

**PROTECTION OF THE RIGHTS OF OLDER PERSONS –  
A SOCIO LEGAL STUDY IN THE STATE OF GOA AND  
STATE OF KERALA**



**A Thesis  
Submitted to Goa University  
for the Award of the Degree of**

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IN  
LAW**

**By**

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September 2016**

## **DECLARATION**

I hereby declare that this thesis titled, “**PROTECTION OF THE RIGHTS OF OLDER PERSONS – A SOCIO LEGAL STUDY IN THE STATE OF GOA AND STATE OF KERALA**” submitted for the award of the Degree of Doctor of Philosophy in Law, to Goa University, Panaji, is an original research work done by me.

I also hereby declare that this thesis or any part of it has not been submitted to any other University for the award of any Degree or Diploma or Fellowship.

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## **CERTIFICATE**

This is to certify that the thesis titled, “**PROTECTION OF THE RIGHTS OF OLDER PERSONS – A SOCIO LEGAL STUDY IN THE STATE OF GOA AND STATE OF KERALA**” submitted for the award of the Degree of Doctor of Philosophy in Law, is a record of the research work done by Ms. Sandhya Ram S.A under my guidance and supervision during 2014 - 2016.

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## TABLE OF CONTENTS

		PAGE NO
	CONTENTS	i - iv
	ACKNOWLEDGEMENTS	v - vi
	LIST OF ABBREVIATIONS USED	vii - ix
	TABLE OF CASES	x - xiii
<b>CHAPTER – I</b>		<b>1 - 13</b>
1	INTRODUCTION	1
1.1	SIGNIFICANCE OF THE STUDY	3
1.2	STATEMENT OF OBJECTIVES OF THE STUDY	5
1.3	STATEMENT OF HYPOTHESES	6
1.4	SCOPE OF THE STUDY	8
1.5	METHODOLOGY	10
1.6	DESIGN OF THE THESIS	11
<b>CHAPTER – II</b>		<b>14 - 79</b>
2	INTERNATIONAL EFFORTS TOWARDS PROMOTION AND PROTECTION OF THE RIGHTS OF OLDER PERSONS	14
2.1	CONCEPTUAL BASE: HUMAN RIGHTS OF THE AGED	16
2.1.1	CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES, 2007	19
2.1.2	INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF MIGRANT WORKERS AND THE MEMBERS OF THEIR FAMILIES, 2003	21
2.1.3	HABITAT AGENDA 1996: GOALS AND PRINCIPLES, COMMITMENTS AND THE GLOBAL PLAN OF ACTION	22
2.1.4	INTERNATIONAL CONFERENCE ON POPULATION AND DEVELOPMENT - CAIRO PROGRAM OF ACTION 1994	23
2.1.5	COPENHAGEN DECLARATION ON SOCIAL DEVELOPMENT, 1995 AND COPENHAGEN PROGRAMME OF ACTION, 1995	25
2.1.6	BEIJING PLATFORM FOR ACTION, 1995	26
2.2	ROLE OF UN GENERAL ASSEMBLY IN PROMOTING THE RIGHTS OF OLDER PERSONS: AN OVERVIEW	28
2.2.1	UNITED NATIONS PRINCIPLES FOR OLDER PERSONS, 1991	31
2.2.2	PROCLAMATION ON AGEING, 1992	33
2.3	WORLD ASSEMBLY ON AGEING & VIENNA INTERNATIONAL PLAN OF ACTION ON AGEING, 1982	36
2.3.1	RECOMMENDATIONS IN THE VIENNA INTERNATIONAL PLAN OF ACTION ON AGEING	38

2.3.2	PRINCIPLES UNDERLYING THE VIENNA INTERNATIONAL PLAN OF ACTION ON AGEING	39
2.4	COMMITTEE ON ECONOMIC SOCIAL AND CULTURAL RIGHTS, GENERAL COMMENT 6: 'THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS OF OLDER PERSONS', 1995	43
2.5	SECOND WORLD ASSEMBLY ON AGEING & MADRID INTERNATIONAL PLAN OF ACTION ON AGEING, 2002	46
2.5.1	RECOMMENDATIONS FOR ACTION IN THE MADRID INTERNATIONAL PLAN OF ACTION ON AGEING	47
2.6	CEDAW'S GENERAL RECOMMENDATION No.27 ON OLDER WOMEN AND PROTECTION OF THEIR HUMAN RIGHTS, 2010	55
2.6.1	OLDER WOMEN AND DISCRIMINATION: SPECIFIC AREAS OF CONCERN	56
2.6.2	RECOMMENDATIONS BY CEDAW	60
2.7	THE RIGHTS OF THE OLDER PERSONS IN REGIONAL HUMAN RIGHTS CHARTERS	65
2.7.1	HUMAN RIGHTS OF THE OLDER PERSONS IN THE INTER - AMERICAN SYSTEM	65
2.7.2	HUMAN RIGHTS OF OLDER PERSONS IN THE EUROPEAN SYSTEM	70
2.7.3	AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS, 1986	74
<b>CHAPTER – III</b>		<b>80 - 157</b>
3	GOVERNMENT INITIATIVES IN PROTECTING THE RIGHTS OF OLDER PERSONS	80
3.1	INITIATIVES OF THE CENTRAL GOVERNMENT	85
3.1.1	FIVE YEAR PLANS	85
3.1.2	NATIONAL POLICY ON OLDER PERSONS, 1999	91
3.1.3	NATIONAL POLICY ON SENIOR CITIZENS, 2011 (DRAFT)	103
3.1.4	INTEGRATED PROGRAMME FOR OLDER PERSONS	114
3.1.5	'VAYOSHRESHTHA SAMMAN' - SCHEME OF NATIONAL AWARD FOR SENIOR CITIZENS	123
3.1.6	INDIRA GANDHI NATIONAL OLD AGE PENSION SCHEME (IGNOAPS)	125
3.1.7	NATIONAL PROGRAMME FOR THE HEALTH CARE FOR THE ELDERLY	126
3.1.8	OTHER CONCESSIONS TO SENIOR CITIZENS	128
3.2	INITIATIVES OF STATE OF GOA	132
3.3	INITIATIVES OF STATE OF KERALA	137
3.4	JUDICIAL APPROACH	145

<b>CHAPTER – IV</b>		<b>158 - 226</b>
4	LEGISLATIVE FRAMEWORK FOR THE PROTECTION OF THE RIGHTS OF OLDER PERSONS	158
4.1	RIGHTS OF THE OLDER PERSONS: CONSTITUTIONAL PERSPECTIVE	160
4.1.1	FUNDAMENTAL RIGHTS	162
4.1.2	DIRECTIVE PRINCIPLES OF STATE POLICY	169
4.2	MAINTENANCE OF PARENTS UNDER THE CRIMINAL PROCEDURE CODE, 1973	171
4.3	MAINTENANCE OF PARENTS UNDER PERSONAL LAWS	174
4.4	SHORTCOMINGS OF THE PROVISIONS FOR MAINTENANCE OF PARENTS IN THE CRIMINAL PROCEDURE CODE, 1973 AND THE PERSONAL LAWS	179
4.5	MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS ACT, 2007	182
4.5.1	MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS: RIGHTS AND OBLIGATIONS	183
4.5.2	ENFORCEMENT OF RIGHTS AND OBLIGATIONS – MAINTENANCE TRIBUNAL AND APPELLATE TRIBUNAL	193
4.5.3	ESTABLISHMENT OF OLD AGE HOMES	202
4.5.4	PROVISIONS FOR MEDICAL CARE OF SENIOR CITIZENS	203
4.5.5	PROTECTION OF LIFE AND PROPERTY OF SENIOR CITIZEN	205
4.6	PORTUGUESE CIVIL CODE, 1867 AS APPLICABLE IN THE STATE OF GOA	210
4.7	BEST PRACTICES IN PROTECTION OF OLDER PERSONS IN U.K, U.S.A, SOUTH AFRICA	213
4.7.1	PROTECTION OF OLDER PERSONS IN U.K	214
4.7.2	PROTECTION OF OLDER PERSONS IN UNITED STATES OF AMERICA	217
4.7.3	PROTECTION OF OLDER PERSONS IN SOUTH AFRICA	220
4.7.4	BEST PRACTICES FROM U.K, U.S.A AND SOUTH AFRICA VIS-À-VIS INDIA	224
<b>CHAPTER – V</b>		<b>227 - 370</b>
5	PROTECTION OF RIGHTS OF OLDER PERSONS IN THE STATE OF GOA AND STATE OF KERALA - A DATA BASED ANALYSIS	227
5.1	POPULATION AGEING AND OLD AGE DEPENDENCY RATIO	228
5.2	EMPIRICAL STUDY OF RIGHTS OF OLDER PERSONS IN THE STATE OF GOA AND STATE OF KERALA: THE SCHEME	230
5.3	QUESTIONNAIRE - 1 – SPECIFIC INFORMATION FROM SENIOR CITIZENS	233
5.4	GENERAL QUESTIONS TO SENIOR CITIZENS AND OTHERS – QUESTIONNAIRES 1, 2, 3 & 4	289

5.5	RESPONSIBILITIES TOWARDS PARENTS: SPECIFIC QUESTIONS TO PERSONS ABOVE 25 YEARS RESIDING AWAY FROM PARENTS – QUESTIONNAIRE-2	331
5.6	RESPONSIBILITIES TOWARDS PARENTS: SPECIFIC QUESTIONS TO PERSONS ABOVE 25 YEARS RESIDING WITH PARENTS – QUESTIONNAIRE-3	342
5.7	ASPIRATIONS FOR OLD AGE: SPECIFIC QUESTIONS TO PERSONS BETWEEN 18-59 YEARS – QUESTIONNAIRES - 2, 3 AND 4	353
5.8	CASE STUDIES, INTERACTION AND OBSERVATION	359
5.9	FINAL OBSERVATION	365
<b>CHAPTER – VI</b>		<b>371- 403</b>
6	CONCLUSION AND SUGGESTIONS	371
6.1	INTERNATIONAL EFFORTS TOWARDS PROTECTING THE RIGHTS OF OLDER PERSONS	372
6.2	GOVERNMENT PROGRAMS FOR THE OLDER PERSONS IN INDIA	374
6.2.1	INITIATIVES OF THE STATE GOVERNMENTS IN GOA AND KERALA	376
6.2.2	JUDICIAL APPROACH	377
6.3	LEGISLATIVE FRAMEWORK TO PROTECT THE RIGHTS OF OLDER PERSONS	379
6.4	FINDINGS DERIVED FROM EMPIRICAL STUDY IN THE STATES OF GOA AND KERALA	381
6.5	SUGGESTIONS	385
ANNEXURE 1 – QUESTIONNAIRE 1		404 - 408
ANNEXURE 2 – QUESTIONNAIRE 2		409 - 412
ANNEXURE 3 – QUESTIONNAIRE 3		413 - 416
ANNEXURE 4 – QUESTIONNAIRE 4		417 – 418
ANNEXURE 5 – UNITED NATIONS GENERAL ASSEMBLY RESOLUTIONS		419 - 421
<b>BIBLIOGRAPHY</b>		422 - 430

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## LIST OF ABBREVIATIONS

ACA	Additional Central Assistance
AIC	All India Cases
AIR	All India Reporter
Art.	Article
ASEAN	Association of South East Asian Nations
ASHAs	Accredited Social Health Care Activists
Bom.	Bombay
Bom. L.R	Bombay law Reporter
BPL	Below Poverty Line
C.A.D	Constituent Assembly Debates
CEDAW	Committee on Elimination of Discrimination against Women
CEO	Chief Executive Officer
CERC	Consumer Education and research Centre
CESCR	Committee on Economic, Social and Cultural Rights
CM	Civil Miscellaneous
CONF.	Conference
Cr.P.C	Criminal Procedure Code
CrI. M.C	Criminal Miscellaneous Case
CRPD	Convention on the Rights of Persons with Disabilities, 2007
DM	Doctorate of Medicine
DMC	Divorce and Matrimonial Cases
ECOSOC	Economic and Social Council
EHRLR	European Human Rights Law Review
GMC	Government Medical College
HC	High Court
HRA	Human Rights Act, 1998
ICCPR	International Covenant on Civil and Political Rights, 1966
ICESCR	International Covenant on Economic, Social and Cultural Rights, 1966
ICMW	International Convention on the Protection of the Rights of Migrant Workers and the Members of their families
<i>Id.</i>	ibid

IGNOAPS	Indira Gandhi National Old Age Pension Scheme
ILO	International Labour Organization
IPC	Indian Penal Code
IPOP	Integrated Programme for Older Persons
IRDA	Insurance Regulatory Development Authority
J&K	Jammu and Kashmir
KSSM	Kerala Social Security Mission
MD	Doctor of Medicine
MMU	Mobile Medicare Unit
MWPC Act	Maintenance and Welfare of Parents and Senior Citizens Act, 2007
NAOPS	National Association of Older Persons
NCD	Non-Communicable Diseases
NCERT	National Council of Educational Research and Training
NGO	Non-Governmental Organisation
No.	Number
NOAPS	National Old Age Pension Scheme
N-OYT	Non Own Your Telephone
NPCB	National Programme for Control of Blindness
NPHCE	National Programme for Health Care of the Elderly
NPOP	National Policy on Older Persons
NPOP	National Policy on Older Persons
NPSC	National Policy for Senior Citizens
NRHM	National Rural Health Mission
NSAP	National Social Assistance Programme
NSS	National Service Scheme
NYKS	Nehru Yuvak Kendra Sanghathan
OAH	Old Age Home
OAS	Organization of American States
Ori.	Orissa
OS	Original Suit
P&H	Punjab and Haryana

para.	Paragraph
PG	Post graduate
PHC	Primary Health Care
RFA	Regular First Appeal
RCR	Rent Control Reporter
RDO	Revenue Divisional Officer
RES	Resolution
RPFC	Revision Petition Family Court
RSBY	Rashtriya Swasthya Bima Yojana
S.	Section
SC	Supreme Court
SCC	Supreme Court Cases
SCR	Supreme Court Reporter
SCSEP	Senior Community Service Employment Program
U.K	United Kingdom
U.S	Unites States
U.S.A	United States of America
UDHR	Universal Declaration of Human Rights
UDHR	Universal Declaration of Human Rights
UN	United Nations
UN ESCAP	United Nations Economic and Social Commission for Asia and the Pacific
UNCHR	United Nations Commission for Human Rights
UNFPA	United Nations Fund for Population Activities
UNO	United Nations Organization
VIP	Very Important Person
VO	Voluntary Organisation
vol.	Volume
W.P	Writ Petition
WHO	World Health Organization

## TABLE OF CASES

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14	<i>Chiranjeetlal v. Union of India</i> AIR 1951 SC 41
15	<i>Church of God (Full Gospel ) in India v. K.K.R. Majestic Colony Welfare Association</i> AIR 2000 SC 2773
16	<i>Dinsab Kasimsab v. Mahmad Husen</i> (1944) 47 Bom. L.R. 345
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## 1. INTRODUCTION

*“Our society must make it right and possible for old people not to fear the young or be deserted by them, for the test of a civilization is the way that it cares for its helpless members.”*

*- Pearl S. Buck*

Ageing is a natural process by which a person grows older in age. There is no single criterion to determine whether a person becomes old. Old age and ageing relate to a multi-faceted process including physiological, cultural and social factors, in addition to passage of time. Even though ageing is in fact a biological reality which is largely beyond human control, it is not merely a biological process alone, but is also based on the conceptions that each society prescribes for old age, based on chronological time or change in social role.<sup>1</sup>

Most developed countries define older persons based on the chronological factor. The United Nations consider 60 years as the dawn of old age, as persons of 60 years and above are referred to as “Older Persons”. In India the term used for this age group is “Senior Citizens.” This age prescription is probably arbitrary as the health and biological factors leading to ageing is not uniform in all persons. However the age prescription is a general indicator of retirement age and the opening up of old age entitlements to persons.

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<sup>1</sup> See GORMAN M, *Development and the Rights of Older People*, in THE AGEING AND DEVELOPMENT REPORT: POVERTY, INDEPENDENCE AND THE WORLD’S OLDER PEOPLE 3-21 (Randel J, ET AL. eds., Earthscan Publications Ltd, London, 1999).

Old age is an unavoidable stage of human life, which brings with it the decline of the physical and mental capabilities that are essential for a person's independent sustenance. The much needed assistance for the old persons was traditionally provided by the supportive structure of the joint family system which prevailed in India. However due to urbanization, and migration of young people in search of better job prospects and other reasons, there has been a transition in the family system, wherein joint families withered away to give way to nuclear families. This left the old people to lead their lives on their own, financially, physically and mentally.

Advancement in medical science and technology resulted in increased longevity and decreased mortality rate as a result of which the percentage of older persons started growing. United Nations population projections indicate that the persons above 60 years in developed countries will outnumber children by 2047 and the proportion of older persons is expected to double over the next four decades.<sup>2</sup> This changing demographic pattern brings forth various socio economic, health care and inter-generational equity issues. It is necessary that the government, people, infrastructure and facilities are suited to accommodate the demographic change and the resultant needs of the elderly persons, so as to provide for an inclusive society to all.

The legal system also needs to adapt to this change, lest the older persons may get marginalised. There is also the need to protect older persons from discrimination, elder abuse and abandonment. The legal system need to vest obligation and responsibilities on family, society and government.

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<sup>2</sup> UNITED NATIONS ECONOMIC AND SOCIAL COUNCIL, WORLD POPULATION AGEING 2013 1(United Nations, New York, 2013).

## **1.1 SIGNIFICANCE OF THE STUDY**

As a person advances in age, changes do occur with respect to physical and mental well-being. This is accentuated by the loss of earning opportunity as well as capacity, resulting in extreme dependency on family members for survival and basic needs. Moreover there is the prejudice against older persons as being incapable of any utility or contribution. This results in the family and the society treating them as a burden and the consequential marginalization of the older persons. The fact is that older persons are not even identified as a marginalized group requiring mainstreaming activities. Ageing and the problems related to ageing is multifaceted and needs a more holistic approach. Otherwise, marginalization of older persons cannot be effectively prevented.

It is therefore important that governmental machinery and its legislative tool be aptly used to address the challenges that older persons face in our country which hinder their attainment of basic human rights to security, participation, healthcare, adequate standard of living, freedom from cruel, inhuman or degrading treatment and the most essential right to dignity.

Considering the fact that the proportion of older persons in the total population is on the rise in the coming decades and that every year more number of persons are added to the category of 'senior citizens' as they are called in India, the socio legal paraphernalia need to be made age friendly. The world is yet to adopt a specific Convention on the Human Rights of Older Persons. However movement towards this cause is progressing in the international scenario and India has been a participant at the World Assemblies in Vienna in 1982 and in Madrid in 2002. Many countries have already taken to task the

entitlements of older persons, in view of the United Nations Principles for Older Persons, 1991.

India had been slow in starting such initiatives at the legislative level, though there have been effort to include the concerns of the aged population in the planning and policy formulation to a limited extent. Even though there have been provisions for maintenance of parents in the Criminal Procedure Code, 1973 and under the Hindu and Muslim personal laws, the importance of a more effective legislation to achieve the constitutional objectives manifested in the form of Maintenance and Welfare of Parents and Senior Citizens Act, 2007<sup>3</sup> (hereinafter MWPSC Act).

The significant features of the Act are the rights of parents and senior citizens to maintenance and the corresponding obligations on the children or relatives, as the case may be. For enforcement of the rights and obligations, an adjudicatory mechanism is envisaged. Responsibility is vested on the state to ensure health-care facilities, to establish old age homes and to safeguard the life and property of senior citizens. Neglect and abandonment of senior citizens is made an offence punishable under the Act. Rules have been framed by the State Governments for the implementation of the Act. There are many areas of uncertainty in the legislation that can be rectified through an intensive study and analysis of the Act leading to identification of the shortcomings and consequent suggestions.

The impact and reach of MWPSC Act to incorporate the United Nations Principles for Older Persons 1991 requires to be ascertained. A detailed study of this legislation

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<sup>3</sup> Central Act No.56 of 2007.

facilitates the same. Moreover a study of the expectations and needs of the society and the senior citizens need to be identified so as to aid in designing policies of the government.

The findings of the research will also serve as useful inputs to make suitable changes to the Act as well as in the framing of policies and schemes. The study also serves to identify the scheme of protection of older persons in other countries, so that those could be adapted in India as well. The best practices in the States of Goa and Kerala can be mutually shared as well as be projected for reference to the rest of the country. The research is significant in these respects. State of Goa and State of Kerala are chosen for the study as these two states top the list of states in India with the highest dependency rates.

## **1.2 STATEMENT OF OBJECTIVES OF THE STUDY**

The primary objectives of the study is to evaluate three aspects namely,

- a) The adoption and implementation of the UN Principles for Older Persons, 1991 through government programs in India,
- b) The effectiveness and reach of the MWPSA Act in building a society for all ages, as envisaged in the UN Principles for Older Persons, and
- c) The impact and efficacy of the governmental measures in meeting the human rights of older persons and their challenges, through collection and analysis of data relating to the entitlements and well-being of older persons.

The other objectives are

- d) To study the conceptual base of human rights of older persons by resort to international human rights documents,
- e) To assess the international initiatives to protect and promote the rights of older persons,
- f) To study the legislation in U.K., U.S.A and South Africa with respect to protection of interests of older persons,
- g) To study the constitutional provisions, various legislations and policies in India which relates to the general or specific rights and well-being of older persons, and
- h) To evaluate the judicial approach generally with respect to older persons and specifically under the MWPSC Act.

### **1.3 STATEMENT OF HYPOTHESES**

Though the human rights movement to secure the entitlements of older persons at the international level has not yet evolved into a specific Convention, there have been efforts led by United Nations to draw a Plan of Action on Ageing at Vienna and later on at Madrid. India is a signatory to the Vienna and Madrid International Plans of Action on Ageing and has accordingly taken up obligations to meet the human rights and needs of older persons. India is also obliged to frame its laws and policies to give effect to the United Nations Principles for Older Persons, 1991.

In furtherance of these obligations, the MWPSC Act was enacted and various policy measures and welfare schemes were taken up by the Government. The MWPSC Act aims to provide for more effective provisions for the maintenance and welfare of parents and senior citizens. However a deeper insight into the Act reveals that it does not cater to the

wider human rights and entitlements of senior citizens. Provisions for claiming maintenance from children and relatives are envisaged in the Act, subject to conditions. A very limited imperative is put on the State to maintain old age homes and provide health care needs of senior citizens.

The preliminary investigation and the prior exposure to the literature on the same, has led to certain provisional observable propositions. These need to be tested through scientific evaluation to ascertain the veracity. These provisional propositions have been framed into the following hypotheses:

- I. The human rights of the older persons including rights to security, participation, health care, adequate standard of living, freedom from torture or cruel, inhuman or degrading treatment and dignity are not adequately promoted and protected in India.
- II. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 does not satisfactorily incorporate the United Nations Principles for Older Persons, 1991 namely independence, participation, care, self-fulfillment and dignity.
- III. The legislation as well as the governmental programmes for senior citizens do not satisfactorily address the challenges to the full enjoyment of human rights by older persons namely (a) poverty; (b) violence and abuse; (c) discrimination and (d) lack of specific measures and services.

#### 1.4 SCOPE OF THE STUDY

The human rights of older persons are very comprehensive. In the absence of a convention addressing the specific rights of the older persons, the essential human rights more important to persons as they advance in age, namely rights to security, health care, adequate standard of living, freedom from torture or cruel, inhuman or degrading treatment are selected as the criteria to verify the adequacy of promotion and protection of such rights in India.

The MWPC Act is passed with the objective of providing "... for the maintenance and welfare of parents and senior citizens guaranteed and recognized under the Constitution..."<sup>4</sup> The fact remains that the Constitution of India does not expressly provide for any rights for parents and senior citizens except for the directive to the State to provide for public assistance in case of old age among other cases of undeserved want<sup>5</sup>.

This being the case, the evaluation of the effectiveness of MWPC Act based on constitutional provisions would encompass the interpretation of constitutional provisions in respect of older person's rights, which is yet to be done by the judiciary. The researcher has resorted to the principles highlighted in the United Nations Principles for Older Persons, 1991 namely independence, participation, care, self-fulfillment and dignity as the indicators to evaluate the ambit and impact of the Act. These principles have been resolved by the UN General Assembly calling upon the Governments to

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<sup>4</sup> See MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS ACT, 2007, Preamble.

<sup>5</sup> See CONSTITUTION OF INDIA, Article 41.



incorporate them into their national programmes.<sup>6</sup> The principles were drawn in pursuance of the Vienna International Plan of Action on Ageing, adopted by the World Assembly on Ageing, 1982 and endorsed by the General Assembly<sup>7</sup>. India had been a signatory to the Vienna International Plan of Action on Ageing, 1982 as well as the Madrid International Plan of Action on Ageing, 2002.

Both the Plans of Action are wide-ranging and contains vast arena of principles and recommendations with the purpose of helping the Governments in formulation of their policies on ageing to deal effectively with demographic ageing. To make the study effective, the research is restricted to the challenges faced by older people in the enjoyment of their key human rights. The key human rights issues and challenges as contained in the Report of the United Nations Secretary General to the General Assembly<sup>8</sup> are taken as indicators to verify the effectiveness of the MWPC Act and national programmes. It is to be noted that the relevance of this Report of the Secretary General is that it was a follow up to the Second World Assembly on Ageing held at Madrid in 2002. Therefore the MWPC Act being post- 2002, it is to be seen as part of the international obligation on the part of Government of India as well.

This study focuses on the protection of the rights of older persons at the international, national and state levels. At the international level, the efforts taken by United Nations as well as the rights of older persons in Regional Human Rights Instruments in the African,

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<sup>6</sup> UN General Assembly Resolution No. A/RES/46/91 of 16 December 1991.

<sup>7</sup> UN General Assembly Resolution No. A/RES/37/51 of 3 December 1982.

<sup>8</sup> See REPORT OF THE UNITED NATIONS SECRETARY GENERAL TO THE GENERAL ASSEMBLY, A/66/173, of 22 July 2011, available at <http://www.globalaging.org/agingwatch/report%202.pdf> [accessed 12 April 2015]. The challenges identified in the report are poverty; violence and abuse; discrimination and lack of specific measures and services.

American and European Systems are examined. The MWPC Act is analysed and its implementation in the State of Goa and State of Kerala is included in the study.

State of Goa and State of Kerala have been chosen for the study due to the high old age dependency ratio that exists in the States.<sup>9</sup> The State with the highest percentage of elderly is Kerala, where they make up 12.6% of the population, followed by Goa with 11.2% elderly population.<sup>10</sup>

### **1.5 METHODOLOGY**

The methodology adopted for this research is both doctrinal and empirical. Doctrinal study includes the jurisprudence of the basis of rights of older persons, international and national initiatives through resolutions, declarations, legislations and policy measures.

For this purpose international and regional human rights documents, Declarations, provisions of the Constitution of India, Hindu Adoption and Maintenance Act, 1956; Criminal Procedure Code, 1973; Muslim Personal Law, Portuguese Civil Code, 1867 as applicable in State of Goa are studied in addition to the Maintenance of Parents and Senior Citizens Act, 2007. The legislations in U.K, U.S.A and South Africa relating to the protection of older persons is examined.

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<sup>9</sup> In India, 'Old Age Dependency' is defined as the number of persons in the age group of 60 or more per 100 persons in the age group 15-59 years. See Ministry of Statistics and Programme implementation, Government of India, *Situation Analysis of The Elderly in India* (Central Statistics Office, June 2011) 10. The population of 60+ people per 100 persons in age group 15-59 is 196 in Kerala and 168 in Goa, the highest two in India.

<sup>10</sup> See REPORT OF THE MINISTRY OF STATISTICS AND PROGRAMME IMPLEMENTATION, Government of India (2016).

The judicial approach is studied through case law from Courts and Maintenance Tribunals with respect to the rights of older persons. The empirical study involves a combination of qualitative and quantitative methodology.

The qualitative approach examines the implementation of law and policy instruments *vis-a-vis* the rights of older persons in general and the specific entitlements to maintenance and welfare. For this purpose unstructured questionnaires, interview and observation methods are used. The quantitative approach in this thesis has been principally used in gathering and assimilation of data through structured questionnaires to four different response groups, in order to test the hypothesis and present the conclusions in the study.

## **1.6 DESIGN OF THE THESIS**

The research has been divided into six chapters.

### ***Chapter II: International Efforts Towards Promotion and Protection of the Rights of Older Persons***

This chapter contains the study of the conceptual basis of the human rights of older persons through a survey of all relevant international human rights instruments. It analyses the role of United Nations in protecting and promoting the rights of older persons. Specific international instruments on ageing namely the Vienna International Plan of Action on Ageing 1982, UN Principles on Older Persons 1991, Madrid International Plan of Action on Ageing 2002 and General Recommendation No.27 on Older Women and Protection of their Human Rights, 2010 of the Committee on Elimination of Discrimination Against Women are surveyed and included, among others.

The Rights of Older Persons under various regional human rights instruments are also studied. These include the African System, Inter-American System and the European System.

### ***Chapter III: Government Initiatives in Protecting the Rights of Older Persons***

This chapter contains two important aspects of the study, namely the executive action and judicial action towards protecting the rights of older persons. Firstly the policies, plans, schemes, programs and directives of the Government of India, Government of Goa and Government of Kerala are surveyed. The effectiveness and reach of the various schemes in the State of Goa and State of Kerala are also highlighted. Secondly, the judicial approach towards the older persons as litigants in general, and the rights and obligations under the MWPC Act is analyzed through case laws.

### ***Chapter IV: Legislative Framework for the Protection of the Rights of Older Persons***

Chapter IV deals with the study of the constitutional perspective on the rights of older persons and the study focuses on identification of rights of the older persons in the Constitution of India, spread across the Preamble, Fundamental Rights and Directive Principles of State Policy. Maintenance of parents under the Criminal Procedure Code, 1973 and under the Hindu Law and Muslim Law is examined. Shortcomings of these laws is brought out and the significance of the MWPC Act is outlined followed by a detailed analysis of the latter statute along with the Rules made by the States of Goa and Kerala and judicial interventions. Provisions relating to rights of parents under the Portuguese Civil Code 1867 as applicable to the State of Goa are also studied. This Chapter also contains study of similar legislations in other countries, namely United

Kingdom, United States of America and South Africa, and a comparative analysis is drawn.

***Chapter V: Efficacy of Protection of Rights of Older Persons in the State of Goa and State of Kerala***

This Chapter contains an over-all assessment of the legislation as well as the governmental programs for the senior citizens in order to verify if they satisfactorily address the challenges to the full enjoyment of human rights by older persons namely poverty, violence and abuse, discrimination and lack of specific measures and services.

The field study is restricted to the State of Goa and Kerala. A sincere attempt is made to take sample depicting the cross section of the society in each of the States. The chapter determines the impact of the existing legal regime in meeting the needs of the older persons. It attempts to identify and locate the specific problems, shortcomings and lacunae in the law and its implementation. The data also serves as a pointer towards an integrated policy formulation and implementation considering the fact that more number of persons are added to the existing pool of senior citizens every year.

***Chapter VI: Conclusion and Suggestions***

This Chapter summarizes the findings of the doctrinal study and empirical investigation. On the basis of the needs identified and the shortcomings noted, recommendations for effective achievement of the human rights of the older persons are made. The various suggestions are made with respect to law reform, policy stipulations and program designs of the government, all of which focusing towards a larger goal of achieving an inclusive society suitable for all ages.

## **2. INTERNATIONAL EFFORTS TOWARDS PROMOTION AND PROTECTION OF THE RIGHTS OF OLDER PERSONS**

“People everywhere must age with dignity and security, enjoying life through the full realization of all human rights and fundamental freedoms.”

Dr. Babatunde Osotimehin<sup>1</sup>

The world population is rapidly ageing and the demographic pattern is undergoing a sea change in the sense that the older persons have started occupying a greater proportion of the total population and this rate of growth of older population is on a steady rise. Between the year 2000 and 2050, the proportion of world’s population of persons over 60 years of age is expected to double from 11% to 22%. The total number of 60+ persons will increase from 605 million to 2 billion during this time.<sup>2</sup>

While the trend of ageing societies is a cause for celebration, it also presents huge challenges as it requires completely new approaches to healthcare, retirement, living arrangements, and intergenerational relations.<sup>3</sup> The increase in the number of persons over 60 years of age has raised the concern of the world in general and the United Nations (UN) in particular. This is because, the ageing of world population coupled with the weakening of the traditional family support systems have resulted in older persons becoming increasingly vulnerable to abuse and forms of negative stereotyping and

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<sup>1</sup> Executive Director, United Nations Fund for Population Activities (UNFPA).

<sup>2</sup> DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS POPULATION DIVISION, WORLD POPULATION AGEING 2013 75 (United Nations, New York, 2013).

<sup>3</sup> *See generally* HELP AGE INTERNATIONAL ET AL, AGEING IN THE TWENTY-FIRST CENTURY – A CELEBRATION AND A CHALLENGE (United Nations Population Fund, 2012).

discrimination. They have limited access to healthcare and they face age discrimination in employment. Income generation activities many-a-time come to a standstill leaving them to depend on their families for all their needs. When families fail to render their obligation, the older persons are pressed to live in conditions of poverty.

This is all the more in the case of developing countries with limited social security systems, where emigration of younger members has left the elderly to fend for themselves. Older women are most affected by this scenario as their longevity is more than men and are often left isolated in old age.

Thus, realizing that the ageing world population is posing an immediate challenge to Governments as well as private entities to adapt their social and economic policies to meet the needs of the aged, the UN took the lead right from 1950. The initiation of worldwide awareness and campaign by the UN through its General Assembly resolutions, as well as through its agencies like the Economic and Social Council (ECOSOC), Committee on Elimination of Discrimination against Women (CEDAW), World Health Organization (WHO), the United Nations Commission for Human Rights (UNCHR) etc. showed results as the member states started their own follow-up actions in their States.

This chapter studies the efforts taken by UN in safeguarding the rights and interests of older persons. The impact of these events on the member States and regional movements are also studied.

Rights of Older Persons being essentially a human rights issue, analysis of the conceptual base of such rights becomes essential.

## **2.1 CONCEPTUAL BASE: HUMAN RIGHTS OF THE AGED**

Human rights are universal and do not wither away as a person advances in age. Therefore, the whole range of internationally recognized standards and principles which are enumerated in the core human rights treaties equally extend to older persons as much as to any other. That is, the civil, political, economic, social and cultural rights belong to all human beings, including older people.

International human rights instrument make scarce mention about the specific human rights of older persons. It was only after the First World Assembly on Ageing at Vienna in 1982, that the world community has been drawn to the social, economic and political issues related to issues arising out of an increase in the aged population.

It is pertinent to note that the UN General Assembly itself acknowledged that there are numerous obligations vis-à-vis older persons implicit in most core human rights treaties but that explicit references to age in core international human rights treaties are scarce and that there is no such instrument for older persons and that only a few instruments contain explicit references to age.<sup>4</sup>

However, human rights being universal and inherent in human beings, all the human rights standards and principles contained in core international treaties, also cover and protect an older person as much as any other. It is submitted that the rights relating to older population stem from the twin principles which are as follows:

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<sup>4</sup> See UN General Assembly Resolution No. A/RES/67/139 of 13 February 2013, available at <http://www.refworld.org/docid/514196672.html> [accessed 17 May 2016].



- a) *Principle of inherent human dignity*: This is the basic premise on which all human rights stand. The United Nations Charter 1945<sup>5</sup>(UN Charter), Universal Declaration of Human Rights 1948<sup>6</sup>(UDHR), International Covenant on Civil and Political Rights 1966<sup>7</sup> (ICCPR), International Covenant on Economic Social and Cultural Rights 1966<sup>8</sup> (ICESCR) and various other instruments<sup>9</sup> affirm and reaffirm faith in the inherent dignity and worth of the human person. As a person advances in age, there are physical and psychological changes in him. This is in addition to his loss of earning capacity. Highest attainable physical and mental health becomes a serious concern. When basic facilities like housing, transport and medical care becomes inaccessible to older persons, they are forced to compromise their inherent human dignity by having to depend on others solely, or by resorting to a life within four walls. The menace is accentuated by the society's prejudice against older persons leading to their marginalization.
- b) *Principle of non-discrimination*: All human rights instruments contain a non-discrimination clause which provides that a person shall not be discriminated on certain grounds, where age is not specifically included<sup>10</sup>. Rather than being seen as an

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<sup>5</sup> See UN CHARTER, 1945, Preamble; It contains the words “fundamental human rights’ and ‘dignity and worth of the human person’, which are undoubtedly wide enough to contain within it the dignity and worth of the older human persons as well; *See also id.* Article 55.

<sup>6</sup> See UDHR, Preamble, para 1, which states that, “... recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”; *Id.* Article 2 states that “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind...”

<sup>7</sup> See ICCPR, Preamble, which reaffirms the principles proclaimed in the UN Charter, 1945.

<sup>8</sup> See ICESCR, Preamble, para 2,5.

<sup>9</sup> INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION, 1965; CONVENTION ON ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN 1979 [hereinafter CEDAW] ; CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, 1984; CONVENTION ON THE RIGHTS OF THE CHILD, 1989; CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES, 2006.

<sup>10</sup> See UDHR, Article 2, which states that “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind”; *See also* ICCPR Article 2, which states that “each state

intentional exclusion, this omission is probably best explained by the fact that, when these instruments were adopted, the problem of demographic ageing was not as evident or as pressing, as it is now. Moreover, prohibition of discrimination on the ground of “other status” could be interpreted as applying to age.<sup>11</sup>

Nevertheless, the words, ‘fundamental human rights’ and ‘dignity and worth of the human person’, is undoubtedly wide enough to contain within it the dignity and worth of older human persons as well. In all walks of social life, whenever a person is discriminated against on the basis of old age, he is deprived of the much deserving rights. Even in matters of employment, we follow a rule of retirement based on a fixed age. Whether the person is physically and mentally capable of continuing the vocation is never a concern. Therefore, this rule of superannuation is the best example of the societal prejudice that a man is not good enough for holding a job because he has crossed a certain age. This mind-set is continued in domestic and community relations as well and the older persons are marginalized in their own homes and towns.

Therefore, the applicability of international human rights instruments to older persons having been impliedly deciphered, certain specified rights contained therein are especially applicable for older persons as a class. These rights include the Right to work;<sup>12</sup> Right to adequate standard of living;<sup>13</sup> Right to social security;<sup>14</sup> Right to equality

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party undertakes to respect the rights mentioned therein without distinction of any kind”; ICESCR Article 2.2, under which the state parties undertake to “guarantee the rights without discrimination of any kind.”

<sup>11</sup> See UN Committee on Economic, Social and Cultural Rights, GENERAL COMMENT NO. 6: THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS OF OLDER PERSONS, 8 December 1995, E/1996/22, para 11-12, available at, <http://www.refworld.org/docid/4538838f11.html> [accessed 10 August 2013].

<sup>12</sup> See UDHR, Article 23; ICESCR, Articles 6, 7.

<sup>13</sup> See ICESCR, Article 11.

<sup>14</sup> See UDHR, Article 22, Article 15(1); ICESCR, Article 9; CEDAW, Article 11(2).

before law;<sup>15</sup> Right to life;<sup>16</sup> Right against torture or cruel, inhuman or degrading treatment;<sup>17</sup> Right to liberty of movement and freedom to choose his residence;<sup>18</sup> Right to recognition everywhere as a person before the law;<sup>19</sup> Right against unlawful attacks on his honour and reputation;<sup>20</sup> Right to hold opinions without interference;<sup>21</sup> Right to enjoyment of the highest attainable standard of physical and mental health;<sup>22</sup> and Right to take part in cultural life and to enjoy the benefits of scientific progress<sup>23</sup>.

It is important to examine certain human rights documents which specifically deal with the rights of older persons, or which are significantly relevant to older persons.

### **2.1.1 Convention on the Rights of Persons with Disabilities, 2007**

The Convention on the Rights of Persons with Disabilities, 2007 (CRPD)<sup>24</sup> recognises that disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.<sup>25</sup> Though the term ‘Disability’ is not specifically defined in the Convention, Article 1 of the Convention provides an illustrative definition wherein “persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in

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<sup>15</sup> See ICCPR, Article 26.

<sup>16</sup> See *id.* Article 6.1.

<sup>17</sup> See *id.* Article 7.

<sup>18</sup> See *id.* Article 12.1.

<sup>19</sup> See *id.* Article 16.

<sup>20</sup> See *id.* Article 17.

<sup>21</sup> See *id.* Article 19.

<sup>22</sup> See ICESCR, Article 12.

<sup>23</sup> See *id.* Article 15.

<sup>24</sup> UN General Assembly, Convention on the Right of Persons with Disabilities: resolution/adopted by the General Assembly, 24 January 2007, A/RES/61/106, available at <http://www.refworld.org/docid/45f973632.html> [accessed 17 May 2016] [hereinafter CRPD]

<sup>25</sup> *Id.* CRPD, Preamble, Clause (e).

interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”.

While ageing by itself cannot be equated to disability, old age can lead to disabilities.<sup>26</sup> Old age and disability are factors that, separated or combined, can make a person vulnerable to a range of human rights violations – from violation of freedom of movement due to physical barriers to medical treatment without the person’s free and informed consent.<sup>27</sup>

People with disabilities age and ageing can also cause disability. Age often sets a social construct based on custom, practice and perception of the role a person plays in his or her community. The disability seen in older persons is not a diagnosis; rather it is an interaction between impairment and a person’s environment. Therefore, it is submitted that the Convention on the Rights of Persons with Disabilities applies to older persons who suffer such disabilities due to old age, as well.<sup>28</sup>

The noteworthy entitlements in this context are Right to make one’s own choices;<sup>29</sup> Equal legal capacity with others in all aspects of life;<sup>30</sup> Right to respect one’s physical and mental integrity,<sup>31</sup> Right against discrimination on the ground of disability;<sup>32</sup> Freedom

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<sup>26</sup> Some diseases directly related to old age, such as Alzheimer’s or Parkinson’s disease, are leading cases of disability among older persons. *See* ECONOMIC AND SOCIAL COUNCIL, REPORT OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, (E/2012/51) para 58, *available at* [http://www.un.org/ga/search/view\\_doc.asp?symbol=E/2012/51](http://www.un.org/ga/search/view_doc.asp?symbol=E/2012/51) [accessed on 24 July 2013].

<sup>27</sup> *See* WORLD HEALTH ORGANISATION, WORLD REPORT ON DISABILITY 34 (2011).

<sup>28</sup> *See* CRPD, *supra* note 24, Article 8 (b) whereby States parties undertake to adopt measures to combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life.

<sup>29</sup> *See id.* Article 3.

<sup>30</sup> *See id.* Article 12.

<sup>31</sup> *See id.* Article 17.

<sup>32</sup> *See id.* Preamble, Clause (h).

from torture or cruel, inhuman or degrading treatment or punishment<sup>33</sup> and Right to health.<sup>34</sup>

Article 16 of the Convention makes a specific mention about age as a factor to be considered when it provides that the States shall provide ‘age-sensitive’ assistance and support to combat protection services against exploitation, violence and abuse of persons with disabilities.<sup>35</sup> In relation to access to justice for persons with disabilities, Article 13 of the Convention provides that the State Parties shall provide ‘age-appropriate’ accommodation.

### **2.1.2 International Convention on the Protection of the Rights of Migrant Workers and the members of their families, 2003**

The International Convention on the Protection of the Rights of Migrant Workers and the Members of their families (ICMW)<sup>36</sup> is applicable to all migrant workers and members of their families without distinction of any kind including age.<sup>37</sup> The State Parties undertook, to respect and to ensure all migrant workers and members of their families,

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<sup>33</sup> See CRPD, *supra* note 24, Article 15.

<sup>34</sup> See *id.* Article 25 which articulate the right to health in five principles dealing with equality of treatment, personalization of care, proximity to people’s own communities, health care professional’s responsibilities and obligations and non-discrimination.

<sup>35</sup> See *id.* Article 16 (2).

<sup>36</sup> UN General Assembly, INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES, A/RES/45/158 of 18 December 1990, *available at* <http://www.refworld.org/docid/3ae6b3980.html> [accessed 25 July 2013][hereinafter ICMW]. The Convention received the required ratification of 20 states and came into force on 1 July 2003.

<sup>37</sup> See *id.* Article 1; The grounds mentioned are sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.

the rights provided in the Convention without distinction of any kind such as to sex, race, colour, language, nationality, age, etc.<sup>38</sup>

Further Article 10 of CRPD proclaims that no migrant worker or member of his or her family shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. The different rights of the migrant workers and their family, which is especially relevant for older persons include, Right against slavery, servitude and forced labour<sup>39</sup>, Right to freedom of thought, conscience and religion<sup>40</sup>, Right to hold opinions without interference,<sup>41</sup> Right against unlawful attacks on his or her honour and reputation<sup>42</sup>, Right to liberty and security of the person<sup>43</sup>, Right not to be deprived of property<sup>44</sup> and Right to social security<sup>45</sup>.

### **2.1.3 Habitat Agenda 1996: Goals and Principles, Commitments and the Global Plan of Action**

The purpose of the Second United Nations Conference on Human Settlements (Habitat II) was to address two themes of equal global importance: "Adequate shelter for all" and "Sustainable human settlements development in an urbanizing world"<sup>46</sup>.

The Habitat Agenda specifies that older persons are entitled to lead fulfilling and productive lives and should have opportunities for full participation in their communities

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<sup>38</sup> See ICMW; *supra* note 36, Article 7.

<sup>39</sup> See *id.* Article 11.

<sup>40</sup> See *id.* Article 12.

<sup>41</sup> See *id.* Article 13.

<sup>42</sup> See *id.* Article 14.

<sup>43</sup> See *id.* Article 16.

<sup>44</sup> See *id.* Article 15.

<sup>45</sup> See *id.* Article 27.

<sup>46</sup> United Nations Conference on Human Settlements (HABITAT II), A/Conf.165/14, available at <http://www.un-documents.net/hab-ag.htm> [accessed 16 May 2016] [hereinafter HABITAT II]

and society, and in all decision-making regarding their well-being especially their shelter needs. Their many contributions to the political, social and economic processes of human settlements should be recognized and valued. Special attention should be given to meeting their growing housing and mobility needs so as to enable them to continue to lead rewarding lives in their communities.<sup>47</sup> For this purpose, the Habitat Agenda proposes government-private partnership to improve the planning and design of human settlements so as to respond specifically to the needs of vulnerable and disadvantaged people.<sup>48</sup> All of these are suggestive of ensuring older persons' special needs relating to shelter.

