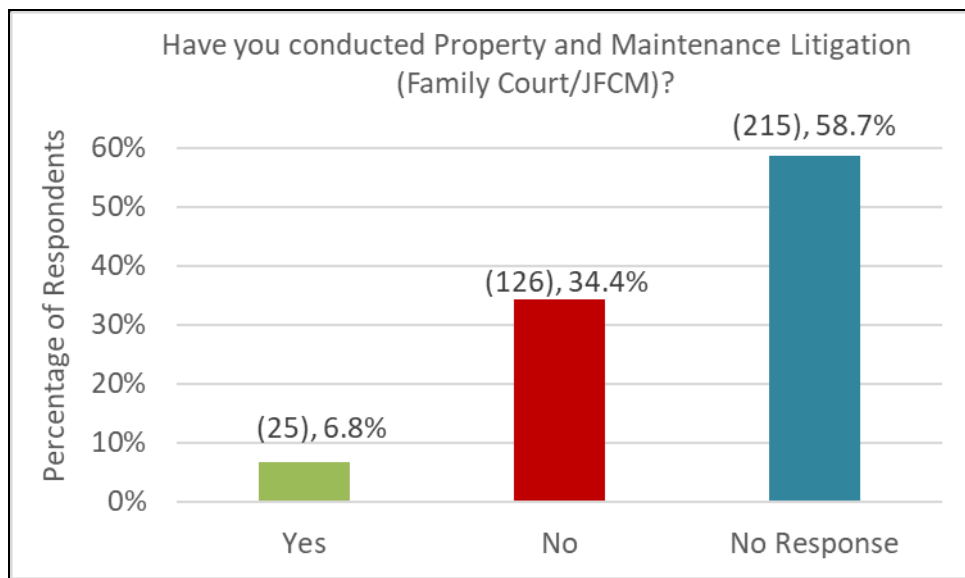
**Graph: 9.40**

The majority of respondents (4.9%) among those who had filed a complaint, had filed complaints before the local police station. Only 2.7% had filed complaints before a court of law. Here again 90.2% had no response indicating lack of awareness and conviction. The fact that the maximum number of persons

turned to the executive instead of the judiciary is indicative of the general reluctance to approach the court of law. The preferred option is to approach the local police station for redressal.

### 9.6.5 Litigations - Property and Maintenance (Family Court / JFCM)

#### 1. Conduct of Litigation.



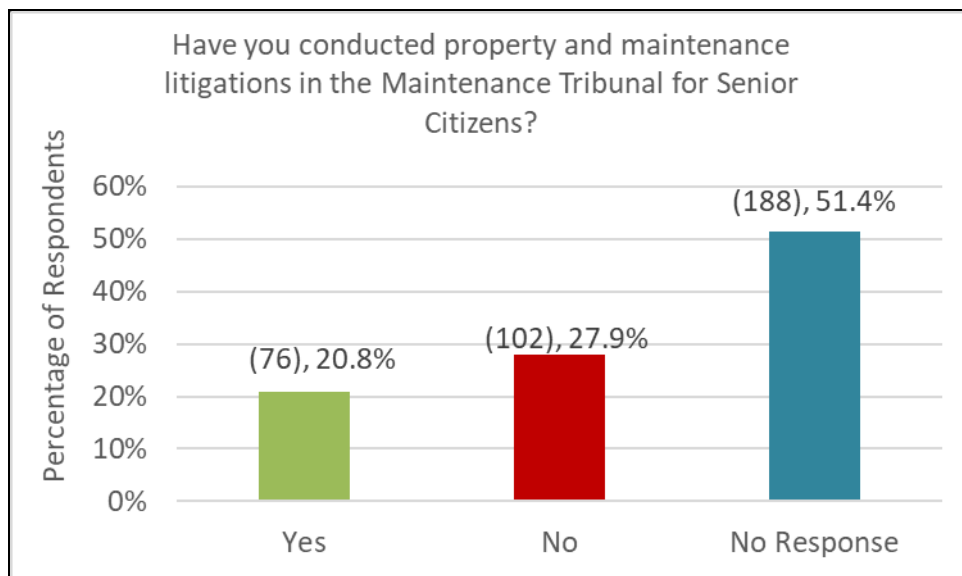
**Graph: 9.41**

A major share of the respondents (34.4%) had not conducted such litigations. Only 6.8% had conducted such litigations which is a pointer to the low exposure to litigation for maintenance before the Family Courts and Judicial First Class Magistrate Courts despite it being the most conventional legal remedy.

### 9.6.6 Litigations – Maintenance Tribunals

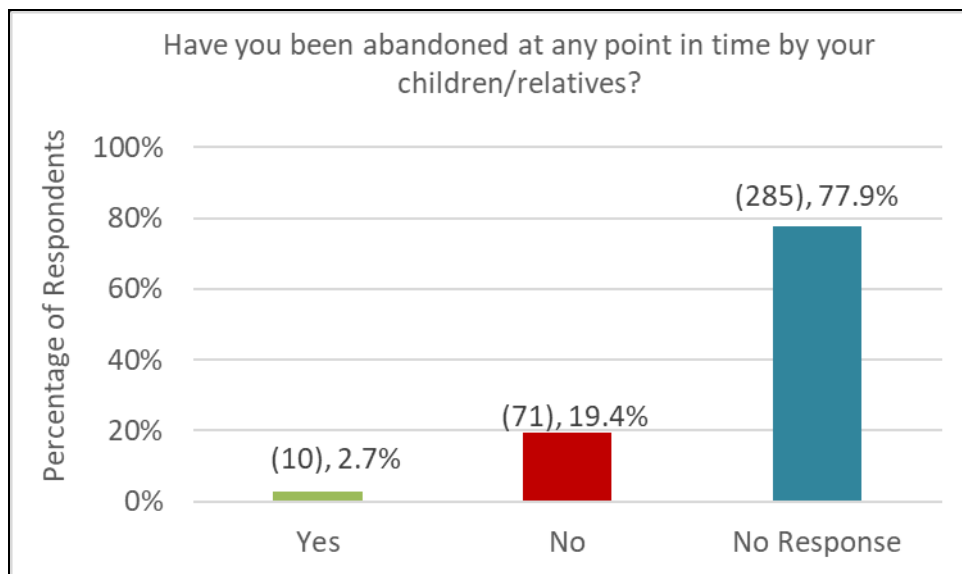
#### 1. Conducted Litigation Before Maintenance Tribunals

Only a minority (20.8%) of the respondents had conducted such litigations. This is indicative of the low level of litigations before tribunals presently due to the lack of awareness of the forum and remedies provided.



**Graph: 9.42**

**2. Were you Abandoned by your Children/ Relatives?**

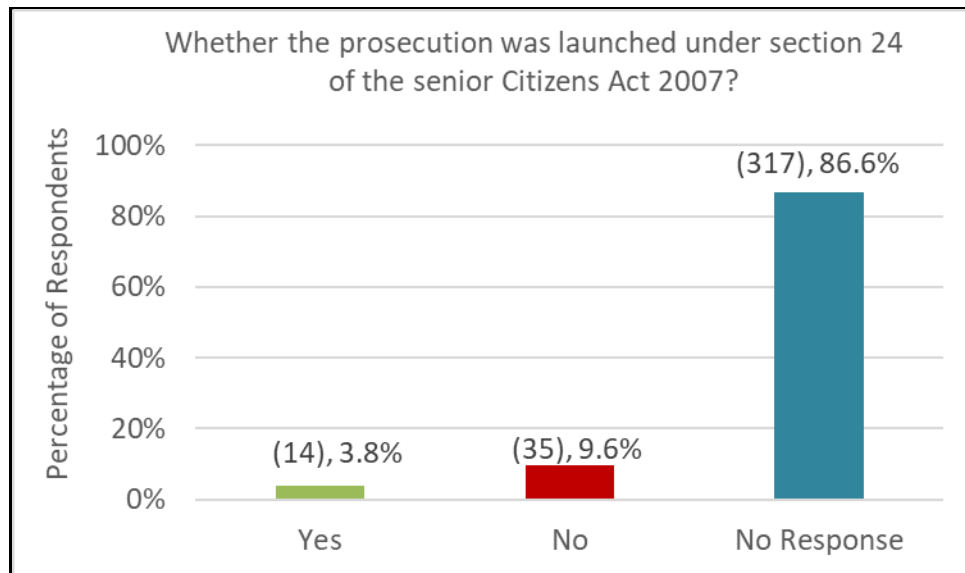


**Graph: 9.43**

A major segment of the respondents (19.4%) was of the view that they were not abandoned by their relatives. However, it is disturbing that 2.7% were of the opinion that they were abandoned indicative of the need to spread awareness on the penal provisions in the MWPSA Act of 2007 penalising abandonment. 77.9% did not respond and some among this group may have not responded due to lack

of conviction to admit. The small minority that gave a positive answer is only the tip of the iceberg considering the media reports of abandonment in many forms in Kerala like “Naddakiruthal.”

### 3. Whether Prosecution was Launched under Section 24 of the MWPSA Act of 2007?



**Graph: 9.44**

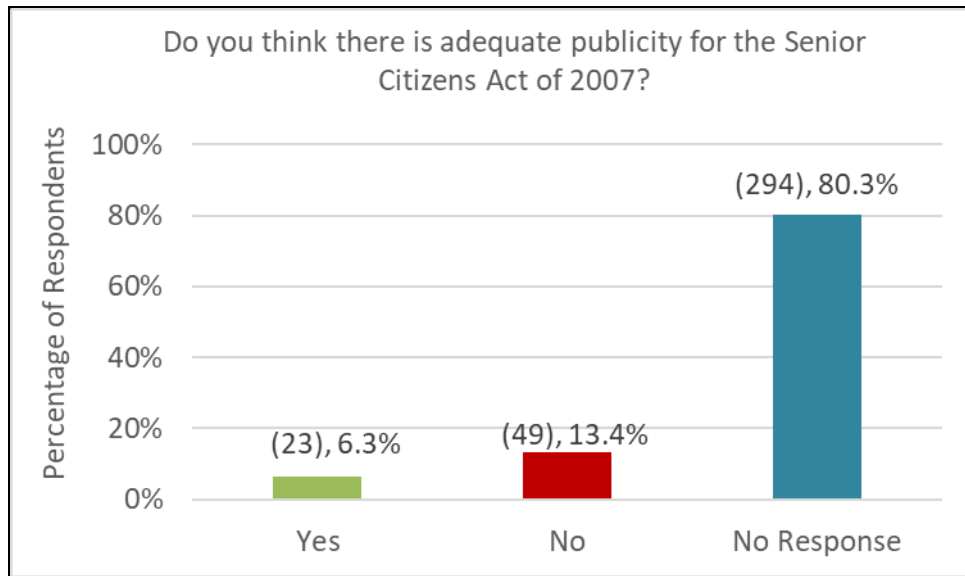
Surprisingly in a sizable segment of cases (9.6%) prosecution was not launched for abandonment and only in 3.8% of cases it was launched. This is indicative of the general mindset not to take legal action against children and relatives, and it also indicates the lack of legal awareness on the only penal provision in the MWPSA Act of 2007.

#### 9.6.7 Efficacy of Legal Remedies (MWPSA Act of 2007)

##### 1. Whether There is Adequate Publicity for the MWPSA Act of 2007

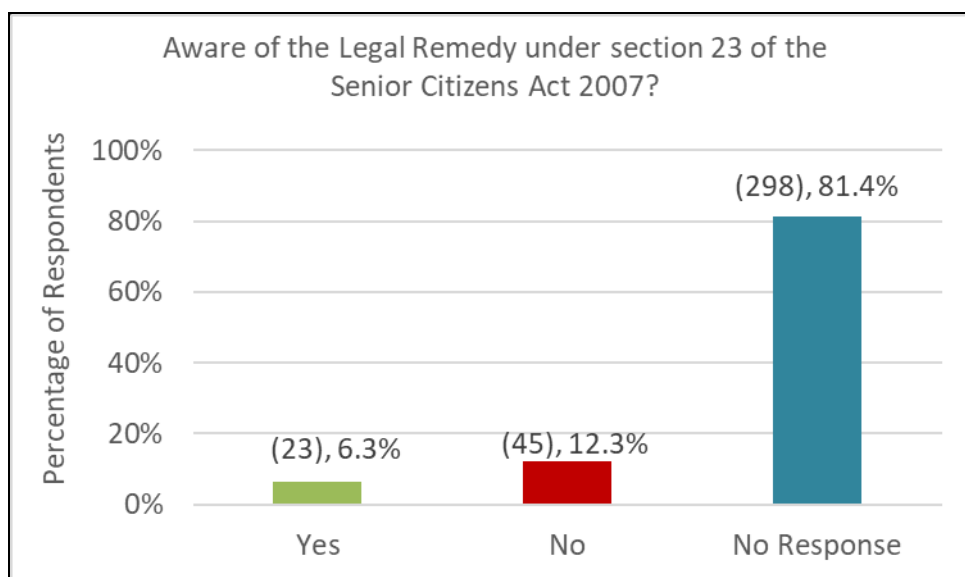
A major share of the respondents (13.4%) felt that there was not enough publicity for the MWPSA Act of 2007 and 6.3% felt that there was adequate

publicity. Together with the 80.3% who did not respond, this data is indicative of the compelling requirement to enhance the publicity for the Act which is also expressly mandated in the Act.



**Graph: 9.45**

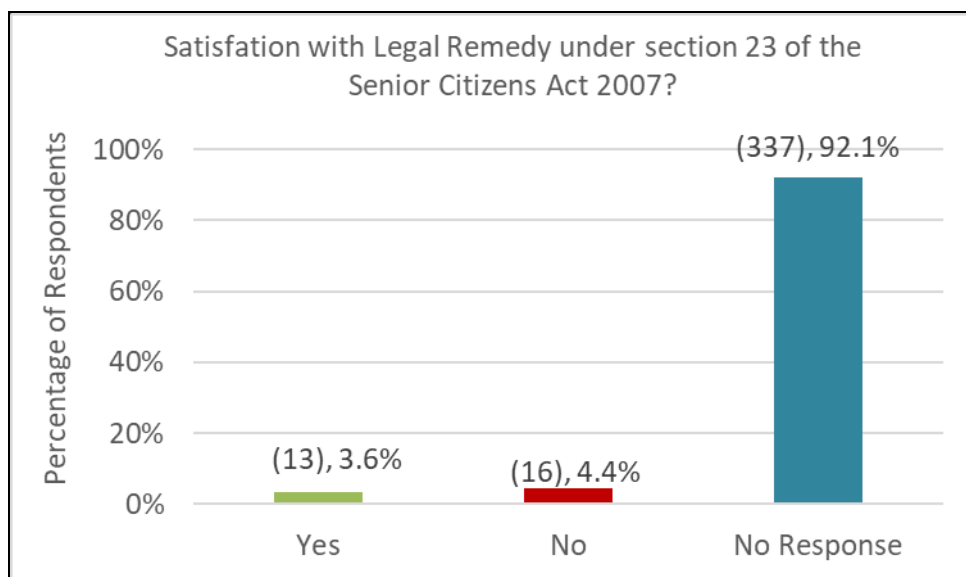
**Awareness of the Remedy under Section 23 of the MWPSA Act of 2007**



**Graph: 9.46**

A major segment of respondents (12.3%) was not aware of and 81.4% did not respond regarding the crucial legal remedy under Section 23 of MWPC Act 2007. Only 6.3% was aware. This is indicative of the urgent need to spread awareness especially since the remedy has only prospective application. The requirement of express recitals in the deed also calls for awareness generation.

## 2. Satisfaction with Legal Remedy Under Section 23 of the Senior Citizens Act of 2007

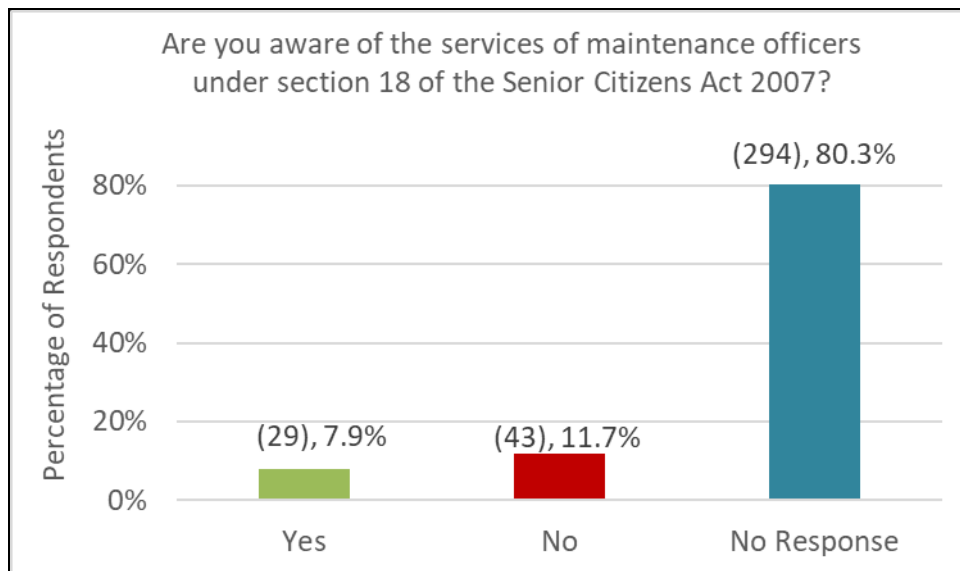


**Graph: 9.47**

Of the 8% of the Senior Citizens who responded to this question, almost similar number of respondents (4.4%) were not satisfied with the legal remedy and only 3.6% were satisfied. 92% of the Senior Citizens did not respond to this question. The data is indicative of the need to revamp the remedies under the MWPC Act of 2007. The complex and legalistic nature of the remedy is also evident from this vital feedback.



### 3. Awareness of Services of the Maintenance Officers Under Section 18 of the MWPC Act of 2007

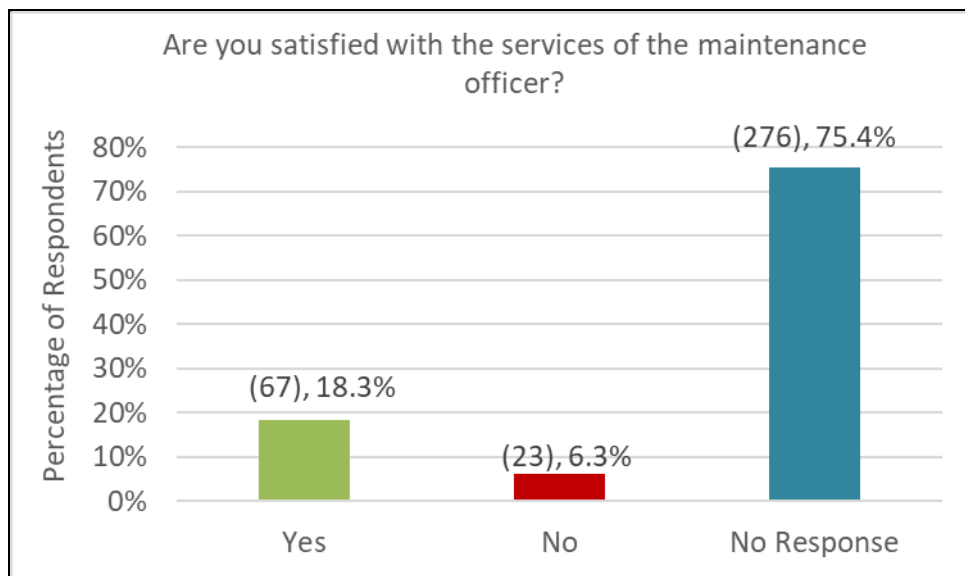


**Graph: 9.48**

Majority of the respondents (11.7%) were not aware of the crucial role played by maintenance officers under the MWPC Act of 2007 indicative of the need to generate awareness on the role of the officers who are duty bound to represent litigants before the tribunals. It is pertinent to note that there is only one Maintenance Officer in each district which is a major lacuna.

### 4. Satisfaction with Services of the Maintenance Officers Under Section 18 of the MWPC Act 2007

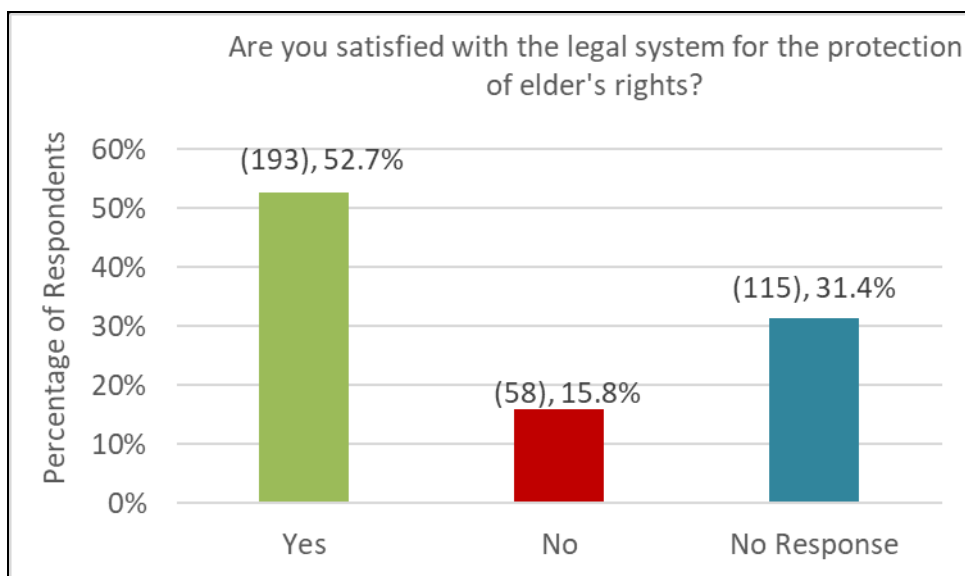
However, majority of the respondents (18.3%) are satisfied with the services of the maintenance officers. 75.4% of respondents had no response indicative of the lack of awareness of such officers and their role under the MWPC Act of 2007. Even the positive feedback can only be due to the ignorance of the role of the authority and its importance.



**Graph: 9.49**

**9.6.8. Efficacy of General Legal Framework for the Aged**

**1. Satisfaction with Legal System for Protection of Elders’ Rights**

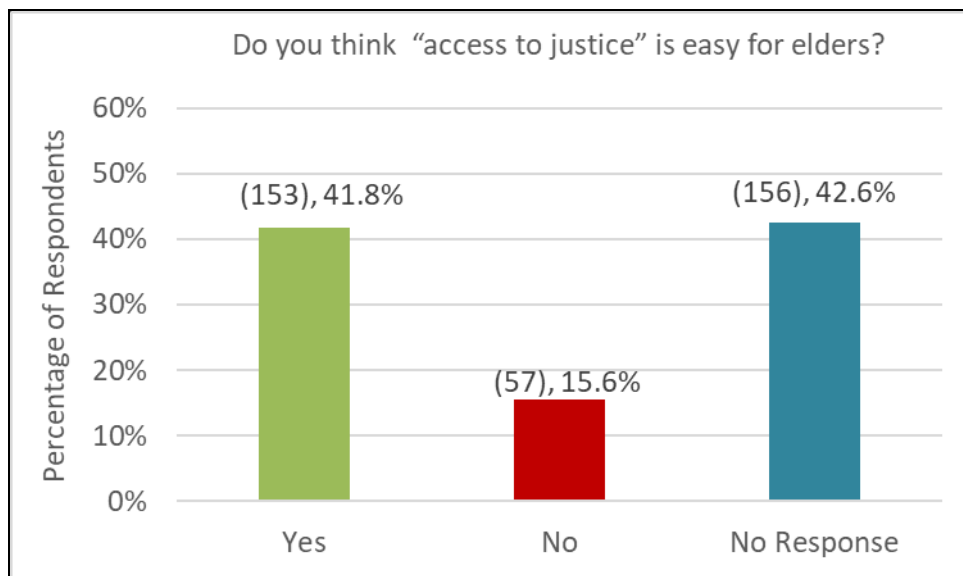


**Graph: 9.50**

Significantly a good majority (52.7%) of the respondents were satisfied with the legal system for protection of elders’ rights as a whole and only 15.8% were not satisfied. This is a positive note for the entire legal framework and its

efficacy. However, urgent reforms are called for considering the negative feedback. The positive feedback is also not very encouraging since it is based mostly on a general perception and is not always based on first hand experience with the legal system.

## 2. Whether “Access to Justice” is Easy for Elders



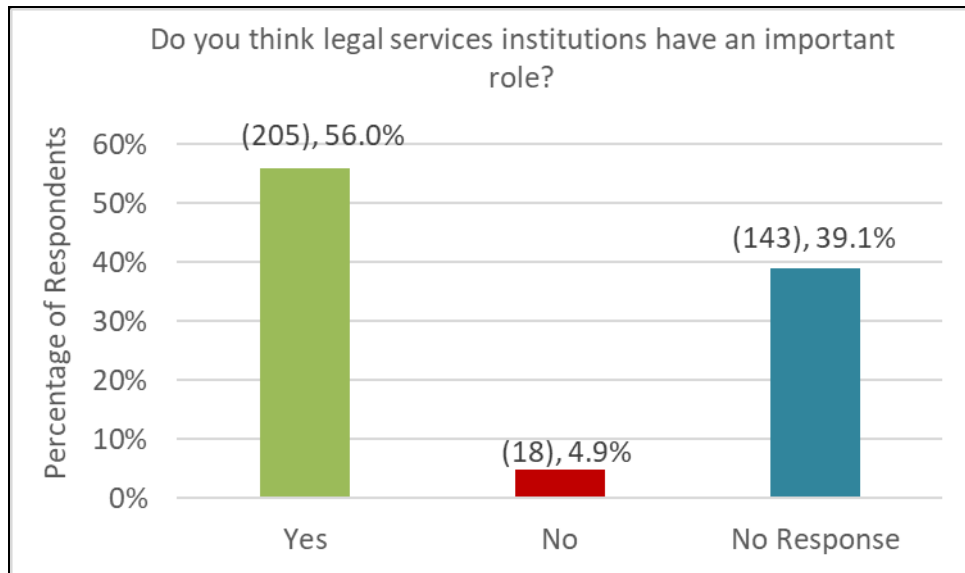
**Graph: 9.51**

Majority of the respondents (41.8%) were of the opinion that “access to justice” was easy for elders and only 15.6% felt that it was not easy. This speaks about the efficacy of the legal framework, but a lot more has to be done for enhancing access to justice for the aged. The positive opinion is also misleading since it is not fully based on first-hand experience with the legal system.