#### **2.1.4 International Conference on Population and Development - Cairo Program of Action 1994**

The Cairo Program of Action on Population and Development<sup>49</sup> addresses the critical challenges and interrelationships between population and sustained economic growth in the context of sustainable development.<sup>50</sup> The document affirms the principle that elderly people constitute a valuable and important component of a society's human resources and enumerates the objectives aimed at assisting the elderly people with long term support needs.

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<sup>47</sup> See HABITAT II, *supra* n. 46, para 17; See also *id.* para 40(j) which proposes protection from discrimination in access to shelter and basic services.

<sup>48</sup> See *id.* para 124.

<sup>49</sup> International Conference on Population and Development, CAIRO PROGRAM OF ACTION, A/CONF.171/13, available at <http://www.un.org/popin/icpd/conference/offeng/poa.html> [accessed on 26th July 2013].

<sup>50</sup> Chapter VI of the Cairo Program of Action deals with Population Growth and Structure, in which part C is exclusively addressing the problems of the elderly people.

The objectives are set out as follows:<sup>51</sup>

- a) Enhance self-reliance of elderly people and create conditions that promote quality of life and enable them to work and live independently in their own communities as long as possible or as desired.
- b) Develop systems of healthcare as well as systems of economic and social security in old age where appropriate, paying special attention to the needs of women.
- c) Develop a social support system, both formal and informal, with a view to enhancing the ability of families to take care of their elderly people.

The actions to be initiated by the Governments to attain these objectives are,

- (i) Develop social security systems that ensure greater intergenerational and intra-generational equality and solidarity and provide support to elderly people.<sup>52</sup>
- (ii) Develop enabling conditions for elderly people to lead self-determined, healthy and productive lives and thereby enhance their self-reliance.<sup>53</sup>
- (iii) Strengthen formal and informal support systems and safety nets for elderly people and eliminate all forms of violence and discrimination against elderly people in all countries, paying special attention to the needs of elderly women.<sup>54</sup>

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<sup>51</sup> See HABITAT II, *supra* note.46, para 6.17.

<sup>52</sup> See *id.* para 6.18.

<sup>53</sup> See *id.* para 6.19.

<sup>54</sup> See *id.* para 6.20.



### 2.1.5 Copenhagen Declaration on Social Development, 1995 and Copenhagen Programme of Action, 1995

At the World Summit for Social Development<sup>55</sup> the Copenhagen Declaration on Social Development<sup>56</sup> was drawn up by 117 Heads of States. The objective of the World Summit was to enhance social development throughout the world especially with respect to people suffering from poverty, unemployment and social exclusion.<sup>57</sup> Furthermore, it specifically states that steps are to be taken to improve the possibility of older persons achieving a better life.<sup>58</sup>

Commitment 2 of the Copenhagen Declaration which is a commitment towards the goal of eradicating poverty in the world makes explicit reference to older persons<sup>59</sup>. Reducing inequalities and eradicating absolute poverty is a measure to protect older persons, considering the fact that poverty and old age are interrelated, as they are “vulnerable and disadvantaged groups and persons” with marginal employment opportunities.<sup>60</sup>

The Copenhagen Programme of Action, 1995<sup>61</sup> emphasized on the urgent need for policies inter alia, ensuring that all people have adequate economic and social protection

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<sup>55</sup> The Summit was mandated by the General Assembly by its resolution A/RES/47/92 of 16 December 1992. It was organized principally by the United Nations Department for Policy Coordination and Sustainable Development, and held at Copenhagen in 1995.

<sup>56</sup> United Nations, *Report of the World Summit for Social Development, Copenhagen Declaration on Social Development* A/CONF.166/9 of 14 March 1995, available at <http://www.un-documents.net/cope-dec.htm> [accessed 26 July 2013].

<sup>57</sup> *See id.* para 9.

<sup>58</sup> *See id.* para 26 (q).

<sup>59</sup> *See id.* Commitment 2 (d).

<sup>60</sup> *See id.* Commitment 2 (b).

<sup>61</sup> United Nations, *PROGRAMME OF ACTION OF THE WORLD SUMMIT FOR SOCIAL DEVELOPMENT*, A/CONF.166/9 of 14 March 1995, available at <http://www.un-documents.net/poa-wssd.htm> [accessed 26 July 2013].

during unemployment, ill health, maternity, disability and old age.<sup>62</sup> Through these suggested actions,<sup>63</sup> it gives the much needed importance to the concern and aspirations of older persons, with respect to their economic, social, political and emotional well-being. Strengthening the family system is a strong pillar to the sustenance of older persons. To meet the financial constraints which affect old age, it is relevant to initiate measures for their financial savings, thereby making old age not a contingency but rather an event of human life for which one should be continuously prepared.

The Copenhagen Summit thus, launched a new commitment to social development and a new era of international cooperation between Governments and people based on a spirit of partnership that puts the needs, rights and aspirations of people including older people, at the centre of their decisions and joint actions.

### **2.1.6 Beijing Platform for Action, 1995**

Beijing Declaration and Platform for Action was adopted by the Fourth World Conference on Women, held at Beijing in September 1995.<sup>64</sup> The Platform for Action was an agenda for women empowerment<sup>65</sup>.

The Platform for Action took account of the increase in the growing number of older women and their increased life expectancy and recognized their health concerns;

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<sup>62</sup> See *id.* para 25.

<sup>63</sup> See *supra* note 61, para 40.

<sup>64</sup> United Nations Fourth World Conference on Women, BEIJING DECLARATION AND PLATFORM FOR ACTION, A/CONF.177/20/Add.1 of 27 October 1995, available at <http://www.refworld.org/docid/3dde04324.html> [accessed 16 May 2016] [hereinafter BEIJING PLATFORM FOR ACTION]. The Platform for Action was endorsed by UN GA Resolution No. A/RES/50/203 of 22 December 1995.

<sup>65</sup> See *id.* Chapter I, “Mission Statement”; It aims at *inter alia*, removing all the obstacles to women’s active participation in all spheres of public and private life through a full and equal share in economic, social, cultural and political decision-making.

interrelationships of ageing and disability among women were given particular attention.<sup>66</sup>

The Platform for Action proposes the following actions to be taken by Governments:<sup>67</sup>

- (i) Implement all international agreements to meet health needs of girls and women of all ages
- (ii) Incorporate into national legislations, provisions for promoting the right to enjoyment of the highest attainable standards of physical and mental health, for women and girls.
- (iii) Identify and plan healthcare priorities and programmes that address the needs of women throughout their life, and also the special needs of women arising from age.
- (iv) Ensure that girls and women of all ages with any form of disability receive supportive services.
- (v) Develop supportive programmes for girls and women of all ages who have experienced any form of violence.

Further, in the context of “Promoting women’s economic rights and independence,”<sup>68</sup> the Platform for Action recommended the Governments to adopt and implement laws against

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<sup>66</sup> See BEIJING PLATFORM FOR ACTION, *supra* note 64, para 101.

<sup>67</sup> See *id.* para 106, Strategic Objective C.1 - “Increase women’s access throughout the life cycle to appropriate, affordable and quality health care, information and related services.”

<sup>68</sup> See BEIJING PLATFORM FOR ACTION, *supra* note 64, para 165; Strategic objective F.1- “Promote women’s economic rights and independence, including access to environment, appropriate working conditions and control over economic resources.”

discrimination based on sex in the labour market, especially considering older women workers.<sup>69</sup>

Women Empowerment, being the core agenda of the Fourth World Conference on Women, equality and empowerment at workplace is of crucial concern in attaining the objectives of the Conference. The due focus which is given to meet the needs of older women would go a long way in realizing such empowerment for all ages.

## **2.2 ROLE OF UN GENERAL ASSEMBLY IN PROMOTING THE RIGHTS OF OLDER PERSONS: AN OVERVIEW**

The General Assembly of the United Nations has, since its inception, addressed the position of the elderly or aged or older persons in society on numerous occasions. The first initiative to place ageing on the UN agenda was a draft declaration on old age rights that the Government of Argentina submitted to the General Assembly in 1948. It contained several articles that referred to rights of older persons to assistance, housing, food, clothing, health care, recreation and work as well as “stability” and “respect”.<sup>70</sup> Although the Argentine draft was not adopted, the General Assembly adopted a resolution titled “Declaration of Old Age Rights” wherein it decided to communicate the draft declaration of old age rights submitted by the Argentine delegation to the Economic

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<sup>69</sup> See *id.* para 165.

<sup>70</sup> Draft Resolution A/C.2/213 of 30 September 1948, cited in SERGEI ZELENNEV, *The Madrid Plan: A Comprehensive Agenda for an Ageing World*, in UNITED NATIONAL DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS, REGIONAL DIMENSIONS OF THE AGEING SITUATION 1 (United Nations Publication, 2008); See also SERGEI ZELENNEV, *Towards a ‘society for all ages’: meeting the challenge or missing the boat*, INTERNATIONAL SOCIAL SCIENCE JOURNAL 601- 616 (Volume 58, Number 190, December 2006).

and Social Council in order that the latter may make a study thereof and report thereon to the General Assembly.<sup>71</sup>

In 1950 the UN Secretary General's office submitted a report to the Council entitled issued a report titled "Welfare of the Aged: Old Age Rights".<sup>72</sup> No major follow-up action was taken by the UN at that time. Probably it was not obvious then that the ageing population would emerge as a substantial proportion of the total population in all countries.

Attention of the UN was turned again to the topic in 1969 when a Maltese delegate placed the issue on the General Assembly agenda. Thereafter, the General Assembly adopted a resolution titled "Declaration on Social Progress and Development"<sup>73</sup> wherein a specific reference was made about the need to protect the rights and assure the welfare of the aged. Later on, in December 1973, the General Assembly passed a resolution<sup>74</sup> noting the need for well-designed policies and programmes for the elderly and the aged.<sup>75</sup> Moreover, the World Population Plan of Action, adopted by the World Population Conference of 1974, contained a provision urging all Governments to consider the implications of changing proportions of older persons in population in their development policies.

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<sup>71</sup> See UN General Assembly Resolution No. A/RES/213(III) of 4 Dec 1948, available at <http://www.refworld.org/docid/3b00f08e3c.html> [accessed 16 May 2016]

<sup>72</sup> MICHAEL G. SCHECHTER, UNITED NATIONS GLOBAL CONFERENCES 89 (Routledge, New York, 2005); See also UNITED NATIONS ET AL., WELFARE OF THE AGED: OLD AGE RIGHTS, SUMMARIZED DOCUMENTATION ON MEASURES FOR THE BENEFIT OF AGED PERSONS AND THE EFFECT OF SUCH MEASURES ON THEIR STANDARD OF LIVING (United Nations Economic and Social Council, 1950).

<sup>73</sup> UN General Assembly Resolution No. A/RES/2542 (XXIV) of 11 December 1969, available at [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/2542\(XXIV\)&Lang=E&Area=RESOLUTION](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/2542(XXIV)&Lang=E&Area=RESOLUTION) [accessed 16 May 2016].

<sup>74</sup> UN General Assembly Resolution No. A/RES/3137(XXVIII) of 14 December 1973, available at <http://www.refworld.org.docid/3b00f1c949.html> [accessed 16 May 2016].

<sup>75</sup> See MICHAEL G. SCHECHTER, UNITED NATIONS GLOBAL CONFERENCES 90 (Routledge, New York, 2005).

On December 16, 1977 the UN General Assembly passed a resolution<sup>76</sup> calling for an International Year and a World Assembly on Ageing. In 1978, the General Assembly, by resolution, decided to convene the First World Assembly on Ageing,<sup>77</sup> with the objective of eventually formulating an international action plan on ageing that would address the needs and demands of older persons as well as analyse relationships between population ageing and economic development. Thereafter, in 1980, the Assembly decided to change the name ‘World Assembly on the Elderly’ to the ‘World Assembly on Ageing’<sup>78</sup> and in 1981 decided that it will be held at Vienna from 26 July to 6 August 1982.<sup>79</sup>

Eventually, the First World Assembly on Ageing was held in Vienna in 1982 and adopted the Vienna International Plan of Action on Ageing.<sup>80</sup> The recommendations of that Plan, together with legal mandates stemming from United Nations legislative and consultative bodies as the General Assembly, the Economic and Social Council as well as the Commission for Social Development, put the range of issues of older persons firmly on the international agenda.<sup>81</sup>

The UN adopted two important resolutions under the impact of the Vienna Assembly.

These are enumerated below:

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<sup>76</sup> UN General Assembly Resolution No A/RES/32/132 of 16 December 1977, available at <http://www.refworld.org/docid/3b00f0368.html> [accessed 16 May 2016].

<sup>77</sup> See UN General Assembly Resolution No. A/RES/33/52 of 14 December 1978, available at <http://www.un.org/documents/ga/res/33/ares33r52.pdf> [accessed 16 May 2016].

<sup>78</sup> UN General Assembly Resolution No. A/RES/35/129 of 11 December 1980, available at <http://www.refworld.org/docid/3b00f1894c.html> [accessed 16 May 2016].

<sup>79</sup> UN General Assembly Resolution No. A/RES/36/30 of 13 November 1981, available at [refworld.org/docid/3b00f1894c.htmhttp://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/36/30](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/36/30) [accessed 16 May 2016].

<sup>80</sup> The Vienna Assembly and Plan of Action is detailed in para 2.3, *infra*.

<sup>81</sup> SERGEI ZELENEV, *The Madrid Plan: A Comprehensive Agenda for an Ageing World*, in UNITED NATIONAL DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS, REGIONAL DIMENSIONS OF THE AGEING SITUATION 1- 2 (United Nations Publication, 2008).

### 2.2.1 United Nations Principles for Older Persons, 1991

The General Assembly adopted the United Nations Principles for Older Persons<sup>82</sup> as guidelines for policymakers to incorporate into their national development programmes. The resolution was prefaced “To add life to the years that have been added to life”. The principles were drawn considering the heterogeneous nature of older persons as a class. The Assembly was convinced that in a world characterized by an increasing number and proportion of older persons, opportunities must be provided for willing and capable older persons to participate in and contribute to the ongoing activities of society.

To ensure such participation, the Assembly laid down five principles, namely, (a) independence, (b) participation, (c) care, (d) self-fulfillment and (e) dignity of older persons. These principles were to serve as guidelines for Governments to incorporate the same into their national programmes, whenever possible. The principles as enunciated are enumerated below.

(a) *Independence*: The independence of older persons is reliant on the following aspects:-

- (i) Access to basic necessities for survival like adequate food, water, shelter, clothing and healthcare. This can be through provision for income, family and community help and self-help.
- (ii) Opportunity to work or have access to income generating opportunities
- (iii) Access to appropriate educational and training programmes

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<sup>82</sup> See UN General Assembly Resolution No. A/RES/46/91 of 16 December 1991, annex: *United Nations Principles for Older Persons: to add life to the years that have been added to life*, available at <http://www.refworld.org/docid/3b00f22548.html> [accessed 16 May 2016].

- (iv) Ability to participate in decision-making that affect them, like retirement from work.
- (v) Ability to live in environments that are safe and adaptable to personal preferences and changing capacities.
- (vi) Ability to reside at home for as long as possible.

(b) *Participation*: Older persons should remain integrated in society, and participate actively in the formulation and implementation of policies that directly affect their well-being. They should be able to share their knowledge and skills with younger generations, and not merely to remain as a self-contained group. They should be able to seek and develop opportunities for service to community and to serve as volunteers in positions appropriate to their interests and capabilities. Older persons should be able to form movements or associations of older persons.

(c) *Care*: Older persons should receive four different levels of care and protection namely,

- (i) Family and community care,
- (ii) Healthcare as an aid to maintain or regain the optimum level of physical, mental and emotional well-being; access to healthcare should also be aimed at preventing or delaying the onset of illness,
- (iii) Access to social and legal services to enhance their autonomy, protection and care.
- (iv) Institutional care providing protection, rehabilitation and social and mental stimulation in a humane and secure environment.



Moreover, older persons should be able to enjoy human rights and fundamental freedoms when residing in any shelter, care or treatment facility, including full respect for their dignity, beliefs, needs and privacy. They should have the right to make decisions about their care and the quality of their lives.

(d) *Self-fulfillment*: Older persons should be able to pursue opportunities for full development of their potential, as well as have access to educational, cultural, spiritual and recreational resources of society.

(e) *Dignity*: Older persons should be able to live in dignity and security and be free of exploitation and physical or mental abuse. They should be treated fairly, regardless of age, gender, racial or ethnic background, disability or other status, and be valued independently of their economic contribution.

### **2.2.2 Proclamation on Ageing, 1992**

Taking note of the unprecedented ageing of populations across the world that poses a policy and programme challenge to Governments and NGOs, the UN Assembly adopted the Proclamation on Ageing in 1992<sup>83</sup> and urged the international community to promote the implementation of the Vienna International Plan of Action on Ageing, 1982. The principles laid down in the Proclamation include the following:

- a) Older persons are viewed as contributors to their societies and not as a burden.
- b) Ageing is a life-long process and that preparation for old age must begin in childhood and continue throughout the lifecycle.

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<sup>83</sup> See UN General Assembly Resolution No. A/RES/47/5 of 16 October 1992, available at <http://www.un.org/documents/ga/res/47/a47r005.htm> [accessed 16 May 2016].

- c) Old and young generations cooperate in creating a balance between tradition and innovation in economic, social and cultural development.
- d) Collaboration of Governmental and non-governmental organizations in the development of primary healthcare, health promotion and self-help programmes for the elderly.
- e) Community awareness and participation is encouraged in the formulation and implementation of programmes and projects with the involvement of older persons.
- f) Families are supported in providing care and all family members are encouraged to cooperate in care-giving.
- g) Local authorities cooperate with older persons, businesses, civic associations and others in exploring new ways of maintaining age integration in family and community.

It is submitted that the significance of the proclamation lies in the realization that preparation for old age must start in childhood. World is growing older and today's younger generation will join the group of older persons in future. The population of older persons is therefore an ever increasing figure and the Governments should not waste any more time in preparing the country for older persons.

In the same resolution, the General Assembly decided to observe the year 1999 as the International year of the Older Persons "in recognition of humanity's demographic coming of age and the promise it holds for maturing attitudes and capabilities in social,

economic, cultural and spiritual undertakings, not least for global peace and development in the next century”.<sup>84</sup> The General Assembly named the theme of the year “towards a society for all ages”. In its resolution<sup>85</sup> on the matter, the General Assembly noted that the concept of a society for all ages has four interlocking dimensions namely, (a) the situation of older persons, (b) lifelong individual development, (c) multigenerational relationships and (d) the relationship between ageing of population and development.

The International Year of Older Persons caught widespread public attention and its political message spread worldwide, generating responses to issues of ageing thereafter. Apparently, the world was beginning to recognise that the unprecedented ageing of societies in the twentieth century is posing a major challenge for all, calling for a fundamental change in the way in which societies organised themselves and their view on older persons.

Twenty years after the First World Assembly in Vienna, the Second World Assembly on Ageing, 2002 was held at Madrid with the mandate of reviewing the implementation of recommendations by the First Assembly and the Vienna Plan. The outcome was the Political Declaration and the Madrid International Plan of Action on Ageing.<sup>86</sup>

The United Nations General Assembly is constantly and regularly taking on its agenda, the follow up of Second World Assembly on Ageing. During the period between 4<sup>th</sup> December 1948 and 17<sup>th</sup> December 2015, a total of 58 resolutions have been adopted by

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<sup>84</sup> See *supra* note.83.

<sup>85</sup> See UN General Assembly Resolution No. A/RES/50/141 of 21 December 1995, available at <http://www.refworld.org/docid/3b00f31f10.html> [accessed 16 May 2016].

<sup>86</sup> See *infra* para 2.5 for a detailed discussion on the Madrid International Plan of Action on Ageing and Political Declaration.

the General Assembly on the topic of older persons. The list of resolutions of the General Assembly has been added as Annexure 5.

Thus, although no Convention explicitly dealing with the rights of the elderly has been adopted, as in the case of, women and children, a number of steps towards the improvement of lives of older persons have been taken under the auspices of the UN, the pioneering one being the World Assembly on Ageing held at Vienna in 1982.

### **2.3 WORLD ASSEMBLY ON AGEING & VIENNA INTERNATIONAL PLAN OF ACTION ON AGEING, 1982**

It was for the first time that the nations of the world gathered to focus exclusively on issues related to ageing and the elderly.<sup>87</sup> The importance of addressing such issues was seen as furthering the ultimate aim of development. This was in tune with the International Development Strategy for the Third United Nations Development Decade, that "the constant improvement in the well-being of the entire population on the basis of its full participation in the process of development and a fair distribution of the benefits derived there from."<sup>88</sup>

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<sup>87</sup> In addition to the 124 countries that attended the Assembly, there was participation from UN specialized Agencies like ILO, FAO, WHO, UNESCO; United Nations Programs and Bodies like UNDP, UNHCR, UNFPA, UNIDO, United Nations Relief and Works Agency for Palestine Refugees in the Near East, United Nations Joint Staff Pension Board; Secretariats of various regional commissions namely Economic Commission for Europe, Economic Commission for Latin America, Economic and Social Commission for Asia and the Pacific, Economic Commission for Africa, Economic Commission for Western Asia; UN Departments like United Nations Council for Namibia, Director-General for Development and International Economic Co-operation of the United Nations, Department of International Economic and Social Affairs and Inter-governmental organizations like European Economic Community, League of Arab States participated in the Assembly. A large number of organizations in consultative status with the Economic and Social Council also attended the World Assembly. *See* REPORT OF THE WORLD ASSEMBLY ON AGEING (United Nations Publications, Sales No. E.82.1.16, New York, 1982) A/CONF.113/31, 6-8.

<sup>88</sup> Jean Hipert, Director General for Development and International Economic Cooperation, *Opening Statement at the World Assembly*, *See id.* at 8 (para 28).

The World Assembly on Ageing adopted the Vienna International Plan of Action on Ageing<sup>89</sup>, the first international instrument on ageing. It identified three priority areas, namely:

- (a) The sustainability of development in a world where the population ageing;
- (b) The maintenance of good health and well-being to an advanced age; and
- (c) The establishment of an appropriate and supportive environment for all age groups.

The purpose of the Vienna Plan of Action was to help Governments in formulating their policies on ageing, by guiding national and international efforts and strengthening capacities of Governments and civil society organizations to deal effectively with demographic ageing.<sup>90</sup>

The Assembly discussed comprehensively the issues in connection with ageing, particularly the “Humanitarian and Developmental Aspects of Ageing”<sup>91</sup>. It was pointed out at the World Assembly that the question of ageing has become more a developmental issue than a demographic or social one. The humanitarian issues relate to the specific needs of the elderly. The developmental issues relate to the socio-economic implications of the ageing population in terms of increasing old age dependency ratio.<sup>92</sup>

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<sup>89</sup> *Vienna International Plan of Action on ageing* (United Nations, New York, 1983) [hereinafter VIENNA PLAN OF ACTION].

<sup>90</sup> The Vienna Plan of Action was endorsed by UN General Assembly Resolution No. A/RES/37/5 of 13 December 1982 and called upon the Governments to implement the principles and recommendations contained in the Vienna International Plan of Action and endorsed the recommendation contained in the Plan of Action that the Commission for Social Development should be designated as the international body to review the implementation of the Plan of Action every four years and make proposals for updating it.

<sup>91</sup> See VIENNA PLAN OF ACTION, *supra* note 89, para 13-24.

<sup>92</sup> See *supra* note 88, at 9.

Enhancement of life expectancy had a bearing on development, if the elderly were to be ensured a life of dignity and decency. The pace of development in developing countries had to be accelerated so as to extend the fruits of development to the entire population. Even in industrialised countries, mortality and morbidity rates being higher in poorer groups, a longer and healthier life was not a privilege shared equally by all individuals. Accordingly, what was needed was a more equitable distribution of resources, both at the national and international levels.

### **2.3.1 Principles underlying the Vienna International Plan of Action on Ageing**

Even though policy formulation on ageing is a sovereign right of each State, safety and well-being of the elderly was considered to be a matter of larger international concern. International and regional co-operation should play an important role in this concern. The International Plan of Action on Ageing was based on the principles set out below<sup>93</sup>:

- (a) The aim of development is to improve the well-being of the entire population and the development process should enhance human dignity.
- (b) Various problems of older people can find their real solution under conditions of peace, security, a halt to the arms race and a rechanneling of resources spent for military purposes to the needs of economic and social development.
- (c) The developmental and humanitarian problems of ageing can best find their solution under conditions where there is respect for human rights.
- (d) The spiritual, cultural and socio-economic contributions of ageing are valuable to society and should be so recognized and promoted further.

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<sup>93</sup> See VIENNA PLAN OF ACTION, *supra* note 89, para 25.

- (e) The family, is a fundamental unit of society linking generations and should be maintained, strengthened and protected, in accordance with the traditions and customs of each country.
- (f) Government-community participation can make a particularly significant contribution to the provision of support and care for elderly people in the family and community.
- (g) An important objective of socio-economic development is an age-integrated society, in which age discrimination and involuntary segregation are eliminated.
- (h) Ageing is a life-long process and should be recognised as such. Preparation of the entire population for the later stages of life should be an integral part of social policies and encompass physical, psychological, cultural, religious, spiritual, economic, health and other factors.
- (i) Ageing persons should be active participants in the formulation and implementation of policies, especially those affecting them.
- (j) Study on all aspects of ageing is necessary.

The recognition that all aspects of ageing are interrelated implies the need for an integrated approach to planning, policies and research on the subject. It was also pointed out that attention should be given to preventive efforts to combat premature ageing.

### **2.3.2 Recommendations in the Vienna International Plan of Action on Ageing**

The Vienna International Plan of Action on Ageing promotes international co-operation to strengthen the capacities of states to deal with the ageing of population and to address the developmental potential and dependency needs of older persons.

It addresses research, training and education and makes recommendations in the following areas:

*a) Health and Nutrition*<sup>94</sup>

Care of the elderly should involve their total well-being taking into account the interdependence of physical, mental, social, spiritual and environmental factors. Healthcare for the elderly should not only encompass curative treatment but should also extend to preventive care<sup>95</sup>, alleviation of handicaps and palliative care.<sup>96</sup> Programmes should be directed to enable the elderly to lead independent lives in their own family and community.<sup>97</sup>

*b) Protection of elderly consumers*

Governments should take up a four-fold action to protect the interests as well as safety of elderly consumers. These are (i) Ensure food and household products conform to standards of safety that take into account the vulnerability of the aged; (ii) Encourage safe use of medications and all household products by requiring manufacturers to indicate necessary warnings and instructions for use; (iii) Facilitate availability of medications and other prosthetics to the elderly and (iv) Restrain intensive marketing techniques aimed at exploiting the meagre resources of the elderly.<sup>98</sup>

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<sup>94</sup>See VIENNA PLAN OF ACTION, *supra* note 89, Recommendations 1 – 17.

<sup>95</sup>See *id.* Recommendation 3.

<sup>96</sup>See *id.* Recommendation 1.

<sup>97</sup>See *id.* Recommendation 2; See also *id.* Recommendation 13.

<sup>98</sup>See *id.* Recommendation 18.



c) *Housing and Environment*

Adequate living accommodation and agreeable physical surroundings including appropriately designed household equipment are necessary for the well-being and quality of life of elderly persons.<sup>99</sup> Traffic circumstances should be adapted to older people instead of the other way around.<sup>100</sup> Efforts should be directed to law enforcement agencies and the elderly to increase their awareness of the extent and impact of crime against older persons.<sup>101</sup>

d) *Family*

The Governments should adopt an age/family-integrated approach to planning and development which would recognise the special needs and characteristics of older persons and their families.<sup>102</sup> Particular consideration should be given to special needs of older women and widows.<sup>103</sup>

e) *Social Welfare*

National policies should encompass social welfare services aimed at maximisation of social functioning of the elderly<sup>104</sup> including elderly migrants. States should be encouraged to define minimum standards to ensure higher quality of institutional care.<sup>105</sup>

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<sup>99</sup> See generally VIENNA PLAN OF ACTION, *supra* note 89, Recommendations 19 – 24.

<sup>100</sup> See *id.* Recommendations 19 (d), 21, 22.

<sup>101</sup> See *id.* Recommendation 23.

<sup>102</sup> See *id.* Recommendations 25 – 29.

<sup>103</sup> See *id.* Recommendation 27.

<sup>104</sup> See *id.* Recommendation 69 which states that social welfare services should have as their goal the creation, promotion and maintenance of active and useful roles for the elderly for as long as possible in and for the community. See also *id.* Recommendations 30 – 35.

<sup>105</sup> See *id.* Recommendation 34.

f) Income security and employment

Governments should take appropriate action to ensure to all older persons an appropriate minimum income, and should develop their economies to benefit all the population.<sup>106</sup> To this end, they should:

- (i) Create or develop social security schemes based on the principle of universal coverage for older people<sup>107</sup>.
- (ii) Ensure that minimum benefits will be sufficient enough to meet the essential needs of the elderly and guarantee their independence.
- (iii) Possibilities of making available supplementary retirement income and incentives to develop new means of personal savings for the elderly should be explored.
- (iv) The retirement age for employees should not be lowered except on a voluntary basis.<sup>108</sup>
- (v) Working conditions and environment, should take into account the characteristics of older workers.<sup>109</sup>

g) *Education*

Educational programmes featuring the elderly as teachers and transmitters of knowledge, culture and spiritual values, should be developed.<sup>110</sup> Education programmes should include continuous adult education, including preparation for ageing<sup>111</sup>; and education to

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<sup>106</sup> See VIENNA PLAN OF ACTION, *supra* note 89, Recommendation 36.

<sup>107</sup> See *id.* Recommendation 36 – 43.

<sup>108</sup> See *id.* Recommendation 37.

<sup>109</sup> See *id.* Recommendation 38.

<sup>110</sup> See *id.* Recommendation 44.

<sup>111</sup> See *id.* Recommendation 45.

general public with regard to the ageing process. The importance of the role of mass media in this respect is significant.<sup>112</sup>

Governments and organizations should develop an information base which would be more specific than the general "sixty-and-over" data which is commonly in use.

The database should cover social, age, functional and economic classifications, among others.<sup>113</sup>

The Policies and Programmes should contain provisions for (a) Training and Education in gerontology and geriatrics<sup>114</sup> and (b) Research related to developmental and humanitarian aspects of ageing. The application of knowledge should take into account cultural and social diversity.<sup>115</sup>

The Vienna International Plan of Action on Ageing specifies role of Governments and their international and regional cooperation. Recommendations for assessment and review were also included.

**2.4 COMMITTEE ON ECONOMIC SOCIAL AND CULTURAL RIGHTS, GENERAL COMMENT 6: 'THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS OF OLDER PERSONS', 1995**

The Committee on Economic Social and Cultural Rights (CESCR) adopted General Comment 6 with the title, 'The Economic, Social and Cultural Rights of Older

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<sup>112</sup> See VIENNA PLAN OF ACTION, *supra* note 89, Recommendation 46.

<sup>113</sup> See *id.* Recommendations 52 and 53.

<sup>114</sup> See *id.* Recommendations 55 – 59.

<sup>115</sup> See *id.* Recommendations 60, 61.

Persons',<sup>116</sup> and urged the Governments to pay particular attention to promoting and protecting the economic, social and cultural rights of older persons.

The Committee, taking into account the changing demographic pattern wherein people above 60 is a fast-growing population group in the world, remarked that “these figures are illustrations of a quiet revolution, but one which has far reaching and unpredictable consequences and which is now affecting the social and economic structures of societies both at the world level, and will affect them more in future.”<sup>117</sup>

The Committee also detailed the specific provisions of the ICESCR as applicable to older persons. In accordance with Article 3 of ICESCR<sup>118</sup>, the State Parties should pay particular attention to older women.<sup>119</sup>

To comply fully with Article 9<sup>120</sup> of the ICESCR and paragraph 2 (h) of the Proclamation on Ageing<sup>121</sup>, the State Parties should institute non-contributory old-age benefits or other assistance for all persons, regardless of their sex, who are without resources.<sup>122</sup>

The Committee stressed with respect to Article 6<sup>123</sup> the need for measures to prevent discrimination on grounds of age in employment and occupation<sup>124</sup> and Article 7<sup>125</sup>

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<sup>116</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), GENERAL COMMENT NO. 6: THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS OF OLDER PERSONS, 8 December 1995, E/1996/22, *available at: <http://www.refworld.org/docid/4538838f11.html>* [accessed 10 August 2013] [hereinafter GENERAL COMMENT NO.6].

<sup>117</sup> GENERAL COMMENT NO.6, *supra* note 116, para 1.

<sup>118</sup> *See* ICESCR, Article 3, whereby the States parties undertake "to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights."

<sup>119</sup> *See* GENERAL COMMENT NO.6, *supra* note 116, para 20.

<sup>120</sup> Article 9 of ICESCR states thus: “The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.” *See generally* SOCIAL SECURITY AS A HUMAN RIGHT: DRAFTING A GENERAL COMMENT ON ARTICLE 9 - SOME CHALLENGES (Eibe Riedel ed., Springer, New York, 2007).

<sup>121</sup> *See* PROCLAMATION ON AGEING, 1992, Para 2 (h). It urges national initiatives so that older women are given adequate support for their largely unrecognized contributions to the economy and the well-being of society.

<sup>122</sup> *See* GENERAL COMMENT NO.6, *supra* note 116, para 30; *See also id.* para 21.

specified the special importance for ensuring older workers enjoy safe working conditions until their retirement.<sup>126</sup> In the years preceding retirement, preparation programmes should be carried out to help older workers cope with their new situation.<sup>127</sup>

The Committee called upon the member States to establish retirement age that is flexible, depending on the occupation performed and the working ability of elderly persons with due regard to demographic, economic and social factors.<sup>128</sup> Also, the States must take appropriate measures to establish general regimes of compulsory old-age insurance, starting at a particular age, to be prescribed by national law.<sup>129</sup>

Commenting on Article 10 of the ICESCR dealing with protection of family, the Committee urges that the States should make all necessary efforts to support, protect and strengthen the family and help it, in accordance with each society's system of cultural values, to respond to the needs of its dependent ageing members.<sup>130</sup>

The General Comment also sets out that, even though not specified as a prohibited ground for discrimination in the ICESCR, 'other status' in Article 2, could be interpreted as applying to age.

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<sup>123</sup> Article 6 of ICESCR requires States parties to take appropriate steps to safeguard the right of everyone to opportunity to gain a living by work.

<sup>124</sup> See GENERAL COMMENT NO.6, *supra* note 116, para 22.

<sup>125</sup> Article 7, ICESCR provides for the right "to the enjoyment of just and favourable conditions of work"

<sup>126</sup> See GENERAL COMMENT NO.6, *supra* note 116, para 23.

<sup>127</sup> See *id.* para 24. Such programmes should, in particular, provide older workers with information about their rights and obligations as pensioners; the opportunities and conditions for continuing an occupational activity or undertaking voluntary work; means of combating detrimental effects of ageing; facilities for adult education and cultural activities, and the use of leisure time.

<sup>128</sup> See *id.* para 28.

<sup>129</sup> See *id.* para 27.

<sup>130</sup> See *id.* para 31.

## **2.5 SECOND WORLD ASSEMBLY ON AGEING & MADRID INTERNATIONAL PLAN OF ACTION ON AGEING, 2002**

Based on the theme of “Building a Society for All Ages”, the United Nations Second World Assembly on Ageing was held in Madrid, Spain from April 8 to April 12, 2002.<sup>131</sup> Its main objective was to adopt a revised version of the 1982 International Plan of Action on Ageing, including a long-term strategy on ageing.

A human rights approach to ageing was espoused in the Second World Assembly on Ageing, also emphasizing the importance of achieving sustainable economic and social development in the context of an inclusive society.

The emphasis on the need to harness the fruitful potential of ageing societies represented a radical shift away from the welfare approach that had generally prevailed since 1980s.

The Second World Assembly on Ageing adopted a Political Declaration and Madrid International Plan of Action on Ageing<sup>132</sup> which includes a number of central themes setting out goals, objectives and commitments. These include the following<sup>133</sup>:

- a) The full realization of all human rights and fundamental freedom of all older persons
- b) The achievement of secure ageing, by eradicating poverty in the old
- c) Empowerment of older persons

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<sup>131</sup> Participants included the national delegations of the 189 UN Member States, as well as representatives of UN agencies, designated international organizations and accredited Non- Governmental Organizations (NGOs) attending as observers.

<sup>132</sup> Second World Assembly on Ageing, Madrid, Spain, 8-12 April 2002, A/CONF/197/9, POLITICAL DECLARATION AND MADRID INTERNATIONAL PLAN OF ACTION ON AGEING (United Nations, New York, 2002) [hereinafter MADRID PLAN OF ACTION]

<sup>133</sup> *See id.* para 12.

- d) Provision of opportunities for individual development
- e) Ensuring full enjoyment of all human rights and elimination of all forms of violence and discrimination against older persons
- f) Gender equality among older persons
- g) Recognition of importance of families
- h) Provision of healthcare, support and social protection for older persons
- i) Recognition of the situation of ageing of indigenous persons.

Elder abuse was not a part of agenda in the Vienna Assembly. However, further research revealed that elder abuse is predominant. Therefore, the International Plan of Action on Ageing 2002, includes actions to eliminate “neglect, abuse and violence.”<sup>134</sup>

### **2.5.1 Recommendations for Action in the Madrid International Plan of Action On Ageing**

The recommendations for action were organized according to three priority directions namely,

- (i) older persons and development
- (ii) advancing health and well-being into old age and
- (iii) ensuring enabling and supportive environments. The priority directions are designed to guide policy formulation and implementation regarding the quality of well-being throughout the life course.<sup>135</sup>

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<sup>134</sup> SUZAN AZIZ, *Summary Report on the Second World Assembly on Ageing*, available at <http://www.inpea.net/images/WAA02-meeting-report.pdf> [accessed 23 July 2015]. Suzan Aziz is the North American Regional Representative of International Network for Prevention of Elder Abuse (INPEA), which NGO represented as an observer in the Second World Assembly on ageing held at Madrid in 2002.

### ***A. Priority Direction I: Older Persons and Development***

Older persons must be full participants in the development process and must also share its benefits. There are two aspects to this namely opportunity to contribute and entitlement to benefits of development. Opportunity to contribute includes empowerment of old people in tune with the technological advancement, which added to their wisdom and experience, enable them to contribute towards development. Entitlement to benefits of development requires the introduction and maintenance of policies that ensure equitable distribution of the benefits of economic growth.

To meet this end, Madrid International Plan of Action sets out two goals. Firstly, the social, cultural, economic and political contribution of older persons must be recognized.<sup>136</sup> Secondly, there should be participation of older persons in decision making processes at all levels.<sup>137</sup>

The important steps to be taken to facilitate older persons' involvement in overall development include the following:

- (i) Human resources management practices and policies should consider workplace practices, both domestic and international, that might facilitate the retention and productive fulfillment of older workers in the workforce<sup>138</sup>.
- (ii) Improvement of living conditions and infrastructure in rural areas through a variety of schemes including development of microcredit schemes, ongoing

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<sup>135</sup> MADRID PLAN OF ACTION, *supra* note 132, para 14

<sup>136</sup> *See* MADRID PLAN OF ACTION, *supra* note 132, para 21.

<sup>137</sup> *See id.* para 22.

<sup>138</sup> *See id.* para 23-28.



adult education, social security measures for older persons etc.<sup>139</sup> Assistance to be extended to families in order to share accommodation with older family members.<sup>140</sup>

- (iii) Technology can be used to bring persons together and thereby contribute to reduction of marginalisation, loneliness and segregation between the ages. Measures that enable older persons to have access to take part in and adjust to technological changes, should therefore be taken<sup>141</sup>.
- (iv) Intergenerational solidarity can be strengthened by promoting understanding of ageing through public education as an issue of concern to the entire society. Opportunities for maintaining and improving inter-generational relations in local communities can be maximised inter alia, by facilitating meetings for all age groups and avoiding generational segregation.<sup>142</sup>
- (v) Reduction of poverty among older persons requires equal access for older persons to employment and income-generation opportunities, credit, markets and assets.<sup>143</sup> Appropriate social protection/social security measures are required to address the feminisation of poverty, in particular among older women.<sup>144</sup>
- (vi) Governments and humanitarian relief agencies should recognise that older persons can make a positive contribution in coping with emergencies in promoting rehabilitation and reconstruction.<sup>145</sup>

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<sup>139</sup> See MADRID PLAN OF ACTION, *supra* note 132 para 32.

<sup>140</sup> See *id.* para 34.

<sup>141</sup> See *id.* para 41.

<sup>142</sup> See *id.* para 44.

<sup>143</sup> See *id.* para 48.

<sup>144</sup> See *id.* para 51.

<sup>145</sup> See *id.* para 54-56.

## ***B. Priority Direction II: Advancing Health and Well-being Into Old Age***

To reach old age in good health and well-being requires individual efforts throughout life and an environment within which such efforts can succeed. The responsibility of individuals is to maintain a healthy lifestyle while the responsibility of Government is to create a supportive environment that enables the advancement of health and well-being into old age.

Maintaining and enhancing health status requires more than specific actions that affect individual health. Health is strongly influenced by environmental, economic and social determinants, including physical environment, geography, education, occupation, income, social status, social support, culture and gender. Improvements in economic and social situation of older persons will result in improvements in their health as well.

The important issues in healthcare and well-being of older persons are,

- (i) *Health promotion and well-being throughout life:* Health promotion and well-being throughout life can be achieved by reducing the cumulative effects of factors that increase the risk of disease and consequently potential dependence in older age. To attain this objective, actions to be taken should include Poverty Eradication Policies; Reduction of exposure to environmental pollutants; Promotion of safe use of all medications; Minimising the misuse of prescription

drugs;<sup>146</sup> Formulation of policies to prevent ill-health among older persons;<sup>147</sup> and Access to food and adequate nutrition for all older persons.<sup>148</sup>

- (ii) *Universal and Equal Access to Healthcare Services*: Older persons can experience financial, physical, psychological and legal barriers to healthcare services. They may also encounter age discrimination and age-related disability discrimination in the provision of services because their treatment may be perceived to have less value than the treatment of younger persons. Governments have the primary responsibility for setting and monitoring standards of healthcare as well as providing healthcare for all ages. It is important to recognise that services provided by families and communities cannot be a substitute for an effective public health system. Attainment of universal and equal access to healthcare services requires the meeting of the following objectives.
- a) Elimination of social and economic inequalities based on age, gender or any other ground, including linguistic barriers, to ensure that older persons have universal and equal access to healthcare.<sup>149</sup>
  - b) Development and strengthening of primary healthcare services to meet the needs of older persons and promote their inclusion in the process.<sup>150</sup>
  - c) Development of a continuum of healthcare measures to meet the needs of older persons. For this purpose, palliative and specialized gerontological

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<sup>146</sup>Minimizing the misuse of prescription drugs can be done through regulatory and education measures with the participation of the industry and professional sectors involved etc. *See* MADRID PLAN OF ACTION, *supra* note 132, para 66.

<sup>147</sup> *See id.* para 67.

<sup>148</sup> *See id.* para 68.

<sup>149</sup> *See id.* para 74.

<sup>150</sup> *See id.* para 75.

services must be developed and coordination of their activities with primary healthcare and social care services must be improved.<sup>151</sup>

d) Involvement of older persons in the development and strengthening of primary and long-term care services.<sup>152</sup>

(iii) *HIV/AIDS in older persons*: Another issue of concern in the area of health care and well-being of older persons is that of dealing with HIV/AIDS in older persons.<sup>153</sup> HIV/AIDS diagnosis among older persons is difficult because symptoms of infection can be mistaken for other immunodeficiency syndromes that occur in older persons. Older persons can be at increased risk of HIV infection merely because they are typically not addressed by public information campaigns and thus do not benefit from education on how to protect themselves. The three objectives, in this connection, that the Second World Assembly put forth are:

- (a) Better assessment of impact of HIV/AIDS on the health of older persons who are infected as well as who are care givers.<sup>154</sup>
- (b) Dissemination of adequate information, training and social support.<sup>155</sup>
- (c) Recognise and enhance the contribution of older persons as caregivers for children with chronic diseases, including HIV/AIDS, and as surrogate parents.<sup>156</sup>

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<sup>151</sup> See MADRID PLAN OF ACTION, *supra* note 13, para 76.

<sup>152</sup> See *id.* para 77.

<sup>153</sup> See *id.* para 78.

<sup>154</sup> See *id.* para 79.

<sup>155</sup> See *id.* para 80.

<sup>156</sup> See *id.* para 81.

- (iv) *Training of care providers and health professionals:* Professional education in gerontology and geriatrics should be expanded and special efforts are to be made to expand student enrolment in geriatrics and gerontology.<sup>157</sup> Informal care-givers also need access to information and basic training on the care of older persons.
- (v) *Mental health of older persons:* Mental health problems are not an inevitable outcome of growing old. But a significant increase in the number of older persons with mental illnesses can be expected due to population ageing. Development of comprehensive mental healthcare services ranging from prevention to early intervention, the provision of treatment services and the management of mental health problems in older persons is a major objective to act upon.<sup>158</sup>
- (vi) *Older persons and disabilities:* Enabling interventions and environments supportive of older persons are essential to promote independence and empower older persons with disabilities to participate fully in all aspects of society. Ageing of persons with cognitive disabilities is a factor that should be considered in planning and decision-making processes.<sup>159</sup>

### ***C. Priority Direction III: Ensuring Enabling and Supportive Environments***

Irrespective of the circumstances of older persons, all are entitled to live in an environment that enhances their capabilities. This includes access to basic services such as clean water and adequate food. Governments must play a central role in formulating

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<sup>157</sup> See MADRID PLAN OF ACTION, *supra* note 13, para 82, 83.

<sup>158</sup> See *id.* para 86.

<sup>159</sup> See *id.* para 90.

and implementing policies that foster such an enabling environment by engaging civil society and older persons themselves.

The important issues that need to be addressed in order to ensure enabling and supportive environment to older persons are, (i) Age-friendly housing and living environment<sup>160</sup> and accessible and affordable transportation;<sup>161</sup> (ii) Care and support for care givers;<sup>162</sup> (iii) Elimination of neglect, abuse and violence against older persons<sup>163</sup> as well as creation of support services to address elder abuse;<sup>164</sup> (iv) Establishing information programmes to educate older persons about customer fraud and (v) Creation of a positive image of ageing.<sup>165</sup>

The Madrid International Plan of Action on Ageing, 2002 is accompanied by a Political Declaration<sup>166</sup> comprising of nineteen Articles in the form of a solemn commitment by member States in their efforts towards securing the society for all ages. The Political Declaration recognises the need to strengthen solidarity among generations;<sup>167</sup> family and community support and care to older persons;<sup>168</sup> and everyone's right to enjoyment of the highest attainable standard of physical and mental health.<sup>169</sup>

The prime responsibility to implement the International Plan of Action, 2002 is on the Governments. There should be an enabling environment based on democracy, the rule of

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<sup>160</sup> See MADRID PLAN OF ACTION, *supra* note 13, para 98, 99.

<sup>161</sup> See *id.* para 100.

<sup>162</sup> See *id.* para 101.

<sup>163</sup> See *id.* para 110.

<sup>164</sup> See *id.* para 111.

<sup>165</sup> See *id.* para 113.

<sup>166</sup> REPORT OF THE SECOND WORLD ASSEMBLY ON AGEING, A/CONF/197/9 1 (United Nations, New York, 2002).

<sup>167</sup> See MADRID PLAN OF ACTION, *supra* note 13, Article 16.

<sup>168</sup> See *id.* Article 15.

<sup>169</sup> See *id.* Article 14.

law, respect for all human rights, fundamental freedoms and good governance at all levels.<sup>170</sup> Non-governmental organizations should support the Governments in the implementation, assessment and follow-up of the International Plan of Action, 2002.<sup>171</sup>

In order to complement national development efforts, enhanced international cooperation and financial assistance<sup>172</sup> is essential to support developing countries, least-developed countries and countries with economies in transition in implementing the International Plan of Action, 2002.<sup>173</sup> The Commission for Social Development was made responsible for follow-up and appraisal of the implementation of the International Plan of Action on Ageing, 2002.<sup>174</sup>

## **2.6 CEDAW'S GENERAL RECOMMENDATION NO.27 ON OLDER WOMEN AND PROTECTION OF THEIR HUMAN RIGHTS, 2010**

Pursuant to Article 21 of the Convention on the Elimination of All Forms of Discrimination (CEDAW)<sup>175</sup>, the Committee on the Elimination of Discrimination against Women at its Forty-seventh session adopted a general recommendation on older women and protection of their human rights in 2010.<sup>176</sup>

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<sup>170</sup> See MADRID PLAN OF ACTION, *supra* note 132, para116.

<sup>171</sup> See *id.* para 118.

<sup>172</sup> See *id.* para 122.

<sup>173</sup> See *id.* para 125

<sup>174</sup> See *id.* para 132.

<sup>175</sup> Article 21 of CEDAW empowers the Committee on the Elimination of Discrimination against Women to make suggestions and general recommendations based on the examination of reports and information received from States parties. The Committee on the Elimination of Discrimination Against Women is appointed under Art. 17 of CEDAW

<sup>176</sup> CEDAW/C/2010/47/GC.1 dated 19<sup>th</sup> October 2010, GENERAL RECOMMENDATION NO.27, *available at* <http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW-C-2010-47-GCI.pdf> [accessed 14 January 2015] [hereinafter GENERAL RECOMMENDATION NO.27]. Earlier, the Committee in its General Recommendation No. 25 also recognized that age is one of the grounds on which women suffer multiple

This general recommendation on older women and the recognition of their rights, explores the relationship between all Articles of CEDAW and ageing. It identifies the multiple forms of discrimination that women face as they age; outlines the content of obligations assumed by the State Parties and provides policy recommendations to enable older women to participate fully without discrimination and on the basis of equality with men.<sup>177</sup> The recommendation acknowledges that elimination of all forms of discrimination against older women can only be achieved by fully respecting and protecting their dignity, right to integrity and self-determination.<sup>178</sup>

The recommendation no. 27 also highlighted that older women are not a homogeneous group and that they have a great diversity of experience, knowledge, ability and skills. Their economic and social situation, however, is dependent on a range of demographic, political, environmental, cultural, employment, individual and family factors. The contributions of older women to society in public and private life are invaluable.<sup>179</sup>

### **2.6.1 Older Women and Discrimination: Specific Areas of Concern**

The recommendation identified specific areas of concern regarding older women and discrimination, which are listed as follows:

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forms of discrimination, See para 12 of General recommendation No. 25, on article 4, paragraph 1, of CEDAW, on temporary special measures, available at [http://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20\(English\).pdf](http://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20(English).pdf) [accessed 14 January 2015]. General recommendations are addressed to States parties and usually elaborate the Committee's view of the obligations assumed under the Convention. See Rule 52 of *Rules of Procedure of the Committee on the Elimination of Discrimination Against Women*, available at <http://www.un.org/womenwatch/daw/cedaw/cedawreport-a5638-RulesOfProcedure.htm> [accessed 14 January 2015]

<sup>177</sup> See GENERAL RECOMMENDATION NO.27, *supra* note 176, para 9.

<sup>178</sup> See *id.* para 10.

<sup>179</sup> See *id.* para 8.



- a) *Age as a compounded factor*: The gender inequality is amplified to a higher proportion as the women age.<sup>180</sup> The discrimination based on age is just a compounded factor to the already existing inequalities based on sex, race, ethnicity, literacy etc.<sup>181</sup>
- b) *Lack of resources*: While loneliness and isolation pose problems for older women in urban area<sup>182</sup>, women in rural areas suffer from a severe lack of basic resources for subsistence, income security and access to healthcare and awareness of their entitlements.<sup>183</sup> Lack of appropriate or affordable transport can prevent older women from accessing social services or participating in community and cultural activities.<sup>184</sup>
- c) *Neglect*: Many older women face neglect as they are considered no longer active in their productive and reproductive roles and are seen as a burden to their families. In addition, widowhood and divorce aggravate discrimination.<sup>185</sup>
- d) *Healthcare*: Lack of or limited access to health insurance schemes<sup>186</sup> and healthcare services, for diseases and geriatric conditions prevent older women from enjoying

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<sup>180</sup>The discrimination that older women experience is often a result of unfair resource allocation, maltreatment, neglect and limited access to basic services; *See* GENERAL RECOMMENDATION NO.27, *supra* note 176, para 11.

<sup>181</sup>*See id.* para 13.

<sup>182</sup>Lack of telecommunication skills, access to internet etc. is attributed to the loneliness faced by the urban older women; *See id.* para 12.

<sup>183</sup>*See id.* para 19.

<sup>184</sup>Such lack of access to transport could occur, for example, due to the lower income enjoyed by older women and the neglect in public policy to provide affordable and accessible public transport meeting the needs of older women, *See id.* para 24.

<sup>185</sup>*See id.* para 14.

<sup>186</sup>Many older women have no private health insurance or are excluded from State-provided schemes because they have not contributed to schemes during a lifetime of work in the informal sector or in unpaid care; *See id.* para 21.

their full human rights.<sup>187</sup> Post-menopausal, post-reproductive and age-related physical and mental health conditions and diseases tend to be neglected in research, academic studies, public policy and service provision. Information on sexual health, HIV and AIDS is rarely provided in a form that is acceptable, accessible and appropriate for older women.

- e) *Gender stereotyping*: Gender stereotyping and traditional and customary practices can have harmful impacts on all areas of the lives of older women. This can result in violence and psychological, verbal and financial abuse.<sup>188</sup> Further, mandatory retirement ages may differ for women and men with women being forced to retire earlier<sup>189</sup>.
- f) *Refugees*: Older refugee and internally displaced women often face discrimination, abuse and neglect because they lack legal status in the country of asylum or experience cultural and language barriers in accessing healthcare services.
- g) *Lack of opportunity*: Older women are often discriminated against through a lack of opportunity to participate in political and decision-making processes.<sup>190</sup> Many poor older women have been denied the right to education<sup>191</sup> and do not have equal educational opportunities to learn modern information technology nor have resources to obtain them.

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<sup>187</sup>These conditions include such as diabetes, cancer, in particular the most prevalent forms of cancer among older women, hypertension, heart disease, cataract, osteoporosis and Alzheimer, *See* GENERAL RECOMMENDATION NO.27, *supra* note 176, para 14.

<sup>188</sup>*See id.* para 16.

<sup>189</sup>*See id.* para 18.

<sup>190</sup>Lack of identity documentation as well as transportation means may prevent older women from voting; *See id.* para 17.

<sup>191</sup>*See id.* para 22.

- h) *Discrimination in employment*: Gender-based discrimination in employment throughout their life has a cumulative impact on old age. Employers often regard older women as a non-profitable investment for education and vocational training. They have disproportionately lower income and no access to pensions compared to older men.<sup>192</sup>
- i) *Age as a disqualification*: Microcredit and finance schemes usually have age limit restrictions or other criteria that prevent older women from accessing them. Insufficient attention is often given to the requirements necessary for independent living such as personal assistance, adequate housing, including, accessible housing arrangements and mobility aids.<sup>193</sup>
- j) *Poverty*: In many countries, older women may not be able to afford adequate food due to the price of food and their inadequate income due to discrimination in employment, social security and access to resources.<sup>194</sup>
- k) *Climate change*: Climate change impacts differently on women and especially older women their limited access to resources and decision-making processes increase their vulnerability to climate change.<sup>195</sup>

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<sup>192</sup>The Committee on Economic, Social and Cultural Rights in General Comment 19 recognises that non-contributory pensions will be required in most States since it is unlikely that everyone will be covered by contributory schemes; *See* GENERAL RECOMMENDATION NO.27, *supra* note 176, para 4(b).

<sup>193</sup>*See id.* para 23.

<sup>194</sup>*See id.* para 24; *See generally* AGEING, WELLBEING AND CLIMATE CHANGE IN THE ARCTIC: AN INTERDISCIPLINARY ANALYSIS (Paivi Naskali, ET AL ed., Routledge, New York, 2016)

<sup>195</sup>Older women are more vulnerable due to physical and biological differences that can disadvantage their initial response to natural hazards, social norms and given roles that affect the way they react to a disaster, and an inequitable distribution of aid and resources caused by social hierarchies; *See* GENERAL RECOMMENDATION NO.27, *supra* note 176, para 25.

- l) *Right to inheritance*: Under many legal systems, women do not have the right to inherit and administer marital property on the death of their spouse.<sup>196</sup> Older widows are particularly vulnerable to “property grabbing”.<sup>197</sup>
- m) *Abuse and exploitation*: Older women are particularly vulnerable to exploitation and abuse, including economic abuse.<sup>198</sup> Older women may not be eligible to claim family benefits if they are not the parent or legal guardian of children for whom they care.<sup>199</sup>
- n) *Polygamous marriages*: As stated by the Committee in its General Recommendation No. 21, “polygamous marriage contravenes a woman’s right to equality with men, and can have such serious emotional and financial consequences for her and her dependents that such marriages ought to be discouraged and prohibited.” Nevertheless, polygamy continues in many States, and there are many women existing in polygamous unions. Older wives are often neglected in polygamous marriages.<sup>200</sup>

## 2.6.2 Recommendations by CEDAW

The recommendations made by the Committee vest obligations on the State Parties, which fall under the following broad categories:

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<sup>196</sup>Some legal systems justify this by providing widows with other means of economic security, such as through support payments from the deceased’s estate. However, in reality these obligations are seldom enforced, and widows are left destitute.

<sup>197</sup>See GENERAL RECOMMENDATION NO.27, *supra* note 176, para 26.

<sup>198</sup>See *id.* para 27.

<sup>199</sup>See *id.* para 22.

<sup>200</sup>See *id.* para 28.

- (i) *Legislative framework:* Legislation and policy should be enacted, repealed and/or amended to eliminate discrimination against older women<sup>201</sup>, as well as adopt gender sensitive and age-specific policies to ensure that older women participate fully and effectively in all walks of life.<sup>202</sup>
- (ii) *Creation of data base:* In order to support legal reform and policy formulation, the State Parties should collect, analyse and disseminate data disaggregated by age and sex and so provide information on the situation of older women from all strata and location.<sup>203</sup>
- (iii) *Access to legal services:* The State Parties should provide legal awareness and access to legal services to older women<sup>204</sup> and also ensure that they are not deprived of their legal capacity on arbitrary or discriminatory grounds.<sup>205</sup>
- (iv) *Sensitive enforcement mechanism:* The State Parties should train the police, the judiciary as well as legal aid and paralegal services on the rights of older women and sensitise and train public authorities and institutions on age and gender-related issues that affect older women<sup>206</sup>.
- (v) *Eliminate negative Stereotyping:* The State Parties have an obligation to eliminate negative stereotyping and modify social and cultural patterns of conduct that are prejudicial and harmful to older women.<sup>207</sup>

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<sup>201</sup> See *id.* para 31.

<sup>202</sup> See *id.* para 29,30.

<sup>203</sup> See *id.* para 32.

<sup>204</sup> See *id.* para 33.

<sup>205</sup> See *id.* para 34.

<sup>206</sup> See *id.* para 33.

<sup>207</sup> See *id.* para 36.

- (vi) *Prohibition of violence against older women:* The State Parties have an obligation to recognise, prohibit and prosecute all acts of violence against older women.<sup>208</sup>
- (vii) *Participation in public life:* The State Parties have an obligation to ensure that older women have the opportunity to participate in public and political life and hold public office at all levels and that older women have the necessary documentation to register to vote and run as candidates for election.<sup>209</sup>
- (viii) *Education:* The State Parties have an obligation to ensure equality of opportunity in the field of education including adult education and learning opportunities for women of all ages.<sup>210</sup>
- (ix) *Work and Pension Benefits:* The State Parties are obliged to facilitate the participation of older women in paid work without facing any discrimination based on their age and sex.<sup>211</sup> The States shall also ensure that pension policies do not discriminate against women and adopt measures to guarantee such pensions.<sup>212</sup> State-provided allowances should be available and accessible to older women, particularly those living in remote or rural areas.<sup>213</sup>
- (x) *Health:* The State Parties should adopt a comprehensive healthcare policy for the protection of health needs of older women<sup>214</sup>. Special programmes tailored to

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<sup>208</sup>See GENERAL RECOMMENDATION NO.27, *supra* note 176, para 37; *See also id.* para 38 which states that When addressing sexual violence, forced displacement and the conditions of refugees during armed conflict, States parties should give due consideration to the situation of older women.

<sup>209</sup> *See id.* para 39.

<sup>210</sup> *See id.* para 40.

<sup>211</sup> *See id.* para 41.

<sup>212</sup> *See id.* para 42.

<sup>213</sup> *See id.* para 44.

<sup>214</sup>See GENERAL RECOMMENDATION NO.27, *supra* note 176, para 4. It states that health policies must ensure affordable and accessible health care services and the health care provided to older women,

address physical, mental, emotional, and health needs of older women should be adopted<sup>215</sup>.

- (xi) *Economic empowerment*: The State Parties have an obligation to eliminate all forms of discrimination against older women in the areas of economic and social life. For this, the barriers based on age and sex to access agricultural credit should be removed. Access to appropriate technology for older women farmers should be ensured. Recreational facilities for older women and outreach services to older women confined to their homes must be created. Affordable and appropriate transportation should be provided so as to enable older women, including those living in rural areas, to participate in economic and social life, including community activities.<sup>216</sup>
- (xii) *Social benefits*: The State Parties should take necessary measures to ensure access of older women to adequate housing that meet their specific needs by removing architectural and other barriers hindering the mobility of older persons. Social services that enable older women to remain at home and live independently for as long as possible must be provided. Laws and practices affecting older women's right to housing, land and property should be abolished. The State Parties also should protect older women against forced evictions and homelessness.<sup>217</sup>
- (xiii) *Rural and other vulnerable older women*: The State Parties should ensure that older women are included and represented in rural and urban development

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including those with disabilities, should be based on the free and informed consent of the person concerned.

<sup>215</sup>See *id.* para 46.

<sup>216</sup>See *id.* para 47.

<sup>217</sup>See GENERAL RECOMMENDATION NO.27, *supra* note 176, para 48.

planning processes. Affordable water, electricity and other utilities to older women must be provided and related technologies are to be designed to enable accessibility without requiring undue physical strength.<sup>218</sup> Older women with refugee status and such others should be protected.<sup>219</sup>

- (xiv) *Marriage and inheritance*: The State Parties have an obligation to repeal or amend any legislation that discriminates against older women in marriage, property and inheritance.<sup>220</sup> The State parties should discourage and prohibit polygamous unions and ensure that upon death of a polygamous husband, his estate is shared among the wives and their respective children on a basis of equality.<sup>221</sup>

Thus CEDAW Recommendation encompasses various aspects of the lives of older women and obliges the State Parties to remove several barriers to their full enjoyment of rights and opportunities.

Though explicit inclusion of the rights of older persons is scanty in the Core International Human Rights instrument, there are meaningful provisions relating to the older persons in the Regional Instrument.

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<sup>218</sup>*See id.* para 49.

<sup>219</sup>*See id.* para 50.

<sup>220</sup>*See id.* para 51; *See also id.* para 52: “The State Parties shall take measures to end practices that force older women to marry against their will and should ensure that succession is not conditional on forced marriage to a deceased husband’s sibling or any other person.”

<sup>221</sup>*See id.* para 53.1.



## **2.7 THE RIGHTS OF THE OLDER PERSONS IN REGIONAL HUMAN RIGHTS CHARTERS**

Unlike the Universal Human Rights system, the Regional Human Rights Charters in American, European and African regimes contain provisions relating to the rights of the elderly. In Asia, there is no Charter as in America, Europe and Africa.

In the European and Inter-American systems, the provisions on elderly rights are embodied in economic, social, and cultural rights treaties, while the African System protects those rights alongside civil and political rights in a unique instrument.

The three regional human rights instrument that explicitly mention older persons as a group in need of special protection, are analyzed hereunder.

### **2.7.1 Human Rights of the Older Persons in the Inter - American System**

The states of the American continents have created a regional institution, the Organization of American States (OAS), which includes several structures for protecting human rights.<sup>222</sup> The important human rights instruments pertaining to OAS are detailed as follows:

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<sup>222</sup> The Organization of American States is an international organization created by the American States to achieve an order of peace and justice, promote their solidarity, and defend their sovereignty, their territorial integrity and their independence. It is a regional agency within the meaning of Article 52 of the United Nations Charter. *See* ORGANIZATION OF AMERICAN STATES-INTER AMERICAN COURT OF HUMAN RIGHTS, BASIC DOCUMENTS PERTAINING TO HUMAN RIGHTS IN THE INTER-AMERICAN SYSTEM 1 (Secretariat of the inter-American Court of Human Rights, San Jose, Costa Rica, 2003).

(i) The Charter of the Organisation of American States, 1948

The Charter of the Organisation of American States<sup>223</sup> focuses on several areas promoting human rights namely, democracy, economic rights, the right to education, and equality. Under the Charter, the member States agree upon the desirability of developing their social legislation on the following bases:<sup>224</sup>

a) All human beings, without distinction as to race, nationality, sex, creed or social condition, have the right to attain material well-being and spiritual growth under circumstances of liberty, dignity, equality of opportunity, and economic security.

b) Work is a right and a social duty; it shall not be considered as an article of commerce; it demands respect for freedom of association and dignity of the worker; and it is to be performed under conditions that ensure life, health and a decent standard of living, both during the working years and during old age, or when any circumstance deprives the individual of the possibility of working.

The goal of social justice and social security as the bases of lasting peace is amplified in Article 29(b) where the dignity of work is uplifted by describing it as a right and social duty, and that it is not to be considered as an article of commerce. Therefore, exploitation is alien to work, and the conditions of work should ensure inter alia, a decent standard of

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<sup>223</sup>THE CHARTER OF THE ORGANISATION OF AMERICAN STATES, *United Nations, Treaty Series* No.1609 (1952) 48. The Ninth International Conference of American States, held in Bogotá in early 1948, approved the Charter of the Organization of American States. Preamble to the OAS Charter proclaims that the historic mission of America is to offer to man a land of liberty, and a favorable environment for the development of his personality and the realization of his just aspirations. The Charter also establishes two main institutions designed specifically for human rights protection and promotion, the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.

<sup>224</sup> *See id.* Article 29.

living not only during the working years but also during old age. The terms of employment, therefore, should be facilitating economic security during old age and should not be of a nature which affects life and health adversely.

(ii) Protocol of San Salvador

The Additional Protocol to the American Convention on Human Rights, 1969 in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador")<sup>225</sup> was drawn by the State Parties in 1988, aimed at progressively full observance of the rights recognized in the Protocol.<sup>226</sup>

Obligation of ensuring non-discrimination is set out in Article 3, where the State undertook to guarantee the exercise of the rights set forth herein without discrimination of any kind. Just, equitable and satisfactory conditions of work<sup>227</sup>, right to health<sup>228</sup>, right to food<sup>229</sup> are recognized. The rights of the elderly persons are specifically protected under Articles 9 and 17 of the Protocol. Article 9 provides for the right to social security affording protection from consequences of old age and of disability which prevents a person physically or mentally, from securing the means for a dignified and decent existence. Article 17 is titled as "Protection of the Elderly" and stipulates that everyone has the right to special protection in old age.<sup>230</sup>

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<sup>225</sup> Organization of American States, ADDITIONAL PROTOCOL TO THE AMERICAN CONVENTION ON HUMAN RIGHTS IN THE AREA OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS (PROTOCOL OF SAN SALVADOR), 16 November 1988, A-52, available at: <http://www.refworld.org/docid/3ae6b3b90.html> [accessed 31 July 2013]

<sup>226</sup> See *id.* Article 1; The measures envisage both domestic and through international cooperation.

<sup>227</sup> See *id.* Articles 6 & 7.

<sup>228</sup> See *id.* Article 10.

<sup>229</sup> See *id.* Article 12.

<sup>230</sup> See *id.* Article 17. It calls upon states to progressively provide suitable facilities, food and medical care for elderly persons who lack them; to undertake work programmes to enable the elderly to take part in

## (iii) American Declaration of Rights and Duties of Man, 1948

Although originally adopted as a declaration and not as a legally binding treaty, the American Declaration of Rights and Duties of Man, 1948<sup>231</sup> is today a source of international obligations for the OAS member States.<sup>232</sup>

The Declaration gives ample importance to duties of individuals by stating in its Preamble that the fulfilment of duty by each individual is a prerequisite to the rights of all.<sup>233</sup> While rights exalt individual liberty, duties express the dignity of that liberty. It is submitted that the very basis of protection of rights of older persons is based on the corresponding duty on the younger generation to have compassion and a compelling obligation to meet the needs and well-being of the elderly. This is a moral obligation, as much as a legal one. The Preamble to the Declaration further states that, "...since moral conduct constitutes the noblest flowering of culture, it is the duty of every man always to hold it in high respect."<sup>234</sup>

The Declaration sets out general rights which are particularly relevant for older persons.

These include right to life, liberty and security<sup>235</sup>; equality before law<sup>236</sup>, freedom of

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productive activity; and to foster establishment of social organizations aimed at improving the quality of life of the elderly.

<sup>231</sup> Inter-American Commission on Human Rights (IACHR), AMERICAN DECLARATION OF THE RIGHTS AND DUTIES OF MAN, 2 May 1948, available at <http://www.refworld.org/docid/3ae6b3710.html> [accessed 4 August 2013] [hereinafter AMERICAN DECLARATION]. The Declaration was adopted by the Ninth International Conference of American States, Bogota, Columbia in 1948

<sup>232</sup> See IACHR, Advisory Opinion OC-10/89, *Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights*, July 14, 1989, Ser. A. No. 10 (1989), para 35-45; IACHR, *James Terry Roach and Jay Pinkerton v. United States*, Case 9647, Res. 3/87, September 22, 1987, Annual Report 1986-1987, para 46- 49; IACHR *Rafael Ferrer-Mazorra et al. v. United States*, Report No 51/01, Case 9903, April 4, 2001. See also STATUTE OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, Article 20.

<sup>233</sup> AMERICAN DECLARATION, *supra* note 231, Preamble, Para 2.

<sup>234</sup> *Id.* para 6.

<sup>235</sup> See *id.* Article I.

<sup>236</sup> See *id.* Article II .

opinion<sup>237</sup>, preservation of health<sup>238</sup>, participation in cultural life of the community<sup>239</sup> and right to work.<sup>240</sup> It is to be noted that, in the non-discrimination clause,<sup>241</sup> the words “any other factor” fetches within its fold, “age”.

In addition to the general rights, old age is specifically mentioned in Article XVI, dealing with social security<sup>242</sup>. The “duty of the children to honour their parents always and to aid, support and protect them when they need it”<sup>243</sup> is spelt out in the Declaration. A duty is cast on every person to cooperate with the State and the community with respect to social security and welfare, in accordance with his ability and with existing circumstances.<sup>244</sup>

At the Inter-American level, there have been interesting decisions of the Inter-American Commission, particularly relating to the protection of social security rights of elderly persons.

It is worth mentioning the case of *Menéndez et al. v. Argentina*<sup>245</sup>. In this case, a group of retired persons alleged that in order to seek an adjustment in their retirement benefits, they had to deal with a cumbersome administrative and judicial system that failed to realise their rights. The fundamental violations alleged that this was derived from delayed judgments and inadequate enforcement of judgments. The retirees also claimed that their

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<sup>237</sup> See AMERICAN DECLARATION, *supra* note 231, Article IV.

<sup>238</sup> See *id.* Article XI.

<sup>239</sup> See *id.* Article XIII.

<sup>240</sup> See *id.* Article XIV.

<sup>241</sup> See *id.* Article II.

<sup>242</sup> See *id.* Article XVI. It states that every person has the right to social security which will protect him from the consequences of unemployment, old age, and any disabilities arising from causes beyond his control that make it physically or mentally impossible for him to earn a living.

<sup>243</sup> *Id.* Article XXX.

<sup>244</sup> See *id.* Article XXXV.

<sup>245</sup> Inter-American Commission, Case 11.670, Report No. 3/01, OEA/Ser.L/V/II.111 Doc. 20 rev. at 95 (2000), available at <http://www.wfrrt.org/humanrts/cases/3-01.html> [accessed 1 August 2013].

rights to property had been adversely affected, and that the social security system was discriminatory as certain retired persons (members of the legislative and judicial branches, the military and former executive branch officials) were privileged. The petitioners also maintained that their right to health, well-being and life had been adversely affected as the situation had prevented them from buying food, essential services or medicine.

The Inter-American Commission declared admissible the petitions in reference to, *inter alia*, the right to judicial guarantees<sup>246</sup>; property<sup>247</sup>; equal protection of the law<sup>248</sup>; and effective remedy<sup>249</sup> and of the rights to the preservation of health and well-being<sup>250</sup> and to social security, in relation to the obligation to work and contribute to social security.<sup>251</sup>

## 2.7.2 Human Rights of Older Persons in the European System

According to a report by the World Health Organisation, at least 4 million elderly people in Europe are estimated to experience ill-treatment and 2500 are estimated to die each year from such treatment.<sup>252</sup> Moreover, the elderly may particularly suffer from poverty, lack adequate care or be discriminated against because of their age. It is important therefore to look into the human rights documents, and verify if older persons' rights are amply protected thereunder.

### (a) European Social Charter

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<sup>246</sup> See AMERICAN CONVENTION ON HUMAN RIGHTS, 1969, Article 8 (1)

<sup>247</sup> See *id.* Article 21.

<sup>248</sup> See *id.* Article 24.

<sup>249</sup> See *id.* Article 25(2)(c).

<sup>250</sup> See AMERICAN DECLARATION, *supra* note 231, Article XI.

<sup>251</sup> See *id.* Articles XVI, XXXV and XXXVII.

<sup>252</sup> See WORLD HEALTH ORGANISATION EUROPEAN REPORT ON PREVENTING ELDER MALTREATMENT (Dinesh Sethi ET.AL ed., WHO Regional Office for Europe, 2011).

The European Social Charter<sup>253</sup> is a Council of Europe treaty which guarantees social and economic human rights. It was adopted in 1961 and revised in 1996. The Revised European Social Charter sets out the right to social protection for the elderly in Article 23. According to this provision, the State Parties undertake to adopt measures:

- I. To enable the elderly to remain full members of society for as long as possible by means of the following:
  - (i) Adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life.
  - (ii) Provision of information about services and facilities available for elderly persons and their opportunities to make use of them.
  
- II. To enable the elderly to choose their lifestyle freely and live independently in their familiar surroundings for as long as they wish and are able to, by means of the following:
  - (i) Provision of housing suited to their needs and their state of health or of adequate support for adapting their housing
  - (ii) Adequate healthcare and the services
  
- III. To guarantee support for older persons living in institutions, while respecting their privacy, and participation in decisions concerning living conditions in the institution.

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<sup>253</sup> Council of Europe, EUROPEAN SOCIAL CHARTER (Revised), 3 May 1996, *European Treaty Series* 163, available at: <http://www.refworld.org/docid/3ae6b3678.html> [accessed 4 August 2013]

(b) Charter on Fundamental Rights of the European Union, 2000

The Charter on Fundamental Rights of the European Union<sup>254</sup> contains special provisions dealing with the rights of the older persons.

Part I of the Charter is titled Human Dignity and it assures that human dignity is inviolable and that it must be respected and protected.<sup>255</sup> This assurance is highly important for older persons as what is compromised most of all in their case are their dignity.

This is one document where the non-discrimination clause takes “age” as a specific ground on which a person shall not be discriminated against.<sup>256</sup>

The Charter also sets out the rights of the elderly in Article 25, wherein it states that “[t]he Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.” In addition to the right of access to preventive healthcare and the right to benefit from medical treatment,<sup>257</sup> social security and social assistance is also provided for older persons. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in

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<sup>254</sup> European Union, CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION, 7 December 2000, Official Journal of the European Communities, 18 December 2000 (OJ C 364/01), *available at*: <http://www.refworld.org/docid/3ae6b3b70.html> [accessed 4 August 2013]. The Charter became legally binding when the Treaty of Lisbon entered into force on 1 Dec. 2009, as the Treaty confers on the Charter the same legal value as the Treaties.

<sup>255</sup> *See id.* Article 1.

<sup>256</sup> *Id.* Article 21(1): “Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, *age* or sexual orientation shall be prohibited.”

<sup>257</sup> *See id.* Article 35.



accordance with the rules laid down by the Community law and national laws and practices.<sup>258</sup>

It is pertinent to note that the European Court of Justice has enforced the anti-discrimination clause by bringing in parity between older men and women, so as to avoid discrimination against older men.

The European Court of Justice decided in *Taylor v. The United Kingdom*<sup>259</sup> that regulations for receipt of winter fuel payment benefits, setting out the age of women entitled to the payment at 60 or over and for men at 65, did not comply with the European Union Council Directive on the progressive implementation of the principle of equal treatment for men and women in matters of social security.

The Court of Justice stressed that the application of different ages, according to sex, to a benefit scheme other than the old age and retirement pension scheme can be justified only if the discrimination to which the difference in age gives rise is objectively necessary in order, amongst other things, to ensure consistency between the retirement pension scheme and other benefit schemes.

According to the Government, “if the benefit at issue was regarded as designed to provide protection against the risk of old age, it would not be consistent to choose an age other than that applicable to payment of the State retirement pension (which specifically meets the risk of old age).

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<sup>258</sup> See *supra* note 254, Article 34.

<sup>259</sup> *Taylor v. United Kingdom* [1998] EHRLR 90, available at <http://www.escri-net.org/docs/i/404170> [accessed 5 January 2014].

However, the Court found that if, as was the case here, the benefit is designed to provide protection against the risk of old age and must, therefore, be paid only to those above a certain age, it does not follow that age must necessarily coincide with the statutory age of retirement.

Thus, such discriminatory treatment was not necessarily linked to the difference in the statutory age of retirement for men and women and was not covered by the derogation in the Directive permitting Member States to exclude the determination of pensionable age for the purposes of granting old-age and retirement pensions from the Directive.” Therefore, Mr. Taylor had been held as the victim of unlawful sex discrimination.

After the ECJ decision, the UK government announced that it would make full Winter Fuel Payments to men aged over 60, including back payments to those who were over 60 when the 1998 regulations first came into effect.<sup>260</sup>

It is submitted that the decision though superficially appears to be in tune with equality and non-discrimination principles, passively justifies discrimination of women regarding retirement and pension benefits. It is clear from the decision that discrimination is not justified only when it relates to a welfare measure which is not retirement and old age pension scheme.

### **2.7.3 African Charter on Human and Peoples’ Rights, 1986**

The regional African human rights system is based on the African Charter on Human and Peoples’ Rights (the African or Banjul Charter)<sup>261</sup> and is the only human rights treaty of

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<sup>260</sup> See UK Department of Social Services Press Release 99/321 of 16<sup>th</sup> December 1999 (Source: THE INDEPENDENT, 2 January 2002).

its nature that embodies civil and political, as well as economic, social, and cultural rights in the same instrument.<sup>262</sup>

It appears from the African Charter that morality, family, culture and traditional values recognized by the community are promoted and protected with utmost importance<sup>263</sup>. The responsibility of promoting and protecting these values is shared between the State and the individuals. Whereas the State is vested with the duty of promoting and protecting these<sup>264</sup>, the individuals shall have duties towards his family and society<sup>265</sup>. Under the African Charter, duties are as prominent as rights.<sup>266</sup> The mandate of non-discrimination is not only for the State but also for every individual.<sup>267</sup> Moreover, the individual is under a specific duty to respect his parents at all times and to maintain them in case of need.<sup>268</sup>

Further the Charter provides that, “The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical and moral health.”<sup>269</sup> Specific mention is to be made of Article 18(4) which pronounces that the

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<sup>261</sup> Organization of African Unity, AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ("BANJUL CHARTER"), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), available at <http://www.refworld.org/docid/3ae6b3630.html> [accessed 29 July 2013] [hereinafter AFRICAN CHARTER]. It was entered into force on October 21, 1986, upon ratification by a simple majority of member states of the Organization of African Unity (OAU).

<sup>262</sup> RODRÍGUEZ-PINZÓN, DIEGO AND CLAUDIA MARTIN, *The International Human Rights Status of Elderly Persons*, AMERICAN UNIVERSITY INTERNATIONAL LAW REVIEW 18, no. 4 (2003): 915-1008, 1004; See AFRICAN CHARTER, *supra* note 261, Preamble, para 7 which states that “...civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of both civil and political rights”. The importance of this stipulation is to be gauged in the backdrop of worldwide perception that economic, social and cultural rights as second only to civil and political rights.

<sup>263</sup> See AFRICAN CHARTER, *supra* note 261, Article 17; See also *id.* Preamble, para 5, 10.

<sup>264</sup> See *id.* Article 17.

<sup>265</sup> See *id.* Article 27, which states that “Every individual shall have duties towards his family and society.”

<sup>266</sup> See *id.* Preamble, Para 7.

<sup>267</sup> See *id.* Article 28.

<sup>268</sup> See *id.* Article 29.

<sup>269</sup> See AFRICAN CHARTER, *supra* note 261, Article 18.

“aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.”

The importance of the African Charter is that States Parties to the African Charter must implement the rights protected therein immediately upon ratification. Article 1 mandates that the Member States “shall recognize the rights, duties and freedoms enshrined ... and shall undertake to adopt legislative or other measures to give effect to them.” The word “shall” suggests that all the rights enshrined in the African Charter are immediately justiciable.<sup>270</sup>

Thus the Charter protects the rights of the elderly by affirming the sanctity given to the traditional values, family, culture and morality, which is inherent in the traditional cultural and moral fabric of Africa<sup>271</sup> and expresses the cultural concept of intergenerational support.<sup>272</sup>

Further, the Protocol to the African Charter on the Rights of Women in Africa<sup>273</sup> sets out special protection relevant for elderly women<sup>274</sup> and enumerates tasks to be undertaken for their protection.<sup>275</sup>

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<sup>270</sup> See *id.* 1006.

<sup>271</sup> See NANA ARABA APT, RAPID URBANIZATION AND LIVING ARRANGEMENTS FOR OLDER PERSONS IN AFRICA 6 (Population Division, Department of Economic and Social Affairs, United Nations Secretariat, 1999); See also HABTE-GABR, E., N. S. BLUM AND I. SMITH, *The Elder in Africa*, JOURNAL OF APPLIED GERONTOLOGY, 163-182 (vol. 6, No. 2, 1987); EL-BADRY, *Aging in developing countries: one more population problem?* in UNITED NATIONS, ECONOMIC AND SOCIAL IMPLICATIONS OF AGEING 389-398 (New York, Sales No. 90.XIII.18, 1988); ADAMCHAK, D. J., *Pension and household structure of older persons in Namibia*, SOUTHERN AFRICAN JOURNAL OF GERONTOLOGY 11-15 (vol. 4, No. 2, 1995); VATUK, S., *Meeting the Challenges of Ageing Populations in Developing Countries*, in FINAL REPORT. MALTA: INTERNATIONAL INSTITUTE ON AGEING 7 (1996).

<sup>272</sup> See MARZI, H., *Old age in Rwanda: A Problem?*, BOLD vol. 5, No. 1, (Malta, 1994) 3-7.

<sup>273</sup> African Union, PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS ON THE RIGHTS OF WOMEN IN AFRICA, 11 July 2003, available at <http://www.refworld.org/docid/3f4b139d4.html> [accessed 29 July 2013].

In addition to the Charters on Human Rights, there have been several regional declarations as a follow up of the International Plans of Action. Both the Vienna and Madrid International Plans of Action had emphasized the need for follow-up action and regional cooperation for taking forward the State commitments. Consequently, there have been regional declarations on the rights of older persons, few of which are listed as follows:

- (a) Macao Declaration on Ageing For Asia and the Pacific, 1999<sup>276</sup>
- (b) Montreal Declaration, 1999<sup>277</sup>
- (c) Brasilia Declaration, 2007<sup>278</sup>
- (d) Shanghai Regional Implementation Strategy, 2011<sup>279</sup>
- (e) Yogyakarta Declaration on Ageing and Health, 2012<sup>280</sup>
- (f) The Dublin Declaration on Age-Friendly Cities and Communities in Europe 2013<sup>281</sup>

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<sup>274</sup>See *id.* Article 5 (b) which mandates that the “States Parties shall take all necessary legislative and other measures to eliminate such practices, including: protection of women who are at risk of being subjected to harmful practices or all other forms of violence, abuse and intolerance.”

<sup>275</sup>See *id.* Article 22.

<sup>276</sup>ESCAP-Resolution-55/4. The Macao Declaration was adopted along with the Plan of Action for Ageing for Asia and Pacific by the associate members of the Economic and Social Commission for Asia and the Pacific (ESCAP). The document is available at <http://www.unescapsdd.org/files/documents/ESCAP-Resolution-55-4.pdf> at 47 [accessed 3 May 2016].

<sup>277</sup>The Montreal Declaration was the adopted at the International Federation on Ageing (IFA) Fourth Global Conference on Ageing in Canada on September 8, 1999. The document is available at [http://www.ifa-fiv.org/wp-content/uploads/2012/11/057\\_IFA-Montreal-Declaration.pdf](http://www.ifa-fiv.org/wp-content/uploads/2012/11/057_IFA-Montreal-Declaration.pdf) [accessed 3 May 2016].

<sup>278</sup>Brasilia Declaration dated 6 December 2007 was adopted at the Second Regional Intergovernmental Conference on Ageing in Latin America and the Caribbean: Towards a Society for all ages and rights-based social protection.. The document is available at [http://www.un.org/esa/socdev/ageing/documents/regional\\_review/Declaracion\\_Brasilia.pdf](http://www.un.org/esa/socdev/ageing/documents/regional_review/Declaracion_Brasilia.pdf) [accessed 3 May 2016].

<sup>279</sup>Shanghai Implementation Strategy was adopted by the Asia-Pacific Seminar of the Economic and Social Council for Asia-Pacific (ESCAP) as a follow up of the Madrid International plan of Action and the Macao Plan of Action For Asia and the Pacific. The document is available at [http://www.un.org/ga/search/view\\_doc.asp?symbol=E/ESCAP/1280](http://www.un.org/ga/search/view_doc.asp?symbol=E/ESCAP/1280) [accessed on 3<sup>rd</sup> May 2016].

<sup>280</sup>Yogyakarta Declaration on Ageing and Health was adopted by the Ministers of Health of WHO South-East Asia(SEA) Region at Yogyakarta, Indonesia on 4 September 2012. The document is available at <http://kp.one.un.org/content/uploads/2012/09/Yogyakarta-Declaration-FINAL.pdf> [accessed 3 May 2016].

(g) Kuala Lumpur Declaration of Ageing, 2015<sup>282</sup>

At the international level, the focus on the rights of older persons is still in its formative stage. It has only reached the stage of identification and recognition of the bare minimum human rights of a special category namely the older persons. The various international instruments that deal with this subject, target actions and set objectives to improve the collective well-being of elderly people through a concerted action of the UN agencies. It is to be noted that these instruments are non-binding in nature, unlike a comprehensive and binding convention recognizing and protecting the rights of the older people is essential. Most of the international human rights instruments do not directly deal with the older population. However the regional regime in America, Europe and Africa contain explicit provisions relating to rights of older persons. The human rights regime in Asia is yet to include suitable and enabling provisions regarding older persons.

Considering the vulnerable nature of the elder people, it appears that this is the only vulnerable group which is left out in the international human rights documents devoid of direct and explicit coverage. There is no specific international body with the mandate to focus on the rights of the older people.

However the two World Assemblies on Ageing had made profound impact in the world through the Vienna International Plan of Action on Ageing, 1982 and the Madrid

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<sup>281</sup> The Dublin Declaration was adopted by the mayors and senior political representatives of European cities, municipalities, communities and regions at the EU Summit on Active and healthy Ageing held in Dublin, Ireland on 13 June 2013. The document is available at <http://www.ifa-fiv.org/wp-content/uploads/2015/03/2-Dublin-Declaration-on-AFC-2013.pdf> [accessed 3 May 2016].

<sup>282</sup> Kuala Lumpur Declaration on Ageing was adopted by the Member States of the Association of South East Asian nations (ASEAN) at the 27<sup>th</sup> ASEAN Summit on 21 November 2015. The document is available at [http://www.asean.org/storage/images/2015/November/27<sup>th</sup>-summit/ASCC\\_documents/Kuala%20Lumpur%20Declaration%20on%20Ageing%20-%20Empowering%20Older%20Persons%20in%20ASEANAdopted.pdf](http://www.asean.org/storage/images/2015/November/27th-summit/ASCC_documents/Kuala%20Lumpur%20Declaration%20on%20Ageing%20-%20Empowering%20Older%20Persons%20in%20ASEANAdopted.pdf) [accessed 3 May 2016].

International Plan of Action on Ageing, 2002. This can be deciphered from the regional follow-up actions which created a wave all over the globe.

Having been a signatory to the International Plans of Action on Ageing, Government of India is also under a mandate to meet the state obligations, drawn out in the plans as well as in the United Nations Principles for Older Persons. Moreover the Constitution of India envisages a welfare state encompassing justice: social, economic and political, indicating state responsibility towards securing the rights of older persons as well. Therefore it is important to evaluate the initiatives on the part of Government of India for the protection of the rights of older persons. Chapter III deals with the plans, policies, schemes and other endeavours of the Government of India and the Governments of the States of Goa and Kerala, towards this cause.

### 3. GOVERNMENT INITIATIVES IN PROTECTING THE RIGHTS OF OLDER PERSONS

Alongside with world population, India's population is also going through a remarkable change. India has the second largest over-65 population in the world at 59.8 million, equivalent to 5% of India's population in 2011 and 10.8 % of the world's over-65 population<sup>1</sup>. The proportion of older people is expected to rise three to four fold in the next 40 years<sup>2</sup>. The number of people aged 60 years in India and over which was 76 million in 2000 is expected to reach 323 million by 2050.<sup>3</sup> This would mean that people in their 50's will account for 30% of the population, while those in their 60's will make up 20%.<sup>4</sup> The 80+ population which was 6 million in 2000 will increase to 48 million in 2050 and therefore will be the fastest growing group. The population projection for 2050 is given in Table 1.

**Table 1 – Population Projection of 60+ and 80+ from 2000 - 2050**

Year	Total Population (in millions)	Above 60 years (in millions)	Above 80 years (in millions)
2000	1008	76	6
2050	1572	324	48

<sup>1</sup> SARAH BOUMPHREY, *Special Report: The World's Oldest Populations* (September 13<sup>th</sup>, 2011), available at <http://blog.euromonitor.com/2011/09/special-report-the-worlds-oldest-populations.html> [accessed 26 October 2015]. China occupies the first position.

<sup>2</sup> See THE ECONOMIST: ECONOMIST INTELLIGENCE UNIT, *Preventive Care and Healthy Ageing*, available at <http://digitalresearch.eiu.com/healthyageing/country-profiles/india> [accessed 8 September 2014].

<sup>3</sup> POPULATION REFERENCE BUREAU, *Today's Research on Ageing: India's Ageing Population* (March 2012).

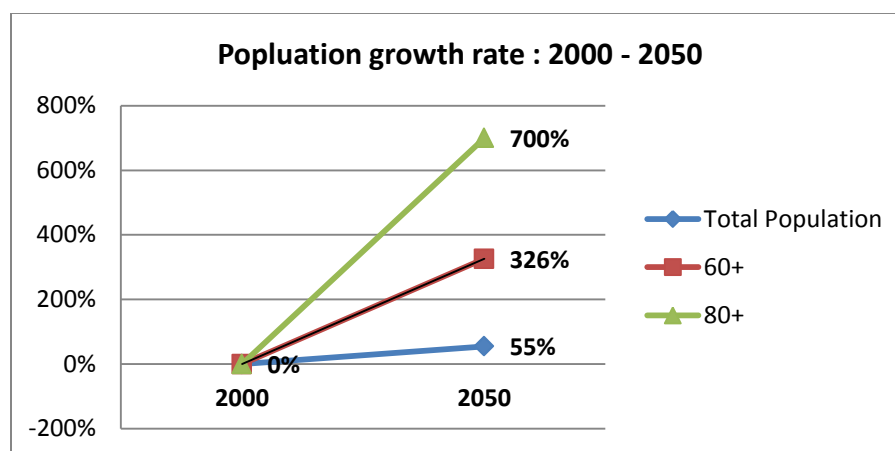
<sup>4</sup> See AROKIASAMY P, *Longitudinal ageing study in India*, in INTERNATIONAL INSTITUTE FOR POPULATION SCIENCES (2012).