## 3. Whether Legal Services Institutions have an Important Role

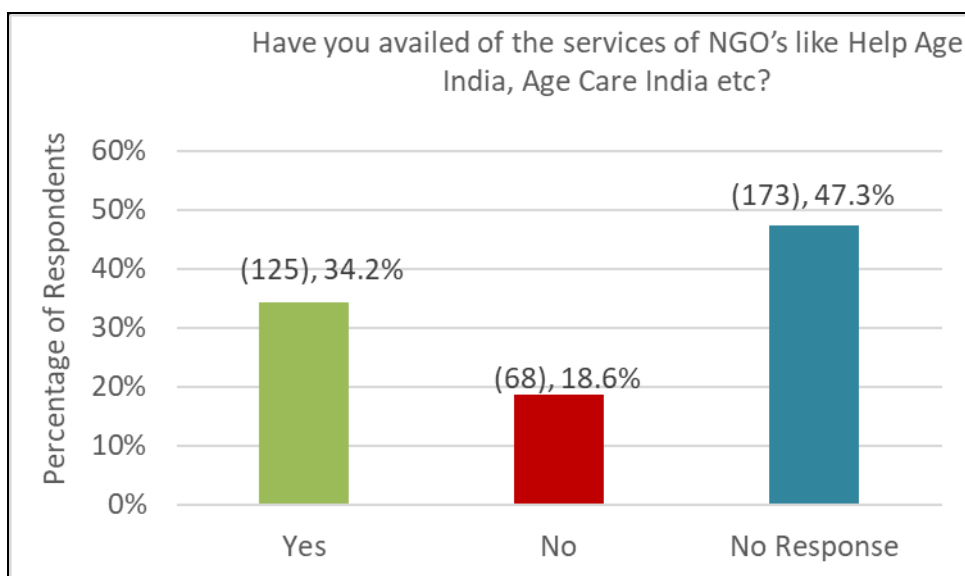
It is to be noted although only a small segment was aware of the legal services institutions, a sizable segment of the said respondents (56%) was of the

view that Legal Services Institutions have an important role to play. Only 4.9% felt that such institutions did not have a role to play. This speaks volumes about the general perception of such institutions and the need to enhance the involvement of such institutions in the justice delivery mechanisms through legal aid and other legal services in particular legal awareness



**Graph: 9.52**

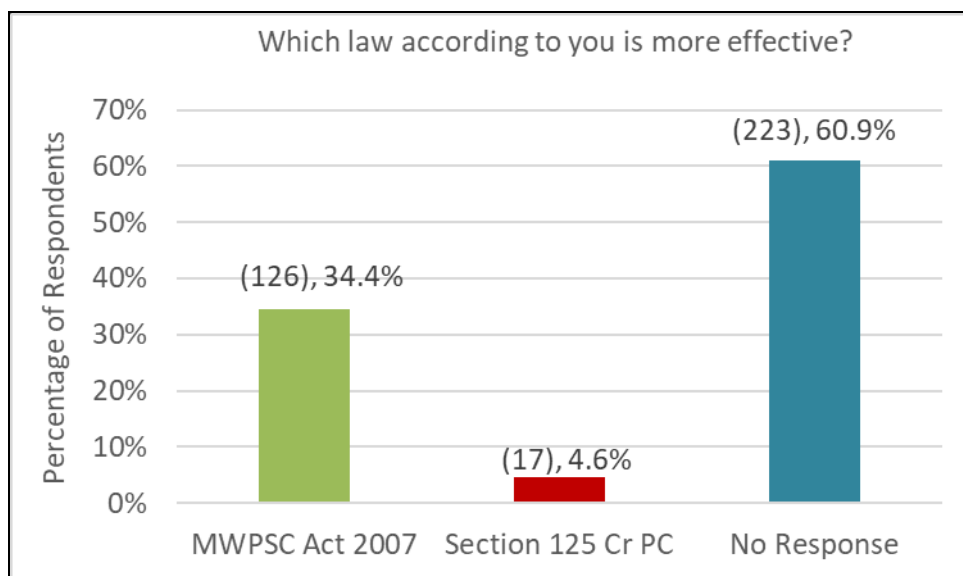
**4. Whether Availed Services of NGOs Like Help Age India**



**Graph: 9.53**

Majority of the respondents (34.2%) stated that they had availed of the services of the NGOs and 18.6% stated otherwise. This is indicative of the important role to be played by NGOs like Help Age India and Gandhibhavan in promoting the rights of the aged. Though the NGOs have been accorded a prime role in the policies their contribution is minimal at present. The feedback is also not indicative of the contribution of NGOs since the nature of services availed was not dealt with.

**5. Which Law According to you is more Effective - MWPSC ACT 2007 or Section 125 of Cr. PC 1973.**

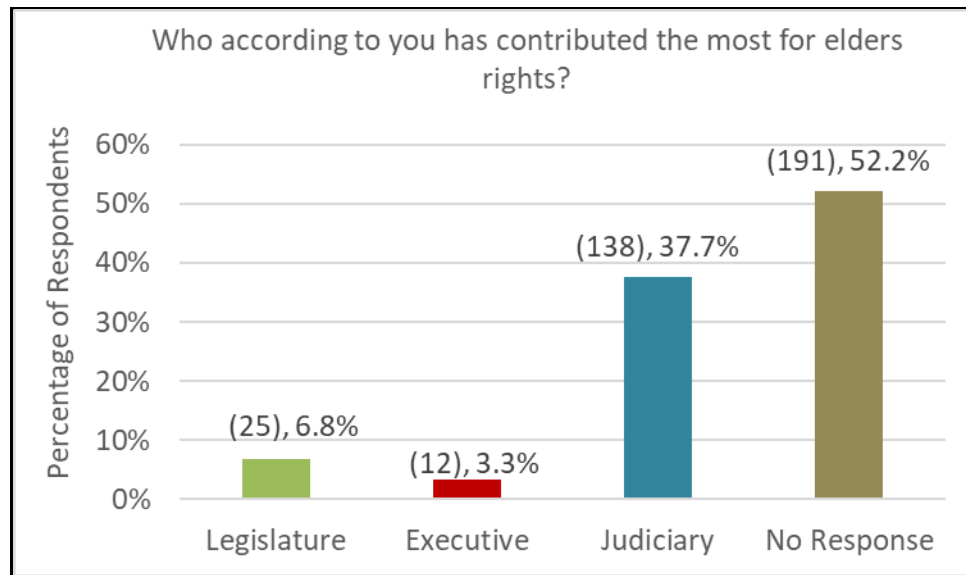


**Graph: 9.54**

Data shows that a major share of the respondents (34.4%) were of the view that the MWPSA Act of 2007 was more effective and only a minority (4.6%) felt that Section 125 of Cr. P C was more effective. This is indicative of the exclusive, speedy, and efficacious legal remedies provided under the Act of 2007. 60.9% of respondents had no response to this vital question due to lack of awareness. This

vital feedback sheds light on the general positive perception of the said Act and its scope, ambit and potential.

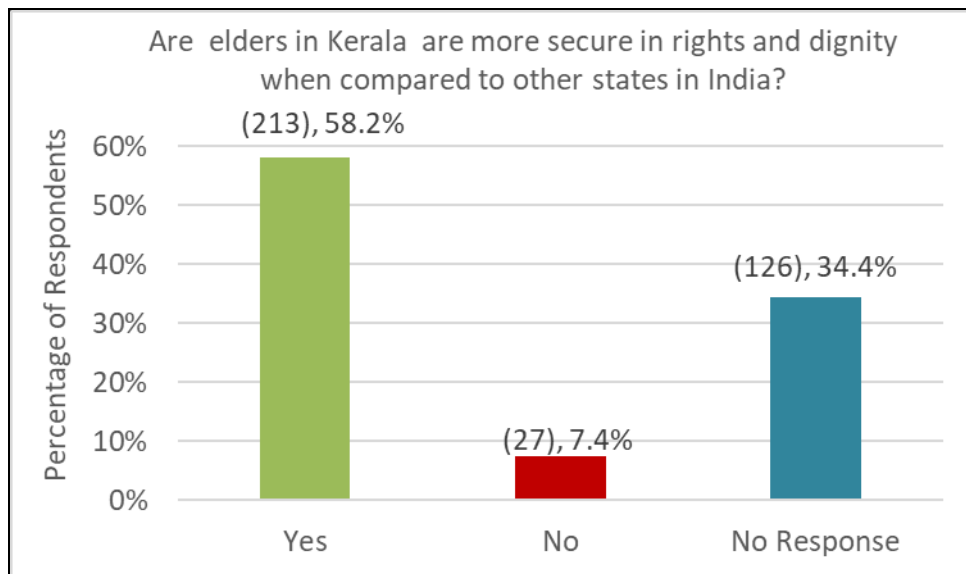
## 6. Who Contributed More for Elder's Rights - Legislature, Executive or Judiciary?



**Graph: 9.55**

Interestingly the majority (37.7%) of those who responded to this question, were of the view that the judiciary contributed more to the rights of the elderly. Legislature with 6.8% came second and Executive with 3.3% came third. Ironically the study reveals that it is the Executive that has implemented the maximum welfare schemes and programs for the elderly. The feedback is doubtful considering the low level of legal awareness and it is probably based on a general high regard for the judiciary. This indicates the general perception of the public regarding the role of each wing of the Government. Here again 52.2% had no response indicating lack of awareness.

## 7. Whether Elders in Kerala are More Secure in Rights and Dignity Compared to Other States



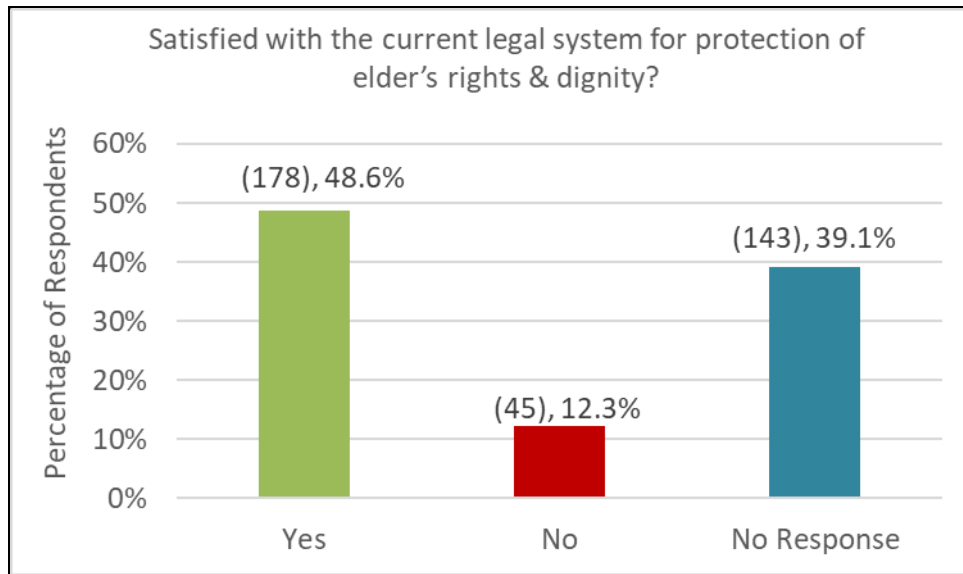
**Graph: 9.56**

Importantly a good majority of 58.2% respondents were of a positive view to this vital question and only 7.4% had a negative view indicative of the general perception of the aged in Kerala about a high level of security and welfare for aged in Kerala. This indicates the overall level of satisfaction of the legal framework, that includes both administrative measures and judicial processes in Kerala. It is noteworthy that Kerala has the highest number of welfare pensions and the highest literacy rate in India.

## 8. Satisfaction with the Current Legal System for Protection of Elders Rights & Dignity

As indicated earlier the majority of the respondents (48.6%) were satisfied with the current legal system and only 12.3% were dissatisfied which is a motivating factor which indicates the general level of satisfaction of the aged with

the current laws, programmes and schemes. The feedback cannot be taken at its face value and is based on a general perception of the majority which need not be based on a first hand experience of the legal system.



**Graph: 9.57**

## **9.7. ANALYSIS OF DATA (QUESTIONNAIRE FOR MAINTENANCE TRIBUNALS)**

While the Maintenance Tribunals in Kollam and Alleppey were All India Services officers of the IAS cadre with designation as Sub-Collector, the Maintenance Tribunal in Chengannur was a state service officer with the designation, Revenue Divisional Officer.

The pendency of cases in Kollam district which significantly had only one Maintenance Tribunal was 182 cases in May 2018. The pendency was 327 cases in Alleppey, and it was 262 cases in Chengannur in 2019. All tribunals had only



weekly sittings. In all tribunals there were panels of conciliators, and the tribunals were of the general view that conciliation process was effective and also that conciliators used to adhere to the time limit of one month under the Rules for completing the process of conciliation. In Kollam Advocates were also included in the panel. The Maintenance Tribunal in Chengannur however was of the view that the conciliation process was not effective. It was revealed that only 14 cases could be settled through conciliation in the said Tribunal up to 2019.

The number of cases filed by Senior Citizens through authorisation was very low compared to the direct filing of applications in all the tribunals. *Suo-moto* cases registered in all tribunals were still low i.e., five in Kollam, four in Alleppey and none in Chengannur.

Importantly all three tribunals could not dispose pending applications for maintenance within 90 days and the extended period of 30 days mandated by the MWPSA Act of 2007.

The average quantum of monthly maintenance awarded in all tribunals ranged between INR 2000/- to INR 10,000/- and all the tribunals were of view that enforcement of orders is effective. However, execution petitions were not filed within one month due to ignorance. The proceedings of the Kollam Tribunal revealed that majority of the cases pertained to cancellation of deeds and only a minority was for maintenance.

Significantly the number of appeals filed was low at 13 in Kollam, 17 in Alleppey and 10 in Chengannur. Lawyers were not barred from appearing before

all tribunals and the number of cases in which deeds were cancelled were very low, 8 in Alleppey and 2 in Chegannur.

Significantly in Alleppey two applications were filed by organisations for relief under Section 23. In all tribunals, applications were filed for protection of life and property. All the tribunals were of the unanimous view that legal mechanisms under the MWPSA Act of 2007 for maintenance and for protection of life and property were effective.

All the tribunals were of the unanimous view that the MWPSA Act of 2007 was successful in creating more effective provisions for the maintenance and welfare of Senior Citizens. It is pertinent to note that the Tribunal at Kollam was conducting adalats in 6 taluks in the district which was a boon for elders since they could avoid travel to the district headquarters. These adalats were found to be very effective.

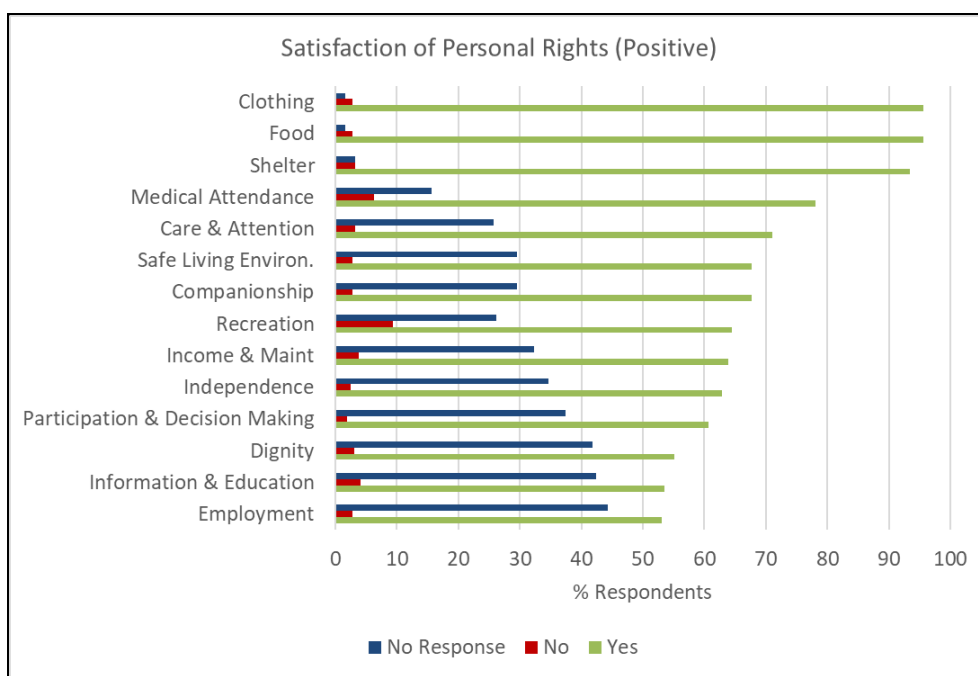
It was revealed that a majority of the cases pending before these Maintenance Tribunals were related to property disputes. In fact, in Chengannur about 90% of the cases were related to property disputes. The Maintenance Tribunal in Chengannur was of the view that many of the applicants could not afford lawyers and that lawyers who appeared for counter petitioners resorted to legal technicalities during the proceedings and especially during cross examination for defeating legitimate claims of applicants. According to the Maintenance Tribunal such appearance of lawyers was creating an uneven arena for litigations.

## **9.8. INFERENCES DRAWN FROM THE EMPIRICAL STUDY**

The Empirical study based on the feedback received for 366 Respondents was very insightful since it illuminated the ground realities with respect to the efficacy of the legal framework. The study was mainly centred around rights entitlements, legal awareness, involvement in litigation and the general conception regarding the legal framework in terms of its efficacy. The study revealed the ground realities of the legal framework. The main inferences drawn from the empirical study are dealt with under this section.

### **9.8.1 General Questionnaire**

1. Majority of the respondents are satisfied with their positive personal rights like right to food, nutritious food, clothing, shelter, right to obtain medical attendance and treatment, right to obtain recreation, right to care and attention, right to obtain adequate income and maintenance, right to Independence, right to obtain companionship, right to a safe living environment, right to participation and decision making, right to obtain employment, right to be treated with dignity, right to information and education as portrayed in the graph and the corresponding table below which indicates high satisfaction of positive personal rights.

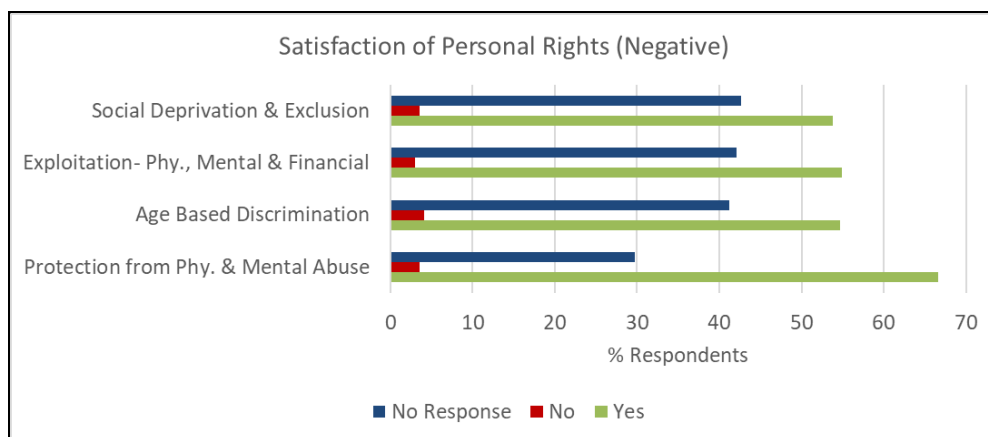


**Graph: 9.58**

Satisfied with Right to:	No. Of Respondents			% Of Respondents		
	Yes	No	No Response	Yes	No	No Response
Employment	194	10	162	53	3	44
Information & Education	196	15	155	54	4	42
Dignity	202	11	153	55	3	42
Participation & Decision Making	222	7	137	61	2	37
Independence	230	9	127	63	2	35
Income & Maint	234	14	118	64	4	32
Recreation	236	34	96	64	9	26
Companionship	248	10	108	68	3	30
Safe Living Environ.	248	10	108	68	3	30
Care & Attention	260	12	94	71	3	26
Medical Attendance	286	23	57	78	6	16
Shelter	342	12	12	93	3	3
Food	350	10	6	96	3	2
Clothing	350	10	6	96	3	2

**Table: 9.9**

2. Majority of the respondents were satisfied with their negative personal rights such as right against social deprivation and exclusion, right against exploitation, right against age-based discrimination, right to protection against physical and mental abuse as portrayed in graph 9.59 and corresponding table below which indicates high satisfaction of negative personal rights.



**Graph: 9.59**

Satisfied with Right to :	No. Of Respondents			% Of Respondents		
	Yes	No	No Response	Yes	No	No Response
Protection from Phy. & Mental Abuse	244	13	109	67	4	30
Age Based Discrimination	200	15	151	55	4	41
Exploitation- Phy., Mental & Financial	201	11	154	55	3	42
Social Deprivation & Exclusion	197	13	156	54	4	43

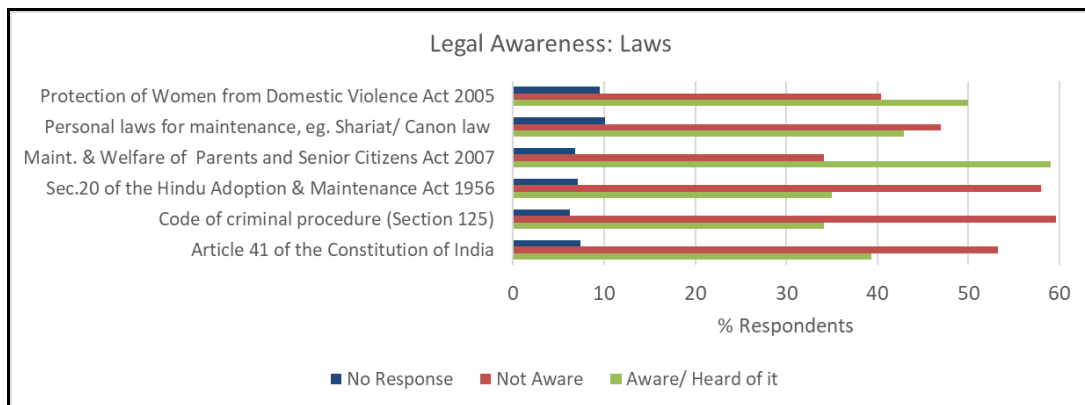
**Table: 9.10**

3. Majority of the respondents preferred to stay at their own home (69.9%) and only a minority (20.2%) preferred staying in on old age home.
4. Majority of the respondents (44%) had recreation at home. The next major location was old age home (5.2%) and Pakalveedu and clubs accounted only for a small share of 1.9% and 0.8% respectively.
5. Majority of the respondents (55.2%) were satisfied with their right to be treated with dignity as against a minority (3%) who were not satisfied with the right.
6. Majority of the respondents had settled property in favour of their children (42.6%) as against (13.7%) who had not settled. Out of which the majority were conditional settlements (8.2%) compared to a minority of unconditional transfers (1.1%).

7. Almost similar number of the respondents stated that the conditions of transfer were not fulfilled (8.5%) as against (7.9%) of respondents who felt that conditions were fulfilled.

8. Majority of the respondents were not having legal awareness of existing relevant legislations that is the Constitution of India, Cr. P C 1973, Hindu Adoption and Maintenance Act 1956, Personal laws like Shariat Laws, Canon Law and the PWDV Act 2005.

The aforesaid data with respect to legal awareness on relevant legislations is summarized in the graph 9.60 and corresponding table below which indicates that the maximum awareness is on the MWPSA Act of 2007.



**Graph: 9.60**

Awareness About:	No. Of Respondents			% Of Respondents		
	Aware/ Heard of it	Not Aware	No Response	Aware/ Heard of it	Not Aware	No Response
Article 41 of the Constitution of India	144	195	27	39	53	7
Code of criminal procedure (Section 125)	125	218	23	34	60	6
Sec.20 of the Hindu Adoption & Maintenance Act 1956	128	212	26	35	58	7
Maint. & Welfare of Parents and Senior Citizens Act 2007	216	125	25	59	34	7
Personal laws for maintenance, eg. Shariat/ Canon law	157	172	37	43	47	10
Protection of Women from Domestic Violence Act 2005	183	148	35	50	40	10

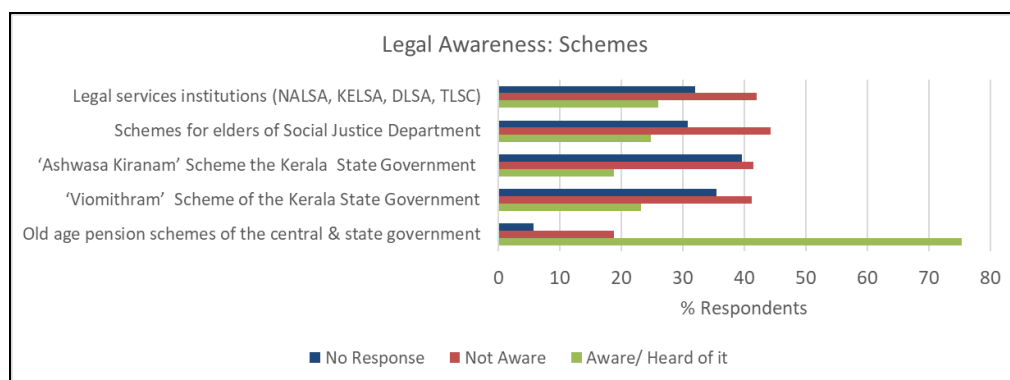
**Table: 9.11**

(It is to be noted that in the summary plots, data for the categories ‘Aware’, ‘Very much Aware’ and ‘Heard of it’ have been combined to simplify the data depiction in the plots.)