*[Source – Secondary: World Population Ageing: 1950-2050; Department of Economic and Social Affairs, Population Division, United Nations, New York 2002]*

This would mean that overall population of India will grow by 55% whereas population of people in their 60 years and above will increase by 326% and those in the age group of 80 years and above by 700%. This can be depicted as in Figure 1.

**Figure 1**

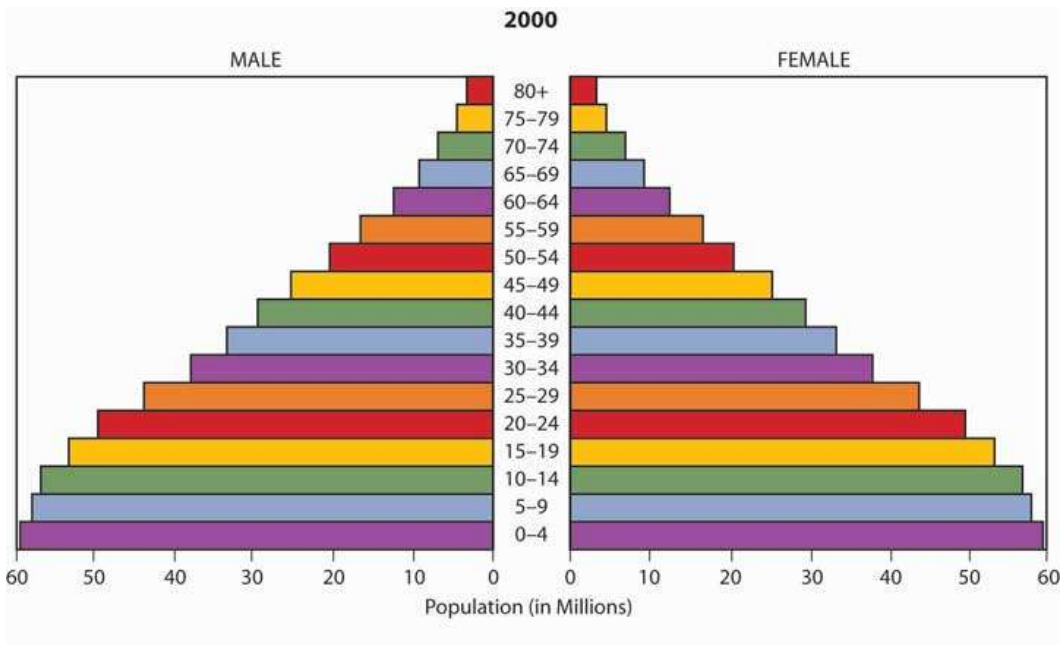


*[Source – Secondary: National Policy on Older Persons, 2011]*

The changing population pattern results in a larger proportion of older persons in India in the future as compared to the past. This also affects the balance among age groups in the society.<sup>5</sup> The seriousness of the changing demographic pattern is better discernible in the population pyramid of India from 2000 – 2050 as is depicted in Figure 2 - 4 given below.

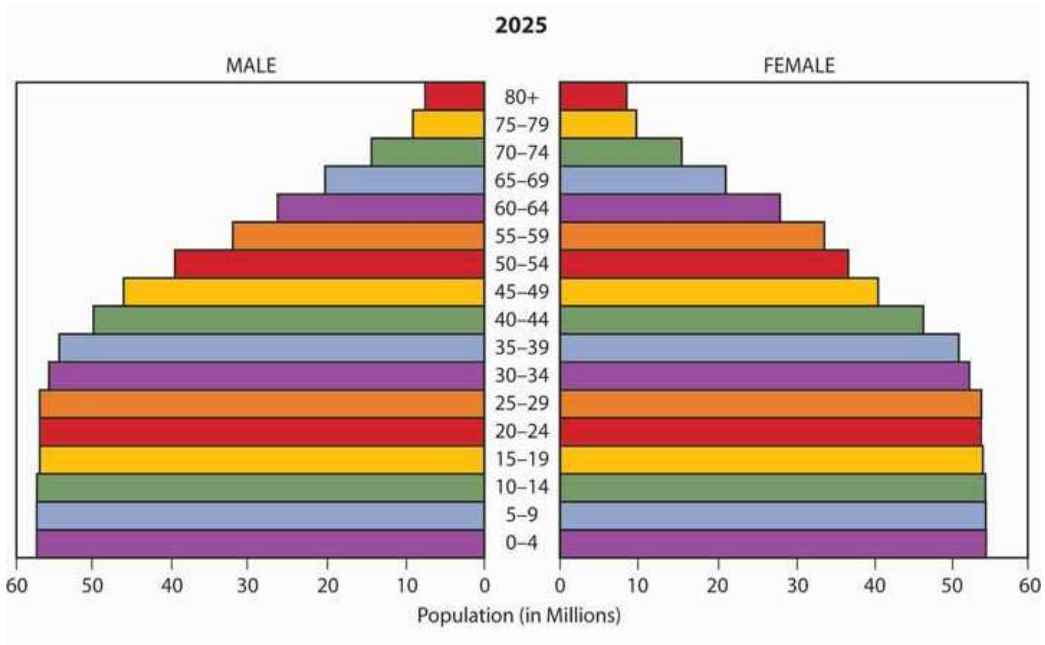
<sup>5</sup> See UNITED NATIONS ECONOMIC AND SOCIAL COUNCIL, WORLD POPULATION AGEING 2013 17 (United Nations, New York, 2013). Age groups, are broadly divided into four age groups, namely (1) children and adolescents under the age of 20 years; (2) “young” adults 20 to 39 years of age; (3) “middle-aged” adults aged 40 to 59 years; and (4) older persons aged 60 years or over. Historically the group of older persons was much smaller than any of the other three groups.

**Figure 2 – Population Pyramid for India: 2000**

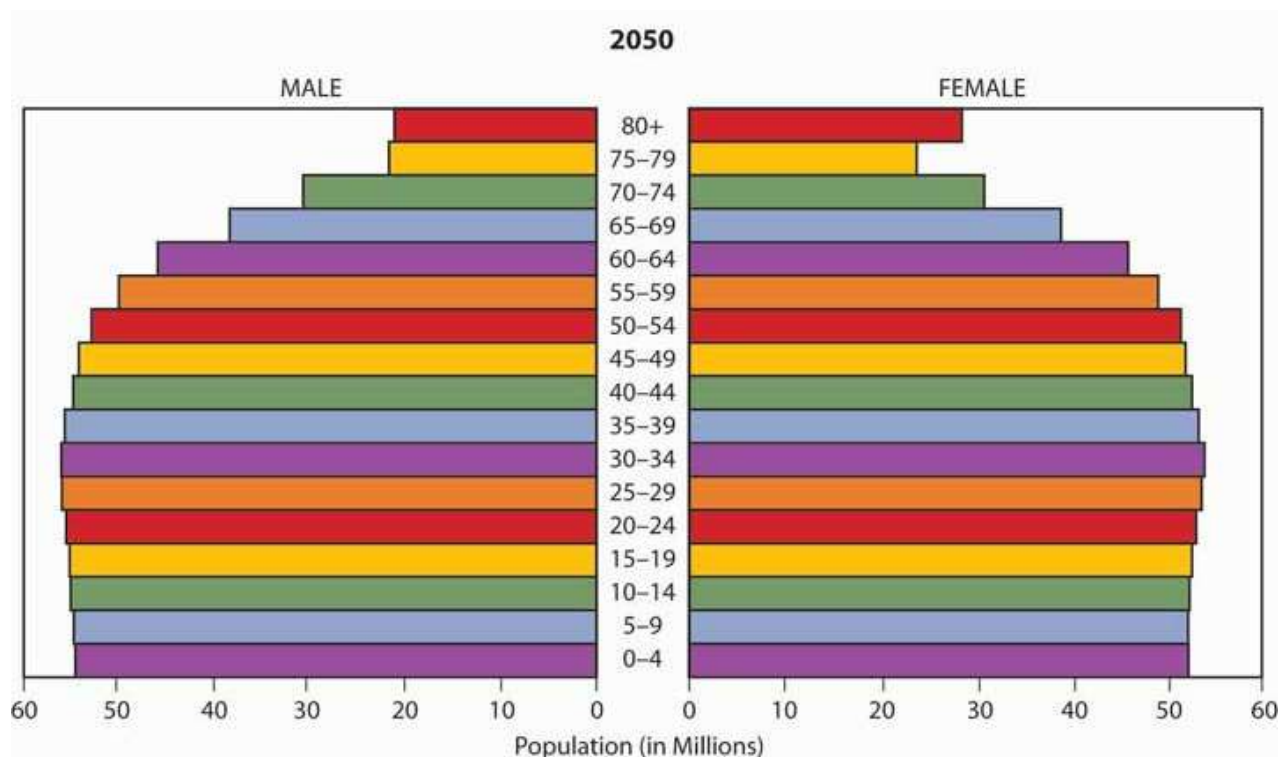


*[Source -Secondary: U.S.Census Bureau, International Data Base]*

**Figure 3 – Population Pyramid for India: 2025**



*[Source -Secondary: U.S.Census Bureau, International Data Base]*

**Figure 4 – Population Pyramid for India: 2050**

*[Source -Secondary: U.S.Census Bureau, International Data Base]*

It is very evident from Figures 2 - 4 that the number of older persons is increasing in such a way that what was previously a pyramid shape is turning out to be broader at the top, and sociologists anticipate an overturn of the pyramid, or a reverse pyramid where elderly population will be much more than the younger.

According to the UNESCO studies, the older population will outgrow the younger age groups.<sup>6</sup> The impact will be the inevitable change in the dependency ratio, which denotes the number of dependent persons over working persons.<sup>7</sup>

<sup>6</sup> See *supra* note 5. The Report states that older persons over 60 years will outnumber children in 2047.

<sup>7</sup> See *id.* at 21-23.

The old age support ratio<sup>8</sup> is also naturally bound to increase. This would create socio economic repercussions, in terms of burden on family on one hand, and need for an inclusive society on the other hand, where older persons do not get marginalized.

The responsibility on the family is limited to the domestic life of the older persons. It is essentially about providing for the needs of the older persons in terms of living arrangements, medical care and also assuring the dignity of such persons. However unless made into a legal obligation it remains merely a moral and unenforceable one. State responsibility is at a larger arena dealing with legalization of the family's obligation and providing enforceability to on the one hand and meeting State responsibilities to bring about a society for all ages in terms of infrastructure and facilities on the other hand.

The role of the State to mitigate the burden and create an inclusive environment through its policies and welfare programs in terms of healthcare, infrastructure, social security, old age homes and financial aid is necessary to be analyzed. This is especially so owing the constitutional directive to the State to strive towards providing assistance in old age.<sup>9</sup>

It is the domain of the policy makers to bring in suitable schemes and measures to cater towards the general welfare and specific needs of the older persons in the country. This chapter studies the various initiatives by the Government of India, Governments of States of Goa and Kerala, for promoting the interests of senior citizens and analyzes the adequacy of the same with respect to the needs of the senior citizens.

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<sup>8</sup> The old-age support ratio is the number of working-age persons per older person. *See supra* note 5, at 23-25.

<sup>9</sup>*See* CONSTITUTION OF INDIA, 1950, Article 41.

### **3.1 INITIATIVES OF THE CENTRAL GOVERNMENT**

A specific legislation for the cause of senior citizens was enacted by the Parliament in 2007, namely the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.<sup>10</sup>

Department of Social Justice and Empowerment is the Nodal Department for matters pertaining to the welfare of Senior Citizens and responsible for implementation of this Act. However much before this enactment itself, in consonance with the Directive Principles of State Policy under the Constitution of India, the Government of India had been instrumental in bringing about significant programs for the welfare of the older persons, which are enumerated hereunder.

#### **3.1.1 Five Year Plans**

Five Year Plans depict the importance given by the government in the planning process not only towards nation building but also towards implementation of the Directive principles of State Policy. Therefore it would be significant to peruse the five year plans to verify if Government of India had considered the welfare of older persons in India while drawing the Five Year Plans for the country.

The 1<sup>st</sup> Five Year Plan (1951-1956) focused primarily on agriculture of the country and contains very few social welfare measures. The plan acknowledges the then existing conditions of poverty and of inequalities in income, wealth and opportunity and urges for measures to eliminate poverty and recognizes some measure of insurance against old age as one of the fundamental urges, in the light of the Directive Principles of State Policy

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<sup>10</sup>Central Act No.56 of 2007. *See infra* Chapter IV for a detailed analysis of the Act.

enunciated in Articles 36 to 51 of the Constitution.<sup>11</sup> The 2<sup>nd</sup> Five Year Plan (1956–1961) contains a passing mention about a home for old, inform, diseased or disabled beggars in each State with occupancy of 100, as one of the welfare measures to be undertaken.<sup>12</sup> The 3<sup>rd</sup> Five Year Plan (1961-1966) sought to give a more precise content to the social objectives of the Constitution and represented a large advance towards their realization. It proposed to make a small beginning in the direction of assisting certain categories of persons without any means of livelihood including old persons. It specifically stated that beggars who are old should be taken care of in residential institutions run by voluntary welfare organizations.<sup>13</sup> The Labour Policy stipulated a statutory scheme for old age pension cum gratuity and social assistance/ social security to old people who are unable to work.<sup>14</sup>

Whereas the 4<sup>th</sup> Five Year Plan (1969-74) did not contain any proposals for the welfare of old persons<sup>15</sup>, the very chapter on social welfare itself was omitted in the 5<sup>th</sup> Five Year Plan (1974-1978).<sup>16</sup> The 6<sup>th</sup> Five Year Plan (1980-1985) despite reviving social welfare measures after the emergency era, omitted provisions for old persons. The then Prime Minister and Chairperson of Planning Commission, Mrs. Indira Gandhi stated in the Foreword of the 6<sup>th</sup> Plan that, “the measure of a plan is not intention but achievement, not

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<sup>11</sup> See PLANNING COMMISSION OF INDIA, THE 1<sup>ST</sup> FIVE YEAR PLAN, Chapter I – “Planning: Economic and Social Aspects”, available at <http://planningcommission.nic.in/plans/planrel/fiveyr/1st/1planch1.html> [accessed on 11th November 2015].

<sup>12</sup> See PLANNING COMMISSION OF INDIA, THE 2<sup>ND</sup> FIVE YEAR PLAN, Chapter 29 – “Social Welfare Services”, para 11, available at <http://planningcommission.nic.in/plans/planrel/fiveyr/2nd/2planch29.html> [accessed on 11 November 2015].

<sup>13</sup> See PLANNING COMMISSION OF INDIA, THE 3<sup>RD</sup> FIVE YEAR PLAN, Chapter 35 – Welfare Programmes Social Welfare, para 8, 13, available at <http://planningcommission.nic.in/plans/planrel/fiveyr/welcome.html> [accessed on 11 November 2015].

<sup>14</sup> See *id.* Chapter 15, *Labour Policy*, para 25, 26.

<sup>15</sup> See *id.* THE 4<sup>TH</sup> FIVE YEAR PLAN.

<sup>16</sup> See *id.* THE 5<sup>TH</sup> FIVE YEAR PLAN.

allocation but benefit.”<sup>17</sup> However the welfare of older persons was far away from the agenda to achieve.

The 7<sup>th</sup> Five Year Plan (1985-1990) continued the lapse.<sup>18</sup> The 8<sup>th</sup> Five Year Plan (1992-1997) followed suit, however contained a proposal for creation of permanent eye care infrastructure, operational throughout the year and within easy reach of the people. This was in pursuance of Blindness Control Programme, which was launched during the previous plan period. The Plan also aimed an intensification of efforts towards ophthalmic manpower development with the ultimate objective of improving the outreach and quality of ophthalmic care at primary, intermediate and tertiary levels. The reason behind this program was the identification that cataract was the cause of more than 80% of blindness and the demographic shift leading to larger old age population has increased the prevalence of cataract.<sup>19</sup>

The 9<sup>th</sup> Five Year Plan (1997-2002), for the first time gave importance to the welfare of the elderly. The Plan noted that the rapid demographic changes have led to an increase in the elderly persons and that they need special attention of the State due to the vulnerability and disabilities they suffer from. The Plan announced Programmes for the Elderly to ensure their well-being and continued participation in the community, keeping by its side the immediate social institutions of family and the community in the effective implementation of the programmes for the Elderly. The older persons in the rural areas was taken into consideration in extending the most wanted health care, housing, shelter, pension etc.

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<sup>17</sup> See *supra* note 13, THE 6<sup>TH</sup> FIVE YEAR PLAN.

<sup>18</sup> See *id.* THE 7<sup>TH</sup> FIVE YEAR PLAN.

<sup>19</sup> See *id.* THE 8<sup>TH</sup> FIVE YEAR PLAN (vol. 2, Chapter 1) *Health and Family Welfare*, para 12.2.23, 12.2.24.

Other measures included (a) dissemination of information regarding the welfare measures and special concessions to 'Senior Citizens', (b) facilitating the insurance sector to formulate special health insurance programmes for the benefit of the Elderly, (c) the concept of 'Sheltered Homes' for the lonely/destitute Elderly with the help of private and public agencies/ NGOs, (d) involvement of the elderly in various developmental activities, thereby leading to productive ageing, (e) revival of the Scheme of Old Age Pension to rationalize the same in terms of providing at least the barest minimum subsistence and expand its coverage, wherever possible, (f) active involvement of the Panchayati Raj institutions in the implementation of various welfare schemes particularly with regard to selection of beneficiaries and disbursement of funds and (g) Encouragement to the voluntary organizations to set up 'Homes for the Aged/Homes for the Destitutes/Homes for the Dying' so as to meet the increasing need for such services.

The most significant point to note is the advocacy programmes to promote awareness amongst the people to plan in advance for the old age. The 9<sup>th</sup> Plan reflected the desire for adopting a National Policy on Older Persons' to develop greater sensitivity and better attention towards the needs of the Elderly. The 9<sup>th</sup> Plan strategies included policy commitments for the well-being of older persons namely, (i) Direct Policy prescriptions to extend support for financial security, health care, shelter, welfare and other needs of older persons, (ii) Protection against the dangers of life and property; abuse and exploitation of older persons and (iii) Extend opportunities for older persons to contribute their mite in various developmental activities.<sup>20</sup> It is submitted that the impact of India's

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<sup>20</sup> See *supra* note.13, THE 9<sup>TH</sup> FIVE YEAR PLAN (Vol. 2, Chapter 3) *Human and Social Development*, para 3.10.



participation at the First World Assembly on Ageing, 1982 and affixing of signature to the Vienna International Plan of Action on Ageing is perceived in the 9<sup>th</sup> Plan.

The Tenth Five Year Plan (2002-2007) gave importance to Adult Literacy Programs.<sup>21</sup>

The National Social Assistance Program under which National Old Age Pension was provided for, was transferred to states with earmarked funds in the Tenth Plan.<sup>22</sup> Geriatric nutrition was focused on and the Plan proposed to create a database on the magnitude of nutritional problems in the elderly, based on which appropriate are-specific intervention programmes could be drawn up.<sup>23</sup> It was acknowledged that the welfare of the aged, which was earlier a family/societal duty, was emerging as a state duty, in view of the breakdown of the joint family system, among other factors. The growing number of destitute aged demands state responsibility and therefore the Tenth Plan articulated to play a pro-active role in caring for the older persons. This would be done through social welfare measures, empowerment of the elderly to lead productive and self-reliant lives, in addition to strengthening of the social institutions of family and community, so that they could act as the primary care-givers for the aged. The Plan aimed at effective implementation of the National policy on Older Persons and suggested identification of salient features for an appropriate legislation on Old Age Protection.<sup>24</sup>

The Eleventh Five Year Plan (2007-2012) laid stress on health care for older persons, for the first time. It was understood that older persons require comprehensive care providing preventive, curative and rehabilitative services. The services focused on counseling and

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<sup>21</sup> PLANNING COMMISSION OF INDIA, THE TENTH FIVE YEAR PLAN 2002-2007 (Volume II), 67 *Adult Literacy & Continuing Education*.

<sup>22</sup> *Id.* at 307.

<sup>23</sup> *Id.* at 328 – 330.

<sup>24</sup> *Supra* note 21, at 500 – 502.

medical care facility for taking care of general health needs and an emergency facility to deal with acute cases and transport them to hospital, where need be. The agenda envisaged in the plan included (a) a home health service, which means home visits intended to detect health problems, and as a psychological support by health personnel sensitized on such issues; (b) a community-based health centre for them for educational and preventive activity. This will be integrated with the National Rural Health Mission (NRHM) and an allocation made specifically for geriatric care. The Accredited Social Health Care Activists (ASHAs) under the NRHM will be trained in geriatric care; (c) outpatient medical service that serves as the base for home health service will be enhanced; (d) improved hospital-based support service focused on their health care needs; (e) centers on geriatric health especially focused on elderly women; (f) training of health professionals in geriatric care; (g) developing scientific solutions to specific health problems by research in Geriatrics and Gerontology and (h) Developing two National institutes for Research In Ageing and Health, one in the North and the other on South<sup>25</sup>

The Twelfth Five Year Plan (2012-17) has included Senior Citizens under the heading “Other marginalized and vulnerable groups”. A division is made among senior citizens based on their age based needs namely, 60 years and above, and 80 years and above. The Plan states to give increasing attention to the needs of Oldest Old persons (80+) whose needs are different from those senior citizens in the age group of 60 years and above.<sup>26</sup>

The Twelfth Plan provides *interalia* for setting up of a National Commission for Senior

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<sup>25</sup> See PLANNING COMMISSION OF INDIA, THE ELEVENTH FIVE YEAR PLAN 2007-2012 (vol. 2), *Health and Family Welfare and Ayush* 93 - 94 (Oxford University Press, 2008).

<sup>26</sup> See PLANNING COMMISSION OF INDIA, THE TWELFTH FIVE YEAR PLAN 2012-17 (vol. 3), *Social Sectors* 268 (Sage Publications, 2013).

Citizens, Helpline for older persons and health insurance.<sup>27</sup> The Plan also mentions about formulation and implementation of a new national policy on Senior Citizens during the Plan period. The new plan contains provisions for home care services, access to healthcare, insurance schemes and services to sustain the concept of dignity in old age.<sup>28</sup>

Though the focus on protection and promotion of the rights of the elderly found little or mere passing references, in the Five Year Plans till 1997, the 9<sup>th</sup> Five Year plan onwards a positive wave of care and welfare for the older persons is evident in the Plans. The current plan, that is, the Twelfth Five Year Plan, has included Senior Citizens in the category of marginalized persons. This is a positive step towards ensuring an inclusive society.

### **3.1.2 National Policy on Older Persons, 1999**

Drawing inspiration and encouragement from the Vienna International Plan of Action on Ageing 1982, United Nations Principles for Older Persons 1991, the Proclamation of Ageing and the Global Targets on Ageing for the year 2001 adopted by the General Assembly in 1992, and various other Resolutions adopted from time to time, added with the UN demand for a Policy Statement by the States regarding senior citizens, Government of India came out with the National Policy on Older Persons (NPOP) in 1999.<sup>29</sup> The NPOP is aimed to safeguard the senior citizens from an identity crisis and make clear to them where they stand in the overall national perspective.<sup>30</sup>

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<sup>27</sup> See *supra* note 26, at 271.

<sup>28</sup> See *id.* at 270.

<sup>29</sup> NATIONAL POLICY ON OLDER PERSONS, 1999, available at <http://socialjustice.nic.in/npopcomplete.php?pageid=3> [Accessed on 13 April 2015].

<sup>30</sup> See *id.* para 14.

Health and well-being of the older persons being the acclaimed goal of the Policy, it came with an assurance to older persons that their concerns were national concerns and that they would not live unprotected, ignored or marginalized.<sup>31</sup> The policy “aims to strengthen their legitimate place in society and help older persons to live the last phase of life with purpose, dignity and peace.”<sup>32</sup> The Policy statement is made meaningful by para 78 and 79 dealing with realization of the potential of the older persons. The 60+ phase of life is noted as a huge untapped resource. Therefore the Policy envisages facilities furthering realization of the potential and enabling the individuals to make appropriate choices. A mention is made about the contribution of women towards the household, and the Policy undertakes to make the family members appreciate and respect such contribution.<sup>33</sup>

This policy aims to encourage individuals to make provision for their own old age. It also strives to encourage families to take care of their older family members. The policy enables and supports voluntary and non-governmental organizations to supplement the care provided by the family and provide care and protection to vulnerable elderly people. Health care, research, creation of awareness and training facilities to geriatric caregivers have also been enumerated under this policy. The main objective of this policy is to make older people fully independent citizens.

The policy visualizes a threefold State role in promoting and protecting the welfare of older persons. Firstly, the State would extend support for financial security, health care, shelter, welfare and other needs of older persons. Secondly, State protection against

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<sup>31</sup> *Supra* note 29, para 15.

<sup>32</sup> *See id.* para 15.

<sup>33</sup> *See id.* para 78 – 79.

abuse and exploitation is a necessary mandate. Thirdly, the State would make available opportunities for development of the potential of older persons, seek their participation, and provide services so that they can improve the quality of their lives.

The broad principles on which the Policy is based are as follows:<sup>34</sup>

- a) Need for affirmative action, in favour of older persons in general and elderly widows in particular, are recognized.
- b) Life post 60 is an integral part of life and older persons should be made available opportunities to lead an active and productive life.
- c) An age integrated society is to be facilitated through development of a social support system wherein the capacity of families to take care of older persons is strengthened and the bond between young and the old is solidified.
- d) Older persons render useful services in the family and outside. Therefore Opportunities and facilities need to be provided so that they can continue to contribute more effectively to the family, the community and society.
- e) Empowerment of older persons will help them acquire better control over their own lives as well as in decision making.
- f) There has to be a public private partnership to bring about the desired goal. In addition to funding by state, individuals, families, communities and institutions of civil society have to join hands as partners.
- g) There is a need for expansion of social and community services to older persons so as to make it accessible and user friendly.

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<sup>34</sup> See *supra* note 29, para 17 – 23.

### *A. Areas of State Intervention*

The policy earmarks certain areas of state intervention which are listed as follows:

(i) Financial Security

Achievement of some level of income security in old age was identified as a high priority goal. For this purpose various programs would be envisaged. Coverage under old age pension scheme for poor persons would be expanded in order to cover all older persons below poverty line. Public distribution system will also reach out to cover all such persons. The policy sought to ensure that settlement of pension, provident fund, gratuity and other retirement benefits is made promptly and superannuated persons are not put to hardship due to administrative lapses. Widows would be given special consideration in the matter of settlement of benefits accruing to them on the demise of husband.

Establishment of pension schemes both in the private as well as in the public sector for self-employed and salaried persons in non-governmental employment, with provision for employers also to contribute would be facilitated. There would be a strong regulatory authority to monitor the functioning of Pension Funds, which would lay down the investment norms and provide strong safeguards. Taxation policies would reflect sensitivity to the financial problems of older persons which accelerate due to very high costs of medical and nursing care, transportations and support services needed at home.

Long term savings instruments would be promoted to reach both rural and urban areas. Earners would be motivated to save in their active working years for financial security in old age. Pre-retirement counseling programmes would be promoted and assisted.

Employment in income generating activities after superannuation should be the choice of the individual. Organizations which provide career guidance, training and orientation, and support services would be assisted. Programmes of non-governmental organizations for generating incomes of old persons would be encouraged.

Age related discrimination in the matter of entitlement to credit, marketing and other facilities would be removed. The policy encouraged the States to enact legislations making it obligatory on children to provide maintenance for old parents who are unable to maintain themselves.<sup>35</sup>

(ii) Health care and nutrition

The policy envisaged a four-tier health services machinery, with varying state intervention, to meet the health care needs of older persons. Firstly the public health system especially the primary healthcare system would be strengthened with focus on the needs of older persons. Geriatric care facilities would be provided at the secondary and tertiary level. This first level requires greater State participation. Secondly, development of health insurance would be given high priority and need to be promoted by the State. Thirdly, trusts, charitable societies and voluntary agencies would be promoted, encouraged and assisted by way of grants, tax relief and land at subsidized rates to provide free beds, medicines and treatment to the very poor elder citizens and reasonable user charges for the rest of the population. Fourthly, at the private medical care level, where land and other facilities are provided at less than market rates, bodies representing private hospitals and nursing homes would be requested to direct their members to offer a

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<sup>35</sup>See *supra* note 29, para 24 – 32

discount to older patients. Over and above all these, the concept of healthy ageing would be promoted and necessary education programs would be strengthened.<sup>36</sup>

(iii) Shelter

Shelter being a basic human need, the policy aims to secure it at two levels. Firstly earning persons would be motivated through loans at reasonable interest rates, tax benefits etc. to invest in their housing so that they have shelter assured as they grow old. Secondly, older persons would be allotted 10 % of the houses under the various housing schemes including *Indira Awas Yojana*. In addition to these, layouts of housing colonies would have to respond to the life styles of the elderly. Group housing of older persons comprising flat lets with common service facilities for meals, laundry, common room and rest rooms would be encouraged.<sup>37</sup>

(iv) Education

The policy aimed to develop information and educational material especially relevant to the lives of older people. This would be widely disseminated using mass media and non-formal communication channels. Discriminations, if any, against older persons for availing educational opportunities would be removed. Continuing education programmes would be encouraged and supported. Assistance of open universities would be sought to develop packages using distance learning techniques. Schools would be encouraged and assisted to develop out-reach programmes for interacting with older persons on a regular basis, participate in the running of senior citizens centres and develop activities in them.

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<sup>36</sup>See *supra* note 29, para 33 – 47.

<sup>37</sup>See *id.* para 48 – 54.



Individuals of all ages, families and communities would be provided with information about the ageing process and the changing roles, responsibilities and relationships at different stages of the life cycle.<sup>38</sup>

(v) Welfare

The policy sought to identify more vulnerable among the older persons such as disabled, poor, chronically sick, those without any family support etc. so that welfare services could be made available to them on a priority basis. Institutional care would be the last resort when personal circumstances are such that stay in old age homes becomes absolutely necessary. Assistance would be provided to voluntary organizations by way of grants-in-aid for construction and maintenance of old age homes with trained employees. Voluntary associations would also be encouraged and assisted to organize services such as daycare and multi-service citizens' centres.

Formation of neighborhood groups and senior citizens' forum would be encouraged. Welfare Fund for older persons would be set up, receiving funding support from government, corporate sector, trusts, charities, individual donors and others. Contributions to the Fund would be given tax relief. The policy encouraged the States to establish Welfare Funds of similar nature.<sup>39</sup>

(vi) Protection of life and property

The policy recognized the vulnerability of older persons at homes with respect to life and property. The policy proposed to introduce special provisions in the Indian Penal Code to

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<sup>38</sup> See *supra* note 29, para 55 -57.

<sup>39</sup> See *id.* para 59 – 64.

protect older persons from domestic violence. Police would be directed to keep a friendly vigil on older couples or single persons living alone. Voluntary organizations and associations of older persons would be assisted to provide protective services and help to senior citizens through helpline services, legal aid and other measures.<sup>40</sup>

(vii) Other areas of action

The other areas of action proposed in the policy included fare concessions in all modes of transport, reservation of seats in local transport, modification in designs of public transport vehicles for easy entry and exit, strict enforcement of traffic discipline at zebra crossings to facilitate older persons to cross streets, priority in gas and telephone connections etc.<sup>41</sup>

***B. Promoting Support Systems for the Older Persons: Towards a Public Private Partnership***

The Policy appears to be very realistic, in the sense that it spelt out the inability of the State alone to provide all the services needed by older persons. Therefore the Policy recognized the complementary role that can be played by the NGOs, families, the older persons themselves and various other groups in providing affordable services in this direction, and proposed to provide State support and aid to such endeavors.

a) Networking, exchange of information and interactions among NGOs would be facilitated. Opportunities would be provided for orientation and training of manpower. Better services would be ensured through transparency, accountability,

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<sup>40</sup> See *supra* note 29, para 65 – 67.

<sup>41</sup> See *id.* para 68.

- simplification of procedures and timely release of grants to voluntary organizations. The grant-in-aid policy would provide incentives to encourage organization to raise their own resources and not become dependent only on government funding for providing services on a sustainable basis.<sup>42</sup>
- b) Trusts, charities, religious and other endowments would be encouraged to expand their areas of concern to provide services to the elderly by involving them on ageing issues.<sup>43</sup>
  - c) Older persons themselves would be encouraged to organize themselves in such a way as to mobilize their professional skill and resources to provide services to the fellow senior citizens. Their initiatives would be supported by the State.<sup>44</sup>
  - d) Volunteer programmes that benefit older persons would be supported and volunteers would be provided opportunity for training and orientation for handling problems of the elderly and to be aware of the developments in the field to promote active ageing.<sup>45</sup>
  - e) Trade unions, employers' organizations and professional bodies would be approached to organize sensitivity programmes for their members on ageing issues, and promote and organize services for superannuated workers.<sup>46</sup>
  - f) Support services to strengthen the family's ability to care for the older persons would be initiated so that family support systems would continue to be functional. This was considered important because the family is the most preferred living arrangement for older persons and the most emotionally satisfying. On the one hand, sensitization

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<sup>42</sup> See *supra* note 29, para 72-73.

<sup>43</sup> See *id.* para 74.

<sup>44</sup> See *id.* para 75.

<sup>45</sup> See *id.* para 76.

<sup>46</sup> See *id.* para 77.

programs would be developed imbibing in the young, the desirability of inter-generational bonding and meeting filial obligation. On the other hand, sensitization of the society will be mooted to accept the role of married daughters in taking care of their parents, as a corollary to equal inheritance rights. The sensitization programs would be supplemented by State policies to encourage children to co-reside with their parents by providing tax relief, allowing rebates for medical expenses and giving preference in the allotment of houses.

Also, persons would be encouraged to go in for long term savings instruments and health insurance during their earning days so that financial load on families can be eased. Short term stay-in facilities for older persons would be supported so that families can get some relief when they go out. Counseling services would be strengthened to resolve inter-familial stress.<sup>47</sup>

- g) The National Policy recognized the significant role that media have to play in promoting the concept of active ageing and help in dispelling prejudices and negative imaging about old age. Participation of media in orientation programmes on ageing and interaction with persons active in the field of ageing would be facilitated.<sup>48</sup>

### ***C. Research and Training of Manpower***

The Policy recognized the importance of good data base on older persons and aimed to strengthen research activities on ageing. Universities, medical colleges and research institutions would be assisted to set up centres for gerontological studies and geriatrics. Corporate bodies, Banks, Trusts and Endowments would be requested to institute Chairs

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<sup>47</sup> See *supra* note 29, para 80-82.

<sup>48</sup> See *id.* para 88-89.

in Universities and medical colleges in gerontology and geriatrics. Funding support would be provided to academic bodies for research projects on ageing. An interdisciplinary coordinating body on research would be set up. Data collecting agencies would be requested to have a separate age category 60 years and above. Professional associations of gerontologists would be assisted to strengthen research activity, disseminate research findings and provide a platform for dialogue, discussion, debate and exchange of information. The necessity of a national institute of research, training and documentation was recognized. Assistance would be given for setting up resource centres in different part of the country.<sup>49</sup>

The policy recognized the importance of trained manpower. Medical colleges would be assisted to offer specialization in geriatrics. The curriculum of nursing and paramedical training programs would need to introduce specific courses on geriatric care. State would assist in developing curriculum and course material. Orientation courses on geriatric care and training programs would be encouraged for medical as well as NGO providing services to older persons. Facilities would be provided and assistance given for such endeavors. Assistance would be given for development and organization of sensitization programmes on ageing for legislative, judicial and executive wings at different levels.<sup>50</sup>

#### ***D. Implementation of the Policy***

The Ministry of Social Justice and Empowerment would be the nodal Ministry to coordinate all matters relating to the implementation of the Policy. A separate bureau of older persons would be set up. An Inter-Ministerial Committee would coordinate matters

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<sup>49</sup> *Supra* note 29, para 83 – 85.

<sup>50</sup> *See id.* para 86-87.

relating to implementation of the National Policy and monitor its progress. States would be encouraged to set up separate Directorates of Older Persons and set up machinery for coordination and monitoring. Five year plans and annual action plans would be prepared by each Ministry indicating the steps taken by them to ensure benefits to older persons from the general programmes as well as the specific schemes formulated for them. The Planning Commission and the Finance Ministry would facilitate budgetary provisions required for implementation. An autonomous National Council for Older Persons headed by the Minister for Social Justice and Empowerment would be set up to promote and coordinate the concerns of older persons. An autonomous registered National Association of Older Persons (NAOPS) would be established to mobilize senior citizens, articulate their interests, promote and undertake programmes and activities for their well-being and to advise the Government on all matters relating to the Older Persons. *Panchayati Raj* institutions would be encouraged to participate in the implementation of the National Policy, address local level issues and needs of the ageing and implement programmes for them. Every three years the nodal Ministry would prepare a review of the National Policy which would be discussed at the National Convention.<sup>51</sup>

#### ***E. Review of the National Policy on Older Persons***

Government of India had announced the National Policy on Older Persons in the year 1999. Subsequent international efforts had made an impact on the implementation of the National Policy. The Madrid Plan of Action and the United Nations Principles for Senior Citizens adopted by the UN General Assembly in 2002, the Proclamation on Ageing and the global targets on ageing for the Year 2001 adopted by the General Assembly, the

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<sup>51</sup> See *supra* note 29, para 90 – 98.

Shanghai Plan of Action 2002 and the Macau Outcome document 2007 adopted by UNESCAP form the basis for the global policy guidelines to encourage governments to design and implement their own policies from time to time. The Government of India was a signatory to all these documents demonstrating its commitment to address the concerns of the elderly. The Parliament of India also passed the Maintenance and Welfare of Parents and Senior Citizens Act in the year 2007. In the light of these developments, the Ministry of Social Justice and Empowerment set up a Committee to review the National Policy for Older Persons under the Chairpersonship of Dr. Mohini Giri on 1<sup>st</sup> October 2010.<sup>52</sup> The Committee submitted its draft National Policy on Senior Citizens in March 2011. For reasons best known to the Government of India, the 2011 draft is yet to be brought into effect.

### **3.1.3 National Policy on Senior Citizens, 2011 (Draft)**

The 2011 Draft Policy<sup>53</sup> highlighted issues which were not referred to in the earlier policy. The Policy recognizes that there is a need for care for the Oldest Old (80+ years) in matters of socio economic, financial, health and shelter aspects. The Policy also stated that elderly women need special attention due to the multiple disadvantages they face in life due to a lifetime of gender based discrimination<sup>54</sup>. Rural poor also needs special attention and social security as they are too poor to save for their old age.

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<sup>52</sup> See Press Information Bureau, Government of India, <http://www.pib.nic.in/newsite/erelease.aspx?relid=66132> [accessed on 15 April 2014].

<sup>53</sup> THE POLICY ON OLDER PERSONS, 2011(DRAFT), available at <http://socialjustice.nic.in/pdf/dnpssc.pdf> [accessed on 15 April 2015].

<sup>54</sup> Patriarchal hierarchy, denial of property rights, burden of household chores and consequent ill health coupled with widowhood make their concerns different from that of men. *See id.* at 3.

In many other aspects the 2011 policy was just a reaffirmation of the 1999 policy like emphasis on the concepts of active ageing, age integrated society, formal and informal social support system to strengthen the capacity of families to take care of senior citizens etc.

Certain “critical concerns” are identified in the new policy, which are as follows:

- a) Support to the Family, Neighbourhood and Community
- b) Poverty among Older Persons
- c) Mainstreaming the rights of older women
- d) Harness Technology to enhance autonomy in functioning
- e) Encourage participation by senior citizens in social, economic, cultural and political spheres of life:
- f) Protect the rights of older persons as consumers and
- g) Partnership among the Governance systems, the Community and the Industry

To address the concerns listed above, the policy focused on the following aspects:<sup>55</sup>

1. Mainstream senior citizens, especially women so that they can form associations and render support in implementation of the mechanisms already set up by the governments.
2. Promote the concept of ‘Ageing in Place’ or ageing in own home and provide facilities to sustain dignity in old age, the thrust of the Policy being preventive rather than cure.

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<sup>55</sup> See *supra* note 53, at 4-5



3. Institutional care will be the last resort and the care of the senior citizens has to remain vested in the family, which can be made possible through the support given by community, government and private sector.
4. Work towards an inclusive, barrier free and age-friendly society in consonance with the Madrid Plan of Action.
5. Recognize that senior citizens are a valuable resource for the country and create an environment that provides them with equal opportunities, protects their rights and enables their full participation in society.
6. Promote long term savings instruments and credit activities in both rural and urban areas.
7. Encourage employment in income generating activities after superannuation
8. Support and assist organizations that provide counseling, career guidance and training services.
9. Advice to States to implement the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and set up Tribunals
10. Set up State run homes with assisted living facilities for abandoned senior citizens in every district of the country with adequate budgetary support.

***A. Areas of State Intervention***

Nine Areas of State Intervention were earmarked, namely (i) Income security in old age; (ii) Healthcare; (iii) Safety and security; (iv) Housing; (v) Productive Ageing; (vi)

Welfare; (vii) Multigenerational bonding; (viii) Media and (ix) Natural disasters/emergencies.<sup>56</sup> The areas of intervention are enumerated hereunder:

(i) Income Security in Old Age

Income security in old age is sought to be achieved in four ways. Firstly, expansion of Indira Gandhi National Old Age Pension Scheme to cover all senior citizens below poverty line; increase in the rate of monthly pension to Rs. 1000 per person and additional pension to the 'oldest old' in case of disability, loss of adult children and concomitant responsibility for grandchildren and women. The pension scheme would be reviewed every five years. The rate of pension will be revised at intervals to prevent its deflation due to higher cost of purchasing. Secondly, the Public Distribution System will be extended to cover all senior citizens living below poverty line. Thirdly, reforming taxation policies so as to be sensitive to the financial problems of senior citizens which accelerate due to very high costs of medical and nursing care, transportation and support services needed at homes. Fourthly, extension of microfinance facilities for senior citizens, whereby loans at reasonable rates of interest, would be offered to them to start small scale business.

(ii) Healthcare

The Policy gives high priority for the healthcare needs of senior citizens with the goal of providing affordable and quality health service for all senior citizens, heavily subsidized for the poor and a graded system of user charges for others. Use of science and technology such as web based services and devices for the well-being and safety of senior

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<sup>56</sup> See *supra* note 53, at 5 – 9.

citizens will be encouraged and expanded to under-serviced areas. As in the previous policy of 1999, healthcare sector will comprise of public health service, health insurance, health services provided by not-for-profit organizations and private medical care. Public private partnership models will be developed wherever possible to implement healthcare of the elderly. The improvements and innovations are sought to be realized through actions involving varying levels of government intervention which are enumerated as follows:

- a. Public Health care: Primary health care will be continued to be strengthened and oriented at all levels to meet the needs of senior citizens. At the secondary and tertiary sectors, they will further be expanded to include preventive, curative, restorative and rehabilitative services.
- b. Geriatric and Palliative care: Geriatric care facilities will be provided at the secondary and tertiary levels of public health system. A tiered national level geriatric healthcare with focus on outpatient day care, palliative care, rehabilitation care and respite care is the desired goal. National and regional institutes of ageing will be set up to promote geriatric healthcare. Adequate budgetary support will be provided to these institutes and a cadre of geriatric healthcare specialists created including professionally trained caregivers to provide care to the elderly at affordable prices. Hospices and palliative care of the terminally ill would be provided in all district hospitals and the Indian protocol on palliative care will be disseminated to all doctors and medical professionals. Twice in a year the Primary Health Care (PHC) nurse or the Accredited Social Health Activist (ASHA) will conduct a special screening of the 80+ population of

villages and urban areas and public/private partnerships will be worked out for geriatric and palliative healthcare in rural areas recognizing the increase of non-communicable diseases (NCD) in the country.

- c. Programmes: The National Programme for Health Care of the Elderly (NPHCE) which was being implemented would be expanded and in partnership with civil society organizations, scaled up to all districts of the country. Special programmes will be developed to increase awareness on mental health and for early detection and care of those with Dementia and Alzheimer's disease. Restoration of vision and eyesight of senior citizens will be an integral part of the National Programme for Control of Blindness (NPCB). Considering the gender based attitudes towards health, programmes would be developed for regular health checkups especially for older women who tend to neglect their health problems.
- d. Health Insurance: Health insurance to cater to the needs of different income segments with varying contribution and benefits will be developed. Packages catering to the lower income groups will be entitled to state subsidy. Concessions and relief will be given to health insurance to enlarge the coverage base and make it affordable. Universal application of health insurance – RSBY (*Rashtriya Swasthya Bima Yojana*) will be promoted in all districts and senior citizens will be compulsorily included in the coverage. Health Insurance cover would be provided to all senior citizens through public funded schemes, especially those over 80 years who do not pay income tax.

- e. Government Health Fund: From an early age citizens will be encouraged to contribute to a government created healthcare fund that will help in meeting the increased expenses on healthcare after retirement.
- f. Tax Incentive: To strengthen the family system as the primary care giver, tax incentives would be provided for those who take care of the older members.
- g. Mobile Health Clinics: Services of mobile health clinics would be made available through PHCs or a subsidy would be granted to NGOs who offer such services.

(iii) Safety and Security

The policy strives to assure safety and security to senior citizens by putting checks on elderly abuse and crimes against older persons. This is sought to be achieved by means of stringent punishment for elderly abuse along with community awareness and policing. Protective services would be established and linked to helpline and legal aid. Police is expected to play the major role in safeguarding the safety and security of senior citizens. Police would be directed to keep a friendly vigil on senior citizens living alone or as couples. They would also promote mechanisms for interaction of the elderly with neighbourhood associations and enrolment in special programmes in urban and rural areas.

(iv) Housing

The Policy acknowledges shelter as a basic human need. Ten percent of housing schemes for urban and rural lower income segments will be earmarked for senior citizens. This will include the *Indira Awas Yojana* and other schemes of the government. Senior

citizens will be given loans for purchase of houses as well as for major repairs, with easy repayment schedules. Housing complexes will be developed in cities, towns and rural areas, for single older men and women and for those with need for specialized care. Age friendly facilities and standards of universal design set by Bureau of Indian Standards will be promoted. Since a multi-purpose centre is a necessity for social interaction of senior citizens, housing colonies would reserve sites for establishing such centres. Access to public transportation<sup>57</sup> and public places like banks, hospitals, parks, places of worship, cinema halls and malls will be made age friendly and barrier-free.

(v) Productive Ageing

The policy aims to create avenues for senior citizens to continue in their employment and in case of retirement, post-retirement opportunities. Directorate of Employment would be created to enable senior citizens to find re-employment. The Ministry would review the age of retirement considering the increasing longevity.

(vi) Welfare

A welfare fund for senior citizens will be set up by the government and revenue generated through a social security cess, which would be allocated to the states in proportion to their share of senior citizens. States may also create similar funds. All senior citizens, especially widows, single women and the “oldest old” would be eligible for all schemes of government. They would be provided universal identity under the *Aadhar* scheme on priority. Larger budgetary allocations would be earmarked to pay

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<sup>57</sup> The 2011 Draft Policy aims to create age friendly barrier free access to buses and bus stations, railways and railway stations, airports and bus transportation within the airports. *See supra* note 53, at 8 (Point no. 27).

attention to the special needs of rural and urban senior citizens living below the poverty line. Non-institutional services by voluntary organizations will be promoted and assisted.

(vii) Multigenerational bonding

The focus is on incorporating relevant educational material in school curriculum which would promote multigenerational bonding and support. School Value Education modules and text books promoting family values of caring for parents would be promoted by NCERT and State Educational Bodies.

(viii) Media

Understanding that Media has an important role to play in highlighting the changing situation of senior citizens and in identifying emerging issues and areas of action, their involvement in ageing issues will be encouraged. The same is the case with informal and traditional communication channels.

(ix) Natural Disasters

A system will have to be set up to provide equal access to food, shelter, medical care and other services to senior citizens during and after natural disasters and emergencies. Enhancement of financial grant for this purpose is required.

***B. Implementation***

Block Development Offices would appoint nodal officers to serve as a one point contact for senior citizens to ease access to pensions and handle documentation and physical presence requirements, especially by the elderly women. *Panchayati Raj* Institutions

would be directed to implement the policy and address local issues and needs of the ageing population. In rural/ tribal areas, the Tribal Council or *Gram Sabha* or the relevant *Panchayat Raj* institution would be responsible for implementation of the policy. The provisions of the 13th Finance Commission for special funding to them would be made applicable.

Responsibility for Implementation is vested in the various departments of the Government<sup>58</sup> who will set up necessary mechanism for implementation of the policy. A five-year perspective Plan and annual plans setting targets and financial allocations will be prepared by each Ministry/ Department. The annual report of these Ministries/ Departments will indicate progress achieved during the year. This will enable monitoring by the designated authority.

### ***C. New Establishments envisaged under the Policy***

Certain new authorities and establishments are sought to be established under the new Policy. They are enumerated as follows:

- (i) Department of Senior Citizens under the Ministry of Social Justice and Empowerment

The Ministry of Social Justice and Empowerment is required to establish a Department of Senior Citizens, which will be the nodal agency for implementing programmes and services for senior citizens and the NPSC 2011. Each ministry will prepare action plans for implementation of the policy with respect to aspects that concern them and submit

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<sup>58</sup>The Ministries of Home Affairs, Health & Family Welfare, Rural Development, Urban Development, Youth Affairs & Sports, Railways, Science & Technology, Statistics & Programme Implementation, Labour, Panchayati Raj and Departments of Elementary Education & Literacy, Secondary & Higher Education, Road Transport & Highways, Public Enterprises, Revenue, Women & Child Development, Information Technology and Personnel & Training.



regular reviews. An inter-ministerial committee will pursue matters relating to implementation of the national policy and monitor its progress. Coordination will be by the nodal Ministry.

(ii) Directorates of Senior Citizens in States and Union Territories

States and Union Territories will set up separate Directorates of Senior Citizens for implementing programmes and services for senior citizens and the NPSC 2011.

The need to set up two agencies, namely Department of Senior Citizens and a Directorate for the same purpose and how it will not be a duplication of the functionaries, is not specified in the Policy.

(iii) National/State Commission for Senior Citizens

The Commissions would be set up under an Act of the Parliament and will have the powers of Civil Courts to deal with cases pertaining to violations of rights of senior citizens. This agenda in the policy is purely a matter for consideration by the Parliament.

(iv) National Council for Senior Citizens

A National Council for Senior Citizens, headed by the Minister for Social Justice and Empowerment will be constituted by the Ministry to monitor the implementation of the policy and advise the government on concerns of senior citizens. A similar body would be established in every state with the concerned minister heading the State Council for Senior Citizens. The Council would include representatives of relevant central ministries, the Planning Commission and ten states by rotation. It will also have representatives of

senior citizens associations from every state and Union Territory, NGOs, academia, media and experts on ageing.

The Policy drafted by Mohini Giri Committee is a positive step towards a holistic well-being of the senior citizens, including the oldest old. However this Policy is still awaiting Government approval.

### **3.1.4 Integrated Programme for Older Persons**

The Integrated Programme for Older Persons is a Central Sector Scheme<sup>59</sup> to improve the quality of life of the Older Persons. The Department of Social Justice and Empowerment, Government of India, is the Nodal Department for this Scheme. The main objective of the Scheme is to improve the quality of life of the Older Persons by providing basic amenities like shelter, food, medical care and entertainment opportunities and by encouraging productive and active ageing. For this purpose, support will be provided for capacity building of Government and Non-Governmental Organizations, *Panchayati Raj* Institutions, local bodies and the Community at large. Assistance under the scheme is given to the *Panchayati Raj* Institutions, local bodies and eligible Non-Governmental Voluntary Organizations for the following purposes:

- (i) Programmes catering to the basic needs of Older Persons particularly food, shelter and health care to the destitute elderly;
- (ii) Programmes to build and strengthen intergenerational relationships particularly between children / youth and Older Persons;

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<sup>59</sup> The revised scheme effective from 01.04.2015 available at <http://socialjustice.nic.in/ipop2015.php> [accessed on 29 October 2015].

- (iii) Programmes for encouraging Active and Productive Ageing;
- (iv) Programmes for providing Institutional as well as Non Institutional Care / Services to Older Persons;
- (v) Research, Advocacy and Awareness building programmes in the field of Ageing; and
- (vi) Any other programmes in the best interests of Older Persons.

Government of India provides upto 90% of the cost and the remaining shall be borne by the institution or organization concerned. However if the programmes are undertaken by schools, colleges, educational institutions and recognized youth organizations like *Nehru Yuvak Kendra Sanghathan* (NYKS) and the National Service Scheme (NSS), up to 100% cost is provided by the Government.

The programmes admissible for assistance under the Scheme and the requirements are depicted in the Table given below.

**Table 2 – Details of the Programmes funded under IPOP**

<b>Sl. No</b>	<b>Programme</b>	<b>Activity/Services</b>	<b>Required Minimum number of beneficiaries</b>	<b>Institution eligible for funding</b>
1	Maintenance of Old Age Homes	Provide food, care and shelter to destitute older persons	25 destitute older persons	<i>Pachayati Raj</i> institutions; Local Bodies; NGOs

Sl. No	Programme	Activity/Services	Required Minimum number of beneficiaries	Institution eligible for funding
2	Maintenance of Respite Care Homes & Continuous Care Homes	Nursing care for Older persons who live in old age homes and who are seriously ill requiring continuous nursing care and respite.	25 Older persons who suffer from mild to severe disability	Agencies with credible track record of running old age homes with 150 beneficiaries; Recognized charitable hospital, Nursing Homes, Medical Institutions/Colleges
3	Running of Multi Service Centres	Provide daycare, educational and entertainment opportunities, healthcare, companionship for Older Persons	50 older persons	<i>Pachayati Raj</i> institutions; Local Bodies; NGOs
4	Maintenance of Mobile Medicare Units	Provide medical care to the older persons living in rural and isolated and backwards areas.	Cover 400 older persons a month	Agencies having a credible track record in working for the cause of the elderly; Organizations having a proven track record in providing free medical care; Recognized Charitable Hospitals/ Medical Institutions

Sl. No	Programme	Activity/Services	Required Minimum number of beneficiaries	Institution eligible for funding
5	Running of Day Care Centres for Old persons with Dementia	Provide specialized day-care to the Alzheimer's disease patients.	Cover 20 old persons with dementia per month	Agencies having a credible track record in running old age homes, or in providing free medical care to the people; Recognized Charitable Hospitals/Nursing Homes/Medical Institutions/Colleges
6	Multi Facility Care Centers for Older Widows	Provide full time shelter and care; give training in income generating activities; conduct religious programmes, yoga etc.	50 older widows	<i>Pachayati Raj</i> institutions;  Local Bodies;  NGOs
7	Physiotherapy clinics for older persons	Physiotherapy	50 older persons per month	Agencies having credible track record in running projects for the welfare of the older persons; Recognized Charitable Hospitals/Nursing Homes/Medical Institutions/Colleges

Sl. No	Programme	Activity/Services	Required Minimum number of beneficiaries	Institution eligible for funding
8	Regional Resource and Training Centres	Act as resource centre at the regional level involved in training and capacity building for effective delivery of service by the Centres funded by the Ministry.	-	Any recognised agency
9	Helplines and Counseling Centres for older persons	Helpline and Counseling facilities to Older persons	-	Agencies having credible track record in running projects for the welfare of the older persons;  Recognized Charitable Hospitals/Nursing Homes/Medical Institutions/Colleges
10	Programme for Sensitization of School and College Students	Undertaking projects for sensitization of the school/college going children towards the cause of senior citizens.	-	Any recognized agency

Sl. No	Programme	Activity/Services	Required Minimum number of beneficiaries	Institution eligible for funding
11	Awareness projects for older Persons	Awareness generation campaign about the various policies and programmes for senior citizens	-	Institutions and NGO s having experience and proven track record in undertaking awareness on voluntary basis.  PRIs, NYKS, NBB, Universities/Colleges, local bodies, etc.
12	Volunteers Bureau for older persons	Senior citizens will register with the Bureau and offer their valuable services to organizations, hospitals, schools, institutions for children with physical or mental challenges, etc. The bureau will enable utilization of their services at the required concern.	100 placements per annum	Any recognized agency

Sl. No	Programme	Activity/Services	Required Minimum number of beneficiaries	Institution eligible for funding
13	Formation of VridhaSanghas / Senior Citizen Associations / Self Help Groups	Mobilization of the senior citizens, articulate their interests, promote and undertake programmes and activities for their well being	District level association – 5000 members; State Level – 20000 members	Senior Citizens Associations; Self-help Groups of Senior citizens. Grant in aid is given for a maximum of 5 years.

Under the scheme, assistance is sanctioned to the following agencies:

- a) *Panchayati Raj Institutions* / Local bodies
- b) Non-Governmental Voluntary Organizations
- c) Institutions or Organizations set up by Government as autonomous / subordinate bodies
- d) Government Recognized Educational institutions, Charitable Hospitals / Nursing Homes, and recognized youth organizations such as *Nehru Yuvak Kendra Sanghathan* (NYKS).

In exceptional case, financial assistance under the Scheme is also provided to State Governments/Union Territory administrations.



The eligibility criteria for the Non-Governmental Voluntary Organizations to apply for grant in aid are listed as below:

- (i) It should be a registered body under relevant Act.
- (ii) Registered under Societies Registration Act, Trust Act, Companies Act and has been working for atleast 2 years
- (iii)The period of 2 years is not applicable for North East, J&K, desert and under – represented areas.
- (iv) The organization shall have a properly constituted managing body with well-defined powers and functions
- (v) The organization is initiated and governed by its own members on democratic principles
- (vi) The aims and objects should be specifically laid down
- (vii) The Organization shall not run for profit to any individual or a body of individuals; The Organization should possess proven credentials and capabilities to handle such projects.

The details of grant in aid released to NGOs in the State of Kerala and State of Goa during 2011-12, 2012-13 and 2013-14 can be seen from Table 3.

**Table 3 - Grant in aid released to NGOs in the State of Kerala and State of Goa during 2011-12, 2012-13 and 2013-14**

Year	State of Kerala			State of Goa	
	Name of NGO	Project	Amount in lakhs	Name of NGO	Activity & Amount
2013-14	Karuna Bhawan Social Centre, Ernakulam	Old Age Home(OAH)	8,29,800	-	-
	Welfare Services Ernakulam	OAH & MMU	3,02,800	-	-
2012-13	Karuna Bhawan Social Centre, Ernakulam	OAH	4,14,900.00 8.30	-	-
	Welfare Services Ernakulam	Mobile Medicare Unit (MMU)	1,18,400.00 3.03	-	-
2011-12	Karuna Bhawan Social Centre, Ernakulam	OAH	3,87,900.00	-	-
	Welfare Services	MMU	1,18,400	-	-
	Welfare Services	OAH	1,84,400	-	-

[Source: Ministry of Social Justice and Empowerment, Details of Grant-in-Aid to NGOs, available at <http://socialjustice.nic.in/pdf/detailsreleasedgia2011-12.pdf>]

It can be understood from the Table that during 2011-12, 2012- 13, and 2013-14, from the State of Goa no claim has been made so far under this scheme. From Kerala, so far only two organizations have availed of the scheme.

It is also to be noted that in the year 2011-12, Notional Allocation for the State of Goa was Rupees 10 lakhs, for which no proposals were made. For the State of Kerala the Notional Allocation was Rupees 85 lakhs, of which three proposals were received from two NGOs and a total amount of 6.9 lakhs was released which covered 450 beneficiaries. For the year 2014-15, the notional allocation for Goa is reduced to Rupees 7 Lakhs, which is not availed of. For the State of Kerala, it is 191 lakhs, of which only Rupees 5 lakhs is availed of by a single NGO, as on 31-12-2014.<sup>60</sup> The funds are thus either totally unused or claimed to a very less fraction.

In addition to the Integrated Programme for Older Persons, the Department of Social Justice and Empowerment provides assistance to *Panchayati Raj* Institutions/ Voluntary Organizations/Self Help groups for construction of Old Age Homes and Multi-Service Centres to Senior Citizens. Under this scheme, a onetime construction grant is provided to NGOs on the recommendation of State Administration.

### **3.1.5 ‘Vayoshreshtha Samman’ - Scheme of National Award for Senior Citizens**

This Scheme is announced by the Department of Social Justice and Empowerment for conferring National Awards on eminent Senior Citizens and institutions in recognition for their service towards the elderly persons, especially indigent senior citizens.<sup>61</sup> *Vayoshreshtha Samman* is given every year in thirteen categories, seven falling under Institutional category and six in Individual category. Awards in the institutional category are the following:

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<sup>60</sup> Social Justice Department, Government of India, *Annual Report 2014-15*, (Annexure 6.5) 236.

<sup>61</sup> Available at <http://socialjustice.nic.in/pdf/gazette-naforseniorcitizens.pdf> [accessed on 30th October 2015].

- (1) Citation, Memento and a cash award of five lakh rupees is given each to Best Institution for Research in the field of Ageing and Best Institution for providing service to senior citizens and Awareness Generation.
- (2) Citation, memento and ten lakhs rupees is awarded each to Best District Panchayat and Best Urban local Body providing services and facilities to senior citizens.
- (3) Citation and Memento is awarded to Best State in implementing the maintenance and Welfare of Parents and Senior Citizens Act, 2007 and providing services and facilities to senior citizens. Best Private Sector Organization and Best Public Sector organization promoting the well-being and welfare of senior citizens are each awarded with a citation and a memento.

In the individual category the following awards are given:

- (1) Centenarian: This award is given to a renowned individual above 90 years and is physically active, independent and contributing to society.
- (2) Iconic Mother: The award is given for women senior citizen who in the face of great odds, brought up her children and supported them in being high achievers in field of their choice.
- (3) Lifetime achievement: This is for senior citizen above 70 years who has worked in the field of ageing and made significant contribution in the field
- (4) Creative Art: The award is given for a senior citizen who had been the winner of national/international acclaim in creative art and who continues to be active in such field well into their old age.

- (5) Sports and Adventure: One award each is given for male and female who had won national/international acclaim and continue to contribute in the field.
- (6) Courage and Bravery: This award is also given, one each to male and female senior citizens who have displayed extra ordinary courage in the face of grave danger.

The award in the individual category comprises of comprises of a citation, memento and a cash award of two lakh and fifty thousand rupees. *Vayoshreshtha Samman* is conferred on the 1<sup>st</sup> of October every year on the occasion of International day of Older Persons.

### **3.1.6 Indira Gandhi National Old Age Pension Scheme (IGNOAPS)**

The Ministry of Rural Development is the Nodal Department for this Scheme. This is one of the schemes under the National Social Assistance Programme (NSAP) which a Central Government initiative commenced on 15<sup>th</sup> August 1995, to give effect to Article 41 of the Constitution. The National Old Age Pension Scheme has been renamed as Indira Gandhi National Old Age Pension Scheme (IGNOPS) and formally launched on 19th November, 2007. Under the Scheme, Central assistance is given towards pension @ Rs. 200/- per month to persons above 60 years, and @ Rs. 500/- per month to persons above 80 years belonging to a household below poverty line, which is expected to be supplemented by contribution by the States.<sup>62</sup> NSAP was transferred to the State Plans from the year 2002-2003. Identification of beneficiaries, sanction of pension and disbursement is done by the concerned State Government. Funds are provided to States as Additional Central Assistance (ACA) by the Ministry of Finance on the recommendation of the Ministry of

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<sup>62</sup> State of Goa pays pension of Rs.2000/- under the Dayanand Social Security Scheme. State of Kerala pays the National Old Age Pension of Rs. 600 for persons above 60 years and Rs.1500 for persons above 75 years, who are otherwise eligible.

Rural Development. Disbursal of benefits is done through the accounts of the beneficiaries in Banks or in Post Office Savings or through Postal Money Order. The assistance under the Old Age Pension Scheme may also be disbursed in public meetings such as *Gram Sabha* meetings in rural areas and by neighbourhood committees in urban areas. Eligibility for the Pension Scheme is not the income level of the senior citizen, rather of the household. This will make the benefit unavailable to many.

For those senior citizens who though eligible are left out from IGNOAPS, *Annapurna* Scheme<sup>63</sup> provides 10 kg of food grains per month free of cost. Therefore the beneficiaries of pension Schemes are not entitled to claim under *Annapurna* Scheme.<sup>64</sup> Supreme Court in *PUCL v. Union of India* had ordered that Governments shall not withdraw the *Annapurna* Scheme unless the beneficiary is covered under the NOAPS.<sup>65</sup>

### 3.1.7 National Programme for the Health Care for the Elderly

Keeping in view the recommendations of the National Policy on Older Persons, as well as the State's obligation under S.20 of the Maintenance & Welfare of Parents and Senior Citizens Act, 2007, the National Programme for the Health Care of Elderly (NPHCE)

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<sup>63</sup>On 1st April, 2000, a Scheme known as *Annapurna* Scheme was launched by Government of India. This scheme aimed at providing food security to meet the requirement of those senior citizens who, though eligible, have remained uncovered under the NOAPS. Under the *Annapurna* Scheme 10 kgs of food grains per month are provided free of cost to the beneficiary. See Government of India, Ministry of Rural Development, *Guidelines for Annapurna Scheme*, available at <http://nsap.nic.in/Guidelines/Annapurna%20scheme%20guidelines%202000.pdf> [accessed on 8 June 2016].

<sup>64</sup>See *id.* para 3.3.

<sup>65</sup>See *PUCL v. Union Of India*, Writ Petition (civil) No. 196/2001, Supreme Court Order dated 18<sup>th</sup> November 2004, available at <http://www.hrln.org/hrln/right-to-food/pils-a-cases/255-pucl-vs-union-of-india-a-others-.html> [accessed 4 September 2016] ; See also Anup Kumar Srivastava and Manisha Tiwary (ed.), *Right to Food* (Human Rights law Network India, 2009) 82.

was initiated in 2010-11 by Government of India.<sup>66</sup> The programme aims to provide separate and specialized health care services to the senior citizens through community based Primary Health Care approach. Preventive and promotive care, management of illness, health manpower development for geriatric services, medical rehabilitation, therapeutic intervention and IEC are some of the strategies envisaged in the NPHCE. The Nodal department for this programme is the Ministry of Health and Family Welfare. The Vision of the NPHCE is to build a framework to create an enabling environment for “a Society for all Ages.” and to promote the concept of Healthy Ageing.

The programme envisages a multi-level integrated health care starting with Sub centres handling home based care. The services will include health education related to healthy ageing, training to family members on looking after disabled elderly persons, Domiciliary visits and arranging support systems from Primary Health Centres. Above this will be Geriatric clinic operated on specified days, through Public Health Centre and referrals will be made to Community Health Centre as per need. The third level care will be at the Daily Geriatric Clinic linked to the District Hospital and at the Tertiary level is the Regional Geriatric Centres containing 30 bedded geriatric wards.

The program stipulates an integrated health care mechanism with cooperation and coordination between the Centre government and the State administration. For this purpose a Memorandum of Understanding is to be entered between the Central and State Governments, ensuring funding for the activities. Development of Geriatric Medical Service is a desirable outcome of the Program. For this purpose post graduate courses

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<sup>66</sup> Operational guidelines of the Program is available at <http://mohfw.nic.in/showfile.php?lid=1403> [accessed on 31<sup>st</sup> October 2015].

with specialization in geriatrics need to be started at the Medical Colleges. The Program supports establishment of Regional Geriatric Centres in 8 medical colleges in the country in New Delhi, Uttar Pradesh, Jammu & Kashmir, Kerala, Assam, Tamil Nadu, Rajasthan and Maharashtra. The neighbouring states are linked to these medical institutions. State of Goa is linked to Grants Medical College & JJ Hospital, Mumbai. In the State of Kerala, the regional institute will be in Government Medical College, Thiruvananthapuram which is the southernmost district. So the other districts in Kerala as well as the southern districts of Karnataka and Tamil Nadu are linked to GMC, Thiruvananthapuram. Research on specific elderly diseases is also included in the programme.

At the first stage during 2010-11, thirty districts spreading over 21 states were identified for launching the programme. Seventy more districts were added in 2011-12 in the same 21 states. It was expected that the 12<sup>th</sup> Five year Plan (2012-17) would extend the program to cover all the states. The NPHCE is a positive step, but the first step towards a larger goal. A more focused approach specific to the needs of the elderly is required and optimization if the existing resources is to be focused on.<sup>67</sup>

### **3.1.8 Other Concessions to Senior Citizens**

The National Policy on Older Persons recognizes a person aged 60 years and above as a senior citizen. The various Ministries provide different concessions to senior citizens, which can be summed up as follows<sup>68</sup>:

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<sup>67</sup>See Sunil Kumar Raina, "National Programme for the Health Care for the Elderly: Are we doing enough?", *International Journal of Clinical Cases and Investigations*, 2013, Volume 5 (Issue 2) 33:38, 1<sup>st</sup> July 2013.

<sup>68</sup> Information available at <http://socialjustice.nic.in/consd.php> [accessed on 31st October 2015].



- a) Ministry of Finance allows income tax exemption up to an income of Rs.3 lakhs per annum for senior citizens above 60 years; and up to 5 lakhs for senior citizens of 80 years and above from FY 2015-16 onwards. Deduction of Rs.20,000 under Section 80 D is allowed to an individual who pays medical insurance premium for his/her parent who is a senior citizen. An individual is eligible for a deduction of the amount spent or Rs.60,000 whichever is less for medical treatment of a dependent senior citizen. A higher rate of interest is provided on saving schemes of senior citizens. A Senior Citizens Savings Scheme offering an interest rate is 9.3% per annum on the deposits made by the senior citizens in post offices has been introduced by the Government through Post Offices in India doing savings bank work<sup>69</sup>.
- b) Insurance Regulatory Development Authority (IRDA) issued instructions on health insurance for senior citizens to CEOs of all General Health Insurance Companies which, inter-alia, includes: Allowing entry into health insurance scheme till 65 years of age; Transparency in the premium charge; Reasons to be recorded for denial of any proposals etc. on all health insurance products catering to the needs of senior citizens. Likewise the insurance companies cannot deny renewability without specific reasons.<sup>70</sup>
- c) Reverse Mortgage which was introduced by the Budget 2007 helps the senior citizens to mortgage their house property for a monthly income, while continuing to stay in the same house property. The senior citizens can pledge their house

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<sup>69</sup> See <http://www.indiapost.gov.in/scss.aspx> for elaborate details on Senior Citizen Savings Scheme (SCSS) Account.

<sup>70</sup> Insurance Regulatory Development Authority vide letter CIR/011/3/IRDA/Health/SN/09-10, dated 25.5.2009, available at <http://socialjustice.nic.in/pdf/IRDA.pdf> [accessed on 1st November 2015].

property to a scheduled bank in return for a lump sum or periodic payment spread over the borrower's lifetime. The senior citizen-borrower need not repay the loan during his/her lifetime. On his death, the loan is repaid with accumulated interest by sale of the house property. The excess amount, if any will be remitted to the legal heirs.

- d) Ministry of Road Transport and Highways has allowed reservation of two seats for senior citizens in front row of the buses of the State Road Transport Undertakings. Some State Governments are giving fare concession to senior citizens in the State Road transport undertaking buses and are introducing bus models, which are convenient to the elderly.
- e) Ministry of Health & Family Welfare had directed separate queues to be maintained for older persons in hospitals for registration and clinical examination.
- f) Department of Telecommunications has announced that complaints of senior citizens will be given priority by registering them under senior citizens category with VIP flag, which is a priority category. Senior citizens are allowed to register telephone connection under N-OYT Special Category, which is a priority category.
- g) Ministry of Railways has allowed 30 % fare concession in all trains for senior citizens aged 60 years and above. There are separate counters for Senior Citizens for purchase/ booking /cancellation of tickets. Wheel Chairs for use of older persons are available at all junctions, District Headquarters and other important stations for the convenience of needy persons including the older persons. Ramps for wheel chairs movement are available at the entry to important stations.

Specially designed coaches with provisions of space for wheel chairs, hand rail and specially designed toilet for handicapped persons have been introduced.

- h) Ministry of Civil Aviation provides 50 per cent Senior Citizen Discount on Normal Economy Class fare for all Indian Airlines domestic flights to Indian senior citizens who have completed the age of 65 years in the case of male senior citizens and 63 years in the case of female senior citizens subject to certain conditions. Air India is offering discount to senior citizens of 60 plus on flights to USA, UK and Europe . Further, Air India has now decided to reduce the age of 60 plus for discount on their domestic routes as well with immediate effect. Sahara Airlines is offering 50% discount on basic fare for travel on its domestic flights only to senior citizens who have attained the age of 62 years. Discount is applicable in economy class only.
- i) Ministry of Consumer Affairs, Food and Public Distribution hosts two schemes namely the *Antyodaya* Scheme and *Annapoorna* Scheme. Under the *Antyodaya* Scheme, the Below Poverty Line (BPL) families which also include older persons are provided food grains at the rate of 35 kgs. per family per month. The food grains are issued @ Rs.3/- per kg. for rice and Rs.2/- per kg. for wheat. The persons aged 60 years above from the BPL category were given priority for identification. Under the *Annapoorna* Scheme being implemented by the States/UT Administration, 10 kgs. of food grains per beneficiary per month are provided free of cost to those senior citizens who remain uncovered under the old age pension scheme. Instructions are send to State Governments for giving

priority to the Ration Card holders who are over 60 years of age in Fair Price Shops for issue of rations.

- j) Courts in the country accord priority to cases involving older persons and ensure their expeditious disposal.<sup>71</sup> The National Litigation Policy which is yet to be implemented also mentions about prioritization in litigation with emphasis on welfare legislation and senior citizens among others.<sup>72</sup>

The initiatives of the Central Government for protection and promotion of the rights of older persons have been effectively supplemented and complemented by various endeavors on the part of the State Governments as well. This is particularly mooted by the State responsibility as under the MWPC Act, 2007. The initiatives of the State of Goa and State of Kerala are enumerated here after.

### **3.2 INITIATIVES OF STATE OF GOA**

Directorate of Social Welfare is the Nodal Department in the State of Goa to implement the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. In addition to this the Directorate also implements various welfare schemes for senior citizens. Maintenance Tribunals and Appellate Tribunals have been established<sup>73</sup>. A State Council of Senior Citizens<sup>74</sup> and District Committees of Senior Citizens<sup>75</sup> are constituted to advise the

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<sup>71</sup> See Minister of Law and Justice, letter bearing no D.O.No.12011/2/2003-Jus(M) /1728 dated 10<sup>th</sup> July 2003, available at <http://socialjustice.nic.in/pdf/lawministertochiefminister.pdf> [accessed on 1st November 2015].

<sup>72</sup> National Litigation Policy aims at reducing the burden of the courts by transforming the government into an efficient and responsible litigant. The policy was launched by the UPA government in 2010, and is proposed to be implemented by the present government.

<sup>73</sup> Maintenance Tribunals for each Sub-Division of the State of Goa are established *vide* Notification No. 83-9-2006-07-SDB/Part/2008/3846 and Appellate Tribunals are established for each District of the State of Goa *vide* Notification No. 83-9-2006-07-SDB/Part/2008/3847, Published in Government of Goa Official Gazette, Series II No.27 dated 1-10-2009.

<sup>74</sup> Order No.83-9-2006-SDB/Part/2008/8625 dated 21/01/2014.

Government on the implementation of the Central Act and Goa Maintenance and Welfare of Parents and Senior Citizens Rules, 2009. The important welfare schemes and other programs for the welfare of Senior Citizens are elaborated below.

a) 'Ummid' Scheme

The main objectives of *Ummid* Scheme<sup>76</sup> are to provide daily required facilities like hearing and vision testing, supply aids, spectacles and walking aids to senior citizens and to run day care centres for the older persons, which would help to meet their physical and mental health. The facilities provided is available to citizens 60 years of age and above, residing in Goa for the last 15 years and whose income does not exceed Rs.60,000/- per annum. Identification of beneficiaries is done by Village Panchayats and Municipalities who shall maintain updated data of the target group. The list of beneficiaries is placed in the Gram Sabha or the Municipal Council, as the case may be for approval and thereafter displayed on the local body's notice board.

Under this scheme, Government provides financial assistance to Local Self Government for establishment of Day Care Centre<sup>77</sup>. The Local Self Government is required to provide accommodation having minimum 2 rooms (having an area 25 sq. meters each) on the ground floor with the facility of toilet and bath room. Preference shall be given near the library. Rooms should have appropriate ventilation, electricity and drinking water

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<sup>75</sup> Order No. 83-9-2006/Part/2008/8624 dated 21/01/2014.

<sup>76</sup> Notification No.83/6/06/SDB dated 25/7/2006.

<sup>77</sup> Installation grant of Rs.30,000 is given, out of which Rs.10,000/- is for purchase of TV and Rs.20,000/- for furniture. Regular grant of Rs.1,10,000/- is given subject to satisfaction of the audit team appointed by the Government. Installation grant is released one time only in the first year while recurring grants will be released in two installments, the second installment is released on the utilization of installation grants and 50 % of the first installment of recurring grants. The Local Self Government or NGO as the case may be is required to maintain a separate bank account of the grants received under Ummid scheme.

facility. There should be one full time attendant for 10 enrolled members. Initially day care centres are to start in the Municipal area and in the Village Panchayat having 11 Panchayat members<sup>78</sup>. If in such an area, any NGO express its willingness to run or start day care centre, permission may be granted to such NGO with the consent of the Village Panchayat/ Municipal Council. Day care Centre “*Ummid*” remain open every day from 10.00 A.M. till 6.00 P.M.

The State Government organizes free medical checkup in the day care centres, twice a year. As per the advice given by the doctors, hearing aids, spectacles and walking stick is supplied free of cost to the target group. Every 1<sup>st</sup> and 16<sup>th</sup> of the month, there will be a free clinical test for Blood Pressure and Diabetes. After the test the Local Self Government or NGO as the case may be shall assist the member for appropriate treatment with the assistance of nearest hospital. The members of Day Care Centre “*Ummid*” are given preference in all the hospitals of the State. Provision is made to subscribe one daily local, one national newspaper and two periodicals in *Ummid* Centres and at about 4.00 P.M., light refreshment and tea are provided.

b) ‘Varishta Nagrik Kalyan Yojana’

*Varishta Nagrik Kalyan Yojana* is a scheme to provide one time financial support of up to Rs. 2 lakhs as grant-in-aid to registered Associations of Senior Citizens working for the welfare of Senior Citizens.<sup>79</sup> The scheme will be implemented by the Directorate of Social Welfare. The eligibility for applying under this scheme is that such registered

<sup>78</sup>See GOA PANCHAYAT RAJ ACT, 1994, S.7. The number of members in a Panchayat is based in population. Panchayats with a population of more than 8000, is classified as ‘A’ and will have 11 members.

<sup>79</sup> Notification No. 83-2011-12-SDB/1604 dated 31<sup>st</sup> May 2011.

association shall have minimum 5 years' experience in the promotion of the welfare of senior citizens such as running of old Age Homes or Day Care Centers or Mobile Medicare Unit or Physiotherapy center exclusively for senior citizens. Good reputation, credibility, financial viability, capability to mobilize community and networking with other institutions are the other criteria for assistance.

If the Association is receiving any other grant from the Central or State Governments, it shall not be eligible for this scheme. The aided Association shall be open to inspection and audit by the State Government. Grants are given for extension or renovation of existing Old Age Homes or Day Care Centres, for carrying out medical and health programmes meeting the needs of the elderly, medical camps, for establishment of Yoga & Meditation Centers, up gradation of physiotherapy center and for establishment of Destitute Rehabilitation Centers. +

c) 'Sanjeevani' Scheme

*Sanjeevani* is a scheme to provide financial assistance to organizations for running home for senior citizens in order to promote shelter and maintenance at a common place and to provide healthy, hygienic and better living. The scheme will be implemented by the Directorate of Social Welfare. Any registered Voluntary Organization (VO) / NGO, Institution set up by Government is eligible for the scheme. VOs and NGOs are selected on the basis of their credentials, financial viability and minimum 5 years of experience in the promotion of the welfare of senior citizens. The State Government shall support the organization/ institution / establishment subject to the condition that at least 25 % of the expenditure is borne by the aided organization. The aided organization shall follow the

norms of physical facilities and operational standards for the Homes for Senior Citizens as prescribed by the Government and shall also be subject to inspection and audit. The Homes shall house minimum of 25 senior citizens.

d) Dayanand Social Security Scheme

Dayanand Social Security Scheme was launched in 2001 as an initiative of 'Freedom from Hunger' Project of the Directorate of Social Welfare<sup>80</sup>. The objective of the scheme is to provide financial assistance to the most vulnerable sections of the society including senior citizens<sup>81</sup>. Financial assistance is given to senior citizens residing in Goa for atleast 15 years and whose family per capita income is not more than the amount granted under the scheme. Presently the amount is Rs.2000/- a month. An additional amount of Rs.500 is sanctioned to senior citizens who need prolonged medical treatment on receipt of certificate from Chief Medical Officer/Health Officer. If the senior citizen is a recipient of any other financial assistance, such person is not eligible under this scheme<sup>82</sup>. After the death of the member, the spouse will be entitled to Financial Assistance which will commence as per the last pension amount drawn by the member – senior citizen. Fifty percent of the last pension drawn by the member will be given to a maximum of two children each, till they reach the age of 21 years, in the event of death of the senior citizen-member and the spouse.

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<sup>80</sup> OFFICIAL GAZETTE, GOVERNMENT OF GOA, Series 1 No.23, page 550, available at <http://goaprinting.press.gov.in/downloads/0405/0405-23-SI-OG.pdf> [accessed on 3rd November 2015].

<sup>81</sup> Single woman above the age of 50 years, disabled persons and senior citizens above the age of 60 years are eligible for financial assistance under this scheme.

<sup>82</sup> Except the recipients of Dayanand Niradhar Madat Yojana, the Scheme of Financial Assistance to young widows and the Scheme of Family Pension to the Old, Destitute and the Handicapped. These schemes are amalgamated with the Dayanand Social Security Scheme.



In addition to these Schemes, Senior Citizens Identity Cards are issued by the Directorate of Social Welfare for availing 50 % concession for travel in the state government-run Kadamba Transport Corporation buses.

e) Old Age Homes

The Institute of Public Assistance, '*Provedoria*' which is an autonomous body under the Government of Goa runs 10 Old Age Homes for destitute senior citizens. It is to be noted that all the old age homes were existing during the erstwhile Portuguese regime and only the Saligao Old Age Home was established in February 2014. People contribute property for running such care homes, which is administered by the institute. 'Recolhimento de Serra' an Old Age Home for women, at Altinho is declared as a night shelter for the destitutes. Though two separate night shelter facilities are made available for men and women separately, it remains unoccupied. The location of the shelter which is on a hilltop could be a probable reason for it to be unoccupied.

### **3.3 INITIATIVES OF STATE OF KERALA**

The Social Justice Department initiates and implements welfare programmes and social security for the aged and destitute through a network of organizations, residential institutions and non-institutional schemes. The implementation of the Maintenance and Welfare of Parents and Senior Citizens Act is vested with the Social Justice Department through its Social Justice Directorate. Maintenance Tribunals and Appellate Tribunals

have been established.<sup>83</sup> The important ventures towards the cause of Senior Citizens that are taken up by the Government of Kerala are enumerated below.

a) Kerala Social Security Mission

One of the major initiatives of the Department was the setting up of the Kerala Social Security Mission<sup>84</sup>, the first organization of the kind in the country to cater to the social security needs of the destitute, chronically ill, aged and other disadvantaged section of the society. Kerala Social Security Mission (KSSM) is chaired by the Minister for Panchayat & Social Welfare. KSSM encourages a philanthropic attitude among members of the society towards the poor and the needy and it hosts a forum to make donations which will be used for specified welfare activities.

b) *Vayomithram* Project

*Vayomithram* Project is a venture of KSSM to provide health care and support to elderly above the age of 65 years residing at Corporation/Municipal Areas in the state. The *Vayomithram* project mainly provides free medicines through mobile clinics. There are no economic criteria for availing of the service. It provides palliative care service for the bedridden patients in the project area. *Vayomithram* co ordinators provide Help Desk

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<sup>83</sup> Maintenance Tribunals are constituted for each Sub-Division and Appellate tribunals are established for each District of the State of Kerala vide G.O.No.32/2009/SWD dated 17<sup>th</sup> August 2009, KERALA GAZETTE 2009 Vol. LIV No. 1499.

<sup>84</sup> The Kerala State Social Security Mission, a charitable society bearing registration number T-1749/08, sponsored by the Social Justice Department, which was set up on 14th October 2008 as per the Government order no: G.O. (MS) No.56/ 2008/ SWD dated 14-10-2008. This is a novel initiative of the State Government to cater the social security needs of the population of the State on a mission mode. A corpus fund of Rs.65 crores has been set apart for the Mission by the State Government.

Service to the old. Other services include Special Medical Camps, entertainment programs and Counseling service.

c) Kerala State Policy for Older Persons 2013

The Government of Kerala announced its Old Age Policy 2013<sup>85</sup> as an improvement over its *Vayojana* (OldAge) Policy of 2006. The Policy recognises that protection of interests of persons above 60 years is on the society. Social Justice Department was made the Nodal Department for the Policy. All senior citizens will be issued identity cards by the Department. For persons below poverty line, the card will be issued free of charges. The card will contain information relating to blood group, long term diseases etc. in addition to name, age, address and income. Once in 5 years the card is to be renewed. The important features of the Policy are enumerated below:

- (i) Awareness Campaign to create awareness on the Maintenance and Welfare of Parents and Senior Citizens Act will be undertaken widely.
- (ii) District Council will be constituted to handle complaints, suggestions and requests put forwards by senior citizens on various issues pertaining to them
- (iii) Police shall take utmost care and compassion in handling issues involving senior citizens specially those living alone and elderly women. Care should be taken to prevent violence against older persons.
- (iv) State and District level Senior Citizens Bureaus to be constituted under the Police Department to receive online complaints by senior citizens. To utilize the services of voluntary organizations and individuals for the cause of senior citizens, a

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<sup>85</sup> GO (MS) No.37/2013.SJD dated 06.05.2013 available at [http://www.kerala.gov.in/docs/policies/2013/4412\\_13.pdf](http://www.kerala.gov.in/docs/policies/2013/4412_13.pdf) [accessed on 1st November 2015].

network by the name 'Elder Line' will be started under the leadership of Police Department. This will be linked to the *Vayomithram* Project of the Social Justice Wing.

- (v) Senior Citizens Associations and Forums are invited to coordinate with the Government in implementation of welfare schemes for senior citizens.
- (vi) The Policy instructs the government offices to show utmost respect to any senior citizen who approaches them for help and to render help to senior citizens on priority basis.
- (vii) Policy requires the State Planning Board to earmark a specific budget out of the fund for local self-governments, for carrying out welfare programs for the older persons.
- (viii) Railway will be requested to install lifts in all main railway stations for use by senior citizens to access the platforms.
- (ix) Concessions in entry tickets for senior citizens at entertainment, cultural and tourist centres will be sought.
- (x) Old Ages Homes for destitute older persons will be established in all districts.
- (xi) Policy outlines that taking care of older parents will be the equal responsibility of sons and daughters.
- (xii) 'Villages for Older Persons' will be developed in urban and rural areas, for protection of older persons who are living alone.
- (xiii) To develop inter-generational equity, the syllabus on schools and colleges will include lessons on older persons.

(xiv) An employment directorate for re-recruitment of older persons will be established.

(xv) Policy anticipates a comprehensive health insurance programme for older persons.

d) Assistance to Local Self Government Institutions to start Old Age Homes and Day Care Centres

As a part of implementing State's Policy for Older Persons, the Government has proposed to support Local Self Governments (LSG) for starting Old Age Homes/Day Care Centres by providing Rs.2 lakhs for each institution for meeting the administrative expenses. Each Old Age Home should house a minimum of 25 inmates and day care centre should have facility for 50 persons.

The running of Institution was entrusted to *Kudumbasree* and LSG provide infrastructure and maintenance. For this purpose concerned local bodies will constitute a monitoring Committee. The Department will provide the recurring expenditure as per the approved norms. The role of LSG in this plan is to provide Land and Building, Infrastructure, Day-to-Day Maintenance & identify and engage Local *Kudumbasree* members for the functioning of the home.

e) Financial Assistance to NGO Institutions to protect the sick, helpless destitute in the streets and hospitals<sup>86</sup>

Under this scheme, grant is given to selected institutions to take care of destitute who are handed over to them by the police or the District Social Welfare Office. Patients who are

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<sup>86</sup>G.O (MS) No. 69/2004/SWD DATED 14-10-2004.

cured of illness, but are forced to stay in Ward No.9 of the Government General Hospital in Thiruvananthapuram District, due to relatives not turning up to take them, are handed over to such institutions. The Police also hands over sick and destitute from the streets to these institutions. The scheme was started in 2005-06 in Thiruvananthapuram District and thereafter extended to all other districts. Grant is given to selected institutions at the rate of Rs.750/- per beneficiary per month. Institutions are selected by a Selection Committee on the basis of credibility, infrastructural facilities and other terms and conditions fixed by the Government.

- f) The Social Justice Department runs fourteen old age homes and one care home throughout the state, which is spread across 14 districts.
- g) *Sevana* Pension: The pension amount under the Indira Gandhi national old Age Pension Scheme in Kerala is Rs.600 for persons 60 years and above and Rs.1500 for persons aged 75 years and above (as of 01/04/2016). To mitigate the delay in payment of pensions, a software application namely 'Sevana Pension' has been launched by the Information Kerala Mission to streamline the disbursement of social welfare benefits to the beneficiaries. The National Old Age Pension Scheme is one of the schemes covered under this application.

The application handles all the procedures involved in the pension allotment and payment process namely, receipt and processing of application, capturing the details of approval by the local Government, preparation of list of beneficiaries, calculation of money to be disbursed, distribution of available amount accurately to the beneficiaries in accordance with their seniority, distribution of arrears when pension revision takes place, generation of bill for submitting in the Treasuries for drawing of

amount and disbursement through money order or electronic money order, as the case may be.

h) ‘*Janamithri* Police’ and Senior Citizens Help Desk

Government of Kerala launched its Community Policing Project viz., ‘*Janamithri Suraksha* Project’ in 20 selected Police Stations in 23<sup>rd</sup> March 2008. By 2013, it is implemented in 248 selected police stations. As Community Policing requires training, continuous training programs are conducted at the Police Training College every year. One of the projects taken up by *Janamithri* Police was protection of life and property of senior citizens. Director General of Police of the State of Kerala issued instructions<sup>87</sup> for the strict enforcement of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and Rule 20 of the Kerala Maintenance of Parents and Senior Citizens Rules 2009, the highlights of which are as follows:

- (i) The Commissioners of Police / Superintendents of police shall take necessary steps for the protection of life and property of Senior Citizens
- (ii) Each Police Station shall maintain a register called ‘Register of Senior Citizens’ containing an update list of senior citizens living within its jurisdiction. Special care is to be taken to include the senior citizens living by themselves.
- (iii) A representative of the Police Station shall visit such senior citizens atleast once a month. In case they seek assistance, they shall be visited as quickly as possible.

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<sup>87</sup> No.U1/16426/2010, Circular No.16/2010.

- (iv) Each Police Station shall maintain a 'Register of Offences against Senior Citizens', which shall be kept for public inspection and every officer inspecting a Police Station shall invariably review the status as reflected in the register.
- (v) Antecedents of domestic servants and others working for senior citizens shall be promptly verified on the request of such senior citizens.
- (vi) List of Do's and Don'ts to be followed by the senior citizens in the interest of their safety will be widely publicized.

The 'Senior Citizens Help Desk' is an innovative endeavour of the Kerala police, launched in 2012. Senior Citizens Help Desk is attached to major police stations and is administered as well as governed by the Police Department. The researcher visited the Fort Police Station in Thiruvananthapuram and conducted a study of the functioning of the Help Desks. There is a 35 Senior Citizens Council attached to the Fort police Station having an Executive Committee of 15 members. 7800 senior citizens are registered with the Help Desk at the Janamithri Fort Police Station. Assistant Sub Inspector is appointed as the Community Relations Officer. Every last Sunday of the month, a meeting is held with Police Officers and Senior Citizens. Every second Saturday of the month, a meeting is held by the City Police Commissioner and also representatives from Department of Health, Electricity Board etc. All 152 residents associations covering 27,000 houses falling within the jurisdiction of this Station are called to attend the meeting.