9. Awareness on the MWPSA Act of 2007 was relatively high compared to other existing laws as 59% was aware of the law compared to 34.2 % who were not aware. 2.7% of the respondents were very much aware of the law.
10. Significantly majority of the respondents (73%) were aware of old age pension schemes of the Central & State Government as against 18.9% who were not aware.
11. Only minority of the respondents were aware of the ambitious schemes of the Social Justice Department of the Government of Kerala like “Vayomithram” (10.7%) and “Ashwasakiranam” (6.8%) and majority were unaware of the two schemes (41.3%) and (41.5%) respectively.
12. Majority of the respondents were not aware of the schemes for elders of the Social Justice Department (43.2%) as against (24.9%) who were aware of such schemes.
13. Majority of the respondents were not aware of Legal Services Institutions like NALSA, KeLSA, DLSA’s, TLSC’s (42.1%) compared to (26%) who were aware.

The aforesaid data is portrayed in graph 9.61 and corresponding table below which indicates high level of knowledge of old age pension schemes of the

Central and State Government compared to other schemes of the state government and legal services institutions.



**Graph: 9.61**

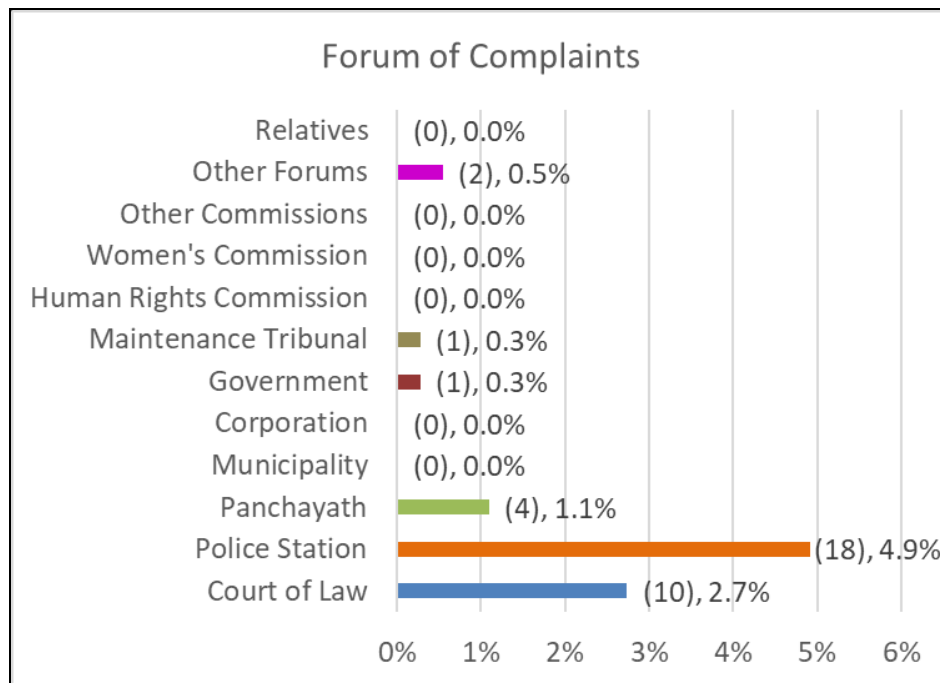
Awareness About:	No. Of Respondents			% Of Respondents		
	Aware/ Heard of it	Not Aware	No Response	Aware/ Heard of it	Not Aware	No Response
Old age pension schemes of the central & state government	276	69	21	75	19	6
'Viomithram' Scheme of the Kerala State Government	85	151	130	23	41	36
'Ashwasa Kiranam' Scheme the Kerala State Government	69	152	145	19	42	40
Schemes for elders of Social Justice Department	91	162	113	25	44	31
Legal services institutions (NALSA, KELSA, DLSA, TLSC)	95	154	117	26	42	32

**Table: 9.12**

14. Only a very small fraction of the respondents (0.3%) was aware of the state legislation for elders of Himachal Pradesh, i.e., the Himachal Pradesh Maintenance of Parents and Dependent Act 2001.
15. Majority of the respondents had not preferred a complaint against their children before any Forum (48.4%) compared to (11.2%) who had preferred complaints and among such complainants, majority had preferred complaints before police stations (4.9%) as against (2.7%) before courts and (0.3%) before Maintenance Tribunals. None of the respondents had preferred complaints before Statutory Commissions like Human Rights



Commission, Women's Commission and State Commissioner for Persons with Disabilities. The aforesaid data is portrayed in graph 9.62 below which indicates the highest number of complaints before local police stations.



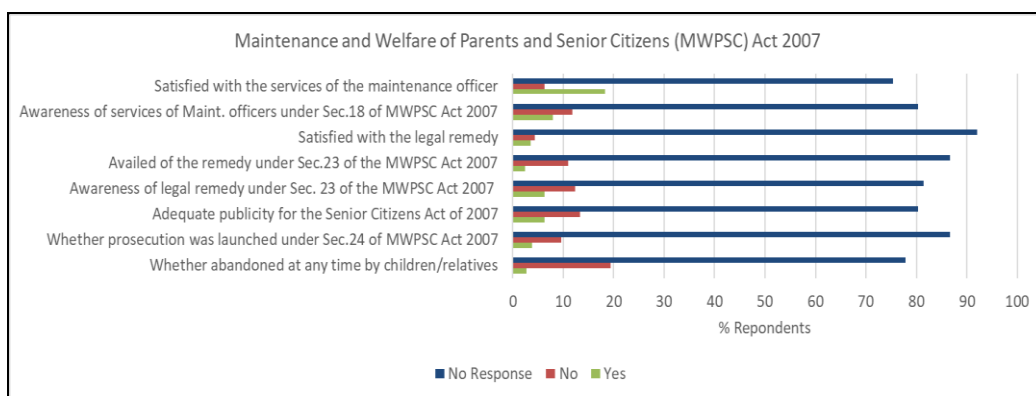
**Graph: 9.62**

16. Majority of the respondents (34.4%) had not conducted litigations before Family Court/JFCM with respect to property and maintenance compared to (6.8%) who had conducted such litigations.
17. Only a minority (20.8%) had conducted litigation before the Maintenance Tribunals.
18. Majority of the respondents (19.4%) were not abandoned by their children/relatives and a minority (2.7%) were abandoned. However, prosecution under Section 24 of the MWPSA 2007 Act was launched only in 3.8% of cases and no prosecution was launched in a majority of cases (9.6%).

19. Majority of the respondents (13.4%) felt that there was no adequate publicity for the MWPC 2007 Act and only a minority (6.3%) felt that there was adequate publicity for the Act.

20. Majority of the respondents (11.7%) were not aware of the services of Maintenance Officers appointed under Section 18 of the MWPC of 2007 and only a minority (7.97%) were aware of the same. However, 18.3% of the respondents were satisfied with the services of the officers compared to (6.3%) who were not satisfied.

The aforesaid data with respect to the MWPC Act of 2007 is portrayed in graph 9.63 and corresponding table below which mainly indicates inadequate publicity for the Act and low satisfaction of the legal remedy under the Act.



**Graph: 9.63**

	No. Of Respondents			% Of Respondents		
	Yes	No	No Response	Yes	No	No Response
Whether abandoned at any time by children/relatives	10	71	285	3	19	78
Whether prosecution was launched under Sec.24 of MWPC Act 2007	14	35	317	4	10	87
Adequate publicity for the Senior Citizens Act of 2007	23	49	294	6	13	80
Awareness of legal remedy under Sec. 23 of the MWPC Act 2007	23	45	298	6	12	81
Availed of the remedy under Sec.23 of the MWPC Act 2007	9	40	317	2	11	87
Satisfied with the legal remedy	13	16	337	4	4	92
Awareness of services of Maint. officers under Sec.18 of MWPC Act 2007	29	43	294	8	12	80
Satisfied with the services of the maintenance officer	67	23	276	18	6	75

**Table: 9.13**

21. A good majority of the respondents (52.7%) were satisfied with the legal system for protection of elder's rights as against (15.8%) who were not satisfied with the legal system.

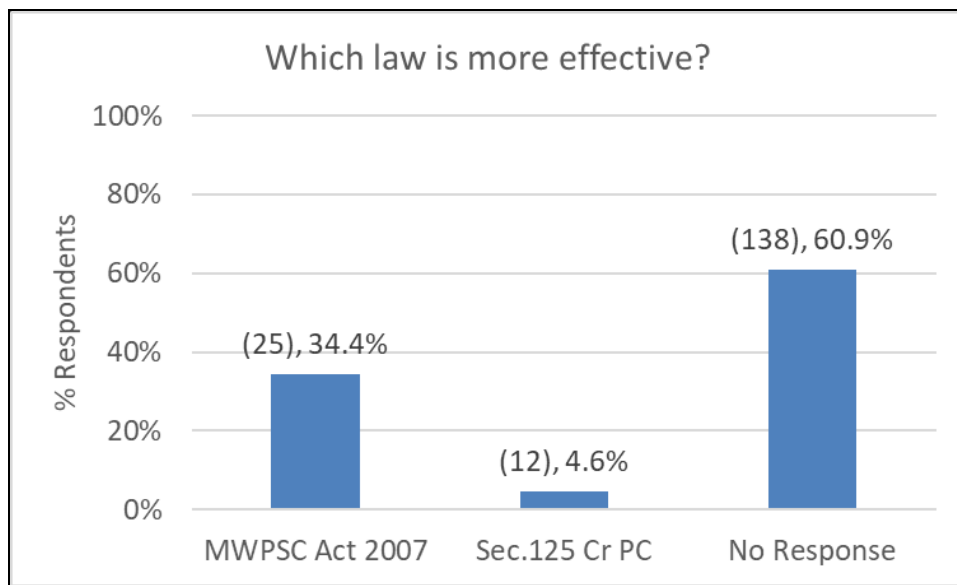
22. Majority of the respondents (41.8%) were of the view that "Access to Justice" is easy for elders and only 15.6% of respondents felt that "Access to Justice" was not easy for elders.

23. A big majority of the respondents (56%) were of the view that legal services institutions had an important role to play while only 4.9% of respondents felt that such institutions did not have an important role.

24. Majority of the respondents (34.2%) had availed of the services of NGOs like Help Age India and only a minority (18.6%) had not availed of such services.

25. A good majority of the respondents (34.4%) were of the view that the MWPSA Act of 2007 was more effective as against a small minority (4.6%) who felt that the conventional law, i.e., Section 125 of the Cr. P C of 1973 was more effective.

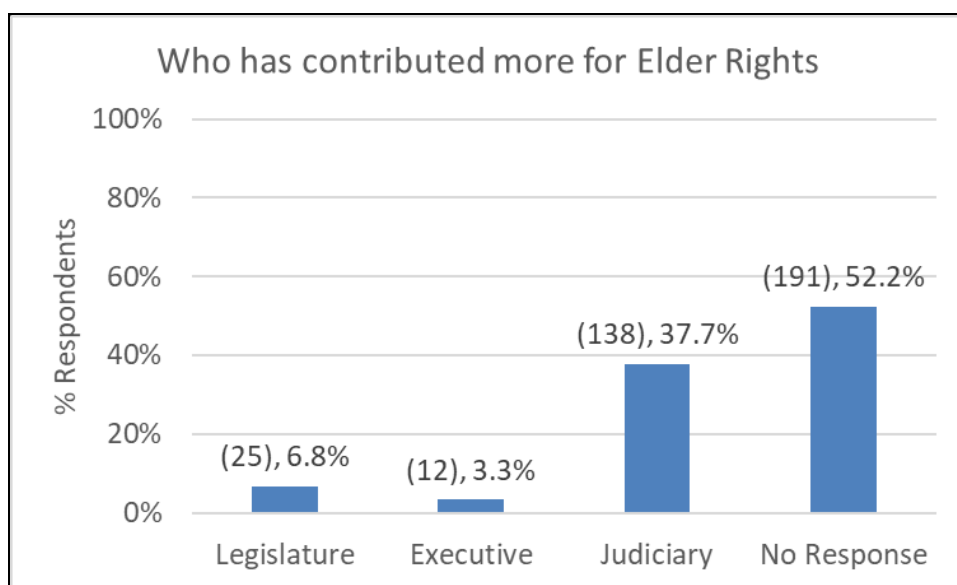
This vital set of data is summarized in graph 9.64 below which indicates the overwhelming opinion regarding the effectiveness of the MWPSA Act of 2007 compared to the Code of Cr. PC 1973.



**Graph: 9.64**

26. A big majority of the respondents (37.7%) felt that the judiciary has contributed the most for elders’ rights as against a minority of (3.3%) who felt that the Executive had contributed the most and 6.8% of the respondents felt that the Legislature had contributed the most for elders’ rights.

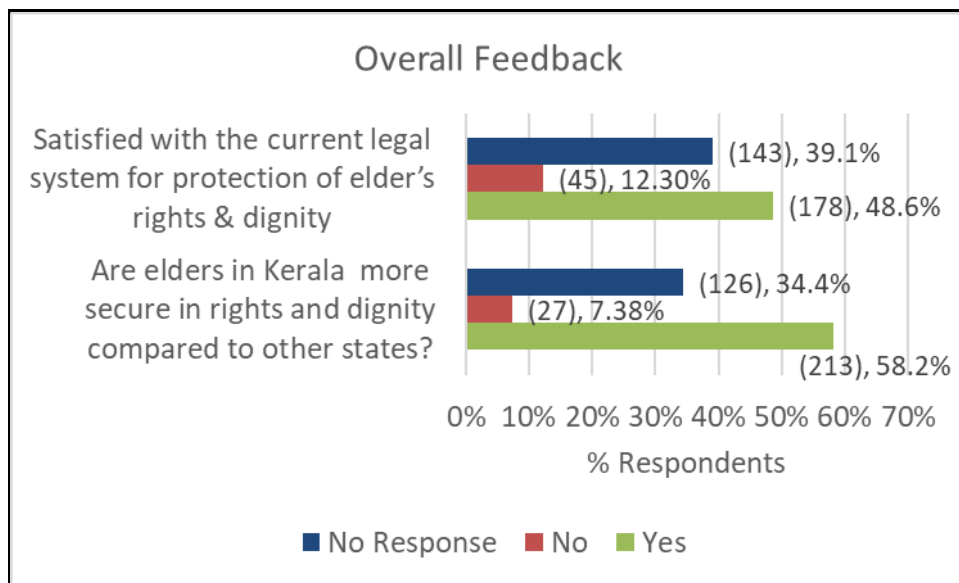
This interesting data is shown in the graph below which indicates the highest regard for the judiciary.



**Graph: 9.65**

27. A good majority of respondents (58.2%) felt that elders in Kerala are more secure in rights and dignity compared to other states in India as against 7.4% of respondents who felt that elders in Kerala are not secure compared to other states.

28. Finally, a sizable majority of respondents (48.6%) felt satisfied with the current legal system for protection of elder’s rights and dignity as against 12.3 % of respondents who were not satisfied. The aforesaid crucial data obtained from the empirical study is portrayed in graph 9.66 below indicating high satisfaction with the current legal system in addition to high security for elders in Kerala.



**Graph: 9.66**

29. A big majority of respondents had no response to many of the questions posed to them pointing to clear ignorance, illiteracy, apathy and lack of awareness on the legal system and exposure to the legal system. In fact, in a majority of questions the major segment of responses related to “No

response” pointing to the lack of awareness on the laws and our legal system and the lack of conviction to give definite answers to the simple questions mooted in the semi structured questionnaire.

30. The respondents furnished valuable suggestions and feedback as the answer to the last question in the questionnaire and the prominent suggestions are incorporated in Chapter X.

### **9.8.2 Questionnaire for Maintenance Tribunals**

The aforesaid analysis reveals the following broad inferences:

- Past experience of Maintenance Tribunals in adjudication is negligible.
- The sitting on a weekly basis is totally inadequate considering the huge pendency of applications.
- The role of conciliators has to be enhanced and improved, and their numbers can be increased for more positive results.
- Tribunals cannot dispose of applications within the time frame under the MWPSA Act of 2007 due to pressure of varied responsibilities and the low frequency of sitting.
- The number of appeals filed are very low which speaks about the efficacy of adjudicating procedure.
- Appearance of lawyers especially for the respondents make the adjudicatory field uneven and unequal which is detrimental to applicants and the purpose of the MWPSA Act of 2007.

- The number of orders passed under Section 23 for cancellation of deeds is very low which speaks about the poor efficacy of the adjudication process and the complexity of the legal remedy.
- Applications are filed for protection of life and property before the Maintenance Tribunals in addition to claims for maintenance making the role of tribunals more onerous and responsible.
- The legal mechanisms both for maintenance and for protection of life and property under the MWPSA Act of 2007 are found satisfactory by the tribunals for achieving the objective of the Act.
- There is a need for establishing more Maintenance Tribunals especially in big districts like Kollam for speedy disposal of cases.

### **9.9. CONCLUSION**

To conclude, the majority of the respondents who offered answers to the questions posed were satisfied with their personal rights and property rights. Majority of the respondents in this study preferred to stay at home compared to an old age home giving importance to “ageing in place” mandated by the State Policy. The level of legal awareness of the respondents on the Constitution and general laws was extremely low. However, the awareness on the MWPSA Act of 2007 was relatively high. Understandably general awareness on the pension schemes of the Government was high but the level of legal awareness on various schemes of the Social Justice Department was low. Majority of the respondents in the empirical study had settled their properties in favour of their children and conditionally, and the conditions were not fulfilled. Only a minority of the

respondents had conducted litigations both general and for maintenance before the Judicial First Class Magistrate Courts/ Family Courts and the majority of such litigants were satisfied with the legal remedies. Only a minority of the respondents had conducted litigation before the Maintenance Tribunals and the majority of such litigants were not satisfied with the legal remedies. Though a minority of the respondents were abandoned by their children and relatives, prosecution was launched only in a minority of the cases. The empirical study reveals the glaring reality that the level of legal literacy on the rights of elders in Kerala is very low and that only a small minority of the elderly have ventured to file complaints against their children. Only a minority of the respondents were aware of the vital legal remedy under Section 23 of the MWPC Act of 2007 and the majority were not aware of the remedy. Majority of the respondents in the empirical study were of the opinion that there is inadequate publicity for the MWPC Act of 2007. Majority of the respondents were satisfied with the current legal system for protection of elder's rights and dignity. Majority of the respondents were of the opinion that access to justice is easy for elders and majority were of the opinion that legal service institutions have an important role to play. It was the opinion of the majority that NGOs like Help Age India have an important role to play. Significantly the majority of respondents were of the view that the MWPC Act of 2007 was far more effective than Section 125 of the Code of Cr. P C 1973. The majority of the respondents felt that the judiciary has contributed the most for elders' rights compared to the executive and legislature. Importantly the majority of the respondents were of the opinion that



elders in Kerala are more secure in rights and dignity compared to elders in other states in India. Majority of the respondents in the empirical study interviewed had “no response” to many of questions either due to lack of awareness and exposure or due to lack of conviction on answers both of which are not healthy indicators.

In the study of Maintenance Tribunals, it is found that Tribunals lack knowledge of law and experience in adjudication. The Tribunals are also very busy authorities with multifarious responsibilities and hence are unable to devote time and attention for enquiries under the MWPSA Act of 2007. The weekly sittings are inadequate for speedy disposal within the time frames under the Act. The number of tribunals are also inadequate considering the exponential increase in applications. Appearance of lawyers especially for respondents has made the field uneven and biased against applicants. Though the Tribunals express satisfaction with the legal mechanisms and conciliation procedures there is a need to appoint exclusive authorities for conducting day to day sittings for speedy justice.

The aforesaid study is illuminating since it exposes the ground realities of the application of the legal framework. The study highlights the general satisfaction of the sample population with respect to the present legal framework, the abysmally low level of legal awareness and the inadequacy and non-suitability of the existing adjudicatory mechanism for adjudicating the rights of Senior Citizens. The study also elicited valuable suggestions from the respondents and the prominent suggestions are incorporated in the final chapter.

## CHAPTER X

### CONCLUSIONS AND SUGGESTIONS

**“Age is an issue of mind over matter. If you don’t mind, it doesn’t matter.”**

**- Mark Twain**

“Population Ageing” is here to stay. The seminal question is whether the current legal framework comprising of statutes, rules, case law, policies, programmes and schemes is adequate and sufficient for meeting the manifold challenges posed by “Population Ageing” in the socio-legal arena and in the context of the rights and dignity of the elderly. The exponential growth in the proportion of the aged population calls for unprecedented attention to the human rights and dignity of the elderly. The elderly are human beings and are hence entitled to all recognized human rights. However, it is the harsh reality that the elderly are vulnerable like children on account of their physical and mental incapacities due to the irreversible biological phenomenon of ageing. This phenomenon calls for immediate focus *interalia* to the income and health needs of the aged primarily in addition to various other vital needs like safe living environment, recreation, continuing education and employment.

The doctrinal cum empirical study focused on the following key areas:

- The mythological, social, cultural and religious basis for the rights and dignity of the elderly.
- The demographic transition at the global, national and state level.

- The concept of ageing and the theories of ageing.
- The jurisprudential roots and evolution of the rights of the elderly.
- The seminal positive and negative rights of the elderly.
- The evolution of rights of the elderly in international law through global and regional conventions.
- The contributions of the UN.
- A comparative study of the rights of the elderly in foreign Constitutions and selected foreign statutes.
- An analysis of the statutes in India including the Constitution.
- An analysis of the main statute for Senior Citizens, i.e., the MWPC Act of 2007 and the Kerala Rules of 2009.
- An analysis of all the non-statutory and other mechanisms for protecting the rights and dignity of the elderly.
- The contribution of important statutory commissions and legal services institutions.
- The contribution of NGOs and Senior Citizens federations and associations.
- An empirical study of 366 respondents spread over all major urban and selected rural areas in Kerala.
- An empirical study through a semi structured questionnaire for presiding officers of three Maintenance Tribunals.

The detailed and incisive study led to the following conclusions.

## 10.1. CONCLUSIONS

Indian culture is the unique remarkable social phenomenon that venerates the aged and sets the aged in a pedestal above that of even “Guru” and “God” and which socio-cultural value system is rooted in religion and morality.<sup>1</sup>

The joint family system in India and in Kerala was the bedrock of ethical, societal, and cultural values that respected the aged and it was the biggest safety net for elders in traditional society.<sup>2</sup>

The joint family system in India and in Kerala promoted inter-generational bonding and protection which was a vital informal social security mechanism for the elderly.<sup>3</sup>

The disintegration of the joint family system in India and in Kerala is the root cause for the lack of traditional social protection of the elderly.<sup>4</sup>

Kerala has the highest proportion of the elderly population when compared to other states in India necessitating urgent, serious and concerted action for the protection and welfare of Senior Citizens through social, economic and legal measures.<sup>5</sup>

“Ageing” is a complex- multi dimensional concept that has four main facets i.e., chronological, biological, psychological and social and though chronological ageing by itself cannot be taken as the sole criterion for elders’ rights and

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<sup>1</sup> *supra* p.2.

<sup>2</sup> *supra* p.2-3.

<sup>3</sup> *supra* p.6.

<sup>4</sup> *supra* 4-6.

<sup>5</sup> *supra* p.18.

protection there is the need to fix a universally acceptable age for legal protection and benefits.<sup>6</sup>

The legal framework is mainly concerned with social ageing and there are no universally accepted parameters presently for social ageing which depends on social and cultural factors. The standards of social ageing vary considerably on the basis of socio-cultural factors. There is a close relation between all the four conceptual facets of ageing and hence the legal framework has to harmonise all the four facets for an effective legal regime.<sup>7</sup>

“Senior Citizens” are basically human beings and are hence entitled to all human rights, inherently that inheres in every human being without any classification or distinction.<sup>8</sup>

“Senior Citizens” however are a vulnerable class by themselves due to their biological and psychological deterioration due to the ageing process necessitating in certain specialized human rights for their protection and welfare like women and children.<sup>9</sup>

Jurisprudentially, “Senior Citizens” are entitled to both positive rights and negative rights and these rights are rooted in morality and religion.<sup>10</sup>

Theories of ageing, both biological and non-biological helps to understand the complex, inevitable, irreversible phenomenon of ageing and its socio-legal

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<sup>6</sup> *supra* p.33.

<sup>7</sup> *supra* p.67.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

consequences.<sup>11</sup>

Biological theories of ageing highlight the inherent vulnerability of the aged on account of the irreversible biological consequences of the ageing process and the need for a specialized regime of rights for the aged. Non biological theories like Activity Theory helps us understand the impact of ageing on human behavior and conduct.<sup>12</sup>

At the international level there is no comprehensive single convention enumerating the rights of Senior Citizens like the United Nations Convention on the Rights of the Child, 1989, the CEDAW of 1979 or the Convention on the Rights of Persons with Disabilities of 2006.<sup>13</sup>

The fundamental human rights documents at the international level, i.e., the Universal Declaration of Human Rights 1948 and the two International Covenants on Civil and Political Rights and Economic Social and Cultural Rights of 1966 does not expressly deal with elders' rights even though they underscore human dignity, equality and liberty.<sup>14</sup>

The later International Conventions like the CEDAW of 1981 and the Convention on the Rights of Persons with Disabilities of 2006 however specifically deal with older persons reflecting the evolving global sensitivity towards the elderly and their rights.<sup>15</sup>

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<sup>11</sup> *supra* p.68.

<sup>12</sup> *Id.*

<sup>13</sup> *supra* p.108.

<sup>14</sup> *supra* p.109.

<sup>15</sup> *Id.*

The UN is singularly responsible for the creation and sustenance of the present International Human Rights regime for the elderly.<sup>16</sup>

The UN through the First World Assembly on Ageing in Vienna 1982, the Second World Assembly on Ageing in Madrid in 2002, the United Nations Principles for Older Persons of 1999, and the commemoration of the year 1999 as the International Year of Older persons has set the global standards for national policy and legislation for the rights of the aged.<sup>17</sup>

There is presently a normative gap when it comes to comprehensive human rights treaties for the aged at the international level and there is the crying need for an exclusive Convention and a “Third World Assembly” on ageing.<sup>18</sup>

There is the dire need for a comprehensive document at the international level enlisting the positive and negative rights of Senior Citizens for creating a strong legal framework at the global, regional, and national levels since there is a normative gap at the international level.<sup>19</sup>

Many of the regional charters like the Arab Charter on Human Rights of 2004, the American Convention on Human Rights of 1969 and the African Charter on Human and People’s Rights of 1981 have incorporated elaborate provisions for protection of elders unlike the global conventions.<sup>20</sup>

The specialized organs of the UN and in particular the ILO, WHO and

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<sup>16</sup> *Id.*

<sup>17</sup> *supra* p.109.

<sup>18</sup> *Id.*

<sup>19</sup> *supra* p.109.