Anyone can call the Police Station and give information regarding any old destitute found on the roads. Police will immediately visit the spot, pick the destitute and admit them in the Government General Hospital, which has a Ward No. 9 earmarked for this purpose. Any case of elder abuse or neglect by children can be reported to the *Janamaithri* police



Station. A helpline number is kept for the same, which is linked to the *Vayomitram* Project<sup>88</sup>. Senior Citizens can directly lodge their grievance online at “<http://keralapolice.org/newsite/senior-citizen-grievance.php>”.

No government fund is specifically allotted to Senior Citizens Help Desk. It is run as a charitable society and receives contributions from charity associations. A unique model has been developed wherein senior citizens themselves are categorized into A, B and C groups based on their financial capacity. A and B groups makes contributions for C group, which requires help. So far, government has not announced any tax exemption for contributions made to Senior Citizens Help Desks. *Janamaithri* fund which comes from government is partly demarcated and allotted to Senior Citizens Help Desks.<sup>89</sup> It was seen by the researcher that accounts and minutes were included in well maintained registers. Photo Albums are maintained of all the programs conducted by the Senior Citizens Help Desk.

### **3.4 JUDICIAL APPROACH**

It is a known fact that Courts are loaded with litigation that there is often delay in disposal of cases. It is important that cases of senior citizens are to be disposed of on a priority basis, due to the very logic that justice delayed is truly justice denied in their case specially. The Law Minister had written to the Chief Ministers of the States on

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<sup>88</sup> The *Vayomitram* – Senior Citizens Helpline numbers are 2472936, 960546368.

<sup>89</sup> 13<sup>th</sup> Finance Commission had awarded an amount of Rs. 100 crore to the Police Department, out of which the Deputy Commissioner of Police by Order No. G5/63095/2011 TC Dated 12/02/2012 sanctioned Rs. 57.5 lakhs for Senior Citizens Help Desks in 230 Police Stations and an amount of Rs. 2.50 lakhs was provided for setting up of Senior Citizens Help Desks in 10 more Police Stations.

establishment of fast track courts to dispose cases in which senior citizens are parties.<sup>90</sup> The same had been communicated by the Law Minister to the Chief Justices of the High Court.<sup>91</sup> The Chief Justice of India has advised Chief Justices of all High Courts to accord priority to cases involving older persons and ensure their expeditious disposal<sup>92</sup>.

Accordingly the Registrars of Subordinate Judiciary issued directions to all District Judges to take necessary steps to identify matters pending before their respective courts in which persons above 60 years of age are involved and to dispose of such matters on priority basis. The Subordinate Judicial Officers were also directed to forward to the Registry quarterly return showing the pendency and disposal of cases involving persons above 60 years of age<sup>93</sup>. Certain categories of cases including that of senior citizens of the age of 65 years onwards are accorded priority in listing for regular hearing at the Supreme Court, in order to ensure that such cases are heard and disposed of expeditiously. All such cases are included in the Terminal List and while generating weekly list and daily list, computer automatically gives the specified priority to such matters.<sup>94</sup>

Supreme Court set up a Social Justice Bench comprising of three Judges on 3<sup>rd</sup> December 2014 to exclusively hear cases concerning social issues related to under privileged

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<sup>90</sup> Minister of Law and Justice, letter bearing no D.O.No.12011/2/2003-Jus(M)/1728 dated 10th July 2003, available at <http://socialjustice.nic.in/pdf/lawministertochiefminister.pdf> [accessed on 1st November 2015].

<sup>91</sup> Minister of Law and Justice, letter bearing no. D.O.No.12011/2/2003-Jus(M)/1757 dated 10<sup>th</sup> July 2003, available at <http://socialjustice.nic.in/pdf/highcourt.pdf> [accessed on 6th November 2015].

<sup>92</sup> *vide* letter of Government of India, Ministry of Social Justice & Empowerment (SD Section), New Delhi, F. No. 20-76/99-SD dated 03.11.1999.

<sup>93</sup> High Court Official memorandum No.R 13/99 (SS) dated 2/6/99 had specified the age as 60 years. This was revised and made into 60 years *vide* High Court Official Memorandum No. D3-4287/2014 (2) dated 23/06/2014. The Memorandum cited here is of Kerala High Court.

<sup>94</sup> *Supreme Court of India Practice & Procedure* (Third revised Edition, 2010) 41.

including senior citizens, for early disposal. The Bench assembles every Friday at 2pm<sup>95</sup>. In a public interest litigation filed by Advocate Sanjeeb Panigrahi, the Social Action Bench ordered setting up of old age homes with basic health facilities in every district of the country and directed the Government to update the National Policy on Older Persons, 1999 specially in view of the enactment of Maintenance and Welfare of Parents and Senior Citizens Act, 2007<sup>96</sup>.

That it is in the interest of justice that the senior citizens cases should be decided on priority basis is manifest in the decision of the Kerala High Court in *H.Felix Fernandez v. State of Kerala*<sup>97</sup> where an accused senior citizen filed an application under Section 482 of Code of Criminal Procedure for speedy disposal of the criminal case against him. It is to be mentioned that the case was listed of the year 2012, and ordinarily it would not be given priority in 2014 as there were older cases pending. However, considering that the petitioner was a senior citizen and the sole accused in the case and has been cooperating with the investigation and trial for the last 12 years, the Court directed the criminal court to dispose of the case as expeditiously as possible at any rate within 6 months from the date of order.

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<sup>95</sup> The Bench started functioning from Friday, 12th December 2014. The term senior citizen was not expressly mentioned in the Supreme Court's circular establishing the Social Justice Bench. However senior citizens are impliedly included in the broad terms. See [http://supremecourtfindia.nic.in/FileServer/2014-12-17\\_1418816381.pdf](http://supremecourtfindia.nic.in/FileServer/2014-12-17_1418816381.pdf) [accessed on 5th November 2015].

<sup>96</sup> *Sanjeeb Panigrahi v. Union of India* (Supreme Court, Writ Petition (C) 81 of 2015, order dated August 28, 2015), <http://courtnic.nic.in/supremecourt/causedisp.asp>.

<sup>97</sup> (High Court of Kerala, CrI.MC. No.3646 of 2014, Judgment dated 17<sup>th</sup> July 2014), available at [http://judis.nic.in/judis\\_kerala/content.asp](http://judis.nic.in/judis_kerala/content.asp) [accessed on 4 September 2016]; See also *Chairman, KSRTC v. K.O.Varghese* 2007 (8) SCC 231; *Sumangali Amma v. O.Manju* (High Court of Kerala, OP(Crl.).No. 49 of 2014 (Q), Judgment dated 26<sup>th</sup> March 2014), available at [http://judis.nic.in/judis\\_kerala/qrydisp.aspx?Filename=351568](http://judis.nic.in/judis_kerala/qrydisp.aspx?Filename=351568) [accessed 12 November 2015]; *Mathew v. Radhakrishna Pillai* (High Court of Kerala, WP (c). No. 28888 of 2008, Judgement dated 17<sup>th</sup> October 2008), available at [http://judis.nic.in/judis\\_kerala/qrydisp.aspx?filename=74452](http://judis.nic.in/judis_kerala/qrydisp.aspx?filename=74452) [accessed 12 November 2015].

In spite of such efforts to take up senior citizens cases on priority basis as well as the creation of Social Justice Bench of the Supreme Court, sensitization of the judiciary at the state level seem to be lacking, in cases where senior citizens are charge sheeted. This is evident from the instance of Mr. Bhanudas, a 66 year old man, being charge sheeted under Section 353 of Indian Penal Code<sup>98</sup>, at Aurangabad for raising his voice against the court bailiff who came to deliver possession of a disputed property. The Magistrate rejected his bail application stating that he “created a hurdle” in the cause of justice. Subsequently, the Sessions Judge also rejected his bail application on the ground of contempt of court, and further rejection of bail by the Aurangabad Bench of the Bombay High Court on the same ground.

After 91 days of detention, the Supreme Court granted him bail and it is reported that the Supreme Court Bench comprising of Justice Anil R. Dave and Justice Kurian Joseph rebuked the Maharashtra State Counsel by asking on what authority a 66 year old man can be detained for 91 days for raising his voice.<sup>99</sup>

The sensitivity of the Supreme Court in matters where senior citizens are involved can be seen from its decision in *Ishwar Chandra Jayaswal v. Union of India & Others*<sup>100</sup>, wherein the Court heard an appeal by a railway employee aged 75 years, who was dismissed from service on the ground of having accepted bribe of Rs.50. The Court allowed the appeal on the ground of disproportionality of the punishment with regard to the meager offence committed and held that deprivation of retirement benefits is entirely

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<sup>98</sup> Section 353 of the Indian Penal Code deals with assault or criminal force to deter public servant from discharging of duty, which carries a punishment of two years imprisonment and fine.

<sup>99</sup> THE HINDU, April 19 2015, available at <http://www.thehindu.com/news/national/sc-shocked-at-senior-citizens-arrest-for-shouting-at-court-official/article7119388.ece> [accessed on 7 November 2015].

<sup>100</sup> (2014) 2 SCC 748.

disproportionate. The Court ordered that the appellant should be deemed to have been compulsorily retired and retirement benefits be paid to him. The ending words of the judgment that “The decision is restricted to the facts of the present case” can be indicator of the age consideration the Court had considered as the particular “fact” of the case, along with other factors.

Another such instance of Court’s sensitivity towards senior citizens is obvious in *Harish Relan v. Kaushal Kumari Relan and others*<sup>101</sup> where the High Court of Delhi in view of the age and health of the respondents observed thus:

Most of the respondents in this appeal are senior citizens. The respondent no.1 is around 90 years of age, completely bed ridden and could come to court only in a wheel chair, assisted by her ... respondent no.5 is stated to be in his eighties, suffering from an eye problem who also needs the assistance of an attendant. The respondent no.6... would be about 78 years at present. These circumstances have compelled us to address the facts and circumstances in this unfortunate litigation in some detail to place the material in its entirety on record so as to facilitate finality in adjudication.

The case was one of a property dispute, where the Court found that the Plaintiff/Appellant had deliberately set up a false case against the respondents and hence ordered costs in favour of respondents.

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<sup>101</sup> (High Court of Delhi, RFA(OS) 162/2014 and CM No.21092/2014 , Judgment dated 3 Aug 2015), available at [http://lobis.nic.in/d\\_dir/dhc/GMI/judgement/26-08-2015/GMI03082015RFAOS1622014.pdf](http://lobis.nic.in/d_dir/dhc/GMI/judgement/26-08-2015/GMI03082015RFAOS1622014.pdf) [accessed on 4 September 2016].

However, Supreme Court had held that when it comes to policy decisions of the government relating to travel concessions for senior citizens, emotions and passion cannot form the basis of decisions by the Courts.<sup>102</sup> Such an observation was also made in an appeal filed by Union of India over the decision of the Rajasthan Court in a Public Interest Litigation challenging the conditions imposed on granting of concession in air ticket rates to senior citizens.<sup>103</sup>

The High Court accepted the contention of the petitioner that that it was rather unfair that a concession granted with one hand was being taken away by the other and that a duty lay on all citizens of this country to ensure a comfortable, happy and healthy life to its senior citizens and any condition laid down by the appellants had to stand the test of reasonableness found that the conditions are unreasonable.

The Supreme Court set aside the order of the High Court and held that a concession granted by a carrier be it the Railways or the Airlines or the Road Transport Corporation is a concession only and no person is entitled to insist that the concession should be with conditions determined by that person.

The Court also observed that the High Court proceeded on the basis of its subjective satisfaction to arrive at the conclusion that the conditions were not to the benefit of senior

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<sup>102</sup> See *Ram Singh Vijay Pal Singh and other v. State of U.P. And Others* (2007) 6 SCC 44; *BALCO Employees' Union (Regd.) v. Union of India and Others* (2002) 2 SCC 333; *Netai Bag v. State of W.B* 2000 (8) SCC 262, 275. In all these cases the Court had observed that that it is not for the Court, be it the High Court or the Supreme Court, to interfere in matter of policy as that is a decision for the administrators on an examination of the various facets before them and the inputs they receive from various sources.

<sup>103</sup>*Union of India v. Shankar Lal Soni & Anr* [2010] 4 SCR 593, 600 - 601. Two conditions were imposed on the senior citizens availing concession of air ticket, namely, (i) that the Airlines required that a senior citizen applying for a concessional ticket had to do so 7 days in advance of the journey; and (ii) that the senior citizen was required to stay a minimum of 2 days at the outgoing destination in order to be eligible for the return ticket.

citizens ignoring the basis nature of a concession given on the basis of administrative policy and ignoring the effect that they could have on the concessionaries.<sup>104</sup>

Another important issue which arose was whether the High Court has jurisdiction under Article 226 to hear the grievance of a senior citizen demanding enforcement of the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 when no such enforcement mechanism has been established by the State or Union Territory or when the mechanism established is deficient.

The issue arose in *Justice Shanti Sarup Dewan, Chief Justice (Retired) and another v. Union Territory, Chandigarh and others*<sup>105</sup>, where the petitioners aged 85 years and 74 years, a retired Chief Justice of the High Court and his wife approached the High Court by a Letter Patent against the order of a single judge bench of the same court. The intense emotion the Court carried for the senior citizens is evident from the opening lines of Chief Justice Sanjay Kishan Kaul's judgment that : "The filial affections of a father have cost him dearly in the twilight years of his life!"<sup>106</sup> The writ petition was filed by the aged parents against the son, seeking an order to evict the son from the father's house and move to his own house which the father had gifted to him. According to the parents, their son's behavior to them was humiliating, using un-parliamentary language and he even locked up the father's office room, and so on.

The petitioner sought directions to constitute a special cell to deal with complaints of senior citizens and parents who are traumatized by their children as the government had

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<sup>104</sup> *Union of India v. Shankar Lal Soni & Anr* [2010] 4 SCR 593.

<sup>105</sup> 2014 (5) RCR (Civil) 656.

<sup>106</sup> *Id.*

not enforced the MWPSC Act by making rules or setting up enforcement machinery especially for the purpose of Section 22 of the Act. The Single Judge felt that the issue as regards eviction of the son cannot be gone into by the Court in exercise of writ jurisdiction as it would necessarily entail the determination of the nature of the property i.e. as to whether the same is self-acquired or ancestral, the determination of rights in respect thereof etc. This would require formulation of triable issues which are left to be adjudicated at the hands of the Civil Court. Therefore the writ petition was disposed of even without issuing notice to the respondents.

The Division Bench considered it appropriate to constitute a three member panel headed by retired Judge of Supreme Court to act as mediators and arrive at a settlement. The father confessed to the panel that he had written a will disinheriting the son. Most interestingly the panel came out with strange settlement conditions that is, (i) The son and family should vacate the father's house and shift to his own house; (ii) If the son agrees to move, the father shall revoke his will wherein he disinherited the son and (iii) The parents shall pay to the son Rs.10,000/- per month to their son for two years to meet his commuting expenses from his own house to his workplace. The very fact that the parents accepted the proposals, even though they felt that condition no., (iii) should have been the other way round, shows that the parents were tortured enough to the extent that they would agree to any condition for the son to move away from their house. However the son refused to accept the proposal and the mediation failed.

The Court held that if the State fails to perform the functions envisaged under an Act, it would certainly give rise to a jurisdiction to be exercised under Article 226 of the



Constitution of India<sup>107</sup> and therefore protection of the property of the appellants envisaged under the MWPC Act can be enforced under Article 226.<sup>108</sup> The respondent son and family were accordingly asked to vacate his father's house and a cost of Rs.50,000/ was also ordered to be paid by the son. The Administration of Union Territory of Chandigarh was directed to take steps to bring the Act into force and especially Section 22 of the Act providing protection of life and property of senior citizens.

The ground reality of the position of senior citizens in legal proceedings can be discerned from the facts of *Paramjit Kumar Saroya v. Union of India and another*<sup>109</sup> where the daughter in law and grandson of a 85 year old senior citizen challenged the constitutional validity of Section 16 of the MWPC Act on the ground that it confers right to appeal only to the senior citizens or parents and not to the other party.

The Sub Divisional magistrate had ordered a sum of Rs.1000/- per month to be paid by the grandson to the grandfather. The senior citizen claimed the amount from the grandson as his own son was abroad and he alleged that his daughter in law along with his grandson have forcibly kicked him out from the house and locked his room. It was also alleged that his other sons were not providing him food. The Court could only pass an order on the constitutionality of the impugned provisions, but was unable to pass any order increasing the maintenance as the senior citizen was unrepresented and the petitioners as well as their lawyers had also absented from the Court. The Court remarked that it received no assistance from either of the two sides and the current status of the 90

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<sup>107</sup> *Justice Shanti Sarup Dewan, Chief Justice (Retired) and another v. Union Territory, Chandigarh and others* 2014 (5) RCR (Civil) 656. The Punjab and Haryana High Court relied on *A.B.L. International Ltd. v. Export Credit Guarantee Corporation of India Ltd.* 2004(3) S.C.C. 553 and *Mrs. Sanjana M.Wig Vs. Hindustan Petro Corporation Ltd.* AIR 2005 SC 3454.

<sup>108</sup> *Id.* para 40.

<sup>109</sup> AIR 2014 P&H 121.

year old man (by then) was not known<sup>110</sup>. Therefore the Court found no cause for interference and the challenge to the impugned order was dismissed. This situation suggests that cases of senior citizens need to be ably assisted by a group or authority specifically meant for that, at the option of the senior citizen.

Callousness of the administration in disallowing the welfare schemes to the senior citizens on the grounds of procedural hurdles was dealt with by the Madras High Court in *H. Mariyam Beevi v. The Secretary to Government*.<sup>111</sup> In this case a 69 year widow was denied Indira Gandhi National Old Age Pension on the ground that her name was not included in the BPL list, which resulted in her filing the writ petition. The reason given by the administration was that the petitioner was living with her daughter and son-in-law, and that the son-in-law was a retired government servant and wealthy, therefore the petitioner was not a destitute.

The son in law's obligation to maintain his mother-in-law was examined by the Court and decided in the negative. Firstly, under the Muslim personal law applicable to the petitioner, there is no obligation for the son-in-law to maintain the mother-in-law. Secondly, the MWPSA Act, 2007 does not mandate the son-in-law to maintain the mother-in-law. The Court also noted that the petitioner's daughter is not shown to have any income and ruled that once the petitioner comes within the BPL definition, there need not be a further formality to include such name. The Government was directed to pay Indira Gandhi National Old Age Pension to the petitioner.

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<sup>110</sup> *Paramjit Kumar Saroya v. Union of India and another* AIR 2014 P&H 121, 139.

<sup>111</sup> (High Court of Madras, W.P.No.22122 of 2010, Judgment dated 27 June 2011), available at [http://judis.nic.in/judis\\_chennai/qrydisp.aspx?filename=32725](http://judis.nic.in/judis_chennai/qrydisp.aspx?filename=32725) [accessed on 3 September 2016].

Leniency in awarding punishment to senior citizens is manifest in a contempt of court case where the Supreme Court set aside the sentence of 3 months simple imprisonment on the ground that the contemnor was 81 years old and remarked: "...we would have been very reluctant to interfere with the sentence imposed by the High Court but for the age of the appellant."<sup>112</sup>

Providing assistance in old age has been a constitutional imperative and a guiding principle for the government from the commencement of the Constitution. However the changing demographic pattern and India's participation in the First World Assembly on Ageing, 1992 had brought profound impact in the planning process of the Government and it started recognizing the importance of state intervention in protecting the special needs and interests of the older persons.

This is evident from the scarce importance given to the cause of elderly in the initial five year plans and its growing importance from the Ninth Five Year Plan (1997 – 2002) onwards. Government of India announced the National Policy on Older Persons in 1999, the same year which was declared by the United Nations as the Year of Older Persons. The Policy promised measures to cater to the well-being of older persons by extending support for financial security, health care, shelter, welfare, protection against abuse and exploitation, opportunities for development of potential of older persons and promote their participation in national life. Special needs of older women were also focused on and the participation of family and community along with state intervention was envisaged in the Policy.

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<sup>112</sup> *Radha Mohan Lal v. Rajasthan High Court* AIR 2003 SC 1467, 1468.

India's participation at the Second World Assembly on Ageing, 2002 followed by Parliament enacting the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 prompted the need for a more comprehensive policy for senior citizens. The Mohini Giri Committee was set up to review the working of the NPOP and the Committee submitted its draft National Policy on Senior Citizens in 2011. This policy is yet to be implemented by the Government.

The Central Government also came up with various welfare schemes and concessions for the senior citizens. Financial stability along with health and well-being are the underlying theme of all these schemes. State of Goa, through its Directorate of Social Welfare holds out welfare schemes for the senior citizens.

The MWPC Act is implemented in the State of Goa as well as in the State of Kerala. The Central Act has been notified, Rules have been made and Maintenance Tribunals had been constituted. In the State of Kerala, in addition to the activities of the Social Welfare Department, the Kerala State Police is also playing an effective role in implementation of the Act.

Senior Citizens Help Desks are established and functioning in selected police stations. Judicial approach shows leniency and sensitivity towards senior citizens in cases before the courts. Cases in which senior citizens are parties are decided on priority basis.

For adequate protection of the rights of older persons, which is both a constitutional imperative and an international obligation, the Government initiatives need to be ably supported and guided by a comprehensive statute on the subject. The MWPC Act, 2007 having been enacted in pursuance of the said objectives, an elaborate evaluation of that

Act is mandated. Even prior to the participation in the World Assemblies on Ageing, India had legislations dealing with provisions for maintenance of aged parents. Chapter IV deals with the study and analysis of the legislative framework for protecting the rights of older persons in India.

#### **4. LEGISLATIVE FRAMEWORK FOR THE PROTECTION OF THE RIGHTS OF OLDER PERSONS**

The role of law in a welfare state is not only to set the welfare machinery of the Government Departments in motion, and set priorities at the governmental level, but also at the individual level. Even though India had been a signatory to the World Assemblies on Ageing<sup>1</sup>, the problems associated with old age and the government mechanism to cater to the needs of an increasing elderly population were not realized in a statutory form till recently. This is evident from the words of Mrs. Indira Gandhi, the then Prime Minister of India in her message addressed to the Vienna World Assembly on Ageing, 1982:

In affluent societies one-unit families and greater mobility in their life styles have aggravated the generation gap. Old people are left very much on their own. Those who can afford it are put in comfortable and often beautifully located homes. Yet they are separated from their dear ones and familiar surroundings. ... In developing countries, the problem is not so serious. Old people are revered as elders and sheltered within the joint family ... But industrialization and modernity are beginning to disturb the old pattern. Even here, the concern and care for the old, which was so much a part of our tradition, is weakening. Also in the poorer sections, when there is natural or other calamity, it is the old who suffer most. In India we have just begun to

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<sup>1</sup> Vienna World Assembly on Ageing, 1982 and Madrid World Assembly on Ageing, 1992.

make provisions for old age pensions and are encouraging voluntary agencies and others to build homes for the aged.<sup>2</sup>

Having been committed to the International Plan of Action on Ageing, the State was expected to take up measures for ensuring the welfare of senior citizens. But owing to the well secured family structure which existed in India, concern and care for the old was taken up as a traditional responsibility of the family. However the system started changing with modernization and breakup of the agricultural system which kept the family as a large unit comprising of three to four generation of members.

With industrialization<sup>3</sup> as well as with advance in education<sup>4</sup> which led the young generation to move out of their family set up in search of jobs, the joint family system suffered a setback and nuclear family was much opted for.<sup>5</sup> Old were left alone and the young migrated to new settlements. Over the years this also led to diminishing of the respect, care and concern which one previously had towards the elders in the family. The 'utility' of the old started diminishing in the eyes of the younger generation and older persons were seen as a burden, economic and otherwise, on the family. This is especially so, as the older persons gradually suffer a loss of health as well as earning capacity. This further resulted in abuse and neglect of the older persons in many parts of the country.

It was in this backdrop that the Parliament enacted the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. This chapter analyses the Constitution of India

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<sup>2</sup> VIENNA WORLD ASSEMBLY ON AGEING REPORT (1982) 91.

<sup>3</sup> See generally AGARWALA B.R, *Nature and Extent of Social Change in a Mobile Commercial Community*, SOCIAL BULLETIN (1962) 11.

<sup>4</sup> See GOODE W.J, *Foreword* in M.S.GORE, URBANISATION AND FAMILY CHANGE (Popular Prakashan, Bombay, 1968).

<sup>5</sup> See generally NIRANJAN ET AL., *Family Structure in India: Evidence from NFHS*, 27(2) DEMOGRAPHY INDIA 287 (1998).

and other legislations dealing with rights of older persons. The chapter also covers legislative protection of the older persons in United Kingdom, United States of America and Republic of South Africa and a comparative analysis of the same.

#### **4.1 RIGHTS OF THE OLDER PERSONS: CONSTITUTIONAL PERSPECTIVE**

Constitution of India strives to create an egalitarian society, informed by justice in all walks of life, irrespective of the caste, sex, race, religion, creed or age. The Preamble to the Constitution secures to all its citizens, certain rights standards. They are analyzed in the light of older persons' entitlements as follows:

- (a) Justice, Social Economic and Political: Social justice is possible only when there exists a society for all ages. Economic justice mandates the opportunity to the older persons to secure an adequate means of livelihood or financial independence. Political justice manifests in non-discrimination of the elderly in the political life of the country.
- (b) Liberty of thought, expression, belief, faith and worship: Liberty is a necessary concomitant to the dignity and independence of the older persons. As a person ages, his thought and expression is not to be sabotaged by the younger generation, and the faith and worship beheld by the elderly are to be respected and allowed, notwithstanding the change in belief of the newer generation.
- (c) Equality of status and of opportunity and to promote among them all: Opportunity to seek happiness and lead a life of contentment is very important for the older persons. With the advance in age, the dependency level of a person tends to increase, especially when he/she is facing health problems and financial difficulty.



In such a situation, equality becomes meaningful only when public assistance, income generation opportunities, accessible transport facilities and other amenities are adequately provided to the old, so that they can live a life with status and opportunity, equal to that of the younger generation.

- (d) Fraternity assuring inter alia the dignity of the individual: The element of fraternity, in the context of elderly rights, indicates the inclusion of the elderly in all walks of national and social life, assuring that their dignity is not compromised on the basis of weakening bones, thinning muscles, greying hair, fading vision or wrinkling skin.

Reading the objectives enunciated in the Preamble along with Article 51 (c) which mandates the State to endeavor to foster respect for international law and treaty obligations, it is pertinent to note that the same is consistent with the objective of Madrid International Plan of Action on Ageing, 2002 “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”<sup>6</sup> and thereby create “a society for all ages”.

Thus the preamble contains the basic postulates necessary to bring in a society for all ages where State should secure an adequate income for older people; equitable, timely, affordable and accessible health services for older people; Appropriate and affordable housing options for older people; a range of culturally appropriate services which allows choices for older people; and increasing opportunities for personal growth and community participation.

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<sup>6</sup> MADRID INTERNATIONAL PLAN OF ACTION ON AGEING, 2002, para 10.

Through Part III and Part IV of the Constitution, the preambular stipulations of Justice, Liberty, Equality and Fraternity are sought to be achieved.

#### **4.1.1 Fundamental Rights**

The fundamental rights contained in Part III of the Constitution are available to everyone irrespective of age and gender. With respect to the rights of older persons, the most significant of all the rights is the rights to equality and right to right to life which are analyzed as follows:

##### **A. *Right to Equality***

Article 14<sup>7</sup> outlaws discrimination in a general way and guarantees equality before law to all persons. It is a well-established principle that the varying needs of different classes or sections of people require differential and separate treatment<sup>8</sup> and hence reasonable classification is permissible within the broader framework of equality.<sup>9</sup>

Therefore, in the context of right to equality of the older persons, there are two propositions which can be inferred from Article 14. Firstly, older persons are to be treated in no lesser manner than the rest of the population. Opportunity for development, employment and participation should be equally available to them as to any other. Secondly, due to the disadvantage which old age brings to a person, with respect to health and physical abilities, special and preferential treatment is to be given to them in such a

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<sup>7</sup> CONSTITUTION OF INDIA, 1950, Article 14: *The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.*

<sup>8</sup> *See Gauri Shankar v. Union of India* AIR 1995 SC 55, 58; *See also Chiranjeetlal v. Union of India* AIR 1951 SC 41.

<sup>9</sup> *See State of Bombay v. F.N. Balsara* AIR 1951 SC 318; *R.K. Dalmia v. Justice Tendolkar* AIR 1958 SC 538; *Jaila Singh v. State of Rajasthan* AIR 1975 SC 1436; *In re Special Courts Bill 1978* AIR 1979 SC 478; *K.Thimmappa v. Chairman, Central Board of Directors* AIR 2001 SC 467.

way as to make their participation and development meaningful. Employment opportunities which suit their abilities should also be designed for the older persons, instead of merely disqualifying them from income generation activities.

If treating everyone equally is one side of the coin, the other is about not discriminating people on the basis of certain non-permissible grounds which is what is provided for in Article 15 (1)<sup>10</sup>, Article 15 (2)<sup>11</sup> and Article 16(2)<sup>12</sup> of the Constitution. 'Age' is not mentioned as a ground on which a person shall not be discriminated against either by the state or by anyone with respect to access to public places or use of amenities kept for the use of general public.

As far as Articles 15(1) and (2) are concerned, there seems to be no reason why age should not be a ground for discrimination. The omission, it is submitted is merely inadvertent, and also based on the fact that when Constitution was drafted, India was a caste based closed hierarchical type of society where discrimination existed on the basis of religion, race and caste, as also gender based discrimination and separatist tendencies, based on place of birth and differential treatment.

Therefore, the grounds on which discrimination was prohibited, included the ones on which mostly discrimination used to happen, namely religion, race, caste, sex, place of birth or any of them.

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<sup>10</sup> Article 15(1) is a prohibition on the state not to discriminate any citizen only on the grounds, of religion, race, caste, sex, place of birth or any of them.

<sup>11</sup> Article 15(2) is a mandate against everyone concerned that no citizen shall only on these grounds be subject to any disability, liability or restriction with regard to access to shops, public restaurants, hotels and places of public entertainment; or the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

<sup>12</sup> Article 16(2) prohibits the State from discriminating citizens only on the grounds of religion, race, caste, sex, descent, place of birth, residence or any of them for the purpose of public employment.

Moreover if the public places, transportation facilities, buildings and such other amenities and services are to be equally made available to older persons, it is necessary that these are made user friendly to the elderly, considering their health and motor abilities. India, being a welfare state has to definitely design its public utility services and infrastructure should be so modified as to make it accessible to all ages. This is in consonance with the rule of law, which is a basic value in our constitutional fabric.<sup>13</sup>

The modern concept of Rule of Law<sup>14</sup> implies that the functions of the government in a free society should be so exercised as to create conditions in which the dignity of man as an individual is upheld. This dignity requires not only the recognition of certain civil or political rights but also the creation of certain political, social, educational and cultural conditions which are essential to the full development of his personality.<sup>15</sup> The Rule of Law depends not only on the provision of adequate safeguards against abuse of power by the Executive, but also on the existence of effective government capable of maintaining law and order and of ensuring adequate social and economic conditions of life for the society.<sup>16</sup>

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<sup>13</sup> Rule of Law has been held to be part of basic structure of the Constitution in *Kesavananda Bharati v. State of Kerala* AIR 1973 SC 1461 and in *Indira Nehru Gandhi v. Raj Narain* AIR 1975 SC 1590. The doctrine of equality before law is a necessary corollary of Rule of Law which pervades the Indian Constitution, See *Ashutosh Gupta v. State of Rajasthan* AIR 2002 SC 1533.

<sup>14</sup> The modern concept of Rule of Law was developed by the International Commission of Jurists, known as Delhi Declaration, 1959, which was later on confirmed at Lagos in 1961. See International Commission of Jurists, THE RULE OF LAW IN A FREE SOCIETY : A REPORT ON THE INTERNATIONAL CONGRESS OF JURISTS, New Delhi, India, January 5-10, 1959 (Prepared by Norman S. Marsh), available at <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/1959/01/Rule-of-law-in-a-free-society-conference-report-1959-eng.pdf>.

<sup>15</sup> Clause I, Report of Committee I, *The Legislative and Rule of Law* (International Congress of Jurists, New Delhi, 1959).

<sup>16</sup> *Id.* Report of Committee II, *The Executive and the Rule of Law* (International Congress of Jurists, New Delhi, 1959).

With respect to Article 16(2), since the civil service in India adheres to the rule of superannuation at a prescribed age, discrimination on the basis of age does not seem to be a prohibitory ground of discrimination. However it is to be understood that Article 16(2) is not exhaustive in nature and that it is explanatory to Art. 16(1).<sup>17</sup> Therefore, the general rule of equality of opportunity for all citizens contained in Article 16(1) is applicable to a person irrespective of age. This is of course subject to the ‘reasonable classification test’. It is submitted that conceptually, a general prohibition of opportunities based on age at the entry level as well as at the exit level appears to be not in tune with the constitutional provision of equality and equal opportunity. However in matters of fixation of age of superannuation, Supreme Court has consistently upheld the exercise of constitutional power under Article 309<sup>18</sup> of the Constitution against attacks based on Article 14<sup>19</sup> and estoppel.<sup>20</sup>

This approach of the Court, it is submitted, is in consonance with the doctrine of political question and the Courts find it fit to leave policy matters to the prerogative of the government. Moreover, age based superannuation from public employment is a polycentric matter that is to be seen as an incidence in the nature of share in government largess or “share (in) the state power”<sup>21</sup>, which in the general interest should be of limited tenure, the fixation of which is outside the ambit of judicially fixable standards.

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<sup>17</sup> See *Indra Sawhney v. Union of India*, AIR 1993 SC 477.

<sup>18</sup> The fixing of the age of superannuation and reducing it has been held to be falling within the power conferred under Article 309, See *Bishun Narain v. State of Uttar Pradesh* AIR 1965 SC 1567. See also *State of Andhra Pradesh v. S.K.Mohinuddin* AIR 1994 SC 1474.

<sup>19</sup> *K. Nagaraj v. State of Andhra Pradesh* AIR 1985 SC 551.

<sup>20</sup> *C.Sankaranarayanan v. State of Kerala* AIR 1971 SC 1997.

<sup>21</sup> See *supra* note 17, at 556.

The Supreme Court held in *Nagaraj* that any superannuation policy was accentuated by the considerations of creating of new avenues of employment for the youth and hence not arbitrary or unreasonable.<sup>22</sup> It is to be noted that the default retirement age has been scrapped in the United Kingdom with the launch of Equality Act 2010.<sup>23</sup>

Article 14 is not a free standing provision. It has to be read in conjunction with the rights conferred by other articles like Article 21 which guarantees “right to life” including several aspects of life. It includes “opportunity”, Articles 21 and 14 are the heart of the chapter on fundamental rights in the Constitution of India. They cover myriad forms of life.<sup>24</sup>

### **B. Right to Life and Personal Liberty**

The term “life” in Article 21<sup>25</sup> has been given an extended meaning by the Supreme Court to include the right to live with human dignity and all that goes along with it.<sup>26</sup> Thus the inhibition against deprivation of “life” would extend to all those faculties by which life is enjoyed.<sup>27</sup> The quality of life as is held in *Francis Coralie* is an inevitable component of the human rights of the older persons. Many a time they are isolated from the community life and due to the many handicaps arising out of old age, they are left

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<sup>22</sup> *K. Nagaraj v. State of Andhra Pradesh* AIR 1985 SC 551, 583.

<sup>23</sup> See *infra*, para 4.7.1, for a detailed discussion on the Equality Act 2010.

<sup>24</sup> See M.P.JAIN, INDIAN CONSTITUTIONAL LAW 929 (Lexis Nexis Butterworths, Wadhwa, Nagpur 6<sup>th</sup> Edition 2010, Reprint 2011).

<sup>25</sup> CONSTITUTION OF INDIA, 1950, Article 21: *No person shall be deprived of his life or personal liberty except according to procedure established by law.*

<sup>26</sup> *Francis Coralie v. Administrator, Union Territory of Delhi* AIR 1981 SC 746, 753; See also *Chameli Singh v. State of U.P* AIR 1996 SC 1051. Justice Bhagwati had observed in *Francis Coralie* that the right to life includes “... the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and comingling with fellow human beings.”

<sup>27</sup> See *Munn v. Illinois* 94 U.S.113 (1877) cited in M.P.JAIN, *supra* note 24, at 1189.

with no option but to lead an animal existence. It is submitted that ensuring a meaningful right to life to the elderly is a duty incumbent on the state.

By its creative interpretation of article 21 in various cases, the Supreme Court has come to impose positive obligation upon the State to take steps for ensuring to the individual a better enjoyment of his life and dignity. Some of the facets of right to quality life, as upheld by the Supreme Court and which are of special relevance to the older persons are as follows:

- (a) Just and humane conditions of work<sup>28</sup>: The conditions should be age friendly and of such a nature as to secure, effective contribution by the elderly without ousting them from the work sector.
- (b) Tradition and cultural heritage of the person concerned<sup>29</sup>: Urbanization and the inevitable cultural exchange should not wither away the tradition and cultural heritage, so very important to the older persons.
- (c) Right to livelihood<sup>30</sup>: State assistance is necessary to ensure a reasonable means of living through income generating activities, which alone can make the older persons enjoy the fundamental human right to live with human dignity.<sup>31</sup>
- (d) Right to medical care<sup>32</sup> and Maintenance and improvement of public health<sup>33</sup>: This includes making available the existing general medical care facilities to the senior

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<sup>28</sup>*Bandhua Mukti Morcha v. Union of India* AIR 1984 SC 802.

<sup>29</sup>*CERC v. Union of India* AIR 1995 SC 922.

<sup>30</sup>*Olga Tellis v. Bombay Municipal Corporation* AIR 1986 SC 180, *Board of Trustees of the Port of Bombay v. Dilipkumar R. Nadkarni* AIR 1983 SC 109.

<sup>31</sup> It is true that the Supreme Court in *Olga Tellis* has added a rider to the 'right to livelihood' under Article 21, by holding that the state may not by affirmative action be compellable to provide adequate means of livelihood or work to its citizens. But such a rider should not be applied to older citizens, as they form a class of their own, and is to be given preferential treatment by the state and hence policies should be formulated and implemented to facilitate a means of livelihood to the older citizens. Generating employment options for a section of the population who are otherwise deprived of the same, owing to societal prejudice is important for their survival.

citizens and the need to develop and promote efficient geriatric care at all health centres.<sup>34</sup>

- (e) Right to shelter<sup>35</sup>: In view of the observation of the Supreme Court that: "... for a human being, it (shelter) has to be suitable accommodation which allows him to grow in all aspects - physical, mental and intellectual", it is submitted that the buildings providing accommodation and lands appurtenant thereto are required to be suitable to meet the special needs of the elderly.
- (f) Right to humane conditions in protective homes<sup>36</sup> : If establishing old age homes for indigent aged persons is a statutory directive<sup>37</sup>, maintaining humane conditions in such protective homes is a constitutional imperative under Article 21 of the Constitution.
- (g) Access to road to residents of hilly areas<sup>38</sup>: Access to roads is important for the older persons living in the rural areas.
- (h) Right to protection against cruel inhuman and degrading treatment<sup>39</sup>: This is a valuable human right of the older persons because of their dependency which makes them all the more vulnerable to abuse and neglect.
- (i) Right to protection from noise pollution<sup>40</sup>: Noise affects sleep, hearing, mental and physical health. Those who are most affected are the young, elderly and persons

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<sup>32</sup>*Paramanand Katara v. Union of India* AIR 1989 SC 2039.

<sup>33</sup>*Vincent v. Union of India* AIR 1987 SC 990.

<sup>34</sup> Provision for medical care of senior citizen is now a statutory obligation of the Government. See MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS ACT, 2007, S.20.

<sup>35</sup>*Shantisar Builders v. Narayanan Khimalal Totame* AIR 1990 SC 630; See also *U.P. Avas Evam Vikas Parishad v. Friends Co-op Housing Society Ltd* AIR 1996 SC 114, 116 : "Right to shelter is a Fundamental Right which springs from the right to residence assured in Art. 19(1) (e) and right to life under Article 21 of the Constitution."

<sup>36</sup> *Vikramdeo Singh Tomar v. State of Bihar* AIR 1988 SC 1782, *Upendra Baxi v. State of U.P* AIR 1987 SC 191.

<sup>37</sup> See MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS ACT, 2007, S.19.

<sup>38</sup> *State of Himachal Pradesh v. Umed Ram* AIR 1986 SC 847.

<sup>39</sup> *Francis Coralie v. Union Territory of Delhi* AIR 1981 SC 746.



suffering from ill-health. The Supreme Court had observed that in the connection the right of such vulnerable group including the elderly is to be protected.<sup>41</sup>

- (j) Right to privacy<sup>42</sup>: Right to privacy is important for the older person as he ought to be given the right to take decisions regarding his own person, occupation, property etc.

All the fundamental rights are available to the older citizens. It is to be remembered that Fundamental Rights are not prefaced 'Till you reach a prescribed age'.

#### **4.1.2 Directive Principles of State Policy**

The Directive Principles enshrined in Part IV of the Constitution seek to introduce the concept of welfare state<sup>43</sup> and obligate the state to take positive action in certain directions in order to promote the welfare of the people and achieve economic democracy.<sup>44</sup>

Article 39 (a) enjoins the State to direct its policy towards securing to citizens the right to an adequate means of livelihood; and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. Right to livelihood has been elevated by the Supreme Court in *Olga Tellis* and held to be part of right to 'life' under Article 21.

Public assistance in case of old age is specifically contained in Article 41 of the Constitution. Further Article 46 prescribes that the State has to promote with special care

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<sup>40</sup> *Noise Pollution (V), In re* AIR 2005 SC 3136.

<sup>41</sup> *Church of God (Full Gospel) in India v. K.K.R. Majestic Colony Welfare Association* AIR 2000 SC 2773.

<sup>42</sup> *PUCL v. Union of India* AIR 1991 SC 207, 211.

<sup>43</sup> *Paschim Banga Khet Mazdoor Samity v. State of West Bengal* AIR 1996 SC 2426.

<sup>44</sup> VII CAD 476, 493-494.

the educational and economic interests of the weaker sections of the people, and to protect them from social injustice and all forms of exploitation.

The mandate is on the State to make “effective provision” for securing inter alia, public assistance in case of old age. But this mandate is subject to the “limits of its economic capacity and development” and therefore has yielded little result. India being a welfare state committed to the cause of human rights and social justice, it cannot hide behind the veil of “within the limits of available resources/ economic capacity/development”, when it comes to protecting the basic rights of the older persons, without which they would either perish or lead an animal existence.

The various directive principles are meant to be realized through laws made by the competent legislature. This is evident from the inclusion of subjects in Schedule VII which are directed towards the welfare of the older persons, as well.<sup>45</sup> Over and above all these, the state shall endeavor to foster respect for international law and treaty obligations, which bring it to the forefront of national agenda the obligations arising out of such state obligations<sup>46</sup>.

The duty to respect the dignity and worth of older persons and care for them is not included as a fundamental duty under Part IV A of the Constitution.

Having analyzed the Constitutional provisions, a perusal of the statutory framework regarding the entitlements of the older persons is necessary.

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<sup>45</sup> See CONSTITUTION OF INDIA, 1950, Seventh Schedule - Entry 9 of List II; Entries 20, 23 and 24 of List III.

<sup>46</sup> It is significant to note that India had been a representative to the World Assembly on Aging held at Vienna in 1982 and the Second World Assembly on Aging held at Madrid in 1992 and that it is a signatory to the International Plan of Actions on Ageing drawn by these Assemblies.

#### 4.2 MAINTENANCE OF PARENTS UNDER THE CRIMINAL PROCEDURE CODE, 1973

Section 125 of the Criminal Procedure Code enacts that if any person having sufficient means neglects or refuses to maintain his wife, children or parents, who are unable to maintain themselves, a judicial magistrate, first class may order such person to pay maintenance to them at such rate as he deems fit.<sup>47</sup> Any breach of the order may result in imprisonment which may extend up to one month.<sup>48</sup> Provision is also made for award of interim monthly allowance for the maintenance of his/ her parent/s and expenses of proceeding. It is the discretion of the Magistrate to make such an order and determine the amount which he considers reasonable to be paid during the pendency of the proceeding.<sup>49</sup>

According to the Law Commission, primary justification for placing provisions relating to maintenance to wives, children and parents which are civil in nature in the Code of Criminal Procedure is that a remedy more speedy and economical than that available in Civil Courts is provided to them. Moreover, these provisions are aimed at preventing

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<sup>47</sup> Relevant part of S.125 (1) - *Order for maintenance of wives, children and parents. (1) If any person having sufficient means neglects or refuses to maintain-*  
 (a) his wife, unable to maintain herself, or  
 (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or  
 (c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or  
 (d) his father or mother, unable to maintain himself or herself,  
 a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct.

<sup>48</sup> S.125 (3), Cr.P.C states that : *If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made.*

<sup>49</sup> Second proviso to Section 125 (1)

starvation and vagrancy leading to the commission of crime.<sup>50</sup> The object of section 125 Cr.P.C. is to provide a summary remedy to save dependents from destitution and vagrancy and thus to serve a social purpose.<sup>51</sup>

There was no provision for maintenance of parents under the Code of 1898.<sup>52</sup> Pursuant to the recommendations of the Joint Committee, a provision has been made in the present Code for the maintenance of parents. Clause (d) of S.125 (1) provides that a person having sufficient means has to maintain his father or mother, unable to maintain himself or herself. Considering the object of such provision, the expression “father” will include adoptive father as well as stepfather and the term “mother” will include adoptive mother and stepmother, but does not include grandparents.

A difficult and controversial question that arises in this context is whether a daughter also is liable to maintain her parents. Some of the High Courts have taken the view that in view of the pronoun “his”, a daughter cannot be held liable to maintain her parents. In *Vijaya Manohar v. Kashirao Rajaram*<sup>53</sup>, a father filed an application claiming maintenance from married daughter. The application was allowed by the trial court as well as the High Court. Relying on the pronoun “his” in Section 125(1)(d) it was contented that only “son” is burdened with the obligation to maintain his parents. Negating the contention, the Court observed:

There can be no doubt that it is the moral obligation of a son or a daughter to maintain his or her parents. It is not desirable that even though a son or

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<sup>50</sup> LAW COMMISSION INDIA 41<sup>ST</sup> REPORT, para 36.1(1969).