<sup>20</sup> *supra* p.108.

OEWG on ageing are doing commendable work for protection of the rights of the elderly and for evolving a new regime based on an international convention exclusively for the elderly.<sup>21</sup>

Rights and duties pertaining to Senior Citizens are contained specifically only in a handful of Constitutions and the Constitutions that prescribe the “duties” are fewer than those that prescribe “rights.”<sup>22</sup>

The Constitution of Brazil is found to be the most ideal progressive and meritorious of all Constitutions studied in the realm of rights of Senior Citizens both in terms of quality and quantity of the provisions contained therein with respect to welfare of elders.<sup>23</sup>

The Constitution of India conspicuously contains a sketchy, outdated and toothless if not a blunt provision for protection of “elderly rights” which is totally inadequate to meet the exigencies of the contemporary social milieu in the context of the radical demographic transition in favour of the elderly.<sup>24</sup>

On a comparative analysis of several world Constitutions, it is found that the Constitution of India is very regressive and outdated in terms of provisions contained for the elderly.<sup>25</sup>

It is gratifying to note that recently the Apex Court has for the first time dealt specifically with a public interest litigation pertaining to the rights of Senior

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<sup>21</sup> *supra* p.109-110.

<sup>22</sup> *supra* p.337.

<sup>23</sup> *Id.*

<sup>24</sup> *supra* p. 31-132.

<sup>25</sup> *supra* p.134.



Citizens and its protection in *Ashwani Kumar (Dr.) v. Union of India and Others* 2019 1 KHC 173.<sup>26</sup>

The existing provision is only a Directive Principle of State Policy or a yard stick for policy and legislation or a yard stick for potential policy and potential legislation which at best merely caters to “public assistance” for aged persons. Public assistance need be provided subject to the economic capacity and development of the state.<sup>27</sup>

The Constitution of India does not contain express provisions for protection against “ageism” or “age” based discrimination as a facet of the right to equality in Article 14.<sup>28</sup>

The Constitution of India does not mandate the right to social security, social insurance, social benefits, social assistance and social services as a fundamental right or even as a constitutional right and merely mandates “public assistance” subject to the economic capacity and development of the state as a guiding policy principle.<sup>29</sup>

The Constitution of India does not prescribe the duty of children, the family and society to protect and care for elders under the head of Fundamental Duties.<sup>30</sup>

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<sup>26</sup> *Supra* p.122.

<sup>27</sup> *Supra* p.132.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

The Constitution of India does not make provision for vital assistance for the aged like tax reliefs for the elderly or for other concessions like free public transportation, retirement pensions, medical aid etc.<sup>31</sup>

Though the Constitution of India does not contain express provisions with respect to the rights of the aged and their dignity, the core constitutional philosophy of dignity of the individual is enshrined in the preamble and the fundamental rights in Part III which fully applies to the aged.<sup>32</sup>

The Constitutional courts and in particular the Apex Court has widened the ambit of the right to life in Article 21 to include all facets of human rights for dignified living which would enure to the aged also.<sup>33</sup>

The statutes of different countries for the aged reflect its close nexus with the culture and history of the land in addition to its traditions and value systems and are progressive in terms of the provisions for the aged.<sup>34</sup>

The oldest and the most detailed legislation studied is the Older Americans Act of 1965 of the USA which provides for a detailed national network of community-based services which includes housing, restorative services, long term care services, employment opportunities, access to low-cost transportation, participation in community-based services, protection against abuse, neglect and exploitation and legal assistance through a central agency by name AOA.<sup>35</sup> The

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<sup>31</sup> *Id.*

<sup>32</sup> *supra* p.133.

<sup>33</sup> *Id.*

<sup>34</sup> *supra* p.337.

<sup>35</sup> *Id.*

legislation caters to the widest spectrum of rights of the elderly and is the most comprehensive and lengthy legislation analysed.

The Maintenance of Parents Act 1995 of Singapore is very similar to our domestic law, i.e., the Maintenance and Welfare of Parents and Senior Citizens Act of 2007 since the legislation constitutes Maintenance Tribunals for awarding maintenance to parents. However, the authorities are not executive officers but district judges and further there is appeal and revision before the High Court and Court of Appeal which is commendable and worth following.<sup>36</sup>

The Statute of the Elderly 2003 of Brazil is a comprehensive legislation that caters to all facets of the rights of Senior Citizens. It is based on Constitutional provisions and contains Fundamental Rights, Protection Measures, Elder Care, Policy, Access to Justice provisions and Penal provisions. The statute is worth emulating considering its comprehensive approach.<sup>37</sup>

The Aged Care Act of Australia 1997 is commendable for the regulation of aged care services both in institutions and at homes. The practice of regulatory caregivers and care recipients can be emulated in the Indian context and especially in Kerala where the Orphanage Control Board hardly has any regulatory hold over old age homes and its inmates in the private sector.<sup>38</sup>

The Law of the People's Republic of China on the Protection of Rights and Interests of the Aged 1996 notably advocates ethical education among children

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<sup>36</sup> *supra* p.338.

<sup>37</sup> *supra* p.339.

<sup>38</sup> *Id.*

and youth for respecting and caring for the aged in addition to legal education among children and youth which is worth emulating.<sup>39</sup>

The Older Persons Act of 2006 of South Africa is a very progressive legislation that has evolved the concept of “best interests of the aged” and the concept of “older persons in need of care and protection.”<sup>40</sup>

Japan the country with the largest aged population has transitioned from fully state sponsored care for the elderly to long term care through insurance commencing from the age of 40 years under the Long Term Care Insurance Act 1997 which system is not practical for India considering the financial disparity between the two nations.<sup>41</sup>

The Protection of Elderly Persons Act 2005 of Mauritius, a country with a sizable Hindu Community and which shares common religious and cultural values with India, is a commendable legislation for its extensive network of agencies created for detecting elder abuse and for prosecuting offenders.<sup>42</sup>

The Hindu Adoption and Maintenance Act, 1956 has limited scope and applicability since it relates only to Hindus by religion and since it is confined to maintenance of Hindu parents alone and since the remedy is conventional through regular civil courts which is time consuming and expensive.<sup>43</sup>

The Cr. P C of 1973 though a secular law is not effective since the

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<sup>39</sup> *Id.*

<sup>40</sup> *supra* p.340.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *supra* p.180.

proceedings are conducted in JFCM/Family Courts which is expensive and time consuming.<sup>44</sup>

The PWDV Act of 2005 has immense scope and potential in protecting aged women from domestic violence since under the Indian context domestic violence is rampant against elderly women.<sup>45</sup>

The Legal Services Authorities Act 1987 does not provide free legal aid to aged men which is a major lacuna on a comparative analysis. The Act and especially the NALSA (Legal Services to Senior Citizens) Scheme of 2016 has tremendous scope and potential for protecting the rights of Senior Citizens.<sup>46</sup>

The Himachal Pradesh Maintenance of Parents and Dependents Act 2001 is an effective legislation for maintenance of parents since the Appellate Authority constituted is a Judicial Authority i.e., a District Judge though the main legal remedy provided is the same as in Section 23 of the MWPSA Act of 2007. This state legislation acted as a model legislation in India since the main legal remedy under the MWPSA Act of 2007 is designed on the basis of this Act.<sup>47</sup>

The PRANAM Act 2017 is an effective legislation that has limited application beneficial to parents and applicable only to Government employees and which ensures speedy monetary relief to the beneficiaries and a similar legislation can be effectively implemented in Kerala among Government

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<sup>44</sup> *supra* p.181.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

employees.<sup>48</sup>

Though the Income Tax Act 1961 have provided exemptions and concessions for Senior Citizens the concessions are only minimal considering the drastic reduction in income of Senior Citizens after retirement.<sup>49</sup>

Maintenance and Protection of Life and Property are the two vital legal remedies provided in the MWPSA Act of 2007 through Maintenance Tribunals and executive authorities.<sup>50</sup>

Though the objective of the Act is to provide simple, inexpensive and speedy remedy without the involvement of lawyers the remedies provided are legally complex necessitating long drawn litigations and the involvement of lawyers.<sup>51</sup>

The Executive Officers and Sub Divisional Officers who are entrusted with adjudicatory functions are over worked being authorities conferred with multifarious executive responsibilities and hence they cannot effectively discharge their functions under the Act.<sup>52</sup>

Though the adjudicatory process under the MWPSA Act of 2007 involves complex legal issues pertaining to transfer of property and conditional transfers, the Authorities invested with powers are not legally trained or qualified to render effective justice.<sup>53</sup>

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<sup>48</sup> *supra* p.182.

<sup>49</sup> *Id.*

<sup>50</sup> *supra* p.228.

<sup>51</sup> *supra* p.229.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

The MWPC Act of 2007 suffers from several lacunas notable among them being the absence of a provision enabling the filing of Appeals under Section 16 by aggrieved respondents in the petitions, the loosely worded definitions under the Act, the inappropriate authority for adjudication and the nominal penalty imposed for abandonment of Senior Citizens.<sup>54</sup>

Though the MWPC Act of 2007 has definitely improved and enhanced the legal framework for protection of elders' rights and dignity in Kerala, the legislation has been able to make an impact only in the realm of maintenance. The level of effectiveness of the legislation in the realm of welfare measures like establishment of old age homes, medical facilities and protection of life and property is very low.<sup>55</sup>

Though judicial interpretation of the provisions of the MWPC Act of 2007 by Constitutional courts have been progressive by and large, dictums enabling access to lawyers in tribunals contrary to the legislative mandate, giving primacy to maintenance orders and insisting on express recitals in the deeds of conditional transfers are huge setbacks for the effective implementation of the Act.<sup>56</sup>

The III<sup>rd</sup> Report of the Kerala Administrative Reforms Commission has rightly reiterated the need for shifting from welfare-based jurisprudence to rights-based jurisprudence for the aged in Kerala.<sup>57</sup>

All the recommendations of the Administrative Reforms Commission are

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<sup>54</sup> *Id.*

<sup>55</sup> *supra* p.230.

<sup>56</sup> *supra* p.231.

<sup>57</sup> *supra* p.230.

welcome. In particular the recommendations for generating awareness on the provisions of the Act, the need for augmenting staff of the Maintenance Tribunals and the need for proper monitoring of the activities of the tribunals, appellate tribunals and authorities under the Act are commendable and they deserve urgent attention.<sup>58</sup>

The recommendation of the special officer Sri. V. K. Beeran (Senior Advocate) to constitute a regulatory board is welcome and commendable since the Board is proposed for effective supervision and monitoring of functioning of authorities under the MWPSA Act of 2007 and its Rules.<sup>59</sup>

Recommendation of the Kerala Legislative Assembly Committee to revise the school curriculum to incorporate subjects on Senior Citizens welfare and protection is commendable. It will foster and enrich a culture of respect and dignity towards the aged.<sup>60</sup>

Recommendation of the Kerala Legislative Assembly Committee for commencement of paid old age homes in the State for the aged who can afford stay in such homes is a welcome step which is very relevant and needed in the contemporary context.<sup>61</sup>

The recommendation of the Kerala Legislative Assembly Committee for establishment of Senior Citizen courts in each district for expeditious disposal of cases involving Senior Citizens is a valuable recommendation which has to be

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<sup>58</sup> *supra* p.231.

<sup>59</sup> *Id.*

<sup>60</sup> *supra* p.232.

<sup>61</sup> *Id.*



implemented urgently in the State.<sup>62</sup>

The proposed Amendments of 2019 to the MWPSA Act of 2007 which includes children-in-laws also within the ambit of the Act is welcome. The inclusion of stepchildren, adoptive children and legal guardian of minor children within the Act is also welcome.<sup>63</sup>

The Amendment Bill of 2019 includes regulation of private care homes for Senior Citizens and institutions providing home care services which is welcome and appreciable.<sup>64</sup>

Both the NPOP of 1999 and the National Policy on Senior Citizens of 2011 are well drafted visionary policies with in-depth analysis and are a reflection of international policy developments in the Indian perspective and if implemented properly will definitely advance the rights of Senior Citizens in India.<sup>65</sup>

The Kerala State Old Age Policy of 2006 and the Revised State Policy for Senior Citizens of 2013 are well drafted policy documents in tune with the National Policy and are well suited for Senior Citizens considering the socio-economic and legal requirements of Kerala.<sup>66</sup>

Though the National and State Policies are very progressive and visionary they largely remain as paper policies without effective implementation or enforcement especially with respect to the effective implementation of the

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<sup>62</sup> *supra* p.233.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *supra* p.279.

<sup>66</sup> *Id.*

MWPSC act of 2007 in Kerala and provision for legal aid.<sup>67</sup>

The National level programmes and schemes of the Central Government especially the National Old Age Pension Scheme and the recent National Action Plan for Senior Citizens 2020 are beneficial for the welfare of Senior Citizens and the **Vayoshreshtha Samman** acts as a motivator for concerted action by individuals and organizations in the field.<sup>68</sup>

The Social Justice Department of the Government of Kerala and the Kerala Social Security Mission are doing commendable work and its programmes like **Vayomithram, Ashwasakiranam, Mandahasam, Vayoamrutham, Vayomadhuram, Vayyoposhanam** and **Navajeevan** are good initiatives for Senior Citizens. However, the Vayomithram scheme is made applicable only to persons above 65 years which is a lacuna and further there is the need to increase publicity and awareness on the programmes.<sup>69</sup>

The other Programmes and Schemes like Airline concessions and Railway concessions are beneficial for Senior Citizens. However, more Income Tax Benefits can be granted to Senior Citizens and their care givers in addition to free Income Tax counselling.<sup>70</sup>

Though there is a scheme for 20 % reservation of seats in public transport for Senior Citizens, the programme is not implemented effectively. There is the need for strict implementation of seat reservation in public transport especially

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<sup>67</sup> *supra* p.280.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

in public transport buses.<sup>71</sup>

There is the need to ensure an age friendly and safe living environment in public offices, public spaces, roads and public transport and the present environment especially public transport and roads are hostile to the safety and security of elders.<sup>72</sup>

Both the Kerala State Human Rights Commission and the Kerala State Women's Commission are recommendatory bodies that can only make recommendations to the Government. Both Commissions can act as watchdogs when it comes to protection of the rights of Senior Citizens and can make timely interventions and effective recommendations.<sup>73</sup> Both the Commissions are presently not focusing specifically on the rights of elders.

Senior Citizens Associations and Forums at the Taluk, District and State levels have to be more proactive in the issues dealing with Senior Citizens and they can act as an effective lobbying force on policy matters and other issues concerning Senior Citizens. Such associations can take active involvement in issues of violation of rights of Senior Citizens, and they can also take effective measures before the authorities concerned and in ligations before the Tribunals. The government at all levels have to effectively consult such associations while formulating policies and programmes which can also be implemented through these associations.<sup>74</sup> Senior Citizens Associations presently are confined to

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<sup>71</sup> *Id.*

<sup>72</sup> *supra* p.281.

<sup>73</sup> *Id.*

<sup>74</sup> *supra* p.282.

conducting get-togethers, medical camps, tours and seminars alone.

Non-governmental organisations have to play an active role in implementing welfare programs of the government as envisaged in the National and State policies.<sup>75</sup> NGOs presently are not actively involved in policy formulations, implementation of programmes and interventions in issues of elders' rights.

Though the National and State Policies have given a prime role to NGOs, the mandate remains on paper without implementation. The State Policy rightly envisaged collaboration between NGOs and the Government for Policy implementation in addition to effectuating Government Welfare Schemes through NGOs. Both the mandates are not implemented till date.<sup>76</sup>

Majority of the respondents in the empirical study were satisfied with their personal rights both positive like food, clothing, shelter, medical attendance and treatment, recreation, care and attention, adequate income, education, safe living environment, employment, participation, decision making, information and dignity and negative rights like protection against abuse discrimination exploitation and social exclusion.<sup>77</sup>

Majority of the respondents in the empirical study preferred to stay at home compared to an old age home giving importance to "ageing in place" mandated by the State Policy.<sup>78</sup>

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<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *supra* p.413.

<sup>78</sup> *Id.*

Majority of the respondents in the empirical study had settled their properties in favour of their children and conditionally, and the conditions were not fulfilled.<sup>79</sup>

Majority of the respondents in the empirical study were not aware of the existing relevant legislations including the Constitution of India, Cr. P. C of 1973, Hindu Adoption and Maintenance Act, 1956 and the PWDV Act of 2005.<sup>80</sup>

Majority of the respondents in the empirical study were satisfied with the legal remedies and the legal system through litigations.<sup>81</sup>

Majority of the respondents in the empirical study were of the opinion that there is inadequate publicity for the MWPC Act of 2007.<sup>82</sup>

Majority of the respondents in the empirical study were satisfied with the current legal system for protection of elders' rights.<sup>83</sup>

Majority of the respondents were of the view that the MWPC Act of 2007 is more effective compared to the conventional law, i.e., Cr. P C of 1973.<sup>84</sup>

Majority of the respondents in the empirical study felt that the aged in Kerala are more secure in rights and dignity compared to the aged in other States in India.<sup>85</sup>

The empirical study reveals the glaring reality that the level of legal literacy

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<sup>79</sup> *Id.*

<sup>80</sup> *supra* p.404.

<sup>81</sup> *supra* p.414.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *supra* p.414-415.

on the rights of elders in Kerala is very low and that only a small minority of the elderly have ventured to file complaints against their children due to social and cultural factors and stigma.<sup>86</sup>

Majority of the respondents in the empirical study interviewed had “no response” to many of the questions either due to lack of awareness and exposure or due to lack of conviction on answers both of which are not healthy indicators.<sup>87</sup>

## **10.2. SUGGESTIONS**

The doctrinal study was illuminating since it gave valuable insights into the lacunas and shortfalls in the existing legal framework. The comparative study helped to understand the outdated and regressive provisions in the Constitution and the Statutes of India. The National and State policies however were found to be very progressive and vibrant and in tune with international developments. The empirical study based on field survey gave invaluable insights into the grass root level operation of the legal framework. In the light of the aforesaid study the following suggestions are mooted for improving the legal framework.

### **Constitutional Amendments**

The Constitution of India has to be amended to include “age” as a facet of non-discrimination like caste, race, sex, place of birth and religion in Part III dealing with Fundamental Rights.

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<sup>86</sup> *supra* p.414.

<sup>87</sup> *supra* p.415.

Article 15 (3) of the Constitution has to be amended to include “Senior Citizens” as a Class of persons for whom special provisions can be made like women and children.

Part IV A dealing with Fundamental Duties has to be amended to include the specific duty of the family, community and society to care for and protect the aged.

Compulsory “Social Security” provisions have to be specifically incorporated in the Directive Principles of State Policy for the elderly in addition to “public assistance.”

The Policy mandates for Senior Citizens in the National and State Policies have to be incorporated expressly in the Directive Principles in Part IV of the Constitution.

### **Statutory Amendments**

The MWPC Act of 2007 has to be amended to incorporate specific positive and negative rights of Senior Citizens like the Constitution of Brazil.

Specific timeframes and priority for disposal of cases pertaining to “Senior Citizens” can be incorporated in Section 125 of the Cr. P. C of 1973, the Hindu Adoption and Maintenance Act 1956, and the PWDV Act of 2005.

The Legal Services Authorities Act 1987 has to be amended to include “Senior Citizens” of male gender as persons entitled to free legal aid.

### **Policy Implementation**

The Central Government and State Government should take steps to

urgently implement all the mandates and directives of the National Policy of 2011 and the Kerala State Policy of 2013.

The Central Government should generate awareness on its National Policy on Senior Citizens of 2011 through the print and electronic media so that the Policy remains in constant public focus and is made a touch stone for all Governmental and Non-Governmental activities.

The State Government should generate awareness on the Revised State Policy for the Elderly of 2013 through print and electronic media so that all Governmental actions can be gauged on its principles and mandates.

The State Government can establish an employment exchange for the aged so that employment opportunities can be enhanced for the aged and the experience and wisdom of the aged can be used as a resource for society. Such employment exchanges can be on professional and non-professional basis.

Local self-government Institutions have a major role to play in promoting the welfare of Senior Citizens and they can work in tandem with Senior Citizens associations and forums in formulation of welfare schemes and programmes and also in effectively implementing welfare schemes and programs. Local self-government institutions can conduct periodical medical and legal camps and adalats for solving the local issues of the elderly.

The “Kudumbasree Mission” can be more effectively used to promote the rights and dignity of Senior Citizens since it functions at the grass root level with community participation. In particular Jagratha Samitis can be formed at the



ward level for reporting elder abuse and for effective intervention.

Senior Citizens Forums, Residents Associations and Police and Local Self Government Institutions can work jointly hand in hand to discuss local issues and problems confronting Senior Citizens and for finding solutions at the grass root level.

Information technology and social media can be harnessed to share information on elders' rights and their needs and requirements, and Government services can be extended to Senior Citizens at their doorstep through online platforms.

Computer literacy can be improved for the aged through basic computer learning Programmes at the local self-government institutions, at old age homes, Pakalveedus and resident associations in association with Senior Citizens associations.

Top priority has to be given to all pending litigations pertaining to Senior Citizens and especially traditional civil litigations by expediting trial and execution procedures.

Special courts for trial of civil and criminal cases pertaining to Senior Citizens have to be established in each district since the regular courts under the current system are unable to cope with the huge overload of cases.

The Corona Pandemic has exposed the vulnerability of Senior Citizens and the Central and State Governments have to take special measures for insulating the aged from such epidemics and pandemics and to mitigate their sufferings and

in particular their restricted mobility in such natural disasters and pandemics.

Helplines and hotlines should be commenced in the Police Department and Health Department for receiving distress calls from Senior Citizens in cases of emergency and the help lines can also provide psychological counselling for Senior Citizens who suffer from loneliness and mental issues.

The Government of Kerala should constitute a separate department for monitoring and regulating all matters pertaining to Senior Citizens like the Department of Women and Child Development.

The Government of Kerala can enact a legislation similar to the PRANAM Act of 2017 of Assam targeting State Government employees in Kerala. Such a legislation will be very effective for speedy monetary relief to relatives of government servants.

The Government of Kerala can promote telemedicine facilities for Senior Citizens and especially for persons aged above 70 years.

Ward level committees for Senior Citizens in local self-government institutions have to be strengthened and ward councilors have to be more vigilant and sensitive to the problems of the elderly in their wards. Ward councilors can initiate ward level actions and programmes for elders.

The Government of Kerala can commence more day care homes or Pakalveedus in all wards of local self-government institutions with facilities for recreation and learning including computer literacy for the aged.

**Improving the Efficacy of the MWPSC Act of 2007**

Awareness on the provisions and legal mechanisms provided under the MWPSC Act of 2007 for Maintenance, Welfare and Protection of Life and Property can be generated at the grass root ward level with the active involvement and co-operation of the local self-government institutions.

Steps have to be taken for effective implementation of all the provisions in the MWPSC Act of 2007 with respect to welfare measures and for providing remedies within the time frames stipulated in the Act.

Special Sub Divisional Officers have to be appointed who deal exclusively with complaints under the MWPSC Act of 2007 and these officers have to be given periodical training in general laws and relevant legal principles.

Instead of sub divisional officers as Maintenance Tribunals, Munsiff-Magistrate Courts can be appointed as Maintenance Tribunals for adjudication of maintenance and reliefs under Section 23 of the Act. The Act can be amended for this purpose. Such conferment of jurisdiction will make the Act more effective since enquiries will be conducted by legally trained judicial officers.

The Appellate Authority under the MWPSC Act of 2007 can be amended, and district judges can be made appellate authorities as in the case of the Himachal Pradesh Maintenance of Parents and Dependent Act 2001 for effective adjudication of appeals against orders of Maintenance Tribunals.

The State Government can enhance research and services in gerontology and geriatrics as mandated in the MWPSC Act of 2007 and it can appoint

qualified geriatricians in the primary health centers recently converted as family health centres in all Government hospitals.

The Government can establish more old age homes with the capacity and facilities mandated by the MWPSA Act of 2007 and the Kerala Rules of 2009 in all taluks, and it can monitor and regulate the conduct of private old age homes in the State by creating a separate exclusive body other than the Orphanage Control Board functioning under The Orphanages and other Charitable Homes (Supervision and Control) Act 1960.

The police authorities have to be properly sensitized and educated on elders' rights and dignity and the Action Plan under Rule 20 of the Kerala Rules of 2009 has to be properly implemented in all police stations. The Janamaithri Police Programmes can focus on protection of the elderly with the involvement of Senior Citizens, associations, forums and resident associations.

Mobile sitting of the Maintenance Tribunals similar to "Nyayadhikaris" can be commenced for door delivery of justice to Senior Citizens who are bed ridden or infirm and whose mobility is restricted. Such sittings can be conducted on a weekly basis at the ward level in grama panchayats and municipalities.

The State council for Senior Citizens and the district committees for Senior Citizens under the MWPSA Act of 2007 have to be made more effective and their work and recommendations have to be publicized in public domain for better visibility.

The MWPSA Act of 2007 can be restructured along the lines of the Rights

of Persons with Disabilities Act, 2016 a progressive new age legislation with the similar scheme enumerating “Rights and Entitlements” and other provisions for specific welfare needs in consonance with international law principles and developments.

Online proceedings and hearings can be promoted in Maintenance Tribunals for the convenience of Senior Citizens.

The functioning of Maintenance Tribunals under the MWPSA Act of 2007 should be in independent age friendly buildings preferably on the ground floor and such Tribunals should function on all working days.

The Government should start more old age homes in the government sector abiding by the guidelines in the Kerala Rules of 2009 and the guidelines regarding infrastructure should be strictly implemented in all Government old age homes.

Geriatricians have to be appointed in all Government Hospitals at the taluk and district level and in primary health centers and family health centers.

### **Role of Legal Services Institutions**

The Authorities under the Legal Services Authorities Act of 1987 and in particular the Taluk Committees and para legal volunteers can be given responsibilities for effective implementation of the MWPSA Act of 2007 and in particular for enhancing legal awareness on the provisions of the Act. Legal awareness classes can be held at the panchayath ward level in all local self-government institutions.

The Legal Services Authorities Act of 1987 can be amended to include male Senior Citizens as persons entitled to free legal aid under Section 12 of the said Act.

The NALSA (Legal Services to Senior Citizens) Scheme 2016 can be effectively implemented by all legal services institutions especially at the taluk level for promoting elder rights and dignity and by enhancing access to justice and the legal framework for the aged. In particular para-legal volunteers can bridge the Government authorities and beneficiaries of various Government schemes and programmes and they can spread legal literacy among the aged regarding laws, policies, and schemes.

Presently under the Kerala Rules of 2009, and under Rule 19 the District Magistrates are conferred with authority to protect the life and property of Senior Citizens and to monitor the implementation of the MWPSA Act of 2007 which is impracticable considering the multifarious responsibilities of the authority and hence a separate authority preferably a multimember authority comprising of all stakeholders can be constituted at the state and district level. The proposal for establishing a Regulatory Board is a good step in this regard.

### **United Nations and International Arena**

At the international level the UN has to take the lead to draft and formulate an exclusive and a comprehensive Convention on the Rights of the Aged along similar lines as the UN Convention on the Rights of the Child **1989**, the Convention on the Elimination of Discrimination against Women **1979** and in particular the Convention on the Rights of Persons with Disabilities of **2006**.

The UN has to set an international benchmark on the parameters for chronological ageing by fixing the age criterion for Senior Citizens since different countries have adopted different age limits for their Senior Citizens for social security and welfare benefits.

The UN has to strengthen its implementation framework at the regional level for the mandates of the MIPAA to ensure that National legislations and policies are calibrated in accordance with its mandates.

### **Central and State Government Programmes and Schemes**

The Central Government as well as the State Government can grant higher tax benefits especially under the direct taxes regime for persons looking after their infirm and financially dependent aged parents and relatives and leave provisions also can be liberalised for employees looking after their dependent aged parents and relatives.

The Central Government and the State Government has to evolve schemes and programmes for creating an age friendly living environment at public places for the aged and free or concessional public transportation can be granted to poor Senior Citizens.

All public buildings and facilities have to be made age friendly and the PWD manuals and municipal building rules have to be amended for such mandatory specifications regarding public constructions.

Special quotas can be set apart in all Government housing schemes for Senior Citizens and community living centres can be established.

The Central and State Governments can actively involve NGOs in Programmes and Schemes for Senior Citizens by granting accreditations and by fixing Standard Operating Procedures and Protocols for the functioning of NGOs. NGOs can be given due importance when it comes to policy formulation and implementation of programmes and schemes.

The Central Government and State Government can revise and modify the school and college curriculums to include moral education to all students up to the university level to instill moral values and legal literacy among children and youth with respect to the rights and dignity of elders.

The Medical Commission of India has to take steps to promote study and research on geriatrics and to increase seats for specialised post graduate education courses in geriatrics to cater to the ever-increasing demand for geriatricians.

The Bar Council of India has to revise the legal curriculum for giving importance to legal topics pertaining to the human rights and dignity of Senior Citizens and to inculcate in law students sensitivity to the aged which in turn will generate a sensitized breed of lawyers who can serve senior citizens with commitment especially through the legal services institutions.

The Central Government and the State Government has to promote continuing education among Senior Citizens to enhance their resourcefulness and productivity regardless of age by online and offline learning pedagogies. The concept of “University of the Third Age” has to be promoted.



State level, district level and taluk level monitoring committees have to be formed in the transport department for monitoring implementation of 20% seat reservation in public transport buses for Senior Citizens and for implementing and enforcing age friendly features in public transport buses like secure doors, convenient seats and steps, calling bells, low floors etc.

State level, district level and taluk level monitoring committees have to be formed in traffic units of police for strict implementation of traffic laws touching the safety and security of Senior Citizens especially in connection with Zebra crossings, use of foot paths and road signages.

Free or concessional entry can be provided to all public parks, stadiums and entertainment centres like cinema and drama theaters for Senior Citizens for encouraging recreation and sports activities.

Government can organise sports events and cultural events for Senior Citizens at the taluk and district and state level in association with Senior Citizens forums and associations and resident associations for promoting healthy ageing among Senior Citizens and rewards and prizes can be granted for motivation.

The State Government can honour individuals and institutions for outstanding Contributions to the cause of Senior Citizens' rights and dignity along similar lines as "Vayoshreshta Samman" of the Central Government.

Separate parking lots in public and private establishments and roads and commercial centers can be earmarked and reserved for "Senior Citizens" at

convenient and prime locations.

The Government can formulate schemes for special protection and welfare of Senior Citizens in times of disasters, epidemics and pandemics like COVID - 19, floods, cyclones, sea erosion etc.

The Government can issue multi-purpose Aadhar linked photo identity cards for welfare pension and schemes entitlements with portability.

### **New State Legislation**

The Government of Kerala can enact a comprehensive legislation as envisaged in the State Policy of 2013 that caters expressly to all rights of Senior Citizens, duties of the family and society towards Senior Citizens, maintenance, protection of property and elder abuse. Special Courts of Munsiff-Magistrates can be constituted for enquiry and adjudication. District and Sessions Courts can be made the Appellate Forum and the High Court can be made the forum for Revision. Such Special Courts can deal with all civil and criminal matters involving Senior Citizens as a one stop legal redressal forum. Presently Senior Citizens have to approach different fora for ventilating their rights which is highly inconvenient, ineffective and impractical.

The legitimacy and efficacy of the legal framework for the aged comprising of statutes, rules, regulations, policies, programmes and schemes are judged by the extent to which they satisfy the manifold rights and dignity of the aged. The rights of the aged and corresponding duties are rooted in morality and the collective consciousness of a society in addition to religious tenets and cultural

values. India is perhaps the only nation in the world that boasts of a culture that venerates the elderly. Though Indian culture and tradition are progressive, the Constitution and statutes are regressive and outdated in the realm of rights and dignity of the aged. While several Constitutions have made elaborate provisions for safeguarding rights of the aged our *Supreme Lex* even now rests on the outdated tenet of “public assistance” subject to the economic capacity of the state. The Cr. P C of 1973 and the revolutionary MWPSA Act of 2007 are not rights based but are rooted in the outdated concept of need based maintenance. Though welfare provisions have been incorporated in the MWPSA Act of 2007 they are not considered serious enough for effective implementation. The lethargic enforcement of welfare provisions speaks volumes about the outdated mindset of executive agencies. National and State policies in India though very progressive and prophetic lack awareness and implementation. There is the dire need to transition from a “welfare” oriented implementation of laws and policies to a “rights based” implementation in tune with international developments.

Though there is no exclusive human rights convention at the international level for the aged despite a crying need for the same, the UN has initiated a new regime of rights pursuant to the two World Assemblies on Ageing of 1982 and 2002 and the United Nations Principles for Older Persons of 1991. The statutes of many nations and in particular the Statute of the Elderly of Brazil of 2003 have laid down a rights-based and duty-based law with elaborate provisions for social security of the aged catering to all facets of rights. This is the new era of the “third age” and the “fourth age” but the Indian Constitution and statutes are

limping behind in this global race for a new legal architecture for the elderly.

The MWPC Act of 2007, though a giant leap ahead, focuses on maintenance and protection of property rights both of which are adjudicated by the executive authorities, untrained in law and legal procedure, heavily impeding timebound, speedy and simple adjudications. The limited right of appeal and involvement of lawyers against the express mandate of the statute have further complicated the legal remedies under the Act and have made the remedies legalistic and complicated.

“Justice delayed is Justice denied” and the huge backlog of constitutional, civil and criminal litigations pending in various courts involving Senior Citizens is an unpardonable malady of the legal framework. Legal Services Institutions and Alternate Dispute Resolution methods are promising developments and so is the NALSA (Legal Services to Senior Citizens) Scheme 2016. Unfortunately, free legal aid is not a reality for all Senior Citizens despite the mandate of various policies and despite the global trend.

The most compelling need of the hour is to enhance legal literacy among the elderly which is the major finding of the empirical study which revealed shocking ignorance of the aged and their lack of conviction on legal issues and problems. The empirical study revealed that the aged are largely satisfied of their personal and property rights in Kerala. It also revealed the preference of MWPC Act of 2007 over the Cr. P C of 1973 and the high level of satisfaction with the existing legal system. The empirical study also revealed the overwhelming opinion that the aged in Kerala are more secure in rights and dignity compared

to other states in India which is remarkable considering the statistical fact that Kerala has the highest population of Senior Citizens in India.

The study established the veracity of the test hypothesis that the existing legal framework comprising of statutory and non-statutory mechanisms is inadequate for protecting all the rights and dignity of Senior Citizens.

In sum there is a crying need for a paradigm shift in the mindset towards the aged and of implementation of laws and policies. Society cannot rest on the greatness of its mythology, culture and tradition and it has to move forward imbibing global developments and changes in the realm of aged rights. As rightly found by the Kerala Administrative Reforms Commission (ARC) the paradigm shift in approach must be from “welfare to rights” for evolving a rights-based jurisprudence for the aged instead of a need-based welfare regime rooted on public assistance.

William Shakespeare dramatically and realistically described the “seventh age” of man as “second childishness.” No doubt the aged are as vulnerable as children if not more and hence the new dawn of human rights belongs to the “third age” and the “fourth age.” The era has dawned in Bharath and in Kerala “God’s Own Country” for a healthy, energetic and a vibrant “**Vayojana Samooham.**”

It is befitting to conclude with the profound words of Mr. António Guterres, Secretary General of the UN extracted from the Policy Brief on “The impact of

COVID -19 on Older Persons.’<sup>88</sup>

**“This pandemic has brought unprecedented challenges to humanity and presents a disproportionate threat to the health, lives, rights and well-being of older persons. It is crucial to minimize these risks by addressing the needs and human rights of older persons in our efforts to fight the pandemic. At the same time, many of these risks are not new. Older persons have long been subject to inadequate protection of their human rights and overlooked in national policies and programmes. COVID-19 recovery is an opportunity to set the stage for a more inclusive, equitable and age-friendly society, anchored in human rights and guided by the shared promise of the 2030 Agenda for Sustainable Development to Leave No One Behind.”**

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<sup>88</sup>See <https://www.un.org/development/desa/ageing/wp-content/uploads/sites/24/2020/05/COVID-Older-persons.pdf>. Accessed on 26/4/2021.

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## ANNEXURES

**Annexure 1:-** General Questionnaire.

**Annexure 2:-** Questionnaire for Presiding officers [Sub Divisional officers] of  
Maintenance Tribunals.

**Annexure 3: -** Kerala High Court Statistics.

**Annexure 4: -** Publication: Legal Protection of the Elderly: Need for a Para-  
digm Shift in Focus, Outlook, Approach and Implementation.

**ANNEXURE -1****GENERAL QUESTIONNAIRE****RESPONDENT No:****Place:****Date:****I. PERSONAL DATA**

1. NAME ( Optional)
2. ADDRESS ( Optional)
3. SEX ( tick appropriate option) : Male  Female
4. AGE( tick appropriate option) :
 

60 – 70 <input type="checkbox"/>	70 – 80 <input type="checkbox"/>
80 – 90 <input type="checkbox"/>	90 Above <input type="checkbox"/>
5. MARITAL STATUS :
 

Single <input type="checkbox"/>	
(Tick appropriate option)	Widow/Widower <input type="checkbox"/>
Living with spouse <input type="checkbox"/>	Remarried <input type="checkbox"/>
6. CHILDREN ( Gender & No) :
 

Son (Biological/Step/Adopted)	<input type="checkbox"/>
Daughter (Biological/Step/Adopted)	<input type="checkbox"/>
Grand son (Biological/Step/Adopted)	<input type="checkbox"/>
Grand Daughter (Biological/Step/Adopted)	<input type="checkbox"/>
7. RESIDENCE :
 

Own House <input type="checkbox"/>	
(Tick appropriate option)	On Rent <input type="checkbox"/>
Living in son's house <input type="checkbox"/>	Living in daughter's house <input type="checkbox"/>
Living in relative's house <input type="checkbox"/>	Living in Old age home <input type="checkbox"/>
Nowhere to live <input type="checkbox"/>	(Govt. /Private) <input type="checkbox"/>



8. EDUCATIONAL QUALIFICATION : Illiterate

(Tick appropriate option)

Upto class V  Upto class X

Pre-degree  Graduation

Post-Graduation  Professional Degree

9. EMPLOYMENT STATUS : Govt.

(Tick appropriate option) Private

Self (Business)  No Employment

Agriculture  Others

10. INCOME STATUS : Govt. Pension

(Tick appropriate option) Other Pensions

Business Income  Agricultural Income

Manual labour Income  Income from children and relatives

Others

11. HEALTH STATUS : No illness

(Tick appropriate option) Occasional ailments

Dementia  Parkinsons disease

Alzheimers disease  Other age-related illness

Life threatening ailments

**I. RIGHTS ENTITLEMENT ( PERSONAL RIGHTS)**

12. ARE YOU SATISFIED WITH YOUR RIGHT: Yes  No

TO FOOD

a. ARE YOU GETTING NUTRITIOUS FOOD : Yes  No

13. ARE YOU SATISFIED WITH YOUR RIGHT: Yes  No

TO CLOTHING

14. ARE YOU SATISFIED WITH YOUR RIGHT: Yes  No   
TO SHELTER

a. WHICH DO YOU PREFER : Home  Old Age Home

15. ARE YOU SATISFIED WITH YOUR RIGHT : Yes  No   
TO OBTAIN 'MEDICAL ATTENDANCE AND  
TREATMENT'

16. ARE YOU SATISFIED WITH YOUR : Yes  No   
RIGHT TO RECREATION

17. ARE YOU ENGAGEING IN ANY MODE OF : Yes  No   
RECREATION

a. IF YES SPECIFY PLACE & MODE : At Home   
"Pakalveedu"  Club   
Friend's house  In an Old age home

18. ARE YOU SATISFIED WITH YOUR : Yes  No   
RIGHT TO CARE AND ATTENTION

19. ARE YOU SATISFIED WITH YOUR : Yes  No   
RIGHT TO PROTECTION AGAINST  
PHYSICAL & MENTAL ABUSE

20. ARE YOU SATISFIED WITH YOUR : Yes  No   
RIGHT TO INCOME & MAINTENANCE

21. ARE YOU SATISFIED WITH YOUR : Yes  No   
RIGHT TO COMPANIONSHIP

22. ARE YOU SATISFIED WITH YOUR : Yes  No   
RIGHT TO A SAFE LIVING ENVIRONMENT

23. ARE YOU SATISFIED WITH YOUR : Yes  No

RIGHT TO PARTICIPATION AND  
DECISION MAKING

24. ARE YOU SATISFIED WITH YOUR : Yes  No

RIGHT TO EMPLOYMENT

25. ARE YOU SATISFIED WITH YOUR : Yes  No

RIGHT TO DIGNITY

26. ARE YOU SATISFIED WITH YOUR : Yes  No

RIGHT TO INFORMATION AND  
EDUCATION

27. ARE YOU SATISFIED WITH YOUR : Yes  No

RIGHT AGAINST DISCRIMINATION

28. ARE YOU SATISFIED WITH YOUR : Yes  No

RIGHT TO INDEPENDENCE

29. ARE YOU SATISFIED WITH YOUR : Yes  No

RIGHT AGAINST EXPLOITATION

30. ARE YOU SATISFIED WITH YOUR : Yes  No

RIGHT AGAINST SOCIAL  
DEPRIVATION AND EXCLUSION

## II. RIGHTS ENTITLEMENT (PROPERTY RIGHTS)

31. OWNERSHIP OF PROPERTY : Yes  No

a. TYPE OF PROPERTY : Immovable  Movable

32. MODE OF ACQUISITION OF PROPERTY: Inherited

Self Acquired

**33. SETTLEMENT OF PROPERTY IN FAVOUR**

OF CHILDRED : Settled  Not Settled

- a. TYPE OF SETTLEMENT : Sale   
 (Tick appropriate option) Gift /Settlement Deed   
 Will  Conditional Transfer  Unconditional Transfer

34. SETTLEMENT OF PROPERTY IN FAVOUR: Settled

OF RELATIVES Not Settled

- a. TYPE OF SETTLEMENT : Sale   
 (Tick appropriate option) Gift/Settlement Deed   
 Will  Conditional Transfer   
 Unconditional Transfer

35. COMPLIANCE OF CONDITIONS : Yes  No

**III. LEGAL AWARENESS**

36. CONSTITUTION OF INDIA ( ARTICLE 41) : Aware

(Tick appropriate option) Not aware

Very much aware  Heard of it

37. CODE OF CRIMINAL PROCEDURE : Aware

(Section 125) (Tick appropriate option) Not aware

Very much aware  Heard of it

38. HINDU ADOPTION & MAINTENANCE : Aware

ACT 1956 (Section 20) Not aware

(Tick appropriate option) Very much aware

Heard of it

39. MAINTENANCE & WELFARE OF PARENTS AND SENIOR CITIZENS ACT 2007 (Tick appropriate option)
- Aware
- Not aware
- Very much aware
- Heard of it
40. PERSONAL LAWS FOR MAINTENANCE (Tick appropriate option)
- Aware
- Not aware
- Very much aware
- Heard of it
41. PROTECTION OF WOMEN FROM PWDV ACT of 2005
- Aware
- Not aware
- Very much aware
- Heard of it
42. AWARENESS OF OLD AGE PENSION SCHEMES
- Aware
- Not Aware
43. AWARENESS OF 'VIOMITHRAM' SCHEME
- Beneficiary
- Not a Beneficiary
44. AWARENESS OF 'ASHWASA KIRANAM' SCHEME
- Beneficiary
- Not a Beneficiary
45. AWARENESS OF SCHEMES FOR ELDERLY OF SOCIAL JUSTICE DEPARTMENT
- Aware
- Not Aware
46. AWARENESS OF LEGAL SERVICES INSTITUTIONS [NALSA, KeLSA, DLSA, TLSC]
- Aware
- Not Aware
47. ARE YOU AWARE OF ELDERLY LAWS IN OTHER COUNTRIES : Yes  No

- a. IF SO OF WHICH COUNTRY : USA
- (Tick appropriate option) Brazil
- Nigeria  Japan  Switzerland
- Australia  Others

48. ARE YOU AWARE OF THE HIMACHAL : Yes  No

PRADESH MAINTENANCE OF PARENTS

AND DEPENDENTS ACT 2001

#### IV. LITIGATIONS (GENERAL)

49. INVOLMENT IN LITIGATION : Civil Litigation

(Tick appropriate option) Criminal Litigation

Maintenance Litigation  Matrimonial Litigation

Pre-litigation  Others

50. HAVE YOU APPEARED BRFORE ANY : Yes  No

LEGAL FORUM WITH A COMPLAINT

AGAINST YOUR CHILDREN/RELATIVES

a. IF SO, WHICH FORUM? : Court of Law

(Tick appropriate option) Police Station

Panchayath  Municipality  Corporation

Government  Maintenance Tribunal

Human Rights Commission  Women's Commission

Other Commissions  Other forums  Relatives

51. WHETHER CONDUCTED LITIGATIONS : Yes  No

a. FORUM : Magistrate  Munsiff

District Court Family Court Maintenance Tribunal Commissions  NGOs b. APPEARANCE : Direct Lawyer Power of Attorney NGOs Private Agencies c. ACCESS TO LAWYER : In the family Friends Legal aid Neighbours 

d. PARTICIPATION IN PROCEEDINGS :

e. RESULT OF LITIGATION: Success  Failure f. LAWYER'S SERVICE : Satisfactory  Not Satisfactory g. LEGAL REMEDY : Satisfied  Not Satisfied h. EXECUTION : Satisfied  Not Satisfied 52. EXPERIENCE OF THE LEGAL SYSTEM : Good Satisfactory Bad 

53. EFFICACY OF LEGAL REMEDIES :

Good Satisfactory Bad **V. PROPERTY & MAINTENANCE LITIGATION [ FAMILY****COURT/JFCM)**54. HAVE YOU CONDUCTED LITIGATIONS : Yes  No 

IF YES,

a. Access : Easy  Difficult b. Lawyer's assistance : Easy  Difficult c. Participation in Proceedings: Participated  Not participated d. Result : Favourable  Not favourable

- e. Remedies : Satisfied  Not Satisfied
- f. Execution : Satisfied  Not Satisfied
- g. Delay : YES  NO

**VI. PROPERTY & MAINTENANCE LITIGATION (MAINTENANCE TRIBUNAL)**

55. HAVE YOU CONDUCTED LITIGATIONS : Yes  No

IF YES,

- a. Access : Easy  Difficult
- b. Lawyer's assistance : Easy  Difficult
- c. Participation in Proceedings: Participated  Not participated
- d. Result : Favourable  Not favourable
- e. Remedies : Satisfied  Not Satisfied
- f. Execution : Satisfies  Not Satisfied
- g. Delay : Yes  No

56. HAVE YOU BEEN ABANDONED AT ANY : Yes  No

POINT OF TIME BY YOUR CHILDREN/

RELATIVES

a. IF YES, WHETHER PROSECUTION WAS : Yes  No

LAUNCHED u/s 24 of the 2007 ACT

57. DO YOU THINK THERE IS ADEQUATE : Yes  No

PUBLICITY FOR THE ACT OF 2007

58. ARE YOU AWARE OF THE LEGAL REMEDY: Yes  No

u/s 23 OF THE MWPC ACT OF 2007 FOR

CANCELLATION OF DOCUMENTS IF YES,



a. HAVE YOU AVAILED OF THE REMEDY AT : Yes  No   
ANY POINT OF TIME

b. IF AVAILED, ARE YOU SATISFIED WITH : Yes  No   
THE LEGAL REMEDY

59. ARE YOU AWARE OF THE SERVICES OF : Yes  No   
THE MAINTENANCE OFFICER u/s 18 OF  
THE MWPC ACT 2007

IF YES,

a. ARE YOU SATISFIED WITH THE SERVICES : Yes  No   
OF THE MAINTENANCE OFFICER u/s 18  
OF THE MWPC ACT

## VII. EFFICACY OF LEGAL REMEDIES

60. ARE YOU SATISFIED WITH THE : Yes  No   
LEGAL SYSTEM FOR PROTECTION  
OF ELDERS' RIGHTS

61. DO YOU THINK "ACCESS TO JUSTICE" IS: Yes  No   
EASY FOR ELDERS

62. DO YOU THINK LEGAL SERVICES : Yes  No   
INSTITUTIONS HAVE AN IMPORTANT  
ROLE

63. HAVE YOU AVAILED OF THE SERVICES : Yes  No   
OF NGOs LIKE HELP AGE INDIA,  
AGE CARE INDIA ETC

64. DO YOU THINK THE NGOs PLAY AN : Yes  No

IMPORTANT ROLE IN PROTECTING

ELDER'S RIGHTS

65. WHICH LAW ACCORDING TO YOU IS : MWPSC ACT 2007/

MORE EFFECTIVE

Section 125 of Cr. PC

66. WHO ACCORDING TO YOU HAS : Legislature

CONTRIBUTED THE MOST FOR ELDERS' Executive

RIGHTS Judiciary

67. DO YOU THINK THE EXISTING LAWS : Yes  No

PROTECT THE DIGNITY OF ELDERS

68. DO YOU THINK ELDERS IN KERALA ARE : Yes  No

MORE SECURE IN RIGHTS AND DIGNITY

WHEN COMPARED TO OTHER STATES IN

INDIA

69. DO YOU THINK THE PRESENT LEGAL : Yes  No

SYSTEM AND ITS REMEDIES PROTECT

THE DIGNITY OF ELDERS

### VIII. FEEDBACK AND SEGGESTIONS

70. WHAT ARE YOUR SUGGESTIONS FOR

IMPROVING THE LEGAL FRAMEWORK

FOR ELDER RIGHTS AND DIGNITY IN

INDIA AND IN PARTICULAR KERALA

**ANNEXURE -2**

**QUESTIONNAIRE FOR PRESIDING OFFICERS [sub divisional officers]  
OF MAINTENANCE TRIBUNALS UNDER THE MAINTENANCE &  
WELFARE OF PARENTS AND SENIOR CITIZENS ACT, 2007**

<b>1</b>	Name [ Optional]	
<b>2</b>	Designation	
<b>3</b>	Tenure in the present post	
<b>4</b>	Past Experience in the field of adjudication	
<b>5</b>	Official Duties other than that of Maintenance Tribunal	
<b>6</b>	Frequency of sittings of the Maintenance Tribunal (Tick appropriate option)	Weekly Monthly
<b>7</b>	Place of Sitting	
<b>8</b>	Time of Sitting and Duration	
<b>9</b>	Pendency of Cases ( Past three years)	
<b>10</b>	Number of cases disposed on merits/contested	
<b>11</b>	Number of cases disposed ex-parte	
<b>12</b>	Whether there are conciliation officers attached to the tribunal (Tick appropriate option)	Yes No
<b>13</b>	Whether there is a panel of conciliation officers (Tick appropriate option)	Yes No
<b>14</b>	Number of conciliation officers presently in the panel?	
<b>15</b>	Mode of selection of conciliation officers	
<b>16</b>	Number of cases settled by conciliation officers	
<b>17</b>	Whether the conciliation conducted by the officers is effective	
<b>18</b>	Whether the conciliation officers submit their reports within one month	
<b>19</b>	Number of cases filed directly by Senior Citizens (Past three years)	

<b>20</b>	Number of cases filed by Senior Citizens through authorisation	
<b>21</b>	Number of cases in which cognizance was taken Suo moto?	
<b>22</b>	Is interim maintenance awarded? (Tick appropriate option)	Yes No
<b>23</b>	Whether applications under Section 5 for Maintenance are disposed off within 90 days and extended period of 30 days (Tick appropriate option)	Yes No
<b>24</b>	Whether applications for execution of orders are made within 3 months (Tick appropriate option)	Yes No
<b>25</b>	Whether the assistance of persons possessing special knowledge are availed for conducting the enquiry? (Tick appropriate option)	Yes No
<b>26</b>	What is the usual quantum of maintenance awarded under section 9 and whether maximum compensation is awarded	
<b>27</b>	Are alteration in allowances granted under section 10?	
<b>28</b>	Is enforcement of orders effective? (Tick appropriate option)	Yes No
<b>29</b>	Whether litigants have exercised their options under section 12 of the Act	Yes No
<b>30</b>	Whether interest is awarded on maintenance on Section 14 and if so what is the rate of interest awarded? (Tick appropriate option)	Yes No
<b>31</b>	Number of cases in which appeals are filed under section 16 (Past three years)	
<b>32</b>	Whether lawyers are barred from appearing before the tribunal under Section 17	
<b>33</b>	In how many cases transfers are declared void by the tribunal under section 23 (1)	
<b>34</b>	In how many cases Section 23 (2) has been invoked against transferees?	