<sup>51</sup> *Bhagwan Dutt v. Kamla Devi* AIR 1975 SC 83, 85.

<sup>52</sup> S.488 of the Criminal Procedure Code, 1898 did not envisage maintenance to parents.

<sup>53</sup> AIR 1987 SC 1100.

a daughter has sufficient means, his or her parents would starve. Apart from any law, the Indian society casts a duty on the children of a person to maintain their parents if they are not in a position to maintain themselves. It is also their duty to look after their parents when they become old and infirm.<sup>54</sup>

Considering the recommendations of the Joint Committee and placing reliance on Section 2(y) of the Code<sup>55</sup> read with Section 8 of the Indian Penal Code<sup>56</sup>, the Court concluded that Section 125 (1) (d) had imposed a liability on both the son and the daughter to maintain their father or mother who is unable to maintain himself or herself.<sup>57</sup>

According to Justice C. K. Thakker<sup>58</sup>, the view taken by the Supreme Court is erroneous and does not lay down the correct law. While making recommendations, the Joint Committee specifically and intentionally used the expression “son”. Moreover while inserting clause (d) to Section 125 (1), Parliament used the pronoun “his”. Though it cannot be denied that ‘a daughter after her marriage ceases to be a daughter of the father or mother’, it requires to be borne in mind that as per the legislative mandate in Section 125 (1) (c), a major married daughter, in no case can claim maintenance from her father, though a son can claim maintenance. The intention being that after the marriage the responsibility of maintaining wife rests with the husband and not with the father.

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<sup>54</sup> *Vijaya Manohar v. Kashirao Rajaram*, AIR 1987 SC 1100, 1101-1102

<sup>55</sup> CRIMINAL PROCEDURE CODE, 1973, S.2 (y): *Words and expressions used herein and not defined but defined in the Indian Penal Code (45 of 1860) have the meanings respectively assigned to them in that Code.*

<sup>56</sup> INDIAN PENAL CODE, 1860, S.8: Gender – The pronoun “he” and its derivatives are used of any person, whether male or female.

<sup>57</sup> *Supra* note 54, at 1103.

<sup>58</sup> *See* C.K.THAKKER, CRIMINAL PROCEDURE 372 (3<sup>rd</sup> ed., Lexis Nexis, Gurgaon, 2011).

Another issue is whether the liability of the son or daughter will pass on to their legal heirs on their death. In *Saroj Mukhawar v. Chandrakalabai Polshetwar*<sup>59</sup>, the mother-in-law, a widow of 5 years, not able to earn for herself, claimed maintenance from the daughter-in-law who was appointed at Rs.10,000/- at compassionate ground on the death of her husband, who was the only son of the claimant. The daughter in law had given an undertaking as a part of the compassionate appointment that she would support her mother in law. For these reasons she was held liable to do so.

Thus the Criminal Procedure Code entitles the parents to claim maintenance from their children subject to two conditions, namely (i) the parents are unable to maintain themselves and (ii) the child has sufficient means and still neglects or refuses to maintain the parents.

#### **4.3 MAINTENANCE OF PARENTS UNDER PERSONAL LAWS**

Even though there a moral obligation to take care of aged parents is recognized generally by all, the extent of the legal obligation to do is specified differently for each religion under their respective personal laws. The Hindu Law and the Muslim Law contain provisions for maintenance of parents. The Christian and Parsi laws do not envisage such provisions. They would have to take recourse to the Criminal Procedure Code, 1973 in order to apply for maintenance. The provisions in the Hindu Law and Muslim Law are detailed as under:

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<sup>59</sup> AIR 2009 NOC 2407 (Bom.); See also *Bharati Mohanta v. Narahari Mahanta* 2011 AIC (Vol. 99) 791 (Ori.).

### A. *Hindu Law*

Maintenance was regarded as a duty of a Hindu male, which he owed to his dependent relations and by which both, the person and property was bound.<sup>60</sup> A Hindu male was under obligations to maintain his aged parents, among others<sup>61</sup>, whether he possessed of any property or not. So strong was the obligation on the Hindu to provide maintenance to these relatives under a mandate coming down from Manu, that, “aged mother and father, the chaste wife and infant child must be maintained even by doing a hundred misdeeds.”

<sup>62</sup> What was a moral obligation of the Hindu male under the *Smritis*, customs and usages is now a statutory obligation not only on the son, but also on the daughter. The law relating to maintenance of parents, among Hindus is now governed by the Hindu Adoptions and Maintenance Act, 1956. This law is not extended to the State of Goa and therefore not applicable in the State.<sup>63</sup>

Section 20 of the Hindu Adoptions and Maintenance Act, 1956 states that, a Hindu is bound, during his or her lifetime, to maintain *inter alia*, his or her aged or infirm parents if the parent is unable to maintain himself or herself out of his or her own earnings or other property. The term “maintenance” is defined under the Act, as including provision for food, clothing, residence, education and medical attendance and treatment and in case

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<sup>60</sup> S.N. AGGARWAL, COMMENTARY ON THE LAW OF MAINTENANCE 1 (Orient Publishing Company, 4<sup>th</sup> ed., Reprint 2006).

<sup>61</sup> A Hindu male was duty bound to maintain his unmarried daughters, legitimate sons, illegitimate sons and a wife who was chaste.

<sup>62</sup> GOPAL CHANDRA SARKAR SASTRI, HINDU LAW 522 (Gyan Books Pvt Ltd, Delhi, 8<sup>th</sup> ed., 1986).

<sup>63</sup> Goa became a part of Indian Union on 19<sup>th</sup> December 1961. As per the Goa, Daman and Diu (Administration) Act, 1961, the laws in force in the State would continue to operate unless amended or altered by a competent legislature or authority. Even though President of India had issued Regulation No 12 of 1962 on 22 November 1962, applying several Central Acts to the State, the Hindu Adoption and Maintenance Act, 1956 was not of those Central Acts. Therefore the law relating to such matters in Goa would continue to be the existing law, namely the Portuguese Civil Code of 1867.

of an unmarried daughter also expenses for her marriage.<sup>64</sup> The term “parent” includes a childless step-mother.

This section gives a statutory recognition to the well-established moral obligation of a Hindu male to maintain his aged or infirm parents, as long as they are unable to maintain themselves.<sup>65</sup> The obligation on the son and daughter is a qualified one; firstly, the inability of the parents to maintain themselves and secondly that the parents must be aged or infirm. Age and health of the parent are relevant criteria in determining the incidence of obligation on the sons and daughters. This is evident from the decision of the Bombay High Court that where the age of the step-mother was 40 years only, she was held to be neither aged nor infirm and therefore not entitled to be maintained by her step-son, step-daughter-in-law, and step-grandson.<sup>66</sup> However, once these conditions are fulfilled, the obligation is a complete, personal, absolute and not dependent on the possession of property or income by the son or daughter. The obligation is legal and imperative one, not merely moral and optional.

It is important to note that this Act is making it obligatory not only on the sons, but also on the daughters to maintain their aged or infirm parents. There is no distinction whether the daughter is married. The liability of the daughter is as much personal and absolute as that of the son and possession of property by the daughter is not a condition precedent.<sup>67</sup>

There is no specific provision in the Act as to who is more liable but no one can evade the liability by pleading that the other child has enough to maintain his or her aged or

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<sup>64</sup> THE HINDU ADOPTIONS AND MAINTENANCE ACT, 1956, Section 3(b),

<sup>65</sup> *Wali Ram v. Muktiar Kaur* AIR 1969 P&H 285.

<sup>66</sup> *Bhagwan Sahebrao Sonawane v. Ranjanabai Sahebrao Sonawane*, (2002) 1 DMC 49 (Bom.)

<sup>67</sup> *Munni Devi v. Chhotti*, AIR 1983 All. 444.



infirm parents. The liability of son and daughter is co extensive which has been left to the Courts to determine depending on the facts and circumstances of each case.<sup>68</sup>

A decree for maintenance in favor of the parent passed against the sons or daughters can be executed against any judgment debtor. The decree is joint and several. The son or daughter to the extent he or she satisfies the joint and several decree exceeding his or her share of liability, can only call for contribution from the other judgment debtors.<sup>69</sup>

The maintenance to which the parents are entitled to does not end with the death of the son or daughter. The Act also vests obligation on the legal heirs of the deceased Hindu to maintain the dependents of the deceased person out of the estate inherited by them from the deceased.<sup>70</sup> Dependent for this purpose includes the father and mother of the deceased Hindu.<sup>71</sup> Therefore the legal heirs of a deceased Hindu are under an obligation to maintain the parents of the deceased.

### ***B. Muslim Law***

Muslim law vests obligation on a Muslim man and woman alike, to maintain one's father and mother. According to Fatawa Alamgiri<sup>72</sup>, the liability to maintain necessitous parents rests in equal shares upon children of both sexes, provided that they have the means; but if some only of them have means, then the parents' entire maintenance must be borne by them, the others being liable to contribute their proportionate shares of such

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<sup>68</sup> S.N. AGGARWAL, *supra* note 60, at 187.

<sup>69</sup> *V. Venkata v. Subrahmanyam*, 1985(2) HLR 234.

<sup>70</sup> HINDU ADOPTION AND MAINTENANCE ACT, 1956, Section 22 (1).

<sup>71</sup> *Id.* S. 21.

<sup>72</sup> Fatawa e Alamgiri is a compilation of law created at the instance of the Mughal Emperor Aurangazeb, also known as Alamgiri. This compilation is based on Sunni Hanafi Islam's Sharia law, and was the work of many scholars, mainly from Hanafi School. *See generally* R.S. KHARE, PERSPECTIVES ON ISLAMIC LAW, JUSTICE AND SOCIETY (Rowman & Littlefield Publishers, Inc., United States of America, 1999).

maintenance.<sup>73</sup> Thus Fatawa Alamgiri lays down the postulate that the children are required to support their aged and infirm parents so far as they are not able to support themselves.<sup>74</sup> The obligation to maintain poor parents provided that they have the means. If some of the children are themselves poor, then the obligation lies on those who are in easy circumstances.<sup>75</sup>

The duty of grandchildren to maintain a Hanafi Muslim is postponed to the duty of his father. A Muslim has an obligation to maintain his poor grandparents, both maternal and paternal.<sup>76</sup> The obligation is of the same nature as of the parents. However if one's father or mother is alive, then one has no obligation to maintain his grandparents, since the children have a prior obligation to maintain their parents.<sup>77</sup> Parents and grandparents are entitled to maintenance even if they have ceased to be Muslims.

Muslim law lays down the following conditions for the maintenance of parents and grandparents. Firstly, the maintainer should be in easy circumstances and secondly, the claimant should be poor. A person, who has sufficient means to be prevented from accepting alms, is considered to be a person in easy circumstances. A person, who cannot be prevented from begging, is poor. Under the Hanafi law, as between parents, the mother has the preferential right as against the father to be maintained by her children.<sup>78</sup>

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<sup>73</sup> *Baillie. I. 461 (465)*, cited in FAIZ BADRUDDIN TYABJI, *MUSLIM LAW : THE PERSONAL LAW OF MUSLIMS IN INDIA AND PAKISTAN* 279 (N.M.Tripathi Private Ltd, 1968).

<sup>74</sup> *Cited in* PARAS DIWAN, *MUSLIM LAW IN MODERN INDIA* 144 (Allahabad Law Agency, 8<sup>th</sup> ed., 2000).

<sup>75</sup> *Kasim v. Sadiq* 1938 PC 169.

<sup>76</sup> *See* FAIZ BADRUDDIN TYABJI, *MUSLIM LAW : THE PERSONAL LAW OF MUSLIMS IN INDIA AND PAKISTAN* 281 (N.M.Tripathi Private Ltd, 1968).

<sup>77</sup> *Id.* at 275.

<sup>78</sup> *Baillie. I. 462 (466)*, cited in FAIZ BADRUDDIN TYABJI, *supra* note 76, at 274; *See also Dinsab Kasimsab v. Mahmad Husen*, (1944) 47 Bom. L.R. 345.

Under Shia law the rights of both parents are equal and the maintenance allowance must, if necessary, be divided between the father and the mother equally.<sup>79</sup>

If a person earns something but has no surplus to maintain his parents, then the Court will not pass an order asking him to provide maintenance for his parents. In such circumstances the son may be asked to bring his father into his family and maintain him like one of his family.<sup>80</sup> The Muslim authorities hold the view that when a person is unable to provide separate maintenance for his parents, he may be compelled to take his parents' home with him. If a person is in easy circumstances, then Muslim law enjoins him to provide reasonable maintenance to his parents.

The obligation to maintain parents is that of children, sons as well as daughters. No one else has this obligation.<sup>81</sup> Whether the obligation to maintain the parents, who are able to earn, exists, the Muslim authorities differ. The majority of Hanafi authorities seem to answer the question affirmatively, while the Shia authorities answer is negatively, since among them the general rule is that no one has an obligation to maintain another who is able to earn.

#### **4.4 SHORTCOMINGS OF THE PROVISIONS FOR MAINTENANCE OF PARENTS IN THE CRIMINAL PROCEDURE CODE, 1973 AND THE PERSONAL LAWS**

The Code of Criminal Procedure, 1973 and the Hindu Adoptions and Maintenance Act, 1956 provide for maintenance of aged or infirm parents. The Muslim law also provides

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<sup>79</sup> *Baillie. II. 104 (par.2) (466)*, cited in *supra* n.76 at 274.

<sup>80</sup> *Supra* note 78.

<sup>81</sup> See FAIZ BADRUDDIN TYABJI, *supra* note 76, at 279.

for maintenance of necessitous parents if the children have means. The limitations of these provisions are enumerated as follows:

Section 125 of the Code of Criminal Procedure, 1973 imposes an obligation on persons having sufficient means to maintain their parents who are unable to maintain themselves. In case any such person neglects or refuses to do so, the father or mother can claim for maintenance before the First Class Magistrate. On proof of neglect or refusal, the Magistrate may order such person to make a monthly allowance at a rate he thinks fit, for the maintenance of his father or mother. This provision will apply to persons only if they have sufficient means to maintain their parents. Further the claim should be raised before a Magistrate of the first class, which requires legal representation and incurs consequent expenses as well. The burden of proving neglect or refusal on the part of the children is on the parents. The amount of maintenance is entirely left to the discretion of the magistrate. The advantage of the order passed is that noncompliance may result in imprisonment and therefore will act as a sanction against noncompliance.

Section 20 of the Hindu Adoption and Maintenance Act, 1956 provides for the obligation of a Hindu son and daughter to maintain his or her aged or infirm parents who are unable to maintain themselves. Firstly, this obligation is only for a Hindu. Secondly only aged or infirm parents are entitled to maintenance under this provision. Unlike S.125 of the Criminal Procedure Code, this Act does not take into account the financial capacity or “sufficient means” of the Hindu son and daughter. The term “parent” for the purpose of maintenance under Section 20 includes a childless stepmother, but does not include the stepfather. Further it is only the childless stepmother who is so entitled. Interim maintenance during the pendency of the proceedings is not provided for under the Act.

The suit for maintenance is to be filed before the civil court or family court as the case maybe and it involves legal representation, involving expenditure and delay as well. Muslim law provides for maintenance of parents who are in need, provided the children have the means to do so. Enforcement of this obligation will be required to be done through a civil court which requires legal representation, incurs delay and expense as well.

Therefore, there was a felt need for a less cumbersome procedure and machinery, which is inexpensive, informal and speedy for claiming maintenance by parents and senior citizens. On one hand, all parents irrespective of age, who are unable to maintain themselves, had to be provided for maintenance by their major children. On the other hand, those senior citizens who are childless need to be maintained as well.

Therefore the obligation to maintain senior citizens was not to be limited to children alone, but also on grandchildren, and on relatives in case of childless senior citizens, at least in cases where such relatives inherit the property of such senior citizens. Accordingly, the obligations of children and relatives had to be elaborately spelt out.

The basis of determining maintenance amount had to be provided for as statutory guidelines. In addition to merely providing for maintenance, the safety of life and property as well as healthcare of senior citizens was a matter of concern, which was not attended to under any other legislation.

The governmental responsibility in integrating its machinery and resources to provide for the maintenance and welfare of senior citizens was much desired. Moreover, a comprehensive law focusing on the special needs and entitlements of parents and senior

citizens had become the need of the hour, especially in the light of international consciousness towards the cause of older persons well mooted by United Nations,<sup>82</sup> coupled with India's own commitment to the Vienna Declaration on Ageing and Madrid Declaration on Ageing.

#### **4.5 MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS ACT, 2007**

Constitution of India guarantees fundamental rights to all citizens. Senior citizens are no exception to this. However due to the general societal attitude towards old age, realization of these rights became a mirage, as a person advances into old age. With the objective of giving legislative shape to the rights of parents and senior citizens recognized under the Constitution<sup>83</sup>, the Parliament of India passed the Maintenance and Welfare of Parents and Senior Citizens Act, 2007<sup>84</sup>(hereinafter MWPC Act).

Thereafter the Government of Goa notified and published the Act for general information on 22<sup>nd</sup> April 2008<sup>85</sup> and the Government of Kerala notified and brought the Act into force from 24<sup>th</sup> September 2008<sup>86</sup>. The Act extends to the whole of India except the State of Jammu and Kashmir and it applies to citizens of India outside India.<sup>87</sup> The Act has

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<sup>82</sup> For a detailed discussion of the role of UN, see supra Chapter 2, para 2.2 and Annexure 5.

<sup>83</sup> The Preamble to the Act states thus: *An Act to provide for more effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognized under the Constitution and for matters connected therewith or incidental thereto.*

<sup>84</sup> (Central Act No.56 of 2007) has been passed by Parliament and assented to by the President of India on 29-12-2007 and published in the Gazette of India Extraordinary, Part II, Section 1, dated 31-12-2007.

<sup>85</sup> S.1(3) of the Act states that the Act *shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.* Government of Goa notified and brought the Act into force vide Notification 10/2/2007 – LA/126 dated 22<sup>nd</sup> April 2008.

<sup>86</sup> *Vide* Notification G.O.(P) No. 54/2008/SWD dated 24<sup>th</sup> September 2008.

<sup>87</sup> MWPC ACT, S.1(2).

overriding effect over all other enactments and instruments which are inconsistent with this Act.<sup>88</sup>

#### **4.5.1 Maintenance and Welfare of Parents and Senior Citizens: Rights and Obligations**

The title of the Act is indicative of two entitlements provided for “parents” and “senior citizens” under this Act, namely right to “maintenance” and “welfare”. The corresponding obligation is vested on children and relatives.

The term “maintenance” includes provision for food, clothing, residence and medical attendance and treatment<sup>89</sup>. It is to be noted that the obligation on the children and relative is to “maintain” the parent or the senior citizen as the case may be. Therefore what is expected of the children and relatives under the MWPSA Act is to make provision for food, clothing, residence, medical attendance and treatment to the parents and senior citizens. It is further provided that the obligation of the children and relatives to maintain a senior citizen/ a parent/ both parents extends to the needs of such senior citizen or parent/s as the case may be so that the person leads a normal life.<sup>90</sup>

Therefore the quality of food, clothing and residence would not be standard for all parents, rather it would vary with the needs, as accustomed to by such parent. Medical assistance and treatment must be to suit the needs of such parent.

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<sup>88</sup> S.3 : *Act to have overriding effect - The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act, or in any instrument having effect by virtue of any enactment other than this Act.*

<sup>89</sup> MWPSA ACT, S.2(b).

<sup>90</sup> See MWPSA ACT, Sections 4 (2) and 4 (3).

The term “welfare” means provision for food, health care, recreation centres and other amenities necessary for the senior citizens<sup>91</sup>. Even though the term is defined in the Act, it does not make any specific provisions for the same. Chapter II of the Act is entirely dealing with the maintenance of parents and senior citizens and nowhere the term ‘welfare’ used. The obligation on children and relatives is only to maintain the parents and senior citizens, though the inclusive nature of the definition for “maintenance” may bring within it “welfare” also.

However in Chapter III, which provides for establishment of old age homes, it is provided that the State Government may provide a scheme for managing old age homes, including the standards and various types of services to be provided by them which are necessary for medical care and *means of entertainment* to the inhabitants of such homes.<sup>92</sup> The definition of “welfare” includes “recreation centres”, and therefore the aspect of welfare, in addition to maintenance is indicated in the scheme for managing old age homes. Moreover, the MWPC Act provides for effective co-ordination between the services provided by the concerned Ministries or Departments dealing with law, home affairs, health and welfare, to address the issues relating to the welfare of the senior citizens and for periodical review of the same.<sup>93</sup>

Even though this term “welfare” overlaps with the term “maintenance”, the implication set by the statute is different for each. “Maintenance” focuses on the monetary requirement to meet the provisions for food, clothing, and medical attendance and treatment. This is a right the parents and senior citizens can enforce as against their

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<sup>91</sup> MWPC ACT, S.2 (k).

<sup>92</sup> MWPC ACT, S.19(2) (*emphasis added*).

<sup>93</sup> MWPC ACT, S.21(iii).



children or relatives.. However welfare is a wider term which includes health care, which is greater in amplitude than medical attendance and treatment; recreation centres which caters to the entertainment and mental well-being; and other amenities which would make life better for the senior citizens. The responsibility to undertake welfare measures for senior citizens appears to be incumbent on the State. The MWPC Act impliedly provides for welfare of senior citizens through (i) establishment of old age homes for senior citizens<sup>94</sup> (ii) Provisions for medical care of senior citizen<sup>95</sup> and (iii) Protection of life and property of senior citizens<sup>96</sup>.

#### **A. Right to Maintenance of “Parents” and “Senior Citizens”**

The persons entitled to maintenance under the Act are the parents and senior citizens. The term “parent” means father or mother whether biological, adoptive or step father or step mother, as the case may be, whether or not the father or the mother is a senior citizen<sup>97</sup>. The term ‘senior citizen’ means any person being a citizen of India, who has attained the age of sixty years and above<sup>98</sup>.

This law is focusing not only on the senior citizens, which is an age based nomenclature. Rather, it addresses the value rupture which has happened with generations, and attempts to legalize the responsibility and obligation on children to take care of their parents, no matter the age of the parents. This is way forward than the international attempts where

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<sup>94</sup> See MWPC ACT, Chapter III. There is a limited capacity in these homes and the more indigent is given priority in admission, See Rule 18 B, *Goa Maintenance and Welfare of Parents and Senior Citizens Rules, 2009* and Rule 18 B, *Kerala Maintenance and Welfare of Parents and Senior Citizens Rules, 2009*.

<sup>95</sup> See *id.* Chapter IV.

<sup>96</sup> See *id.* Chapter V.

<sup>97</sup> *Id.* S.2(d).

<sup>98</sup> *Id.* S.2 (h).

all focus was only on older persons, which is a term adopted by UN for persons sixty years of age and above.

The Criminal Procedure Code, 1973 also mentions about the obligation to maintain “one’s parents”. However, the Hindu Adoptions and Maintenance Act, 1956 provides for maintenance of ‘aged’ parents, and not ‘parents’<sup>99</sup>. The MWPC Act is much broader and includes parents below the age of sixty, and also includes adoptive parents and step-parents.

Chapter II of the Act is titled as ‘Maintenance of Parents and Senior Citizens’. It sets out the obligation of the children and relatives on one side and on the other hand prescribes the right of the parents and senior citizens to make an application to the Maintenance Tribunal, for maintenance from children or relative as the case may be. Senior citizens and parents who are unable to maintain themselves from their own earning or out of the property owned by them shall be entitled to make an application to the Maintenance Tribunal.<sup>100</sup> Parent can make the application against their children and childless senior citizens can claim against the relatives.

The right to claim maintenance is also provided in the Criminal Procedure Code, 1973. In spite of this statutory right, a senior citizen or parent is entitled for maintenance under the Maintenance of Parents and Senior Citizens Act. This is clear from S. 12<sup>101</sup> of the MWPC Act which provides for an option regarding maintenance, allowing the applicant

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<sup>99</sup> HINDU ADOPTION AND MAINTENANCE ACT, 1956, S.20.

<sup>100</sup> MWPC ACT, S.4 (1).

<sup>101</sup> *Id.* S.12: *Notwithstanding anything contained in Chapter IX of the Code of Criminal Procedure, 1973, where a senior citizen or a parent is entitled for maintenance under the said Chapter and also entitled for maintenance under this Act may, without prejudice to the provisions of Chapter IX of the said Code, claim such maintenance under either of those Acts but not under both.*

to make a claim under any one of the laws, but not under both. It is clear from Section 12 read with proviso to Section 14<sup>102</sup> that a Tribunal cannot entertain a complaint if an application for maintenance has already been allowed by the First Class Magistrate under Section 125 of Cr.P.C or it is pending before such Court.

A question arose whether a person who has been granted maintenance by an order of the Tribunal, can thereafter file an application under Section 125 of Cr.P.C was decided by the Court in the affirmative. The Court observed that the provisions of the MWPSA Act is only an enactment enacted to protect the interest of parents and senior citizens who have been neglected by their kith and kin and that cannot be treated in derogation of the rights available under the general law to such persons to claim maintenance from the persons liable to pay maintenance under the general law.<sup>103</sup>

It is submitted that whether the lower court as well as the High Court had omitted to consider Section 12 of the Act, or was it 'the play of an inadvertent human element' in the judges is difficult to decipher. It is important to note that in that case an eighty year old mother had been allowed maintenance of Rs.300/- per month from each of her two sons by the Tribunal, and the lower court considering this amount to be meager awarded Rs.500/- per month over and above the amount ordered by the Tribunal. It is shocking that the son had taken the old mother to the court even up to the level of a revision petition in the High Court.

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<sup>102</sup> *Id.* Proviso to Section 14 states: *Provided that where any application for maintenance under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) is pending before a Court at the commencement of this Act, then the Court shall allow the withdrawal of such application on the request of the parent and such parent shall be entitled to file an application for maintenance before the Tribunal.*

<sup>103</sup> *Unnikrishnan v. Devaky* (High Court of Kerala, RPFC. No. 105 of 2015, Judgment dated 18<sup>th</sup> March 2015), available at [http://judis.nic.in/judis\\_kerala/content.asp](http://judis.nic.in/judis_kerala/content.asp). [accessed 1 August 2016].

Under these circumstances and the MWPSA Act being welfare legislation, it is submitted that at times humanity outweighs the literal legality and therefore any further analysis to prove the judgment as *per incuriam* is unconscionable and hence omitted.

### **B. Obligation of “Children” and “Relatives”**

The provisions for maintenance not only endorse the obligation of children to maintain their parents, but also ensure the obligation on the side of the relatives in maintaining the childless senior citizens in the family. The Act makes it obligatory on the children to maintain their parents, who may or may not be senior citizens.

The term ‘Children’ includes son, daughter, grandson and grand-daughter but does not include a minor<sup>104</sup>. By giving an expanded definition of the term ‘children’ the law is making available the right of grandparents to claim maintenance from their grandchildren. And the specific inclusion of ‘daughter’ and ‘granddaughter’ as within the meaning of ‘children’ does not leave scope for any discussion on whether a daughter has the obligation to maintain her parents and grandparents. Such an ambiguity pertained to interpretation of Section 125 of Criminal Procedure Code, as to the interpretation of the word “his” in Section 2 (d) as whether including a son only or even a daughter also.<sup>105</sup>

However the obligation on children is only to maintain parents, and not the parents of their spouses.<sup>106</sup> In the event of death of a major child, the parents therefore are left

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<sup>104</sup> MWPSA ACT, S. 2(a).

<sup>105</sup> See *Vijaya Manohar v. Kashirao Rajaram* AIR 1987 SC 1100. The Supreme Court held that the obligation to maintain one’s parents is on the daughter, as much as on the sons.

<sup>106</sup> See *H. Mariyam Beevi v. The Secretary to Government* (High Court of Madras, W.P.No.22122 of 2010, Judgment dated 27 June 2011) available at [http://judis.nic.in/judis\\_chennai/qrydisp.aspx?filename=32725](http://judis.nic.in/judis_chennai/qrydisp.aspx?filename=32725) [accessed on 3 September 2016].

without any claim for maintenance against the spouse of the deceased, despite the probability of such spouse inheriting all property rights of the deceased including even an appointment on compassionate grounds. The service benefits accruing on the death of a married employee is claimed/inherited by the surviving spouse or children, if any and there seems to be no provision to make it available to the parents, to claim the same. Therefore the right to be maintained by one's children appears to be a personal right which dies with the death of the children and grandchildren. If the deceased employee's family pension and such other benefits are granted to the widow, there is no provision which mandates such a daughter-in-law to maintain her parents in law.

Nevertheless it is pertinent to note that under Section 23(2) where any senior citizen has a right to receive maintenance out of an estate and if such estate is transferred gratuitously, the transferee has the obligation to maintain such senior citizen. Whether inheritance of the property of the deceased sons/daughters by their spouses would amount to 'gratuitous transfer' need to be seen. If so, they would be liable to maintain their parents-in-law who are senior citizens.<sup>107</sup>

Section 4(1) (ii) of the MWPSA Act states that a childless senior citizen who is unable to maintain himself from his own earning or property owned by him shall be entitled to make an application for maintenance against such of his relative referred to in clause (g) of Section 2.

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Discussed in detail in *supra* chapter 3, para 3.4. The son-in-law was held to be under no mandate to maintain his mother-in-law.

<sup>107</sup> S.23 uses the word "senior citizen" and does not use "parent". Therefore the section looks to be applicable to parents only if they are senior citizens.

The term ‘relative’ means “any legal heir of the childless senior citizen who is not a minor and is in possession of or would inherit his property after his death”.<sup>108</sup> Relative is under an obligation to provide for maintenance of the childless senior citizen, only if he is in possession of the property of such senior citizen or would inherit his property. Moreover, such a relative is under an obligation to maintain the childless senior citizen, only if the senior citizen is not able to maintain himself and the relative is having sufficient means to do so.<sup>109</sup>

The obligation of the relative is limited to the extent to which he would inherit the property of the senior citizen. Therefore if a senior citizen is childless and does not own property which would be inherited by any relatives, no one in the family is under any statutory obligation to maintain such senior citizen, under MWPC Act, 2007.

Where more than one relative is entitled to inherit the property of a senior citizen, the maintenance shall be payable by such relative in the proportion in which they would inherit his property. This is an indication of several liability of each of the “relatives” of the senior citizen. Here the obligation is not solidary in nature. Rather each one’s obligation is apportioned in proportion to the share he inherits of the property of such childless senior citizen.<sup>110</sup>

There appears to be an inconsistency between Sections 2(g) and 4(4). On one hand it is provided that the obligation would vest on a relative of the senior citizen if he is in

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<sup>108</sup> See MWPC ACT, 2 (g).

<sup>109</sup> See MWPC ACT, S. 4(4): *Any person being a relative of a senior citizen and having sufficient means shall maintain such senior citizen provided he is in possession of the property of such senior citizen or he would inherit the property of such senior citizen.*

<sup>110</sup> *Id.* proviso to S.4(4): *Provided that where more than one relative is entitled to inherit the property of a senior citizen, the maintenance shall be payable by such relative in the proportion in which they would inherit his property.*

possession of the property of such senior citizen *or* would inherit such property. The word “or” used in Section 4(4) as well as in Section 2(g), indicates that either one of the criteria mentioned should be fulfilled, namely (a) he is in possession of such property or (b) he would inherit such property. On the contrary the proviso to Section 4(4) states that the obligation of a relative who would inherit the property, where there are more relatives who would inherit the same, would be in proportion to the share he would inherit. If there is one relative who in possession of the property, but would not inherit the same; and another one who is not in possession but would inherit such property, who would be under an obligation to maintain such senior citizen and in what proportion is not clear from the Act. Moreover there may be a senior citizen who is not childless, and whose property in the possession of a relative or would inherit the property, other than his/ her children, whether such a relative is under an obligation to maintain such senior citizen is not mentioned with clarity in the Act.

In *Paramjit Kumar Saroya v. Union of India and another*<sup>111</sup>, the High Court of Punjab and Haryana opined as follows:

...the next generation inherits the properties from their parents and yet are unwilling during the life time of their parents to maintain them. The hard reality is that the longevity has given an extended ownership and sometimes the next generation is not even willing to wait to inherit the property at an appropriate stage, but would like to take it during the life time of their parents without the corresponding obligation. It is in this context that sub section (4) of Section 4 of the said Act casts an

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<sup>111</sup> AIR 2014 P&H 121, 123.

obligation on any person who is in possession of a property of a senior citizen or which he would inherit to maintain the senior citizen and where there are more than one relatives entitled to inherit the property the maintenance is to be shared in the proportion of the inheritance.

It is respectfully submitted that the High Court has not correctly interpreted the provision as Section 4 (4) vests an obligation only on a “relative” and not on “children”. The meaning of both terms vary considerably as “relative” under Section 2(g) is a legal heir of a childless senior citizen who is in possession or who would inherit his property after his death and “children” as in Section 2 (a) means of course the children and grandchildren.

The term “childless senior citizen” is not defined. By common parlance it can be assumed that it means a senior citizen who does not have any child living. Therefore in case of a senior citizen parent whose child has died, the spouse of such child who has inherited the estate as well as family pension benefits of the deceased has no obligation under this law to maintain the parents of his/her deceased spouse. Such an obligation would arise, only if the senior citizen owns property which is in the possession of or would be inherited by the son/daughter in law.

The application for maintenance can be made against any of the children or relatives as the case may be and such person can implead the other persons who are also liable to provide maintenance to the claimant.<sup>112</sup> The Delhi High Court held in *Pawan Sharma v.*

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<sup>112</sup> See MWPS ACT, S.5(5).



*State and others*<sup>113</sup> that a parent is free to file an application for maintenance against any of his children or grandchildren and therefore the parent is not under any statutory compulsion to implead his other children also in the complaint. The obligation to implead such others is on the son against whom the application is filed. If he does not take steps to implead his siblings in the matter before the Tribunal, later on it is not possible for him to get the proceedings quashed on the ground that such others were not impleaded.

#### **4.5.2 Enforcement of Rights and Obligations – Maintenance Tribunal and Appellate Tribunal**

The State Governments are under a statutory mandate to constitute Maintenance Tribunal<sup>114</sup> for adjudicating and deciding upon the application<sup>115</sup> for maintenance. The application can be for maintenance,<sup>116</sup> including monthly allowance during pendency of proceeding<sup>117</sup> and also for expenses of proceeding.<sup>118</sup>

The de facto competency of the Maintenance Tribunal in dealing with the complaints under MWPS Act is also a matter to be looked into, keeping in mind the complex legal issues that may arise before a Tribunal especially with respect to transfer of property made by a senior citizen. The Tribunal is presided by an officer not below the rank of Sub

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<sup>113</sup> (High Court of Delhi W.P.(CRL) 1471/2010, Judgment dated 9<sup>th</sup> September 2011), available at [http://lobis.nic.in/d\\_dir/dhc/MUG/judgement/15-09-2011/MUG09092011CRLW14712010.pdf](http://lobis.nic.in/d_dir/dhc/MUG/judgement/15-09-2011/MUG09092011CRLW14712010.pdf) [accessed 3 August 2016].

<sup>114</sup> S.7 of the MWPS Act provides for constitution of Maintenance Tribunal for each subdivision within six months from the date of commencement of the Statute, The Tribunal shall be presided over by an officer not below the rank of Sub-Divisional Officer of a State. There can be more than one Tribunal for a subdivision. Where more than one Tribunal is constituted for any area, the State Government may regulate the distribution of business among them by general or special order.

<sup>115</sup> S.7 of the MWPS Act uses the word “order”, which the researcher feels is apt to be replaced by the word application, which is more meaningful in the context. Application for maintenance is made before the tribunal as per S.5.

<sup>116</sup> MWPS ACT, S.4(1).

<sup>117</sup> *Id.* S.5(2).

<sup>118</sup> *Id.* S.5(2) and S.5 (7).

Divisional Officer of a State. In fact the Tribunal in the States is a single member body comprising of the presiding officer himself.<sup>119</sup>

The actual capability of this Tribunal to deal with the cases proved doubtful in *Nachammai v. The Revenue Divisional Officer*<sup>120</sup> where Madras High Court was called upon by a writ petition to decide on a strange order passed by the RDO. One 83 year old mother in law filed a complaint before the RDO against her daughter in law that the latter had come to her house with police, demanded the keys of the locker, and took away all the jewelry. On receipt of the complaint, the RDO issued summons to the daughter in law (petitioner) directing her to appear with the gold and hand over to the mother in law, failing which, for giving mental torture to the latter, proper legal action will be taken against the petitioner. It was this summons notice that was challenged before the High Court. The Court held that the RDO “must act like a Tribunal in deciding the ‘lis’ between the 2<sup>nd</sup> respondent (mother in law) and the petitioner (daughter in law) and order fresh summons to be issued for enquiry of the matter.

In another case, the Court while adjudicating on the validity of an order of the tribunal setting aside a settlement deed under Section 23 of the Act, held that “transfer of property cannot be approached in a light and casual manner and the same has to be done with all seriousness taking into account the crucial aspects that any decision of the Tribunal under Sec.23 will have grave repercussions on the civil rights of the parties.” The Court ordered

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<sup>119</sup> In the State of Goa, Sub- Divisional Officer is appointed as the presiding officer of the Maintenance Tribunal, *vide* Notification No.83-9-2006-07-SDB/2008/3846). In the State of Kerala, the Revenue Divisional Officers are appointed to the said post *vide* (G.O (P) No.32/2009/SWD.

<sup>120</sup> High Court of Madras (W.P.(MD)No.9390 of 2012, Judgment dated 22<sup>nd</sup> August 2012) *available at* [http://judis.nic.in/Judis\\_Chennai/content.asp](http://judis.nic.in/Judis_Chennai/content.asp) [accessed on 15 June 2016]

that the Tribunal considers all the material before it, give reasonable opportunity to the parties and decide on the matter afresh<sup>121</sup>.

Yet another blatant error of the Tribunal was set aside by the Court, wherein the Tribunal set aside a transfer which was made before the commencement of the Act when it is clearly and unambiguously stated in S. 23 that the provision applies to transfers made after the commencement of the Act.<sup>122</sup>

A gross excess of jurisdiction can be seen in a case where a senior citizen couple approached the RDO seeking measuring and demarcation of the property so that illegal claims by neighbours could be resolved. The RDO treated this petition as one filed under MWPC Act, 2007. The Court held that the RDO cannot, in exercise of the power conferred under the MWPC Act, determine disputes between senior citizens and neighbouring land owners.<sup>123</sup>

The important functional and structural aspects of the Tribunal and its proceedings are enumerated as follows:

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<sup>121</sup>See *P.SreedeviAmmu v. State of Kerala* (High Court of Kerala, WP(C).No. 17357 of 2015 (T), Judgment dated 21<sup>st</sup> April 2015), available at [http://judis.nic.in/judis\\_kerala/qrydisp.aspx?filename=421038](http://judis.nic.in/judis_kerala/qrydisp.aspx?filename=421038) [accessed on 10<sup>th</sup> November 2015]. See also *Johnson M. Paul v. State of Kerala* (High Court of Kerala, WP(C).No. 26925(M) of 2011, Judgment dated 15<sup>th</sup> July 2011), available at [http://judis.nic.in/judis\\_kerala/qrydisp.aspx?filename=278611](http://judis.nic.in/judis_kerala/qrydisp.aspx?filename=278611) [accessed on 10<sup>th</sup> November 2015].

<sup>122</sup>*Vincent v. Augustine* (High Court of Kerala, WP(C).No. 2065 of 2012 (G) , Judgment dated 18<sup>th</sup> August 2011), available at [http://judis.nic.in/judis\\_kerala/qrydisp.aspx?filename=321678](http://judis.nic.in/judis_kerala/qrydisp.aspx?filename=321678)

<sup>123</sup>*K. C. Augustine and another v. The Maintenance Tribunal and others* (High Court of Kerala, WP(C).No. 30255 of 2013 (F) , Judgment dated 6<sup>th</sup> February 2014, available at [http://judis.nic.in/judis\\_kerala/qrydisp.aspx?filename=362959](http://judis.nic.in/judis_kerala/qrydisp.aspx?filename=362959) [accessed on 12 November 2015]. See also *Rani Gopalan v. Sub Divisional Magistrate* ( High Court of Kerala, WP(C).No. 14591 of 2015 (Y) , Judgment dated 9<sup>th</sup> July 2015), available at [http://judis.nic.in/judis\\_kerala/qrydisp.aspx?filename=423517](http://judis.nic.in/judis_kerala/qrydisp.aspx?filename=423517) [accessed on 12 November 2015].

(a) Jurisdiction and Powers

The maintenance application can be filed where one of the parties resides.<sup>124</sup> The tribunal shall have the powers of a Civil Court for the evidentiary purpose and shall be deemed to be a Civil Court for all purposes.<sup>125</sup>

(b) Applicant

The application for maintenance may be made by the parent or senior citizen, and in case of incapacity of such person, the application may be made by any other person or organization.

The Tribunal can also take suo motu action.<sup>126</sup> It is submitted that the neighbourhood groups and self-help groups can take an active role in bringing such matters to the notice of the Tribunal. This can also be effectively done through the Legal Aid Cells of the Law Colleges, as well who can also create legal awareness about the Act among senior citizens and the general public.

The *suo motu* power of the Tribunal to reopen the proceedings even after the applicant-senior citizen requested closure of the proceedings was upheld by the Court in *Shahul Hameed v. Revenue Divisional Officer and others*.<sup>127</sup>

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<sup>124</sup> See MWPSA ACT, S.6(1).

<sup>125</sup> *Id.* S.8(2).

<sup>126</sup> See MWPSA ACT, S.5(1).

<sup>127</sup> (High Court of Kerala WP(C).No. 22434 of 2013 (D), Judgment dated 15<sup>th</sup> December 2012), available at [http://judis.nic.in/judis\\_kerala/qrydisp.aspx?filename=354149](http://judis.nic.in/judis_kerala/qrydisp.aspx?filename=354149) [accessed on 3 November 2015].

## (c) Procedure

The Tribunal may follow its own summary procedure, but shall be subject to the rules prescribed by the State Government.<sup>128</sup> In addition to the Principles of Natural Justice<sup>129</sup>, the Tribunal shall also follow some minimum procedure is mentioned in the Act. Provision is made for referring the matter to a Conciliation Officer before the Tribunal takes up the matter for hearing.<sup>130</sup> Time bound disposal of the application is also mandated.<sup>131</sup>

## (d) Interim maintenance

During the pendency of the proceeding, the Tribunal may order the children or relative to make a monthly allowance for the interim maintenance of the senior citizen including parent, and to make such payment from time to time, as the Tribunal may direct.<sup>132</sup>

## (e) Order of Maintenance

The Tribunal, on being satisfied of the application may order such children or relatives to make payment of a specified monthly allowance for the maintenance of such senior citizen. The maintenance amount is to be fixed in such a manner that it does not exceed the monthly income from all sources of the opposite party, divided by the number of

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<sup>128</sup> MWPSA ACT, S.8(1).

<sup>129</sup> *Id.* S.5(3) provides that, on receipt of an application for maintenance, notice of the application is given to the children or relative and the parties are given an opportunity of being heard. Thereafter the Tribunal shall hold an inquiry for determining the amount of maintenance. S.6(4) states that : “All evidence to such proceedings shall be taken in the presence of the children or relative against whom an order for payment of maintenance is proposed to be made...”

<sup>130</sup> *See id.* S.6(2)-(6).

<sup>131</sup> *See id.* S.5(4).

<sup>132</sup> MWPSA ACT, S.5(2).

persons in his family, counting the applicant also.<sup>133</sup> However the maximum maintenance allowance which may be ordered by such Tribunal shall be such as may be prescribed by the State Government which shall not exceed ten thousand rupees per month.<sup>134</sup> On discovery of facts, or based on the decision of a Civil Court, the order may be cancelled or varied by the tribunal.<sup>135</sup>

Regarding the higher limit of Rupees Ten Thousand, it was observed in *Paramjit Kumar Saroya v. Union of India*<sup>136</sup> that in view of Section 12 of the Act which fixes an option to the applicant to either claim maintenance under Section 125 of Cr.P.C or under this Act, the ceiling on maintenance creates a dilemma. The Court observed as follows:

If he seeks to avail of what is perceived to be a simple and a less expensive remedy under the provisions of the said Act (as the object and reasons state), then he is constrained by the amount of ` 10,000/-. He is not only constrained, but is also precluded from moving for maintenance under Chapter IX of the Cr.P.C. which does not put any such limit. On the other hand, if he is desirous of a larger maintenance and moves under Chapter IX of the Cr.P.C, the more expeditious remedy, albeit of smaller amount of maintenance is no more available to him. Thus, the benefit of the Act itself would stand precluded.<sup>137</sup>

Therefore the Court held that there is a need to relook at the provisions of the Act.

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<sup>133</sup> Rule 14, *Goa Maintenance and Welfare of Parents and Senior Citizens Rules, 2009* and Rule 14, *Kerala Maintenance and Welfare of Parents and Senior Citizens Rules, 2009*.

<sup>134</sup> See MWPC ACT, S.9.

<sup>135</sup> See *id.* S. 10.

<sup>136</sup> AIR 2014 P&H 121.

<sup>137</sup> *Paramjit Kumar Saroya v. Union of India* AIR 2014 P&H 121, 123-124.

## (f) Compliance in case of death of the oblige

Where a maintenance order is made against more than one person, the death of one of them does not affect the liability of others to continue paying maintenance.<sup>138</sup> If the Tribunal passes an order against a single person, whether his obligation would pass on to his legal heirs is relevant point to be ascertained. In case of a relative, the action will pass to his legal heirs who would inherit such property of the childless senior citizen, as would have been inherited by the deceased relative, had he been alive. However the obligation of the children to provide for maintenance being irrespective of probable inheritance, the question whether the maxim *action personalis moritur cum persona* would apply in such a case is relevant. This is especially so, when the legal heirs of the deceased happen to be other than the grandchildren of the senior citizen, who are in any case under an obligation to maintain their grandparents.

## (g) Recovery of amount due under the Order

The Act prescribes the procedure for enforcement of the order of maintenance.<sup>139</sup> It is significant to note that recovery of amount due can be made only on application made by the applicant within three months from the date on which it became due.<sup>140</sup> This causes inconvenience to the senior citizens and may turn out to be a negation of the entire process of claiming of maintenance. In cases where the application is filed by a person on behalf of a senior citizen who is incapable, it would be difficult to expect such continued vigilance from the part of such representative. The limitation of three months period for

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<sup>138</sup> See MWPC ACT, S.5(6).