<b>35</b>	Whether applications under section 23 (1) and (2) have been filed by organisations. If so, how many?	
<b>36</b>	Whether applications are filed under section 22 and 23 for protection of life and property of Senior Citizens? (Tick appropriate option)	Yes No
<b>37</b>	How effective is the legal mechanisms for providing maintenance for Senior Citizens? (Tick appropriate option)	Not Effective Effective Very Effective
<b>38</b>	How effective is the legal mechanism for providing protection of life and property of Senior Citizens? (Tick appropriate option)	Not Effective Effective Very Effective
<b>39</b>	Do you think the MWPC Act of 2007 has been successful in creating more effective provisions for the maintenance and welfare of Senior Citizens	
<b>40</b>	Do you think sub divisional magistrates are able to do justice as maintenance tribunals considering their multifarious official duties and responsibilities? (Tick appropriate option)	Yes No
<b>41</b>	What are your suggestions for improving the effectiveness of the MWPC Act of 2007?	

**ANEXXURE- 3****KERALA HIGH COURT STATISTICS*****STATEMENT SHOWING THE PENDENCY OF CASES INVOLVING OLDER PERSONS IN ALL THE DISTRICTS FOR THE YEAR 2010***

Sl. No	Name of the District	Pendency as on 31.12.10	
		Civil	Criminal
1	Thiruvananthapuram	2598	37
2	Kollam	1191	138
3	Pathanamthitta	1588	180
4	Kottayam	1182	76
5	Alappuzha	2188	120
6	Thodupuzha	4	31
7	Ernakulam	3566	113
8	Thrissur	1581	88
9	Palakkad	2973	165
10	Kozhikode	1252	122
11	Manjeri	1284	99
12	Wayanad	215	62
13	Thalassery	1833	281
14	Kasaragod	573	106
Total		22028	1618
Grand Total		23646	

***CONSOLIDATED STATEMENT SHOWING THE PENDENCY OF CASES INVOLVING SENIOR CITIZENS AS ON 31.12.2015***

Sl. No.	District	Sessions Court	CJM Court	Total
1	Thiruvananthapuram	5758	212	5970
2	Kollam	3388	306	3694
3	Pathanamthitta	2712	158	2870
4	Kottayam	2085	182	2267
5	Alappuzha	6685	298	6983
6	Thodupuzha	678	153	831
7	Ernakulam	5662	1110	6772
8	Thrissur	3631	317	3948
9	Palakkad	3967	389	4356
10	Kozhikode	4929	446	5375
11	Manjeri	2288	238	2526
12	Wayanad	338	97	435
13	Thalassery	4814	136	4950
14	Kasaragod	931	129	1060
Total		47866	4171	52037

<b>Pendency of cases – Crime against Senior Citizen From 01.01.19 to 31.12.19</b>					
		<b>Opening balance As on 01.01.19</b>	<b>Filing</b>	<b>Disposal</b>	<b>Closing balance As on 31.12.19</b>
<b>Thiruvananthapuram</b>	<b>Sessions Courts</b>	186	322	47	461
	<b>Magistrate Courts</b>	433	79	160	352
<b>Kollam</b>	<b>Sessions Courts</b>	123	121	68	176
	<b>Magistrate Courts</b>	489	445	440	494
<b>Pathanamthitta</b>	<b>Sessions Courts</b>	143	61	71	133
	<b>Magistrate Courts</b>	110	23	24	109
<b>Kottayam</b>	<b>Sessions Courts</b>	76	27	9	94
	<b>Magistrate Courts</b>	234	128	158	204
<b>Alappuzha</b>	<b>Sessions Courts</b>	3875	145	795	3225
	<b>Magistrate Courts</b>	280	171	211	240
<b>Thodupuzha</b>	<b>Sessions Courts</b>	81	45	36	90
	<b>Magistrate Courts</b>	156	123	80	199
<b>Ernakulam</b>	<b>Sessions Courts</b>	15	45	7	53
	<b>Magistrate Courts</b>	1750	520	965	1305
<b>Thrissur</b>	<b>Sessions Courts</b>	99	122	40	181
	<b>Magistrate Courts</b>	600	155	278	477
<b>Palakkad</b>	<b>Sessions Courts</b>	117	33	41	109
	<b>Magistrate Courts</b>	120	89	113	96
<b>Kozhikode</b>	<b>Sessions Courts</b>	91	38	60	69
	<b>Magistrate Courts</b>	448	533	451	530
<b>Manjeri</b>	<b>Sessions Courts</b>	55	24	23	56
	<b>Magistrate Courts</b>	194	78	126	146
<b>Thalassery</b>	<b>Sessions Courts</b>	74	29	38	65
	<b>Magistrate Courts</b>	125	142	160	107
<b>Kalpetta</b>	<b>Sessions Courts</b>	9	42	17	34
	<b>Magistrate Courts</b>	183	148	177	154
<b>Kasaragod</b>	<b>Sessions Courts</b>	63	37	37	63
	<b>Magistrate Courts</b>	135	222	170	187
<b>Total</b>		<b>10264</b>	<b>3947</b>	<b>4802</b>	<b>9409</b>

**ANNEXURE – 4****LEGAL PROTECTION OF THE ELDERLY: NEED FOR A PARADIGM SHIFT IN FOCUS, OUTLOOK, APPROACH AND IMPLEMENTATION**

*“Age is an issue of mind over matter. If you don’t mind, it doesn’t matter”*

Mark Twain

**I. INTRODUCTION**

*Matha, Pitha, Guru, Daivam*, the ancient adage meaning mother, father, teacher and God in that order of priority, encapsulates the prime status, role and importance conferred on the elderly by Indian society, culture, tradition and values. Kerala, *Gods own Country*, shares the same culture and value systems when it comes to caring and respecting elders. Indian society and culture down the ages has accorded prime status to the elderly on account of their wisdom, life experience and knowledge. Further Indian society was predominantly centred around the joint family system where the elderly was held in high esteem. However, the slow and steady demise of the seminal joint family system pursuant to the Kerala Joint Hindu Family System (Abolition) Act 1975 and multi-generational homes, the *Hum do Hamare Do* two child family planning policy of the Central Government under the National Programme for Family Planning which commenced in 1952, the advent of nuclear families, migration of the youth to foreign shores in search of employment, breakdown of marriages, childless couples and working couples etc. have led to the neglect, denial and deprivation of the rights of



elders in this era of globalization, commercialization, liberalisation and information technology driven existence. Furthermore, there has been a steady increase in the population of the elderly in old age homes in India and particularly in Kerala. In fact, according to one estimate, there has been a 69% increase in the number of residents in old age homes in the state over the past four years and the rapid increase during recent times has set off alarm bells in the department of social justice of the Government of Kerala<sup>1</sup>. Further, despite the aforesaid family values and culture, incidents of elder abuse, neglect and violation of rights of elders has become rampant in Society<sup>2</sup>. The report on elder abuse in India prepared by Help Age India in 2014 reveals that victims of elder abuse amount to 50 % of the elderly population and further that the percentage has increased from 23% in 2013 to 50% in 2014<sup>3</sup>. Apart from the serious issue of elder abuse, the elderly in Kerala especially widows and the poor and illiterate aged in rural areas who are highly vulnerable physically, emotionally, intellectually and financially suffer untold hardships and misery on account of isolation, neglect and low income consequential to old age. The existing legal framework and machinery remains a distant illusion for the majority of the elderly especially in Kerala since the elderly who are grossly ignorant of the welfare legislations and their legal remedies. Hence the need of the hour is to totally revamp and revitalize the legal framework for protection of the rights of the elderly with the objective to

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<sup>1</sup>See “Old Age Homes Reflect Sorry Statistics” The Hindu Daily Dated 20<sup>th</sup> September, 2015.

<sup>2</sup> See “Prayam Chennavarkkum Kudumbathil Duritham” The *Malayala Manorama*, 13<sup>th</sup> July 2015.

<sup>3</sup> Help Age India Report on Elder Abuse, 2014 [www.helpageindia.org/media/centre/press-release](http://www.helpageindia.org/media/centre/press-release); last accessed on 30/7/2015.

ensure benefits of legislations and government schemes and programmes for the elderly.

This paper attempts to drive home the point that a sharp shift in focus and outlook is needed for effectuating the existing legislations and government programmes and schemes and that societal mindset and approach needs a paradigm change. The need of the hour is to inculcate in the young a sense of duty to care and protect elders through legal and moral education, for bringing about a society for all ages.

For the purpose of this article, the aged refers to persons who are 60 years old and above<sup>4</sup>.

## **I. SOCIO - DEMOGRAPHIC TRANSITION SCENARIO**

### **i. International**

The pivotal social phenomenon that has catapulted elderly rights and its protection from the backstage of socio-legal discourse into the limelight of human rights discourse is the demographic transition in all countries and societies across the globe during the last decades of the 20<sup>th</sup> century. This phenomenon is primarily the result of advancement in medical science which led to increased life expectancy of human beings. The exponential Ageing of population is also the direct consequence of downward trends in fertility and mortality. Hence low

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<sup>4</sup> Section 2 (h) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 defines "Senior Citizen" as a person being a citizen of India who has attained the age of 60 years or above

birth rates coupled with long life expectancies have generated an Ageing population worldwide tilting the demographic balance. Importantly, going by statistics of the United Nations Organization in the year, 2015, there were 901 million people aged 60 years and above comprising at least 12% of the global population and it is increasing at the rate of 3.26 per cent every year.<sup>5</sup> Further the aged population in the world is expected to reach 22% of the total population by the year 2050. In the year 2006, the aged constituted 11% of the world population.

## **ii. India**

In India the proportion of the elderly is expected to reach 21% by 2050<sup>6</sup>. The percentage of the aged in India has steadily increased from 5.1% in 1901 to 6.8% in 1991 and 8.9% in 2016<sup>7</sup>. In fact, it is predicted that in the years 2000-2050 the overall population in India will grow, by 55% whereas population of the elderly above 60 years will grow by 326% and the population of the elderly in the age groups 80 and above by 700%<sup>8</sup>. In fact, 1/8th of the world's elderly live in India<sup>9</sup>. The life expectancy at birth of an Indian citizen for the period 2010-2014 was 68 years and for a Keralite, 74.9 years going by the statistics of the United Nations Organisation.<sup>10</sup> According to the World Health Organisation,

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<sup>5</sup> See World Population Prospects – Key Findings and Advance Tables -2015; Revision Department of Economic and Social affairs, Population Division; [www.esa.un.org/unpd/wpp](http://www.esa.un.org/unpd/wpp), last accessed on 30/7/2015.

<sup>6</sup> National Policy on Older Persons 1999, Ministry of Social Justice and Empowerment, Government of India

<sup>7</sup> Ibid

<sup>8</sup> National Policy on Senior Citizens 2011, Ministry of Social Justice and Empowerment, Government of India

<sup>9</sup> Ibid

<sup>10</sup> See Human Development Index Report, 2011 of the United Nations Development Programme at [www.undp.org/.../librarypage/hdr/humandevreport2011.html](http://www.undp.org/.../librarypage/hdr/humandevreport2011.html), last

the average life expectancy in India which was 42 years in 1960, steadily climbed to around 48 years in 1980's, 58.5 years in 1990, and around 62 years in 2000.<sup>11</sup>

Statistics of the Union Ministry of Health and Family Welfare indicate that the life expectancy in India has gone up by 5 years from 62.3 years for males and 63.9 years for females in 2001-2005 to 67.3 years and 69.6 years respectively in 2011-2015.<sup>12</sup>

A study of the decadal growth rate of India's general population and the elderly population for the period 1951-2001 reveals that the aged population in India has grown steadily since 1951 at a much faster rate compared to the general population. The size of elderly population has risen from 12.1 million in 1901 to approximately 77 million in the 2001 census. According to official projections the number of elderly persons will rise to approximately 140 million in 2021.<sup>13</sup> Further the percentage of the elderly in the total population varies from around 4 % in small states like Dadra and Nager Haveli, Nagaland, Arunachal Pradesh and Meghalaya to more than 8% in Maharashtra, Tamil Nadu, Punjab and Himachal Pradesh and 10.5 % in Kerala as per the 2001 census. The corresponding national figure was 7.4 %.<sup>14</sup>

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accessed on 30/7/2015

<sup>11</sup> See "Life Expectancy in India Goes Up by 5 years in a Decade", *The Times of India Daily*, 29<sup>th</sup>, January, 2014

<sup>12</sup> *Ibid*

<sup>13</sup> See "Situational Analysis of the Elderly in India", dated June 2011 at [www.mospi.nic.in/sites/default/files/publication-reports/elderlyinindia.pdf](http://www.mospi.nic.in/sites/default/files/publication-reports/elderlyinindia.pdf), last accessed on 30<sup>th</sup> July, 2015

<sup>14</sup> *Ibid*

### iii. Kerala

Kerala has the largest proportion of elderly population in the Country and as per the 2011 census 12.6 % of the population is above 60 years<sup>15</sup>. Hence, Kerala in addition to becoming the land of Kera and God's Own Country has also become Vayonadu or the land of the elderly. The percentage of the aged in Kerala in terms of the total population was 5.83 % in 1961, 8.82 % in 1991, and 9.79% in 2001. The projection for the future is 11.74 % in 2011, 15.63 % in 2021 and 20 % in 2026<sup>16</sup>. Kerala has the highest number of old age homes in the country<sup>17</sup>. Kerala also has the highest life expectancy among all the states pointing towards the advancement in public healthcare and other human development parameters.

This demographic transition in terms of the astronomical increase in the elderly population has become the prime concern for law makers and policy makers all over the world. It has varied implications for underdeveloped, developing and developed countries. It poses one of the most challenging socio-legal problems for our developing country in the years to come and especially in terms of the huge financial burden for social security measures. On the other hand, the vast pool of talent, wisdom and experience of the elderly population is an invaluable asset of society. Hence the emerging grey demographic landscape calls for

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<sup>15</sup> See "Kerala Population Ageing Fast –Survey", [www.business-standard.com/article/pti-stories/kerala](http://www.business-standard.com/article/pti-stories/kerala), last accessed on 30/7/2015

<sup>16</sup> Kerala State Old Age Policy 2013

<sup>17</sup> See *supra* note 1

imminent action by all stake holders for ushering in a new manthra and culture in the legal regimen for elders' rights.

## II. EVOLUTION OF ELDER LAW JURISPRUDENCE

### i. India

Prior to Independence, there was hardly any legislation catering to the rights of elders that is worth mentioning. Even the Code of Criminal Procedure of 1898, dealt only with the maintenance of wives and children and it did not cater to parents.<sup>18</sup> The Constitution of India contains nominal and minimal provisions for the aged. Understandably this socio-legal problem did not engage the attention of the framers of our Constitution considering the socio-cultural mores of our society in the 1940's when joint family systems were the social norm. A perusal of the debates of the Constituent Assembly will reveal the fact that Article 41 of the Constitution which corresponds to Article 32 of the Draft Constitution was incorporated in our Constitution without any discussion worth mentioning<sup>19</sup>.

The emphasis was laid on the rights of women and children and their constitutional protection<sup>20</sup>. The demographic transition discussed above and the international developments which will be discussed below impelled the law makers to amend the Code of Criminal Procedure and to introduce Section 125(1)(d)

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<sup>18</sup> Section 488 of the Code of Criminal Procedure, 1898

<sup>19</sup> See *Constituent Assembly Debates*, official reports, Vol. 7, Book no. 2, 4 Nov 1948 – 8 Jan 1949 and discussed on Tuesday 23 Nov 1948.

<sup>20</sup> Article 15(3) of the Constitution which allows to make special provisions for protective discrimination favoring women and children

for maintenance of parents along with wives and children. This change in the law was pursuant to the Report of the Joint Committee on the Code of Criminal Procedure Bill of 1973. Earlier at the time of codification of Hindu laws, the Hindu Adoption and Maintenance Act 1956 was enacted which catered to the maintenance of aged and infirm parents of persons belonging to Hindu religion. Other religions were governed by their personal laws. A major impetus came about pursuant to the commemoration of the year 1999 as the International year of Older Persons under the auspices of the United Nations Organisation and after the revolutionary first World Assembly on Ageing held in Vienna in 1982. The National Policy on Older Persons was formulated in 1999 in the aforesaid backdrop and later the National Policy of Senior Citizens was formulated in 2011 after the second World Assembly on Ageing in Madrid, Spain in 2002. The defining moment was the enactment of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 which came into force in Kerala on 24.8.2008. Hence the evolution of elder law jurisprudence in India can be traced partly to the demographic transition of the elderly population and its socio-legal problems and partly to international developments.

To conclude it can be stated that elder law jurisprudence in India is at its infancy when compared to many other countries especially the United States of America which enacted a comprehensive legislation namely the Older American's Act of 1965, thirty years after the enactment of the Social Security Act in 1935. It is noteworthy that the United States is celebrating the 50<sup>th</sup> anniversary of the said Act of 1965.

## ii. International Law

The evolution of elder law jurisprudence at the international level can be traced mainly to the initiatives of the United Nations Organisation and after the two World Wars. The core mandate of the Charter of the United Nations is to reaffirm faith in fundamental human rights and in the dignity and worth of the human person<sup>21</sup>. The three seminal human rights instruments of the United Nations, *viz.*, the Universal Declaration of Human Rights, 1948, the International Covenant on Civil and Political Rights, 1966 and the International Covenant on Economic, Social and Cultural Rights, 1966 though underscores the inherent dignity of all human beings including the elderly does not contain express and visible provisions for the elderly. The first major initiative was taken by virtue of resolution number 33/52 of the UN General Assembly of 14.12.1978 to convene a World Assembly on Ageing. The first World Assembly on Ageing was accordingly held in Vienna, Austria from 26<sup>th</sup> July to 6<sup>th</sup> August 1982. The cardinal objectives of the Assembly were (i) to develop and apply at the international, regional, and national level policies designed to enhance the lives of the aged (ii) to study the impact of ageing populations on development and that of development on Ageing. Very importantly the Preamble of the Plan of Action reaffirms the belief that all the fundamental human rights enshrined in the Universal Declaration of Human Rights apply fully to the aged. The Preamble also recognises that quality of life is no less important than longevity. The Vienna Action Plan

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<sup>21</sup> See Charter of the United Nations, 1945 at un.org



made recommendations for action and implementation in key areas like (a) health and nutrition (b) protection of elderly concerns (c) housing and environment (d) family (e) social welfare (f) income security and employment and (g) education.

The Vienna Declaration of 1983 was followed by the landmark United Nations Principles for Older Persons adopted by the General Assembly pursuant to Resolution no 46/91 of 16.12.1991 highlighting the key principles of (a) independence (b) participation (c) care (d) self-fulfilment and (e) dignity. The UN principles of 1991 was followed by the commemoration of 1999 as the International Year of Older Persons with the central theme “a Society for All Ages”. The second World Assembly on Ageing was held in Madrid, Spain in 2002 and it adopted the revolutionary Madrid International Plan of Action on Ageing (MIPAA, 2002). This international plan was an attempt to respond to the opportunities and challenges of population ageing in the 21<sup>st</sup> century and to promote “a society for all ages”. The aim of the international plan of action was to ensure that the persons everywhere are able to age with security and dignity and to continue to participate in their societies as citizens with full rights. The plan of action gave priority to three core areas which are (i) older persons and development (ii) advancing health and wellbeing into old age (iii) ensuring, enabling and supportive environments. The crucial importance of MIPAA 2002, lies in the fact that it is the first attempt of governments to link questions of ageing to other frameworks for social and economic development.

The aforesaid initiatives of the United Nations Organisation have brought the rights of the aged into the centre stage of human rights discourse. Unfortunately, these international agreements are not legally binding, and its implementation is voluntary. The international community is hence eagerly looking forward to the third world assembly of Ageing under the aegis of United Nations and for a binding international Convention on the Rights of the Aged.

Apart from the aforesaid global developments, it is noteworthy that certain regional human rights treaties deal with the rights of the elderly like the Revised European Social Charter of 1988<sup>22</sup>, the Charter of Fundamental Rights of the European Union of 2000<sup>23</sup>, the African Charter on Human and People's Rights on 1981<sup>24</sup>, and the Arab Charter on Human Rights of 2004<sup>25</sup>. Hence it is evident that though the elder law jurisprudence is at a nascent stage in India, it has developed considerably both internationally and regionally guiding national policies and programmes.

### III. EXISTING LEGAL FRAMEWORK

#### i. Constitution of India

Our Constitution is the supreme *lex*<sup>26</sup> and the preamble of our supreme *lex* encapsulates the essence of its ideology and noble objectives. It was observed by

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<sup>22</sup> See Article 4 of the Additional Protocol

<sup>23</sup> See Articles 21 and 25

<sup>24</sup> See Articles 1 and 4

<sup>25</sup> See Article 38

<sup>26</sup> See H.M.Seervai, *Constitutional Law of India*, , vol. 2,(4<sup>th</sup> edn.,) , p.1923

the learned constitutional jurist, H.M. Seervai that the preamble to the Constitution indicates the objectives of the founding fathers of the Constitution.<sup>27</sup> Hon'ble Chief Justice A.K. Sikri expounded the true import of the Preamble in the celebrated case of Keshavanda Bharathi<sup>28</sup> in the following words<sup>29</sup>

It seems to me that the Preamble of our Constitution is of extreme importance and the Constitution should be read and interpreted in the light of the grand and noble vision expressed in the Preamble.

The Preamble apart from proclaiming the mandate of social justice also envisages dignity of the individual which includes the elderly. Thus, dignity of the elderly is one of the cornerstones of our constitutional philosophy. Further human dignity is the core ingredient of the right to life and personal liberty enshrined in Article 21 of the Constitution.<sup>30</sup> The Apex Court in a catena of decisions including the decision in Francis Coralie Mullin v. Union Territory of Delhi<sup>31</sup> expounded the true import of Article 21 in the following words of Justice P.N. Bhagvathi<sup>32</sup>

We think that the right to life includes the right to live with human dignity and all that goes along with it namely the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and comingling with fellow human beings.

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<sup>27</sup> *Ibid* at vol.1 at p. 276

<sup>28</sup> See His Holiness Kesavanda Bharathi Sripadgalvaru and Others v. State of Kerala and Another 1973 KHC 800

<sup>29</sup> *Ibid* at para 21

<sup>30</sup> See Article 21

<sup>31</sup> AIR 1978 SC 597

<sup>32</sup> *Ibid* at para 8

Apart from the mandate of dignity in the Preamble and the right to life and personal liberty, in Part III dealing with fundamental rights, all the fundamental rights enshrined in Part III applies with full vigour to the aged. Incidentally it was held by the Apex court in *Chameli Singh v. State of UP*<sup>33</sup> that the right to shelter is a fundamental right under Article 21 of the Constitution and in *Consumer Education and Research Centre v. Union of India*<sup>34</sup> the Apex court held that the Right to health and medical care is a fundamental right under Article 21 of the Constitution. Both the aforesaid decisions have a seminal role to play in the human rights entitlements of the elderly.

The broadest and most proactive interpretation of all fundamental rights in consonance with contemporary social realities has flowed from the Apex Court over the years enriching elder law jurisprudence in our country though indirectly. Recently in *NALSA v. Union of India and Others*<sup>35</sup> the Apex Court while dealing with the rights of transgenders held that the constitution makers could not have envisaged each and every human activity be guided, controlled, recognised or safeguarded by laws made by the legislature. The Court held that Article 21 has been incorporated to safeguard those rights and that a constitutional court cannot be a mute spectator when those rights are violated. Importantly it was also held that in the absence of contrary legislation municipal courts in India would respect rules of international law which has a bearing on elderly rights since elder law

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<sup>33</sup> (1996) 2 SCC 549

<sup>34</sup> (1995) 3 SCC 42

<sup>35</sup> 2014 KHC 4251

has developed under international law and especially under the auspices of the United Nations as will be discussed later in this paper.

Unfortunately, our Constitution contains sketchy provisions meant exclusively for the elderly. The prime provision is incorporated in Article 41 and as an unenforceable Directive Principle of State Policy<sup>36</sup>. This solitary and cardinal provision mandates social assistance for the aged but with the caveat that such state assistance is subject to the economic capacity of the state and its development. Apart from Article 41, Article 39(e) and Article 46 are also pertinent in this context. Article 39(e) mandates the state to make policies for securing that the citizens are not faced by economic necessity to enter avocations unsuited to their age and strength. Article 46 directs the state to promote with special care the educational and economic interests of the weaker sections of the society and to protect them from social injustice and all forms of exploitation.

Coming specifically to Article 41, the Hon'ble Apex Court in *D.S. Nakara v Union of India*<sup>37</sup> was called upon to consider the legality of an office memorandum of the Ministry of Finance of the Government of India relating to pension benefits. The Hon'ble Apex Court after analysing the scope and objective of pensions in detail struck down the office memorandum on the ground that it

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<sup>36</sup> Article 41 - Right to Work, to education, and to public assistance in certain cases- the state shall, within its limits of its economic capacity and development make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want

<sup>37</sup> AIR 1983 SC 130

violated the right to equality under Article 14 of the Constitution after adjudicating the crucial issue whether classification of pensioners on the basis of their date of retirement is a valid classification for pensionary benefits. The Apex Court speaking through Hon'ble Justice D.A. Desai has beautifully explained the constitutional objective of Article 41 in the context of pensionary benefits as follows<sup>38</sup>:

Then comes the old age in the life of everyone, be he a monarch or a mahatma, a worker or a pariah. The old age overtakes each one, death being the fulfilment of life providing freedom from bondage. But then socialism aims at providing an economic security to those who have rendered unto society what they are capable of doing when they are fully equipped with their mental and physical prowess. In the fall of life, the state shall ensure to the citizens a reasonably decent standard of life, medical aid, freedom from want, freedom from fear and the enjoyable leisure relieving the boredom and the humility of dependents in old age. This is what Article 41 aims when it enjoins the state to secure public assistance in old age, sickness and disablement.

It was held in *Ram Lubhaya Baggas' Case*<sup>39</sup> that, a policy based on financial constraints is not violative of Article 47 or 21 and that Article 41 recognizes this aspect. In the said case, the challenge was against the new policy of the government of the year 1995 with respect to reimbursement of medical expenses of government servants and pensioners incurred in non-governmental hospitals. The Hon'ble Apex Court eventually held that the new policy is valid and not

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<sup>38</sup> Ibid at para 33, page 139

<sup>39</sup> *State of Punjab v. Ram Lubhaya Bagga* AIR 1998 SC 1703

violative of Article 21 of the Constitution. The Apex Court speaking through Hon'ble Justice A.P. Misra, held as follows<sup>40</sup>

Any state endeavour for giving best possible health facility has direct correlation with finances. Every state for discharging its obligations to provide some projects to its subject requires finances. Article 41 of the Constitution gives recognition to this aspect.

It is heartening to note that it has now become a judicial strategy to read fundamental rights along with Directive Principles with a view to define the scope and ambit of Fundamental Rights and that Directive Principles are used to broaden and give depth to fundamental rights<sup>41</sup>. Article 51 A (f) in Part IV A under Fundamental Duties<sup>42</sup> enshrines a fundamental duty on every citizen to value and preserve the rich heritage of our composite culture which certainly would take in the value norm to respect, care for and protect the elderly. In *State of Gujarat v Mirzapur Moti Kureshi Kasaab Jamaat and others*<sup>43</sup> it was held by the Apex Court that when the court is faced with the question of testing the constitutional validity of any statutory provision or an executive act or testing the reasonableness of any restriction cast by law on the exercise of any fundamental right by way of regulation, control, or prohibition the Directive Principles of State Policy and Fundamental Duties as enshrined in Article 51A of the Constitution play a significant role.

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<sup>40</sup> Ibid at para 32-page 1711

<sup>41</sup> See M.P. Jain, *Indian Constitutional Law*, (7<sup>th</sup> edition 2014) p 1413

<sup>42</sup> Introduced *vide* Constitution 42<sup>nd</sup> Amendment Act, 1976

<sup>43</sup> 2005 KHC 1907

Hence it is evident from the aforesaid discussion that our Constitution contains only bare minimal basic provisions for protection of the rights of elders and understandably considering the demographic scenario and the socio-cultural mosaic of the 1940's. However, it is heartening to note that the Hon'ble Apex Court has been very progressive and modernistic in its interpretation of the provisions in Part III and Part IV of the Constitution which has definitely enured for the benefit of the elderly. It is equally disheartening that despite the passage of about seven decades of vibrant exposition of constitutional law, the constitutional courts have not endeavoured for advancing the rights of elders as a vulnerable class of the society barring the progressive interpretation of Article 41 mentioned above. It is sincerely hoped that the plight of the elderly and their manifold problems both legal and social will engage the attention of the Constitutional courts at least in the near future.

**ii. Hindu Adoption and Maintenance Act, 1956**

Section 21 of the Hindu Adoption and Maintenance Act, 1956 mandates that a Hindu is bound to maintain his aged or infirm parents provided the parent is unable to maintain himself out of his own earnings or other property. Section 22 provides for maintenance of dependents of a deceased Hindu by the heirs of the deceased Hindu from out of the estate of the deceased and going by Section 21 of the said Act, dependents would include the father and mother of the deceased.



In *Munni Devi v Chhoti and Others*<sup>44</sup> it was held that the term aged or infirm has to be interpreted in the context of the parent's right to maintenance which is to be conditioned by the ability of the person seeking maintenance to maintain himself from his income or property. It was held that the idea of being aged or infirm is closely connected with the ability of a person to earn his livelihood and that there cannot be an absolute objective test for determining whether a person is aged or infirm. The interpretation aforesaid of the Hon'ble court is progressive and purposeful based on social realities. It is advisable not to fix a particular standard for age or ability and to define the true test based on ability of a person seeking maintenance to maintain himself or herself from his or her income or property and the ability of the person to earn his livelihood. In *Karthiyani v Chandrika*<sup>45</sup> the Kerala High court held that by virtue of Section 20 of the said Act, a Hindu is under a legal obligation to maintain his aged parents whether or not he possesses property and that the obligation to maintain the aged parent is personal and legal in character which arises from the very existence of the relationship between the parties. Importantly, the Court granted interim maintenance despite the absence of a specific provision for interim maintenance in the Act. This progressive interpretation for providing interim maintenance invoking Section 151 of the Code of Civil Procedure, is laudable and commendable as interim maintenance would provide succour to aged parents during the pendency of long drawn litigations. Though the progressive interpretations aforesaid are in

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<sup>44</sup> 1983 KHC 1008

<sup>45</sup> 1991 KHC 189

the right direction the fact remains that the legislation has only limited application to even persons professing Hindu religion.

### **iii. The Code of Criminal Procedure 1973**

The Code of Criminal Procedure 1973 has mandated in Section 125<sup>46</sup> a similar duty to provide maintenance for parents who are unable to maintain themselves out of their own assets. In *Ramesh Chandra Kaushal v Veena Kaushal*<sup>47</sup> the Hon'ble Apex Court held that this provision is a measure of social justice falling within the Constitutional Sweep of Article 15 (3) and Article 39 enacted to protect the weaker sections like women and children. The Apex Court, speaking through Hon'ble Justice V.R. Krishna Iyer, in his inimitable style held as follows<sup>48</sup>:

The roots of the rule of law lie deep in the collective consciousness of a community and this sociological factor has a role to play in understanding provisions like Section 125 of the Criminal Procedure code which seek to inhibit neglect of women and children, the old and the infirm.

The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance.

Hence the seminal social relevance of the provision which incorporated the category of Parents which was conspicuously missing in Section 488 of the

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<sup>46</sup> Sections 125 -128, Chapter IX, Code of Criminal Procedure, 1973 deals with orders for maintenance of wives, children and parents, its procedure and enforcement of orders of maintenance

<sup>47</sup> AIR 1978 SC 1807

<sup>48</sup> Ibid at para 3, 9

former Code of 1898 has been wonderfully expounded by the Apex Court in this landmark ruling. Importantly the Court negated the argument that Section 125 of the Code prescribed an outer limit of INR 500 towards maintenance as mentioned in the Section.

In *Fazlumbi v K. Khader*<sup>49</sup> the Hon'ble Supreme Court held that the section is a secular safeguard irrespective of the personal laws of the parties. In *Bhagwan Dutt v Kamala Devi*<sup>50</sup> the Hon'ble Apex Court laid down that the object of the provision is to compel a man to perform the moral obligation which he owes to society in respect of his wife, children and parents. It was also held that the jurisdiction of the Magistrate is preventive and not remedial and certainly not punitive. It was held in *Vijaya Manohar Arbat (Dr.) v Kashiram Rajaram Sanvai*<sup>51</sup> by the Hon'ble Apex Court that a daughter though married is bound to maintain her indigent father and the word his in Section 125 (1)(d) was interpreted to include son as well as daughter. However, the Apex Court cautioned that before ordering maintenance the court must be satisfied that the daughter has sufficient means of her own independent of the means or income of her husband and that the father or mother is unable to maintain himself or herself. It was rightly held that a daughter after her marriage does not cease to be a daughter of the father or mother and that it was the moral obligation of the children to maintain the parents. It was further held that purpose of Section 125(1) (d) is to enforce the social

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<sup>49</sup> AIR 1980 SC 1730

<sup>50</sup> AIR 1975 SC 83

<sup>51</sup> 1987 KHC 199 at paras 12 and 13

obligation of children and that there is no reason to exclude the daughter. In *Mahendra Kumar Gaikwad v Gulabhai and Others*<sup>52</sup> it was held that the statutory claim for maintenance of the mother is not dependent on her having discharged her parental obligations during the childhood of the child. The Hon'ble Court repelled the argument of the son that his father was bound to maintain his mother. Importantly it was held that Section 125 of the Code does not contemplate preferential rights and that the rights conferred on the wife, children and parents under Section 125 of the Code are not mutually exclusive but co-extensive. Interestingly the court also repelled the argument of the son that the mother did not care for the education of the son during his childhood. The court for its reasoning quoted Manu as follows<sup>53</sup>

The Aged parents, a virtuous wife and an infant child must be maintained even by committing a hundred misdeeds.

In *Chakkingal Achuthan Kutty Nair and others v Chakkingal Seetha Kutty Amma*<sup>54</sup> it was held that parents are entitled to claim maintenance from their daughters whether married or not provided the parents are unable to maintain themselves and provided the Court is satisfied that the married daughter concerned has sufficient independent means independent of the means of her husband. The Code of 1973 and the activist interpretations no doubt are welcome

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<sup>52</sup> 2001 KHC 2259

<sup>53</sup> *Ibid* at para 11

<sup>54</sup> 2014(4) KHC 186

developments for elders' rights. However, it is a harsh reality that very few parents initiate litigations against their children for maintenance considering Indian familial values and norms. It is equally disturbing that such litigations even if initiated are long drawn and expensive for aged parents and more a bane than a boon as a legal remedy.

#### **iv. Protection of Women from Domestic Violence Act 2005**

The revolutionary legislation the Protection of Women from Domestic Violence Act, 2005 provides a remedy under the civil law to protect elderly women from domestic violence” a phenomenon that is widely prevalent in Indian Society especially in Kerala but largely invisible in the public domain. The Act gave the widest possible interpretation to the term domestic violence in Section 3 to include physical abuse, sexual and economic abuse. The secular law caters to aged women in domestic relationships who have lived with the respondent in a shared household as defined in the Act. The welfare legislation empowers Judicial Magistrates to grant protection Orders<sup>55</sup>, Residence Orders<sup>56</sup> Monetary Reliefs<sup>57</sup> Custody Orders<sup>58</sup> and Compensation Orders<sup>59</sup>. It was held by the Apex Court speaking through Hon'ble Justice Deepak Misra in *Krishna Bhattacharjee v. Sarathi Choudhary and Another*<sup>60</sup> that the Act is a beneficial as well as assertively affirmative enactment for the realization of the constitutional rights of

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<sup>55</sup> See Section 18 of Protection of Women from Domestic Violence Act 2005

<sup>56</sup> See Section 19 of Protection of Women from Domestic Violence Act 2005

<sup>57</sup> See Section 20 of Protection of Women from Domestic Violence Act 2005

<sup>58</sup> See Section 21 of Protection of Women from Domestic Violence Act 2005

<sup>59</sup> See Section 22 of Protection of Women from Domestic Violence Act 2005

<sup>60</sup> 2015 KHC 4758

women and to ensure that they do not become victims of any kind of domestic violence. Having regard to the nature of the legislation, the Court directed trial courts to take a more sensitive approach while adjudicating claims under the Act. The Court set aside an order of the maintenance tribunal dismissing an application at the very threshold on the question of limitation. In *Vajresh Venkatray Anvekar v State of Karnataka*<sup>61</sup> the Apex Court held that assault on a woman offends her dignity and that the Court should be sensitive to women's problems. The Court pointed out that there is a phenomenal rise in crimes against women and protection granted to women by the Constitution of India and other laws can be meaningful only if those who are entrusted with the job of doing justice are sensitized towards the problems of women in society. The case related to the offences of dowry death, abetment of suicide, and matrimonial cruelty. While upholding the conviction under Section 306 of IPC the court held that one or two assaults on a woman cannot be considered as an accepted social norm and the court highlighted the need for a sensitive approach by judges towards the problems of women.

The Act has become a crucial legal weapon for women especially elderly women for seeking redressal for all forms of elder abuse in domestic environment against children and relatives. The Act provides comprehensive and exten-

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<sup>61</sup> 2013 KHC 4003

sive remedies for redressal of domestic violence in all forms including compensatory orders and it is heartening that the Act provides speedy summary procedures for quick relief within a short time frame.<sup>62</sup>

In fact, elderly women in India and in particular in Kerala Society are largely confined to domestic environment and are by and large at the mercy of their children and relatives. They form the most vulnerable among the elderly population and the Act has tremendous potential in curbing physical, mental, emotional, economic and sexual abuse of elderly women. In this context, it is noteworthy that the Legal Services Authorities Act, 1987<sup>63</sup> mandates free legal aid to women as of right. Significantly the Protection of Women from Domestic Violence Act 2005, mandates that Police Officers, Protection Officers, Service Providers and Magistrates on receiving complaints of domestic violence should inform the aggrieved person of her right to free legal Services under the said Act<sup>64</sup>.

Unfortunately, all the aforesaid legislations combined with the personal laws could not provide effective redressal for the manifold problems of the elderly *via-a-vis* violation of their legal rights. Finally, in 2007, the Parliament enacted the revolutionary law for the elderly *i.e.* The Maintenance and Welfare

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<sup>62</sup> See Section 13 of Protection of Women from Domestic Violence Act 2005

<sup>63</sup> See Section 12 (c) in Chapter IV of the Legal Services Authorities Act, 1987 deals with entitlement to Legal Services

<sup>64</sup> See Section 5 (c) of Protection of Women from Domestic Violence Act 2005

of Parents and Senior Citizens Act 2007 which today is the exclusive legislation for the elderly in India.

#### **IV. THE MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS ACT, 2007 - A CRITICAL ANALYSIS**

The landmark legislation came into force in Kerala on 24.09.2008. The Act primarily caters to maintenance of parents and senior citizens by imposing a legal obligation on children and relatives of parents and senior citizens to maintain the latter so that they can lead a normal life<sup>65</sup>The Act also caters to welfare measures which include, (1) establishment of old age homes for the indigent aged<sup>66</sup> (2) Medical support *inter alia* in the form of more beds in government hospitals for the aged, enhancing research in Geriatrics and separate queue system for the aged<sup>67</sup> (3) measures for protection of life and property of senior citizens which primarily includes a provision to declare certain conditional transfers void<sup>68</sup> by the Maintenance Tribunals constituted under the Act. Finally, the Act penalizes exposure and abandonment of senior citizens<sup>69</sup>. Significantly, the aforesaid welfare measures under Chapters III to VI are confined solely to senior citizens unlike maintenance in Chapter II which is meant for both parents and senior citizens. Importantly, the Act confers an option to the litigant to litigate either under

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<sup>65</sup>See Section 4(3) of the Maintenance and Welfare of Parents and Senior Citizens Act 2007

<sup>66</sup>See Section 19 of the Maintenance and Welfare of Parents and Senior Citizens Act 2007

<sup>67</sup> See Section 20 of the Maintenance and Welfare of Parents and Senior Citizens Act 2007

<sup>68</sup> See Section 23 of the of the Maintenance and Welfare of Parents and Senior Citizens Act 2007

<sup>69</sup> See Section 24 of the Maintenance and Welfare of Parents and Senior Citizens Act 2007



Chapter IX of the Code of 1973 under Section 125<sup>70</sup> or under the Act, but not under both.

The interpretation of various provisions of the MWPC Act of 2007 by various High Courts has been very progressive and purposive and in tune with the lofty social importance of the welfare legislation. The Kerala High Court in *Jayashree v State of Kerala and Another*<sup>71</sup> speaking through Hon'ble Justice K. Ramakrishnan, held that the Act was enacted to protect the senior citizens and parents and to make the moral obligation of the children to look after their parents into a legal obligation. The Court held that the purpose of the Act is not to punish the person neglecting to maintain the parents and respect a senior citizen but to make them to understand the responsibility and fulfil their responsibilities to the parents and senior citizens. The Court pointed out that in a country like India, where there is a culture to respect mother, father, and teacher and then God in that order of preference, there is a new thinking among some of the younger generation that keeping away their parents will bring happiness in life. The Court opined very aptly that the younger generation is forgetting the fact that they will also age one day and the pain they will have to undergo if their children show the same attitude to them. The Court quashed a criminal proceeding initiated by a father against his daughter since the daughter subsequently looked after the father and since the dispute was settled between the parties.

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<sup>70</sup> *Supra note 46*

<sup>71</sup> 2014 KHC 549 at para 8

It was held in *Subramanya H.S. and Another v H.S. Lekshmi and others*<sup>72</sup> that ageing has become a major social challenge because of the decline in the joint family system and that while interpreting the Act and its provisions the object of the Act has to be kept in mind which is not to punish a person for neglect to maintain those whom he is bound to maintain but instead it is to provide a simple, inexpensive and speedy remedy to the parents and senior citizens who are in distress by a summary procedure. It was laid down that the provisions have to be liberally construed since the primary object is to give social justice to parents and senior citizens by compelling those who can support those who are unable to support themselves. The Court emphasized the need for a short and quick procedure under the Act instead of an elaborate procedure while interpreting Section 8 of the said Act.<sup>73</sup>

In *Paramjit Kumar Saroya v Union of India and Another*<sup>74</sup> the Punjab and Haryana High Court speaking through Hon'ble Chief Justice Sanjay Krishna Kaul, undertook a meticulous analysis of the various provisions of the Act. It was held after an analysis of the provisions that the matter is not so simple as the statement of objects and reasons to the Act states and pointed out that there are certain provisions which are bound to give rise to more complex legal issues where rights in immovable property are sought to be negated on pleas such as

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<sup>72</sup> 2015 KHC 2057

<sup>73</sup> Section 8 of the Maintenance and Welfare of Parents and Senior Citizens Act 2007 deals with summary procedure in case of inquiry by maintenance tribunals under the Act

<sup>74</sup> 2014 KHC 3407 at Para 4

fraud, coercion and undue influence. The Court pointed out that even presumptions are sought to be drawn by introducing a deeming provision. The Court was referring to the fulcrum of the Act which is Section 23<sup>75</sup>. Importantly the Court pointed out that the provisions of the Act need a re-look and eventually held that Section 16 (1)<sup>76</sup> of the Act is valid and must be read to provide for the right of appeal to any of the affected parties applying the principles of purposive interpretation and *causus omissus*. It is noteworthy that on a plain reading of Section 16 of the Act<sup>77</sup> right to appeal is granted only to a parent or a senior citizen and not to the children, grandchildren or relatives. The Court incidentally adverted to the discrepancies in Sections 12<sup>78</sup> and 17<sup>79</sup> of the Act in addition to Section 16 of the Act in the context of Section 30<sup>80</sup> of the Act. The Court also held that Section 17 would not come in the way of legal representation on behalf of the parties after 15.6. 2011, in view of Section 30 of the Advocates Act<sup>81</sup> having come into force. Finally, the court requested the central government to have a

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<sup>75</sup> Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act 2007 deals with Transfer of property which would be void in certain circumstances mentioned in the section

<sup>76</sup> Section 16(1) of the Maintenance and Welfare of Parents and Senior Citizens Act 2007 which provides right of appeal to any senior citizen or parent aggrieved by an order of the maintenance tribunal

<sup>77</sup> *Ibid*

<sup>78</sup> Section 12 of the Maintenance and Welfare of Parents and Senior Citizens Act 2007 provided option regarding maintenance under the Act as well as Chapter IX of the Code of Criminal Procedure, 1973

<sup>79</sup> Section 17 of the Maintenance and Welfare of Parents and Senior Citizens Act 2007 bars legal practitioners

from representing parties before maintenance tribunals and appellate tribunals

<sup>80</sup> Section 30 of the Maintenance and Welfare of Parents and Senior Citizens Act 2007 gives power to the Central Government to give directions to the state governments for carrying out the provisions of the Act

<sup>81</sup> Section 30 of Advocates Act 1961 providing right of audience for advocates before all courts and tribunals was notified with effect from 15.6.2011.

relook into the provisions of the Act in the context of Section 30<sup>82</sup>. This decision assumes significance since it has undertaken a critical evaluation of the various provisions of the Act and in particular the limited right of appeal under Section 16 of the Act and also the statutory bar for advocates to appear before the tribunal. In this context, it is noteworthy that the Kerala High Court held in the ruling reported in *Latha Sumam.A v District Collector, Allapuzha and others*<sup>83</sup> that parties can engage lawyers of their choice to represent them before the tribunal and appellate authority constituted under the Act.

In *Jayanthram Vallabhdas Meswania v Vallabhdas Govindram Meswania*<sup>84</sup> the Gujarat High Court through Hon'ble Justice K.M. Thaker held that the term transfer in Section 23 would not only mean actual transfer of title and ownership but also possession of property. The court held that the term transfer of property in Section 23 of the Act should receive wide and liberal construction so as to include an act of allowing possession or occupation of premises provided it is without consideration. The Court highlighted the fact that the Act aims at providing protection *inter alia* to the life and property of elderly persons and also to provide for better medical facilities and to ensure physical and financial support. The court upheld the decision of the Tribunal and the Appellate Tribunal to hand-over possession of part of the premises in the possession of the son without any

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<sup>82</sup> 2014 KHC 3407 at Para 50

<sup>83</sup> 2013 2 KLT p233

<sup>84</sup> 2013 KHC 2615

consideration or rent to the father thus expanding the scope and ambit of Section 23. It is felt that this interpretation is in tune with the objective of the legislation.

In *Vincent v Augustine and another*,<sup>85</sup> it was held by the Kerala High Court that Section 23 of the said Act can be invoked only in respect of conveyances effected after the commencement of the Act with effect from 24.08.2008. Accordingly two impugned deeds of 14.1.2005 and 28.04.2005 were held not to come within the scheme of the Act. This interpretation though technically sound underscores the need for generating legal awareness on the legislation among the elderly since it applies only to prospective transfers after 24/08/2008.

In *Priti Dhoundial and Others v Tribunal*<sup>86</sup>, the Delhi High Court through Justice Shiv Narayanan Dhingra severely criticized the action of the Maintenance Tribunal in acting *suo moto* on a reference from an NGO by name ACIDEE (All India Centre for Development of Education and Environment) without proper authorization and without hearing the affected party, a renowned scholar Ms. Lotika Sarkar. After quashing the proceedings of the Tribunal, which cancelled the gift deed executed by Ms. Lotika Sarkar prior to the coming into force of the Act and even without hearing Ms. Lotika Sarkar the court advised the government to ensure the competence of persons selected to Maintenance Tribunals and in particular to ensure that members have sound knowledge of law in addition to basic knowledge of a fair trial in accordance with natural justice. Interestingly the tribunal had not undertaken any investigation on its own

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<sup>85</sup> 2013 (3) KHC 738

<sup>86</sup> 2011 KHC 836

on the complaint. The tribunal also did not hear the affected party Ms. Lotika Sarkar and it also did not record the statement of Mr. Pradeep Kumar Singh, the so-called President of the said NGO and had passed an order merely on presumptions. Most importantly, the tribunal set aside a gift deed enacted prior to the coming of force of the Act contrary to the express mandate of Section 23 which has only prospective operation. The court rightly held that the order passed by the tribunal was highly unjust and totally biased. The court rightly advised the Government that before constituting the Maintenance tribunals the Government must ensure the competence of the members and should ensure that the members not only have basic knowledge of the law but also basic knowledge of a fair trial in accordance with natural justice and also that the members have respect for legislative enactments and the common man. This observation is incisive and highlights the key limitation in adjudication of vital proprietary rights by Tribunals manned by Sub-divisional officers of the executive without any knowledge of law or legal procedures.

In *Pawan Sharma v State and Others*<sup>87</sup> the cardinal issue was whether an aggrieved person can file a petition for maintenance under section 5 selectively against some or any of his children. In this case, one of the sons opposed the order of the tribunal on the ground that the other son was not impleaded. The father of the aggrieved person contended that the other son was looking after him well. The court after construing Section 4(1) (i) and section 5(5) held in favour

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<sup>87</sup> 2013 2 KHC 914

of the father to the effect that a petition for maintenance under section 5 can selectively be filed against some or any of his children<sup>88</sup>

Thus, the interpretations of various provisions of the Act have been very vibrant and progressive keeping in mind the social purpose for the beneficial legislation. The legislation is today the most vital tool in the legal armoury for redressal of the grievances of elders and for their welfare.

## **V. EXECUTIVE INTERVENTIONS**

### **i. Policies (National)**

As discussed above the Directive Principles of State Policy in Part IV of the Constitution guides the formulation of executive policies and eventual enactment of legislations rooted on the policies. The Principles enumerated in part IV are fundamental in the governance of the country. The first major Executive Intervention came in the form of the Indian National Policy on Older Persons (NPOP) of 1999 which was adopted by the Union cabinet on 13.2.1999. The policy document, after highlighting the demographic transition in the Indian population vis-à-vis the aged as the background statement, declared as the policy statement that the policy seeks to assure older persons that their concerns are national concerns and that they will not live unprotected, ignored and marginalized. The goal of the policy is the well-being of older persons and it strives to

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<sup>88</sup> See Section 4 (1) (i) dealing with persons against whom an application for maintenance under Section 5 can be filed and Section 5(5) which enables impleadment of other persons liable to pay maintenance

enable the aged to live their last years with purpose, dignity and peace. The policy recognises the need for affirmative action in favour of elders. It believes in empowerment of older persons and their participation in decision making and the need for larger state budgetary allocation. The policy visualizes the state to extend support for financial security, health care, shelter, welfare and other needs, and to provide protection against abuse and exploitation and also to make available opportunities for their development and participation. The policy gives special attention to older women, an age integrated society, aged as a valuable resource of society, empowerment of the aged for decision making, providing more funds for the rural and urban poor among the aged and the expansion of social and community services for the aged. Finally, the policy stresses the need for its very wide dissemination on the basis of an action plan so that its features remain in constant public focus.

The National Policy on Senior Citizens, 2011 revised the policy of 1999. The main focus of the revised policy is on the oldest among the elderly and on elderly women. The policy values an age integrated society and believes in the development of formal and informal social support systems so that the capacity of the family is strengthened, and seniors live in the family. The policy aims to promote “ageing in place” in one’s own home rather than in an institution and gives prime importance to Dignity in old age. The thrust of the revised policy is on the concept of prevention is better than cure and also gives emphasis to the need for main streaming elders especially women. The policy states that the rural



poor needs special attention and also gives due regard to advancement in technology.

Importantly the policy considers elders as a valuable resource of society and hence gives emphasis to their employment after retirement. Remarkably, the revised policy gives emphasis to productive ageing and seeks to establish a Directorate of Employment exclusively for the aged as well as a Department of Senior Citizens, Directorates for Senior Citizens at the Centre and State, a National and State Commission for Senior Citizens and a National Council for Senior Citizens. The main areas of intervention under the policy are: (i). Income security and old age (ii) healthcare (iii) safety and security (iv) housing (v) productive ageing (vi) welfare (vii) multi-generational bonding (viii) media. The policy also makes Block Development Officers, Pachayathi Raj institutions and Tribal Councils responsible for implementation of the policy. The Policy also mandates proper implementation of the Maintenance and Welfare of Parents and Senior Citizens Act of 2007. Finally, the revised national policy gives emphasis to legal aid for the elderly and multi-generational bonding among the young and the old through value education of children.

Significantly both the National Policy on Older Persons (NPOP) of 1999 and the revised National Policy of 2011 are in accord and consonance with global developments in the realm of the rights of the aged. It is also pertinent to note that the NPOP of 1999 was formulated pursuant to the adoption and commemoration of the year 1999 as the International Year of Older Persons by the United

Nations Organisation. Remarkably, the thrust of the two policies is on intergenerational bonding and on productive ageing both of which are highly relevant in our social context. It is however unfortunate that all the aforesaid objectives and principles laid down in both the national policies still largely remain on paper. Barring limited social security measures like welfare pensions, the state has hardly done any commendable act in furtherance of the national policies. In fact, the aged still remain neglected and marginalised in their own homes and society. No effective steps have been taken for reemployment of the aged and for harnessing their talent, experience and wisdom for the betterment of society.

## **ii. Policies (Kerala State)**

The first policy formulated by our state government for the aged is the policy of 2006. The Policy Statement portion aims to safeguard the independence, self fulfilment and dignity of the elderly. It emphasised the financial, health, social and emotional empowerment of the elderly. It sought effective intervention for elders who needed special care like elders above 80 years, widows, disabled elders and abandoned elders. The Policy also sought for intergenerational bonding and a comprehensive scheme in addition to cheap health facilities for the aged. It recognised the seminal role of non-governmental organisations and local self-governments. Under legal protection measures the policy highlighted the special responsibility of the police department and sought sensitivity from police personnel. It envisaged creation of district councils for complaint redressal, free legal aid for elderly and enacting of a special law to prevent elder abuse.

The Kerala State Revised Old Age Policy of 2013 which revised and improved the policy of 2006 considers it the duty and responsibility of society to look after the elderly aged above 60 years. It mandates necessary action to ensure that the elderly can live with dignity in society by catering to health and financial security and in particular by ensuring employment opportunity for the elderly. The policy highlights the remarkable demographic feature in Kerala which is a large number of widows among the elderly and the large proportion of illiteracy among the elderly and the fact that about 30% of the state population live below the poverty line. The policy promotes ageing in one's own home and on prevention rather than cure and views institutional care as the last resort. The policy views the elderly as a valuable resource of society and seeks to ensure equal opportunities for the elderly in addition to participation. The policy aims to establish Old age homes in every district for housing and protecting abandoned elders. It also envisages a palliative care network for door to door service for rural and urban areas and the inclusion of elderly issues in school and college curricula.

Very importantly the policy recognises the fact that ageing is not an unexpected life phenomenon and that since it is a predicted certainty, persons of young age and persons on the verge of becoming elderly are also the concern of the policy and for whom a planned, secure and healthy retirement is of prime importance.

Under legal protection and security measures, the policy highlights the vulnerability of the elderly in terms of abuse and exploitation both domestic and in

society, for money and property. The policy considers it the duty and responsibility of the state government to protect the life and property of senior citizens. The policy mandates special attention by the police authorities in protecting the elderly and in dealing with the cases of the elderly, especially elderly women, elderly persons and elderly couples living alone and envisages creation of service bureaus for online redressal of complaints in addition to creating a network called ElderLine for providing services for the elderly. The policy seeks to establish a council at the district level for considering complaints of the elderly and their speedy disposal. It also underlines the direction of the Honourable Supreme Court and the High Court to expedite disposal of litigations pertaining to the elderly. Very significantly it mandates the strict and effective implementation of the Maintenance and Welfare of Parents and Senior Citizens Act 2007 and wide publicity for the Act. The policy states that measures will be taken for providing free legal aid for the elderly and even declares that a new legislation will be enacted for protecting the elderly from abuse. Further the policy seeks to implement a scheme for protecting senior citizens by name Vayojana Suraksha at the instance of the home department.

The Government of Kerala approved the revised policy<sup>89</sup> for formulating various programs and schemes for the welfare of the elderly and their protection and as a guiding Magna Carta for future actions. Hence the revised state policy

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<sup>89</sup> GO MS No 37/2013 dated 6.5.2013 of Social Justice Department, Thiruvananthapuram

of 2013 which refined and enhanced the ambit of the first policy of 2006 primarily underscores the effective implementation of the MWPSA Act of 2007 and the need for wide publicity for the legislation.

The revised Kerala state policy notably mirrors the core ideals of the National Policy of 2011. It vividly articulates the social maladies of our state *vis-à-vis* the elderly and gives prime importance to the welfare of widows, aged women, and the oldest among the old especially persons above 80 years of age who form a distinct class in themselves as the most vulnerable among the aged. Unfortunately, despite the lofty aspirations enumerated in the policy document hardly anything has been done on the ground for the betterment of the oldest old and aged widows barring the programmes mentioned below. Since the policy views institutional care as the last resort, which is ideal in the context of our state it is vital to promote intergenerational bonding through value education from the primary school level. There is also the dire need to generate employment opportunities for the elderly post retirement by commencing employment exchanges dedicated for the elderly. Presently barring professionals like doctors, architects, lawyers etc only a negligible segment of the elderly procure employment after retirement. The huge resource pool of talent experience and wisdom of the elderly post retirement still remains untapped in Kerala despite the revised policy of 2013. Further the policy has had no impact whatsoever on expediting pending litigations pertaining to the elderly despite directions of the Apex Court and the High Court of Kerala. Last but not the least the effective implementation of the

MWPSC Act of 2007 remains an illusion considering the abysmally low awareness on the provisions of the Act and the inordinate delay in disposal of matters by the tribunals, the conciliators, and the appellate tribunals under the Act disregarding the specific timeframes in the Act discussed above.

In sum, though the National and the State policies are torch bearers for action, a lot remains to be done on the ground for effectuating the policies. It is true that the central and state governments have unleashed a plethora of programmes and schemes which are discussed below. However concerted and focussed action is the need of the hour considering the alarming demographic transition at the national and state levels. All the noble tenets of the policies are to be implemented at the grassroot level involving local self-government institutions and after giving adequate publicity for the policies at the earliest and within definite time frames.

### **iii. Programmes (National)**

The Department of Social Justice and Empowerment of the Government of India under the Ministry of Social Justice and Empowerment is the nodal department co-ordinating all activities for the welfare of senior citizens and its target group includes senior citizens. Within the department, the Social Defence Bureau mainly caters to senior citizens. The Bureau implements an integrated program for older persons which aims at providing support for capacity building of government/non-government organisations, Panchayathi Raj Institutions, local bodies and the community at large. Under this programme grants are given for

running and maintenance of old age homes, day care centres, mobile day care units, and multi facility care centers for older widows. The programme aims to improve the quality of life of senior citizens by providing basic amenities like shelter, food, medical care, and entertainment opportunities. The Programme encourages productive and active Ageing. The Bureau also implements the Vayoshreshta Samman, a scheme of National awards to eminent senior citizens and institutions involved in distinguished services for elderly persons. The National Institute of Social Defence was established as a nodal institute for training and research in the field of social defence and it also caters to older persons. The Government of India has also implemented the National Social Assistance Programme to effectuate the mandate of Article 41 of the Constitution. The National Social Assistance Programme implemented with effect from August 15, 1995 introduced the National Policy of Social Assistance to the poor and it aims at ensuring a minimum national standard for social assistance. The programme presently comprises of the Indira Gandhi National Old Age Pension Scheme (IGNOAPS), the Indira Gandhi Widow Pension Scheme (IGNWPS), the Indira Gandhi National Disability Pension Scheme (IGNDPS), the National Family Benefit Scheme (NFBS) and the National Maternity Benefit Scheme (NMBS). This welfare programme is administered by the Ministry of Rural Development and is being implemented both in rural as well as urban areas. The said National Old Age Pension Scheme is the most important Social Security Scheme catering to financial security of the elderly. The minimum eligibility age for beneficiaries under the scheme is fixed as 60 years. The monthly pension is INR 200 as central

government contribution for persons between 60- and 79-years and INR 500 for person above 80 years. The Central Government has also implemented the national programme for health care of the elderly through the Ministry of Health and Family Welfare. (NPHCE). The main objective of the programme is to provide preventive, curative and rehabilitative services to the elderly persons at various levels of the health care delivery system of the country. It also aims to strengthen the referral system and to develop specialised manpower and to promote research in the field of diseases relating to old age. The aforesaid programme includes health promotion, preventive services, diagnosis and management of geriatric medical problems, day care services, rehabilitative services and homebased care. At the district level, the NPHCE aims to provide dedicated health facilities in district hospitals, community health centres, primary health centres and sub centres and the facilities envisaged are either free or highly subsidised. The Ministry of Finance of the Government of India has also implemented the Varishtha Pension Bhima Yogana (VPBY) a social security scheme through the Life Insurance Corporation of India intended to give an assured minimum pension on a guaranteed minimum return on the subscription amount of the senior citizens. The Ministry of Railways has implemented separate ticket counters for senior citizens aged 60 years and above at passenger reservation centres and has also implemented fare concession of 30% for males and 50% for females aged above 60 years. The Ministry of Finance has granted income tax exemptions for senior citizens and also benefits with respect to deductions under



Section 80D of the Income Tax Act 1961 for payment of medical insurance premium. The department of Pensions and Pensioner Grievances has set up a pension portal to enable senior citizens to obtain information regarding the status of their applications and to lodge complaints relating to pension. The Ministry of Health and Family Welfare has implemented the following programmes (i) separate queues for older persons in government hospitals (ii) commencement of two National Institutes of Ageing in Delhi & Chennai (iii) setting up of Geriatric departments in 25 medical colleges.<sup>90</sup> A close look at the activities of the Central Government will reveal the fact that, of late, there has been renewed interest for the protection of the rights of the elderly especially after the formulation of the National Policy for Senior Citizens of 2011.

### **Programmes (State)**

At the state level, the nodal department is Department of Social Justice. The Department initiates and implements welfare programmes and services and provides social security for the aged through a network of organisations, residential institutions and non-institutional schemes. The Department also ensures proper implementation of the Maintenance and Welfare of Parents and Senior Citizens Act 2007 through the Social Justice Directorate. The Directorate provides financial aid like welfare pensions. The department had also set up the Kerala Social Security Mission<sup>91</sup>, the first organisation of its kind in the country to cater to the social security needs of the aged. The Social Security Mission has

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<sup>90</sup> *Supra note 10*

<sup>91</sup> See [www.kerala.gov.in](http://www.kerala.gov.in), last accessed on 2.8.2015

as its mission, to organise social security programmes all over the state, to extend services and support to the aged and to formulate and implement schemes for the protection of the aged.

Vayomithram, launched in 2010-11 is a notable scheme implemented by the Kerala Social Security Mission which provides health care and support for the elderly, aged above 65 years residing in corporations/municipalities in the state. The project mainly provides free medicines through mobile clinics, palliative care services, a help desk and it also organises other services like conducting medical camps, entertainment programmes, sponsorship programmes, special day programmes and counselling services in project areas. The scheme which was commenced initially in Thiruvananthapuram and Kollam Corporations was extended to 12 district headquarters later on.

Apart from the Vayomithram scheme, the Social Security Mission also deals with elderly care services, whereby the Mission, provides care providers to needy welfare institutions like old age homes and Asha Bhavans. The Mission also implemented the Aswasakiranam scheme launched in 2010 which envisages assisting the care givers of physically and mentally disabled bed ridden patients who are family members or relatives of bed ridden patients since these care givers are not in a position to take up employment for self-sustenance. This assistance is in addition to the welfare pension given to the bed ridden patient.

The Social Justice Department also implements schemes and programmes both of the Central Government and the State Government. The Central schemes

are the Grants in Aid programmes for older persons, integrated programmes for older persons, Vayo Shreshta Samman for the aged and the State schemes include assistance to local self-governments to commence old age homes and day care centres, in addition to the proper implementation of the MWPSA Act of 2007. The Directorate of Social Justice is the main arm of the Department which acts as the Nodal Agency for implementing several programmes of the Central Government and the State Government. The vision of the Directorate is to build a balanced society by providing rights-based services to the disadvantaged sections of society including the aged, so that the aged can lead a normal and useful life in society. Further, the Directorate creates awareness among the public about the welfare measures adopted by the state.

Even a cursory scan of the various central and state programmes and schemes will reveal the sensitivity, concern and commitment of the executive arm of the government in promoting the welfare of the elderly. All the programmes and schemes are commendable. However, the outreach of many programmes is minimal, and steps are to be taken for widening the net of beneficiaries of the programmes by increasing publicity and awareness at the grassroot level. It is also very important to ensure uniformity in age criterion for various programmes and schemes fixing the age as 60 years which is not done presently.

**iv. Action Plan for Senior Citizens (Kerala)**

The Action Plan for the protection of life and property of senior citizens in Part VII of the Kerala Rules<sup>92</sup> is meant for the protection of life and property of senior citizens which is a mandate of Chapter V of the MWPSA Act of 2007. Considering the scope and ambit of the said Chapter, the Action Plan assumes tremendous significance in the context of our State where the number of widows, aged women, and elderly couples living alone are very high. Kerala and especially Pathanamthitta district in Kerala has a huge segment of elderly population living alone since their children and relatives are abroad. The Action Plan mandates that Police Commissioners and District Superintendents of Police should take all necessary measures for protection of life and property of senior citizens. Pursuant to the said plan, the Kerala Police has issued a circular<sup>93</sup> for effective implementation of the Action Plan which envisages a proactive role for the Police in protecting the rights of the elderly by various measures including the maintenance of a Register of Senior Citizens, the maintenance of a Register of Offences against Senior Citizens, periodic interaction with senior citizens living alone, effective community policing and sensitivity to complaints and problems of senior citizens. The Action Plan also envisages periodic publication of the steps being taken by the Police for protection of life and property of senior citizens.

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<sup>92</sup> Rule 20 of the Kerala Maintenance and Welfare of Parents and Senior Citizens Rules 2009

<sup>93</sup> Circular no 16/2010 dated 11/3/2010 of PHQ, Trivandrum

It is pertinent to note that the Action Plan has not been effectively implemented across the state despite the police circular aforesaid. The Action Plan if implemented in letter and spirit has the potential to effectively cater to many of the problems faced by the elderly in our state especially with respect to protection of life and property.

A careful scan of the aforesaid executive measures of the Central and State Governments and interventions reveals the commendable concern and commitment of the Executive wing of the State, which has been sensitive and proactive of late to the concerns of the elderly and the protection of their rights.

## **VI. THE PATH AHEAD, THE FORMIDABLE CHALLENGES AND THE STUMBLING BLOCKS**

The demographic transition in society and the exponential growth of the aged population has unleashed a plethora of problems, both social and legal. Fortunately, the State machinery and society has awakened and has slowly risen from its slumber. If child rights and the rights of women were at the centre stage of public discourse in the last century, the rights of the aged and its protection has come to the limelight of human rights discourse in the contemporary era. The existing legislations, which are mainly the Code of Criminal Procedure 1973, the Maintenance and Welfare of Parents and Senior Citizens Act 2007 and the Protection of Women from Domestic Violence Act 2005, though powerful and potent, have not lived up to its true potential considering the very low public aware-

ness of the legislations particularly on the MWPSA Act of 2007. The most compelling need of the hour is to strictly implement the mandate of Section 21<sup>94</sup> of the MWPSA Act of 2007 regarding measures for publicity and awareness for the welfare of Senior Citizens. While litigations for maintenance for aged parents under the Code of 1973 and against domestic violence under the PWDV Act of 2005 are conventional, adversarial and time consuming, the enquires under the MWPSA Act of 2007 by the Maintenance tribunals are meant to be summary inquisitorial proceedings to be concluded within definite time frames<sup>95</sup> for speedy justice. Unfortunately, the maintenance tribunals are often manned by sub divisional executive officers who are often officers without much legal knowledge and legal acumen and who are overburdened with manifold executive duties and responsibilities. The vital remedies for maintenance and protection of property call for sound judicial decisions which are likely to be compromised by executive officers who are overburdened with other executive duties.

In the decision reported in *Priti Dhoundial and others v. Tribunal*<sup>96</sup>, the High Court holding that the Maintenance Tribunal acted beyond jurisdiction with respect to a case involving the property of the renowned scholar Mrs. Lotika Sarkar filed at the instance of an NGO, raised a serious doubt about the legal

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<sup>94</sup> Section 21 of the Maintenance and Welfare of Parents and Senior Citizens Act 2007 deals with measures for publicity and awareness on the provisions of the Act through public media including the television, radio and the print at regular intervals

<sup>95</sup> Section 5 (4) of the Maintenance and Welfare of Parents and Senior Citizens Act 2007 prescribes a time limit of 90 days for disposal of applications by the maintenance tribunal and Section 16(6) prescribes a period of 1 month for disposal of appeals by the appellate tribunals

<sup>96</sup> *Supra* note 86

knowledge of the members of the Tribunal and their competence. Quite remarkably, it was held in the *Paramjit Singh Soraya*<sup>97</sup> case, that the remedies under the MWPSA Act of 2007 are not simple, but complex and that the Maintenance Tribunal has been granted authority to pass orders affecting the valuable property rights of citizens, highlighting the need for the judicious exercise of authority of the Maintenance Tribunals. The Protection of Women from Domestic Violence Act of 2005 has tremendous potential for redressal of grievances of aged women since abuse of the aged, especially women which is widely prevalent in our society, largely takes place within the four walls of the homes of the aged and by their own near and dear ones, including their biological children. It is hence imperative to enhance the public awareness of the Protection of Women from Domestic Violence Act 2005, especially in our state where abuse of elderly women is rampant and is a grave socio legal issue. Hence the biggest challenge is in enhancing legal awareness of the existing legislations among all segments of the population including the illiterate and the elderly in rural areas.

Though the state government has formulated an Action Plan<sup>98</sup>, the plan is not implemented effectively by the Police Department. The public is also largely unaware of the plan and its purpose. Further, under the Kerala Rules<sup>99</sup> the District Magistrates have been conferred with the authority to ensure protection of life and property of senior citizens so that they can live with security and dignity in

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<sup>97</sup> *Supra* note 74

<sup>98</sup> *Supra* note 92

<sup>99</sup> Rule 19 the Kerala Maintenance and Welfare of Parents and Senior Citizens Rules 2009

addition to various other duties including overseeing and monitoring the works of Maintenance Tribunals and Maintenance officers and the working of old age homes in the district. Needless to state, the aforesaid monitoring and implementation is also a big challenge for the officials considering the manifold magisterial and other executive duties of the office of the District Magistrate. Considering the wide spectrum of official duties of the District Magistrate it is virtually impossible to focus on the statutory mandate to ensure adequate publicity for the Act.. In fact the dire necessity for public awareness on the MWPSA Act of 2007 stems from the fact that the Act and its provisions and in particular the seminal Section 23 has only prospective application.<sup>100</sup> Here again the challenge is in effective implementation of the Act by the District Magistrates and sub divisional officers who are over burdened with manifold executive functions.

With the exponential increase in the population of the aged, and in particular, the oldest old, above 80 years, there is the need to promote in right earnest, “Ageing in place” or Ageing in one’s own home, since it is the most preferred and desired option for the aged, especially in Kerala and in the context of the mandate of the revised state policy of 2013. However, there is also the need to promote establishment of paid old age homes to cater to the increasing segment of the aged who have no children or relatives to look after and who can afford such payment. The concept of day care centres or Pakalveedu can also be encouraged even for the aged who are living in their own homes for better social

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<sup>100</sup> *Vincent v. Augustine and another* 2013 3 KHC 738



interaction and mental and physical fitness and health. There is also the urgent need to create an independent regulatory body to regulate all old age homes and to ensure that all old age homes are conducted as per the notified scheme and guidelines<sup>101</sup>. The challenge is to inculcate among the younger generation a sense of duty and responsibility to protect and care for the elderly firstly within the family and secondly in society through moral education and legal education.

Kerala has a huge resource pool of skilled, unskilled and educated elderly. It is imperative to commence separate employment exchanges for the elderly as envisaged in the state policy of 2013 so that society can benefit from the rich talent pool of knowledge and experience in varied fields of human endeavour. This process will benefit both the elderly as well as the younger generation and it will be a mutually rewarding endeavour which will grant financial security to the aged. The challenge is to mobilise the elderly workforce, unskilled, semi-skilled and skilled to take up vocations suited for their age, knowledge and experience post retirement and to provide suitable jobs for the elderly through dedicated employment exchanges.

Considering the seminal role of the local self-government institutions in governance and governmental action, it is imperative to enhance the involvement and interventions of local self-government bodies in the realm of protection of elders' rights. Presently, such grass-root bodies are largely confining themselves to the distribution of welfare pensions alone which is not desirable considering

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<sup>101</sup> Rule 18 of Kerala Maintenance and Welfare of Parents and Senior Citizens Rules 2009 and the Schedule to the Rules

the wide outreach of these ground level institutions of democracy. The challenge is to empower the elderly and to involve the elderly in decision making at all levels of governance and in particular the grassroots level of local self-government institutions. In this context the potential of the Poverty Eradication and Women Empowerment Programme implemented by the State Poverty Eradication Mission (SPEM) popularly known as “Kudumbasree Mission” can be utilised to promote elder rights at the grassroot level.

Coming to the sphere of litigation involving the elderly, there is a dire need to amend the Legal Services Authority Act of 1987 to include the elderly irrespective of gender as persons entitled to free legal aid under Section 12<sup>102</sup> of the Act for effectuating the Constitutional mandate of equal justice under Article 39A of our Constitution. It is also important to ensure expeditious disposal of pending litigations especially of persons above 80 years of age so that such litigants can enjoy the fruits of their decrees during their lifetime. The justice delivery system would be a mockery and a travesty of justice if the aged are denied speedy justice. Unfortunately, despite several guidelines and circulars<sup>103</sup>, there has not been any significant progress in the realm of disposal of pending litigations of the elderly. The challenge is to expedite all pending litigations civil and criminal involving the elderly and in particular to abide by the timeframes stipulated in the MWPSA Act of 2007 by the Tribunals and Appellate Authorities.

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<sup>102</sup> *Supra* note 63

<sup>103</sup> OM of the High Court of Kerala No D3-4287/2014(2) dated 23/06/2014

Finally considering the relatively high levels of literacy in Kerala, modern methods of communication and technological advances including social media and mobile based applications can be harnessed for the protection and welfare of the aged. Such methods are vital for door delivery of government services and other services to the aged for whom mobility is the biggest impediment. Deep internet penetration and wide use of social media by the literate among the elderly can be used productively for the wellbeing of the elderly in society. Information and communication technology can be used especially in the area of dissemination of vital information regarding government services, social welfare schemes, welfare legislations and programmes for the elderly. It can also be used for effective social interactions especially at times of disasters, distress and need. It can also be used for hotline services, medical services and for counselling. The challenge is to harness the potential of information and communication technology to uplift and enhance the wellbeing of the elderly and to make all government programmes and schemes accessible to the elderly at their doorsteps.

## VII. CONCLUSION

William Wordsworth, the English romantic poet famously wrote that “*the child is the father of the man*”, in his celebrated poem “My Heart Leaps Up” in 1802 and rightly so since the aged today, tomorrow and for all time to come needs the care and respect of the children and the youth of society. The Constitution of India rightly mandates the fundamental duty of every citizen to value and preserve the rich heritage of our composite culture. The seminal value norm

of Indian culture is to respect the elderly and to care for the elderly. In fact, Indian culture is perhaps the only one that venerates the aged. This core tenet of our ancient culture has to be engrained in the minds of the youth of today. The existing legal framework discussed above, though potent enough to cater to the manifold rights of elders, has been grossly unutilized on account of the abysmally low level of awareness on the existing legislations and the legal remedies. The Maintenance and Welfare of Parents and Senior Citizens Act 2007 and the Protection of Women from Domestic Violence Act 2005 have tremendous scope and potential in the realm of elders' rights and its protection in the Indian context and the context of our state. However, as mandated by both statutes, the compelling need of the hour is to increase the public awareness on the legislations, among all segments of the society especially among the elderly. There is also the dire need to shift the present focus from maintenance centric remedies to all welfare measures including medical facilities, shelter and protection of life and property so that the entire gamut of rights of elders are catered to by the executive machinery. There is also a need to promote value-based moral education to children and the youth to care and respect elders so as to promote intergenerational bonding, the elixir of our national and state policies. There is also the need to strengthen informal and family based support systems for the elderly, so that the elderly can age with peace, dignity and happiness in their own homes and in the midst of their children, grandchildren, and family members which is most ideal in the Indian socio cultural and economic context. There is the need to promote productive Ageing and employment after retirement and also to ensure that the

rich experience and wisdom of the aged become an invaluable resource pool for society and its progress. Finally, the discipline and culture of planned productive retirement has to be instilled among the youth to ensure a planned and peaceful retired life with financial and health security in old age.

The demographic transition aforesaid skewed against the elderly is irreversible and here to stay. The legal machinery which hitherto was mostly confined to maintenance has to rise up to the changed scenario to cater to the entire spectrum of elders' rights. The task is daunting in our society considering the high level of illiteracy, literal and legal. Societal norms and mindset have to change drastically for ushering in a new era for elders' rights and their legal protection. Our legislations and policies discussed above are well equipped for the new challenges provided they are implemented in letter and in spirit. The Judiciary as found above has been in the forefront of activist and progressive interpretation of relevant legislations. The executive has shown resolve and commitment by launching several programmes and schemes as discussed above. Focused, concerted action is warranted in core areas like protection of widows, elderly women, illiterate aged especially in rural areas and the oldest old above 80 years since their problems are distinct and decisive. Since our country is at a nascent stage in the evolution of elder law jurisprudence, it is vital to have a periodic review of the implementation of the policies and programmes and to initiate timely corrective measures. It is also vital to involve the elderly in all decision-making processes in families and in societies and in all levels of governance commencing from the ward level of Gram Panchayaths.

In summary, there has to be a clarion call for a paradigm shift in focus, in outlook and in societal mind set in how the family and society and the legal system view the inevitable, natural, mortal phenomenon of Ageing, the aged and their problems and in redressing the manifold socio-legal problems of the aged. Hence let us awaken, arise and act for the Ageing and the aged.

**C.S. Mohit**