<sup>139</sup> See MWPC ACT, S.11.

<sup>140</sup> See *id.* S.5(8).

filing such an application adds to the difficulty. Thus the effectiveness ultimately depends on the vigilance of the senior citizen/parent as well as their physical and mental ability to enforce their right to receive maintenance.

The irony of the situation is that the whole concept of payment of maintenance to these persons is due to their inability to take care of themselves, not merely financial, but also emotionally and physically. It requires immense awareness creation in the first place, to encourage senior citizens and parents to avail the provisions of the Act. It is not just a matter of legal literacy alone; rather it is an emotional issue as well to file an application against one's own children and relatives, which is not an easy task for many. Therefore it is even more important to alert and make aware the procedure to be followed in case of non-payment of the amount ordered.

#### (h) Appeal

The MWPC Act provides for constitution of appellate tribunals<sup>141</sup> and the procedure for filing appeals.<sup>142</sup> Section 16 confers the right to file an appeal only to the parents and senior citizens. However the proviso to Section 16(1) states that on appeal, the children or relative who is required to pay any amount in terms of such maintenance order shall continue to pay to such parent the amount so ordered, in the manner directed by the Appellate Tribunal. The proviso can mean two instances: (i) The parent/senior citizen is aggrieved by the less amount of maintenance ordered by the tribunal and hence prefers an appeal to the Appellate Tribunal, wherein during the time of the appeal the

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<sup>141</sup> MWPC ACT, S.15. It provides for the Constitution of Appellate Tribunal. The Appellate Tribunal shall be presided over by an officer not below the rank of District Magistrate.

<sup>142</sup> *See id.* S.16.



children/relative shall be required to make the payment as ordered by the tribunal; (ii) The children/relatives who are aggrieved by the order of the tribunal may prefer an appeal in which case also the appellants shall continue to make the payment as ordered by the tribunal.

Section 16 was challenged in *Paramjit Kumar Saroya v. Union of India and another*, on the ground of *ultravires* the constitutional scheme, because it granted right to appeal only to one of the parties. The High Court held that the section is valid but must be read to provide for the right of appeal to any of the affected parties.<sup>143</sup> The Court came to this conclusion after going through the maze of judicial interpretation and the precedents.<sup>144</sup> On a reading of the Parliamentary Debates on the legislation as well as going by the complexity of the property matters that may be involved in such cases, the Court followed purposive interpretation, considered the absence of explicit mention of opposite party's right to appeal in Section 16 as an omission and held that both the parties have right to appeal under Section 16 of the Act, specially reading it with the proviso to clause (1) of the said section.

It is submitted that the decision of the Court in *Paramjit Kumar Saroya* is justified considering the complex transfer of property matters that may be involved in the applications before the Tribunal and also considering that the Tribunal is vested with the powers of a Civil Court under Section 8 of the Act. However contrary opinions had been

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<sup>143</sup> AIR 2014 P&H 121, 124.

<sup>144</sup> The Court relied on *N. Kannadasan v. Ajoy Khose and others* 2009(7) SCC 1; *Gujarat Urja Vikas Nigam Ltd. V. Essar Power Ltd.* 2008 (4) SCC 755; *Unique Butyle Tube Industries (P) Ltd v. U.P. Financial Corporation and others* 2003 (2) SCC 455.

expressed by various High Courts and by holding that S.16 gives the right to appeal only to senior citizens and parents.<sup>145</sup>

(i) Legal representation

Section 17 explicitly lays down that no party to a proceeding before a Tribunal or Appellate Tribunal shall be represented by a legal practitioner.<sup>146</sup> It has been observed by the Punjab and Haryana High Court that Section 17 needs to be examined in the context of Section 30 of the Advocates Act, 1961<sup>147</sup> conferring to the advocates the right to practice, which remained un-notified for five decades, but was finally notified on 16.06.2011. The overriding effect of Section 3 of MWPSA Act, 2007 is only on law existing at that time and definitely S.30 of Advocates Act was not “law existing” as in 2007. However when S.30 was notified and brought into force in 2011, both the laws being Central enactments, the latter will override the former. Therefore the Court requested the Central Government to have a relook into the provisions of the Act in the context of Section 30 of Advocates Act.<sup>148</sup>

#### 4.5.3 Establishment of Old Age Homes

The Act provides for the establishment of old age homes in each district for indigent senior citizens.<sup>149</sup> This responsibility is not mandatory as is indicated by the word “may”

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<sup>145</sup> *Rajubhai v. Manubhai* (High Court of Gujarat, Special Civil Application No. 10852 of 2010, Judgment dated 9<sup>th</sup> December 2010), available at <http://voice4india.org/rajubhai-vs-manubhai-gujarat-high-court/5185/> [accessed 2<sup>nd</sup> November 2015]; *Johnson v. The District Collector* (High Court of Kerala, WP(C).No. 9004 of 2012 (A) Judgment dated 12<sup>th</sup> April 2012), available at [http://judis.nic.in/judis\\_kerala/qrydisp.aspx?filename=248919](http://judis.nic.in/judis_kerala/qrydisp.aspx?filename=248919) [accessed on 10<sup>th</sup> November 2015]

<sup>146</sup> Maintenance Officers are designated to represent a parent if he so desires. See S. 18, MWPSA Act, 2007

<sup>147</sup> See *Paramjit Kumar Saroya v. Union of India and another* AIR 2014 P&H 121, 133-138.

<sup>148</sup> See *Paramjit Kumar Saroya v. Union of India and another* AIR 2014 P&H 121, 133-138.

<sup>149</sup> See MWPSA ACT, S.19.

in S.19 which calls upon the State Government to establish and maintain such number of old age homes at accessible places in a phased manner, beginning with at least one in each district. Such homes are to accommodate a minimum of one hundred fifty senior citizens who are indigent.

The scheme for management of old age homes, including the standards and various types of services to be provided by them which are necessary for medical care and means of entertainment to the inhabitants of such homes are prescribed by the Rules made by the State Governments.

The Goa Maintenance and Welfare of Parents and Senior Citizens Rules, 2009<sup>150</sup> (Goa MWPC Rules) and the Kerala Maintenance and Welfare of Parents and Senior Citizens Rules, 2009<sup>151</sup> (Kerala MWPC Rules) provides for the scheme for management of old age homes.<sup>152</sup> It is noted that the rules issued by both the States are verbatim.

#### **4.5.4 Provisions for medical care of senior citizens**

Medical support for senior citizen for senior citizens is provided for in the Act.<sup>153</sup> The State Government shall ensure certain facilities for senior citizens, in the hospitals. These are,

- (i) The Government hospitals or hospitals funded fully or partially by the Government shall provide beds for all senior citizens as far as possible.

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<sup>150</sup> Published in *Goa Official Gazette*, Series 1 No.27 dated 1-10-2009 as Notification 83-9-2006-07-SDB/Part/2008/3843.

<sup>151</sup> Published in *Kerala Gazette Extraordinary* No.1581 dated 29<sup>th</sup> August 2009 as Notification G.O (P) No. 38/2009/SWD dated 28<sup>th</sup> August 2009. The Rules are made under S.32(2) (d) of the Act.

<sup>152</sup> See Rule 18 of the *Goa MWPC Rules, 2009* and *Kerala MWPC Rules, 2009*.

<sup>153</sup> MWPC ACT, S.20.

- (ii) Separate queues to be arranged for senior citizens.
- (iii) Facility for treatment of chronic, terminal and degenerative diseases is expanded for senior citizens.
- (iv) Research activities for chronic elderly diseases and ageing to be expanded.
- (v) Earmarked facilities for geriatric patients in every district hospital duly headed by a medical officer with experience in geriatric care, to be provided.

It is submitted that these are the only legislative provisions dealing with healthcare of senior citizens in the country. And it is unfortunate that these are nowhere near the commitments undertaken by the country at the World Assemblies on Ageing as well as in meeting the United Nations Principles for Older Persons. When beds for all senior citizens can be ensured only “as far as possible”, the reach of facility for treatment for chronic diseases is in reality a far cry.

While providing separate beds for all senior citizens is a task to be implemented by the hospitals partly or fully funded by the Government, all the other facilities as mentioned above need to be met by the private hospitals also. In order to expand research and facilities in geriatric care, specialization in geriatrics need be provided for PG Courses in all medical colleges. As of now, Medical Council approved Post Graduation Program, i.e., MD in Geriatrics is offered only by three Colleges in the whole of India with a total of five seats.<sup>154</sup> Super specialty course in Geriatric Mental Health (DM) is offered only in one College in India with a single seat.<sup>155</sup> These numbers are grossly insufficient to meet

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<sup>154</sup>Amrita School of Medicine, Kochi, Kerala; Chrisian Medical College, Vellore, Tamil Nadu and Madras Medical College, Chennai, Tamil Nadu. For a list of PG Courses, subjects and Colleges recognised by the Medical Council of India, See <http://www.mciindia.org/InformationDesk/ForStudents/ListofCollegesTeachingPGCourses.aspx> [accessed 18 April 2014].

<sup>155</sup>Chhatrapati Shahuji Maharaj Medical University, Lucknow, Uttar Pradesh.

the goals of healthy ageing and equality in health care to all. Without generating sufficient expertise in geriatrics, health care of the elderly will be meaningless.

Senior citizens are as much entitled to right to health, physical and mental, as much as any other person. Accessibility and availability of health care becomes real to the older persons only if their specialized needs are met. This includes efficient geriatric care, preventive as well as curative healthcare and health promotion. The health care and services need to include necessary training of personnel and facilities to meet the special needs of the older population. The MWPSA Act does not duly address the issues relating to right to health of the Older Persons.

#### **4.5.5 Protection of life and property of senior citizen**

Awareness and sensitization of the public as well as the government machinery itself is a sine qua non for effective protection of rights of the senior citizens. The Act requires the State Government to take all measures to ensure that the provisions of the Act are given wide publicity.<sup>156</sup> Further, the State Government is required to conduct periodic sensitization and awareness training to Central and State Government Officers, including the police officers and the members of the judicial service.<sup>157</sup> Effective coordination between the services provided by the concerned Departments of the Government is also to be ensured.<sup>158</sup> District Magistrates are empowered to ensure that the provisions of the

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<sup>156</sup> See MWPSA ACT, S.21(1).

<sup>157</sup> See MWPSA ACT, S.21(2).

<sup>158</sup> See *id.* S.21(3).

Act are properly carried out and that the life and property of senior citizens of the district are protected and they are able to live with security and dignity.<sup>159</sup>

Protection to the property of senior citizens is afforded by making the transfer of property by senior citizens void in certain circumstances. Firstly, where any senior citizens has transferred his property by way of gift or otherwise with a condition that the transferee shall provide the basic amenities and basic physical needs to the transferor, the transferee is at a risk to lose the property transferred to him, in case he refuses or fails to abide by such condition. This is made possible by virtue of Section 23(1) of the Act which states that "...the said transfer of property shall be deemed to have been made by fraud or coercion or undue influence and shall at the option of the transferor be declared void by the Tribunal." This provision will have effect only for all transfer of property made after the commencement of the Act.<sup>160</sup>

Secondly, where any senior citizen has a right to receive maintenance out of an estate and if such estate, fully or in part is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous. However it cannot be enforced against the transferee for consideration and without notice of right.<sup>161</sup> If, any senior citizen is incapable of enforcing the rights

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<sup>159</sup> See *id.* S.22; Rule 19, *Goa MWPS Rules, 2009* and Rule 19, *Kerala MWPS Rules, 2009*.

<sup>160</sup> *Vincent v. Augustine* (High Court of Kerala, WP(C).No. 2065 of 2012 (G), Judgment dated 18th August 2011), available at [http://judis.nic.in/judis\\_kerala/qrydisp.aspx?filename=321678](http://judis.nic.in/judis_kerala/qrydisp.aspx?filename=321678) [accessed on 10<sup>th</sup> November 2015]. The Court set aside the order of the Tribunal and held that S.23 will apply only for transfer effected after the commencement of the Act.

<sup>161</sup> MWPS ACT, S.23(2).

assured under S.23, action may be taken on his behalf by a voluntary association registered under a law for the time being in force.<sup>162</sup>

To invoke S.23 and set aside a transfer deed, it would be necessary to expressly mention in the deed the conditions stipulated in the section, that is, that “the transferee shall provide the basic amenities and basic physical needs to the transferor”. If this condition is not stated in the deed, any neglect or refusal by the transferee to provide such amenities and basic needs to the transferor will not attract Section 23 is what was held by the Kerala High Court in *Pushpangadan v. Revenue Divisional Officer*.<sup>163</sup>

The aspect of property as defined in the Act<sup>164</sup>, and the provisions relating to transfer of property of senior citizens is not just a part of a beneficial legislation and has more legal repercussions. The same was explored by the Punjab and Haryana High Court in *Paramjit Kumar Saroya v. Union of India and another*<sup>165</sup> and the Court directed a copy of its judgment to be forwarded to the Secretary, Ministry of Law, Government of India in view of its findings on the need to have a relook at the MWPC Act. The Court opined that,

“... while framing the provisions of the said Act, the Legislature has gone much beyond the aspect of maintenance as rights in property have become involved with that aspect not only affecting the senior citizens’ and their progenies’ inter se rights, but even capable of affecting third

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<sup>162</sup> *Id.* S.23(3).

<sup>163</sup> (High Court of Kerala, WP(C).No. 22933 of 2013 (N), Judgment dated 20<sup>th</sup> September 2012), available at [http://judis.nic.in/judis\\_kerala/qrydisp.aspx?filename=360390](http://judis.nic.in/judis_kerala/qrydisp.aspx?filename=360390) [accessed on 10<sup>th</sup> November 2015].

<sup>164</sup> The definition of property under S. 2 (f) is expansive including all aspects of property, movable, immovable, ancestral, self-acquired, tangible, intangible and includes any interest or rights in such property.

<sup>165</sup> AIR 2014 P&H 121.

party rights. Thus, the matter is not so simple as the statement of objects and reasons states, but on the other hand, there are certain provisions which are bound to give rise to more complex legal issues where rights in immovable properties are sought to be negated on pleas such as fraud, coercion and undue influence”.<sup>166</sup>

The issue of third parties rights is amplified by Section 3 which gives overriding effect to the Act and Section 27 which bars the jurisdiction of the Civil Courts. Moreover, Section 16 of the Act states that “any senior citizen or parent” aggrieved by the order of the Maintenance Tribunal may file an appeal to the Appellate Tribunal. The other party’s right to file appeal is not expressly contained. On important matters as to nullity of transfer of property, it does not seem appropriate that only one party is allowed to appeal. Hence the provisions need a re look.

Another dilemma with respect to Section 23 is regarding the jurisdiction of the Tribunal in matters where senior citizens or parents are thrown out of their own houses by their children. In such a case<sup>167</sup>, the Gujarat High Court set aside the order of the Deputy Collector (The Maintenance Tribunal) and held that Section 23 comes to play only when there has been a transfer of property by senior citizens. If no such transfer had taken place, the Tribunal does not have jurisdiction to order vacation of premises by the son who had thrown away his father from the father’s own house and hand over peaceful possession to the father. But the Court after setting aside the Deputy Collector’s order,

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<sup>166</sup>*Paramjit Kumar Saroya v. Union of India and another* AIR 2014 P&H 121, 123.

<sup>167</sup>*Rajubhai v. Manubhai* (High Court of Gujarat, Special Civil Application No. 10852 of 2010, Judgment dated 9th December 2010), available at <http://voice4india.org/rajubhai-vs-manubhai-gujarat-high-court/5185/> [accessed 2nd November 2015].



declared that the father has every right to reside in his own house along with his wife and unmarried daughter and that the son shall not prevent him from exercising such a right or create any hindrance in enjoying that right. This judgment seems to convey the position that in such cases the Tribunal does not have jurisdiction and pushes the senior citizen and parent to approach the Civil Court with a suit for declaration. It is submitted that this view is not consistent with the general scheme and purpose of the Act, though it is very well in tune with the literal interpretation of the provisions.

The Rules made by the State Governments under S.32 (2) (f) provide for an 'Action Plan for the Protection of Life and Property of Senior Citizens.'<sup>168</sup>

The life and safety of senior citizens is also promoted by making exposure and abandonment of senior citizen an offence which shall be cognizable and bailable.<sup>169</sup> The penalty of imprisonment or/and fine<sup>170</sup> falls on any person who is having the care or protection of senior citizen, and who leaves such senior citizen in any place with the intention of wholly abandoning such senior citizen. Therefore responsibility of ensuring the safety of the senior citizen is on the children, family members, day care centres, old age homes or any person who is having the care and protection of senior citizen. This will include even the hospital authorities, asylum etc. where senior citizens may be entrusted with or taken care of.

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<sup>168</sup> Rule 20, *Goa MWPS Rules, 2009* and Rule 20, *Kerala MWPS Rules, 2009*.

<sup>169</sup> MWPS ACT, S.24.

<sup>170</sup> S.24 prescribes a punishment of imprisonment of either description for a term which may extend to three months or fine which may extend to five thousand rupees or with both.

#### 4.6 PORTUGUESE CIVIL CODE, 1867 AS APPLICABLE IN THE STATE OF GOA

By the Goa, Daman and Diu (Administration) Act in 1962, the Parliament of India provisionally retained the Portuguese laws in force in Goa until or unless repealed by the competent Legislature or other competent authority.<sup>171</sup> The provisions of the Civil Code pertaining to marriage, divorce, succession, etc. has not been repealed or amended and hence continues to be the legal regime in Goa on such matters.<sup>172</sup>

Division VI of the Portuguese Civil Code, 1867 which deals with Disinheritance contain clear-cut provisions regarding disinheritance of legal heirs who do not maintain their parents during their lifetime or who otherwise commits certain offences against the parents. According to the Article 1875 of the Civil Code, a testator may deprive mandatory heirs of their mandatory portion, in the circumstances where the law expressly permits. This phenomenon is termed as disinheritance.<sup>173</sup>

Article 1876 of the Civil Code which provides for the circumstances in which parents can disinherit their children is stated as follows:<sup>174</sup>

The legal heirs may be deprived by the testator of their legitime or disinherited in cases expressly permitted by the law. The following may be disinherited by the parents:

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<sup>171</sup> GOA, DAMAN AND DIU (ADMINISTRATION) ACT, 1962, Section 5.

<sup>172</sup> See generally M.S.USGAOCAR, FAMILY LAWS OF GOA, DAMAN AND DIU (Vol 1 & 2, Vela Associates, Goa, 2009); PIRES DE LIMA & JOAO DE MATOS ANTUNES VARELA, FUNDAMENTAL CONCEPTS OF CIVIL LAW (Translated by Mark Robetson, Centro de Estudos Norte-Americanos, Lda, English-Portuguese Bilingual Edition 1997); F.E.NORONHA, OUTILNE GOA CIVIL CODE (Published by F.E.Noronha, 2011).

<sup>173</sup> PIRES DE LIMA & JOAO DE MATOS ANTUNES VARELA, FUNDAMENTAL CONCEPTS OF CIVIL LAW 524 (Translated by Mark Robetson, Centro de Estudos Norte-Americanos, Lda, English-Portuguese Bilingual Edition 1997).

<sup>174</sup> M.S.USGAOCAR, FAMILY LAWS OF GOA, DAMAN AND DIU 30-31 (Vol. 2, Vela Associates, Goa, 2009).

1. The son, who commits against their parents against their persons an offence punishable with imprisonment of more than six months;
2. The son, who accuses or denounces judicially his parents of offence which has not been committed against himself, or against his spouse, ascendants , descendants or brothers;
3. The son, who, without good reason, refuses to maintain his parents.

Firstly, if the son (including daughter) is guilty of an offence committed against the person of the parents, the offence being punishable with imprisonment of more than six months, the parents can disinherit such child. Secondly, if the son starts legal proceedings against the parents, otherwise for an offence committed against himself, his spouse, his ascendants, descendants or brothers, the parents can disinherit him. Thirdly and very importantly, if a son without good reasons, refuses to maintain his parents can be disinherited. Therefore a son having sufficient income to maintain his parents and who refuse to do so is clearly falling in this category.

It is also to be noted here that the parents' right to be maintained by the children is irrespective of their own ability to maintain themselves. This is unlike the MWPC Act, where children are under a legal obligation to maintain their parents only if they are unable to maintain themselves.

The relevance of disinheritance option becomes meaningful only if the concept of inheritance under the Portuguese Civil Code is clear. Under the Code, a person does not enjoy absolute freedom to write a will. Only half of his assets can be disposed of by will which is termed as the 'disposable part', whereas the other half which he cannot dispose

of is termed as *legitime*.<sup>175</sup> The *legitime* is to be necessarily to be inherited by children who are therefore listed as mandatory heirs. And disinheritance is an option the parents can exercise to the prejudice of the mandatory heirs, in case there is a breach of obligation as envisaged under Article 1876. The law entitles the grandchild to succeed to the intestate grandfather, in representation of his predeceased father. That is, the child of a deceased mandatory heir is also a mandatory heir by way of his right of representation<sup>176</sup>. This would mean that such grandchild whose parent is not alive being a mandatory heir of the grandparent is also liable to be disinherited on the like grounds. Therefore by implication they are also under an obligation to maintain their grandparents.

It is also important to note that a will is a legal act whereby someone makes a disposal of his assets, in part or in full, which is effective on his death.<sup>177</sup> The great importance of the legal act is that it is by means of this will that the deceased makes provision for the disposal of his assets after his death.<sup>178</sup>

Therefore it is only just and equitable that the parents are lawfully allowed to disinherit their legal heirs, when the latter do not give due regard to the former, whether by way of neglect to maintenance or by way of willful harm. However the disinheritance is not automatic on commission of the breach. Disinheritance may be declared only in the Will and with clear declaration of its cause.<sup>179</sup>

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<sup>175</sup> PORTUGUESE CIVIL CODE, 1867, Article 1784.

<sup>176</sup> Article 1980 of the Portuguese Civil Code, 1867 states that the right of representation arises when law entitles certain relatives of a deceased person to inherit all rights that the deceased would have inherited had he been alive.

<sup>177</sup> PORTUGUESE CIVIL CODE, 1867, Article 1739.

<sup>178</sup> PIRES DE LIMA & JOAO DE MATOS ANTUNES VARELA, *supra* note 173, at 468.

<sup>179</sup> PORTUGUESE CIVIL CODE, 1867, Article 1880.

Thus the Portuguese Civil Code through the provision for disinheriting children for not maintain parents, impliedly makes it obligatory on the children to maintain their parents. It also vests obligation on the children to be respectful and inoffensive to the parents as well as not to initiate any legal proceedings against them except on certain permissible grounds.

#### **4.7 BEST PRACTICES IN PROTECTION OF OLDER PERSONS IN U.K, U.S.A, SOUTH AFRICA**

The United Nations Principles for Older Persons which was adopted in 1991 encouraged the Governments to incorporate the same into their national programs wherever possible. These principles are Independence, Participation, Care, Self-fulfillment and Dignity.

The Report of the Secretary General to the United Nations General Assembly<sup>180</sup> revealed that there are many challenges which hinder the full enjoyment of all human rights by older persons. The challenges which were highlighted are, but not limited to the following:

- (i) Poverty and living conditions
- (ii) Discrimination
- (iii) Violence and abuse of older persons
- (iv) Lack of specific measures and services for older persons.

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<sup>180</sup>See A/66/173, available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/66/173](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/66/173) [accessed on 12th November 2014]. The report was submitted pursuant to General Assembly resolution 65/182 entitled "Follow-up to the Second World Assembly on Ageing". In paragraph 31 of that resolution, the Assembly requested the Secretary-General to prepare a report on the implementation of the resolution, including on the situation of the rights of older persons in all regions of the world.

The legislations in U.K, U.S.A and South Africa is analyzed with respect to the level of attainment of the UN Principles for Older Persons and effective addressal of the challenges highlighted in the Report of the Secretary General. The same is thereafter compared with the Indian legislations so as to borrow the best practices from these countries.

#### **4.7.1 Protection of Older Persons in U.K**

In U.K, the various aspects of old age and its concerns are being taken care of by legislations. On the one hand, “Ageism” or age discrimination is abolished and equality in all walks of life is ensured through Equality Act, 2010<sup>181</sup>. On the other hand, care and support services to adults and carers are provided by the Care Act, 2014.

The Equality Act, 2010 has totally done away with age discrimination in all walks of life including employment.<sup>182</sup> It gives new protection to ensure older people get fair treatment when they are receiving goods and services. Retirement by default age has been scrapped.<sup>183</sup> It is a matter of choice for an employee to choose to retire at the age of 65 and claim pension or choose to work beyond the age of 65.<sup>184</sup> Individual discrimination

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<sup>181</sup> EQUALITY ACT, 2010, available at <http://www.legislation.gov.uk/ukpga/2010/15> [accessed on 5th October 2014].

<sup>182</sup> *Id.* Chapter I covers the “Protected Characteristics” namely age, disability, gender orientation. It is illegal to discriminate a person because of any of these characteristics, See S.4, of the Act.

<sup>183</sup> See EMPLOYMENT EQUALITY ( REPEAL OF RETIREMENT AGE PROVISIONS) REGULATIONS 2011, Regulation 2 omitted Paragraph 8 of Schedule 9 to the Equality Act, 2010 which permitted compulsory retirement age. See also EMPLOYMENT RIGHTS ACT, 1996; EMPLOYMENT EQUALITY (AGE) REGULATIONS, 2006, where corresponding changes were made.

<sup>184</sup> However the employers would be able to make redundancies or dismiss people on grounds of capability, as long as their decision is not based on someone’s age. See *Equality Act 2010: Employment Statutory Code of Practice* 281-283 (Equality and Human Rights Commission, 2011).

(Direct)<sup>185</sup> and Class discrimination (indirect)<sup>186</sup> has been prohibited. Service providers are put out a compulsory mandate not to discriminate people on age.

Harassment<sup>187</sup> and victimization<sup>188</sup> of aged persons is also prohibited. The service provider concerned with the provision of a service to the public or a section of the public (for payment or not) must not discriminate against a person requiring the service by not providing the person with the service or discriminate against as to the terms of the service.

The Act imposes regulations and duties on taxi service providers<sup>189</sup> for securing that it is possible for disabled persons to get into and out of taxis in safety, to travel in taxis safely and in reasonable comfort and to do so while in wheelchairs.<sup>190</sup> Taxi license is made conditional on compliance with taxi accessibility regulations.<sup>191</sup> These provisions though directed towards equality of disabled persons, will be greatly applicable in cases of old age based disability.

The Care Act, 2014<sup>192</sup> replaced all other social care legislations<sup>193</sup> in U.K and it contains effective provisions for care and support of older persons. Local Authority is vested with

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<sup>185</sup> See EQUALITY ACT, 2010, S. 13(1). Direct discrimination is when a person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favorably than A treats or would treat others

<sup>186</sup> See *id.* S. 19 (1). Indirect discrimination is when a person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

<sup>187</sup> See *id.* S. 26; Harassment is unwanted conduct which violates a person's dignity or creates offensive environment for that person.

<sup>188</sup> See EQUALITY ACT, 2010, S. 27. Victimization is when someone who has complained about discrimination or harassment because of age, or who has supported someone else's complaint is victimized.

<sup>189</sup> *Id.* Part 12, Chapter 1 deals with Disabled Persons: Transport.

<sup>190</sup> See *id.* S. 160 ; See also *id.* S. 165.

<sup>191</sup> *Id.* Section 163.

<sup>192</sup> THE CARE ACT, 2014, available at <http://www.legislation.gov.uk/ukpga/2014/23/introduction/enacted> [accessed on 13th November 2014].

the duty to promote the overall well-being of the persons which includes mental, physical and emotional well-being.<sup>194</sup> This encompasses protection from abuse and neglect<sup>195</sup>, suitability of living arrangement, recreational facilities and participation in society and contribution to society. Care and Support Services are integrated with Health Services.<sup>196</sup> The Act envisages meeting the needs by providing (a) accommodation in a care home or in premises of some other type; (b) care and support at home or in the community; (c) counseling and other types of social work; (d) goods and facilities; (e) information, advice and advocacy.<sup>197</sup>

By imposing obligations on local bodies under these legislations, the Human Rights Act, 1998<sup>198</sup> (HRA) also comes into operation when any of the ‘public authorities’ act in contravention of the rights enumerated in the European Convention on Human Rights. The local authority being a public authority will be bound to act in a way consistent with the convention rights. Moreover the registered service providers under the Care Act are brought within the meaning of ‘public authority’ for the purpose of HRA.<sup>199</sup> In case of

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<sup>193</sup> THE NATIONAL HEALTH SERVICE AND COMMUNITY CARE ACT 1990 vested a duty in the local authorities to assess people for social care and support to ensure that people who need community care services or other types of support get the services they are entitled to. Community care ensures that people in need of long-term care are able to live either in their own home, with adequate support, or in a residential home setting. Local authority pays for older persons who need care in a care home. Care homes for the ill and inform, among others are provided for in the CARE STANDARDS ACT, 2000; AGE RELATED PAYMENTS ACT 2004 assured a specified weekly payment to individuals over the age of 70. The Secretary of State was empowered to make regulations to provide for payments to persons who have attained the age of 60 years.

<sup>194</sup> *See supra* note 192, S. 1.

<sup>195</sup> *Id.* S. 42.

<sup>196</sup> *Id.* S. 121.

<sup>197</sup> CARE ACT, 2014, S. 8.

<sup>198</sup> HUMAN RIGHTS ACT, 1998 was enacted by the British Parliament to give effect to the European Convention on Human Rights. Section 6(1) of the Act states that, “It is unlawful for a public authority to act in a way which is incompatible with a Convention Right.”

<sup>199</sup> Section 73 of the Care Act, 2014 states that the registered service providers is considered as public authority for the purpose of Section 6 (3) of the Human Rights Act, 1998.



any contravention, the public authority (local authority and registered service providers) shall be made subject to judicial remedies provided under Section 8 of the HRA.

The legislative framework in U.K addresses all the four challenges to the full enjoyment of human rights by the older persons and it incorporates all the five principles enshrined in the UN Principles for Older Persons.

#### **4.7.2 Protection of Older Persons in United States of America**

The Older Americans Act of 1965<sup>200</sup> is designed to comprehensively meet the needs of older people<sup>201</sup>, with the mission of helping them to attain maximum independence in their homes and communities. A nodal agency is created under the title ‘Administration on Ageing’<sup>202</sup> to ensure delivery of community based services to the aging population.<sup>203</sup>The older persons are secured with adequate income, highest possible mental and physical health irrespective of economic status, suitable living arrangements and creation of opportunities are the highlights of the law along with efficient community services.<sup>204</sup>

The Congress declared through this legislation that the older people of the Nation were entitled to equal opportunity to the full and free enjoyment of the objectives laid down in the statute. Ten objectives were laid down namely,

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<sup>200</sup> PUBLIC LAW 89-73 – July 14, 1965 (79.STAT.) 218 , available at <http://www.gpo.gov/fdsys/pkg/STATUTE-79/pdf/STATUTE-79-Pg218.pdf> [accessed on 8<sup>th</sup> October 2014].

<sup>201</sup> OLDER AMERICANS ACT, 1965, Title III , provides for grants for Community Planning , Services and Training.

<sup>202</sup> OLDER AMERICANS ACT, 1965, S. 202, Title II.

<sup>203</sup> *Id.* S. 202 lists out the functions of Administration on Ageing.

<sup>204</sup> *Id.* Title I – S. 101.

- (1) An adequate income in retirement in accordance with the American standard of living
- (2) The best possible physical and mental health which science can make available and without regard to economic status.
- (3) Suitable housing, independently selected, designed and located with reference to special needs and available at costs which older citizens can afford.
- (4) Full restorative services for those who require institutional care.
- (5) Opportunity for employment with no discriminatory personnel practices because of age.
- (6) Retirement in health, honor, dignity - after years of contribution to the economy.
- (7) Pursuit of meaningful activity within the widest range of civic, cultural, and recreational opportunities.
- (8) Efficient community services which provide social assistance in a coordinated manner and which are readily available when needed.
- (9) Immediate benefit from proven research knowledge which can sustain and improve health and happiness.
- (10) Freedom, independence, and free exercise of individual initiative in planning and managing their own lives.

The Act authorizes seven titles<sup>205</sup> that include a series of formula-based and discretionary grants to meet a wide range of activities that go to improve the lives of older persons in

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<sup>205</sup> Title I: Declaration of Objectives; Title II: Establishment of the AoA; Title III: Grants for State and Community Programs on Aging; Title IV: Activities for health, Independence, and Longevity (Program Innovations); Title V: Community Service Senior Opportunities Act; Title VI: Grants for Services for native Americans; Title VII: Vulnerable Elder Rights protection Activities. All programs are administered at the federal level by AoA, except for the Title V community service senior opportunities program, which is administered by the Department of Labor (DoL).

the country.<sup>206</sup> These include community resources, social service programs, supportive services<sup>207</sup>, nutrition services<sup>208</sup>, family caregiver support<sup>209</sup>, and disease prevention and health promotion activities<sup>210</sup>, research and prevention of elder abuse, neglect, and exploitation. Title V, sometimes referred to as SCSEP (the Senior Community Service Employment Program), provides part-time jobs for unemployed low-income people age 55 and older who have poor employment prospects.

It appears that the normative framework in U.S.A focuses on allocation of funds for various purposes to meet the needs of older persons. This addresses the issue of poverty and living conditions of the elderly. It also enables specific measures and services for the older persons. However discrimination and abuse though finds a reference, is not appropriately taken care of as in U.K. Retirement based on age continue to exist. The UN Principles of independence, participation, care, self-fulfillment and dignity are incorporated in the law.

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<sup>206</sup>See National Health Policy Forum, *The Basics : Older Americans Act*, July 9, 2010 (The George Washington University, Washington DC); available at [http://www.nhpf.org/library/the-basics/Basics\\_OlderAmericans Act\\_02-23-12.pdf](http://www.nhpf.org/library/the-basics/Basics_OlderAmericans Act_02-23-12.pdf) [accessed on 8th October 2014].

<sup>207</sup> The supportive services program funds a wide range of social services aimed at helping older people remain independent in their own homes and communities. These include case management, adult day care, and activities of senior centers.

<sup>208</sup> The elderly nutrition program, provides meals and socialization to older people in congregate settings, such as senior centers and churches (the “congregate meals” program), and meals to frail older people in their own homes (the “home-delivered meals” program). The purposes of the program are to reduce hunger and food insecurity and to promote socialization, health, and well-being of older people by helping them gain access to nutritional and other health promotion services that prevent the onset of poor health conditions.

<sup>209</sup> The National Family Caregiver Support Program provides grants to states to develop a variety of services to assist family caregivers. These include information and assistance about available services, individual counseling, organization of support groups and caregiver training, respite services to provide families temporary relief from caregiving responsibilities, and supplemental services (such as home care and home adaptations) on a limited basis to complement care provided by family and other informal caregivers.

<sup>210</sup> Programs to prevent or delay chronic conditions and promote health among older people receive the smallest amount of funding among Title III programs. The law provides “seed money” for these activities and intends that state and area agencies leverage other funding sources to complement Title III funds.

### 4.7.3 Protection of Older Persons in South Africa

The South African Government has developed a comprehensive legal framework for protecting, promoting and fulfilling the rights of older persons. The Constitution of the Republic of South Africa, 1996<sup>211</sup> expresses its commitment to improve the quality of life of all citizens and free the potential of each person.<sup>212</sup> The Bill of Rights sets out the fundamental rights of older persons to have access to social security<sup>213</sup>, right against discrimination<sup>214</sup>; access to adequate housing<sup>215</sup>; dignity<sup>216</sup>; freedom from violence<sup>217</sup> and adult basic education<sup>218</sup>. To give effect to the right to equality under the Constitution, the Parliament passed the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000<sup>219</sup> which adds “age” as a prohibited ground of discrimination.<sup>220</sup>

The Older Persons Act, 2006<sup>221</sup>, promotes empowerment and protection of older persons. The Act also provides for the maintenance of the older person’s status, rights, well-being, safety and security.<sup>222</sup> Combating elder abuse and regulating services and residential facilities to avoid discrimination of any kind are the key features of the legislation.

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<sup>211</sup> CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, Act No.108 of 1996, *available at* <http://www.gov.za/documents/constitution/1996/a108-96.pdf> [accessed on 5th October 2014].

<sup>212</sup> *Id.* Preamble.

<sup>213</sup> *Id.* S.27.

<sup>214</sup> *Id.* S.9 (3)

<sup>215</sup> *Id.* S.26.

<sup>216</sup> *Id.* S.10.

<sup>217</sup> *Id.* S.12(1)(c).

<sup>218</sup> *Id.* S.29(1)(a).

<sup>219</sup> Act No. 4 of 2000, published in the Government Gazette of the Republic of South Africa dated 9 February 2000, *available at* <http://www.justice.gov.za/legislation/acts/2000-004.pdf> [accessed on 5th October 2014]. The Act is passed under the authority of Section 9 of the Constitution of the Republic of South Africa which provides for the enactment of national legislation to prevent or prohibit unfair discrimination and to promote the achievement of equality.

<sup>220</sup> PROMOTION OF EQUALITY AND PREVENTION OF UNFAIR DISCRIMINATION ACT, 2000, S. 1(xxii).

<sup>221</sup> OLDER PERSONS ACT, 2006 (Act 13 of 2006), *available at* [http://www.justice.gov.za/legislation/acts/2006-013\\_olderpersons.pdf](http://www.justice.gov.za/legislation/acts/2006-013_olderpersons.pdf) [accessed on 5th October 2014]. Under the Act, “older person” means a person who, in the case of a male, is 65 years of age or older and, in the case of a female, is 60 years of age or older, See S.1 of the Act.

<sup>222</sup> *Id.* S. 2.

Community based programs ensure the independent living of the older persons and home based programs are designed to care for frail older persons.

The UN Principles namely, participation, self-fulfillment and independence of the older persons and their right to live in adaptable environment are the focus of the Act.<sup>223</sup>

The challenge to full enjoyment of human rights is sought to be removed through norms for age-friendly facilities and services. The Act lays down the guiding principles to be followed by the service providers.<sup>224</sup> In addition to this, any person who provides a service to an older person must comply with the norms prescribed by the State.<sup>225</sup>

Confrontational approaches and delays in action must be avoided in any matter concerning an older person.<sup>226</sup> The Department of Social Development may provide financial support to those who provide services to older persons provided the service provider complies with norms and standards.<sup>227</sup>

Older persons who receive community-based care services have the right to live at home for as long as is possible. They are also entitled to pursue any opportunity for the full development of their potential and to benefit from family and community care according to their cultural values.<sup>228</sup>

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<sup>223</sup> *Id.* S.7.

<sup>224</sup> *Id.* S. 9.

<sup>225</sup> *Id.* S. 6.

<sup>226</sup> *Id.* S. 5 (3).

<sup>227</sup> *Id.* S. 8.

<sup>228</sup> OLDER PERSONS ACT, 2006, S. 10.

The outline of the community-based programmes/services that may be developed by the State is provided in the Act.<sup>229</sup> All service providers that offer community-based care and home-based care must be properly trained and registered with the State.<sup>230</sup> If an older person is in need of care and protection, this should be brought to the attention of the prescribed authorities who will have to take appropriate measures to help the older person to gain access to a hospital or shelter, etc.<sup>231</sup>

Residential facilities for older persons have to be registered and must meet requirements as stipulated by the State's norms and standards.<sup>232</sup> The older persons residing in a residential facility has other rights including privacy, participation in social, religious and community activities of his or her choice, etc.<sup>233</sup> Residential facilities which are required to be provided include inter *alia* 24 hour care and support services; public education on issues of ageing; and rehabilitation services.<sup>234</sup> No older person can be unfairly discriminated against or refused admission to a residential facility without good reason.<sup>235</sup>

The most remarkable aspect of the older Persons Act is the safeguards against elderly abuse.<sup>236</sup> The term abuse is defined widely to mean any conduct or lack of appropriate action, occurring within any relationship where there is an expectation of trust, which causes harm or distress or is likely to cause harm or distress to an older person constitutes

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<sup>229</sup> *Id.* S. 11. Prevention and Promotion programmes which ensure independence of the older persons, as well as home-based programmes ensuring maximum care to frail persons are specified.

<sup>230</sup> *Id.* S.12.

<sup>231</sup> *Id.* S. 25.

<sup>232</sup> *Id.* S.18.

<sup>233</sup> *Id.* S. 16.

<sup>234</sup> *Id.* S. 17.

<sup>235</sup> *Id.* Ss. 21 (1) & (2).

<sup>236</sup> The Older Persons Act, 2006 was the legislative outcome of the *Ministerial Report on Abuse, Neglect and Ill-treatment of Older Persons*, titled as “Mothers and Fathers of the Nation: The Forgotten People”, which gave horrific accounts of older persons suffering neglect and abuse in residential care, in their communities and in their family homes, available at <http://www.polity.org.za/polity/govdocs/reports/welfare/2001/elder.html> [accessed on 6th October 2014].

abuse of an older person.<sup>237</sup> Abuse includes physical, sexual, psychological and economic abuse.<sup>238</sup>

All persons have a duty to report the abuse of older persons. Any person who suspects that an older person is being abused must report the abuse to the authorities. It is an offence to fail to report abuse.<sup>239</sup> Any person who abuses an older person is guilty of an offence.<sup>240</sup>

The Department of Social Development must keep a register of persons convicted of abuse or any crime pertaining to older persons. A person whose name appears in the register is not allowed to operate a residential facility or be employed at any residential facility or provide any community-based care and support service to an older person.<sup>241</sup>

This Act is a break from the past in the sense that then existing Aged Persons Act, 1967 focused only on residential care with no mention being made of older persons staying at home or with families, whereas the Older Persons Act, 2006 focuses on the realization of older persons' constitutional rights rather than regulation and monitoring of residential homes.<sup>242</sup>

Thus the legislative structure in the Republic of South Africa heavily addresses the issue of violence and abuse of older persons. Specific measures and services for older persons is achieved through the various regulations on service providers. Discrimination by

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<sup>237</sup> OLDER PERSONS ACT, 2006,S.30(2).

<sup>238</sup> *Id.* S.30(3).

<sup>239</sup> *Id.* S.26.

<sup>240</sup> *Id.* S.30(1).

<sup>241</sup> *Id.* S.31.

<sup>242</sup> See Kitty Malherbe, *Older Persons Act: Out With The Old And In With The Older?*, LAW DEMOCRACY AND DEVELOPMENT 53 (2007).

service providers is prohibited. Poverty and living conditions are not adequately dealt with.

#### **4.7.4 Best Practices from U.K, U.S.A and South Africa vis-à-vis India**

The term used for older persons in the Indian context is senior citizens who are persons aged 60 years and above. This is same for both men and women. Constitution of India contains very few express provisions pointing towards protection of the rights of the older persons. The reach of fundamental rights, though equally available to older persons are not put to any purposive interpretation or action, to make them meaningful for the senior citizens. Substantive equality for older persons remains a far cry and is poles away from the equality assured to them in U.K under the Equality Act, 2010.

The focus on securing the independence, participation, care, dignity and self-fulfillment of the older persons through government funded programs in U.S.A is not seen in the Indian law. Social security measures are limited to the Directive Principle under Article 41 of the Constitution of India directs the state to make effective provisions, within the limits of its economic capacity, for securing public assistance in old age. This is implemented through the Old Age Pension and other welfare Schemes of the Governments. There are no all-pervasive social security measures in India as there are in U.K and U.S.A. The Directive Principle is after all meant to be realized subject to the limits of economic capacity and development of the State.

Reaffirming the family's obligation to take care of its older members is the focus of the law in India. The Criminal Procedure Code, 1973 provides for maintenance of parents. The personal laws provide for the duty of the children to take care of the parents at old



age. The MWPSA Act, 2007, which is the only legislation designed exclusively for protecting the rights of older persons confers the right on parents and senior citizens to claim maintenance from their children and relatives as the case may be. The protection is not only for the older persons as in the other countries, but is also extended to parents, irrespective of age. However the protection offered is limited to obligation on children and relatives to make provisions for maintenance of parents and senior citizens. The wider welfare aspect including independence, participation, care, dignity and self-fulfillment are not appropriately addressed in the MWPSA Act.

Facilities and services provided to older persons in U.K is an epitome of how the existing private service providers can be vested with the responsibility of rendering old age-friendly services. This is especially relevant with respect to transportation facilities. In U.K, license to ply taxis is granted subject to compliance of taxi accessibility regulations. Such good practices can be adopted in India.

Unlike the law in U.K and South Africa, there are no specific restrictions on service providers who provide care, housing and such other services to elderly in India. The general restriction under the Consumer Protection Act, 1986 alone applies to such services. Community based care programmes are not envisaged in the Indian law. However there are welfare schemes of the Governments which do allot fund for specified services to specified institutions.

Abandonment and neglect of persons is made a cognizable offence, but abuse of the elderly per se is not made a punishable offence under the Act. Such instances would be covered under the general criminal law. The best practice from South African law is far

ahead in preventing elderly abuse. There, even lapse in reporting abuse is made punishable offence as against any person.

In sharp contrast with the Care Act, 2014 of U.K and the Older Americans Act, 1965 of U.S.A, the state responsibility under the MWPSA Act, 2007 in India is confined to establishment of old age homes for indigent senior citizens and maintaining certain minimum health care facilities like separate queue and beds in hospitals for senior citizens. The Act however calls for expansion in research and specialization in geriatric care, which is yet to be implemented.

Thus in India, The MWPSA Act is oriented towards addressing only the economic aspects of the aging problem and the various other rights relating to independence, participation, health care, dignity, self-fulfillment, freedom from abuse and discrimination of the elderly are not adequately incorporated in the Act. The various challenges to full realization of human rights therefore remain inadequately addressed.

The cumulative effect of the legislation and government programs and its impact on protecting the rights of the older persons need to be verified through a data based study. This is also important in identifying the specific needs of the older persons and their expectations and goals. Chapter V deals with the data based evaluation of the protection of the rights of older persons in the States of Goa and Kerala keeping in mind the United Nations Principles for Older Persons, 1991 as the attainment criteria.

## **5. PROTECTION OF RIGHTS OF OLDER PERSONS IN THE STATE OF GOA AND STATE OF KERALA - A DATA BASED ANALYSIS**

World Population is ageing and so is every individual. Individual Ageing is the process of individuals growing older. This process is multidimensional involving physical, psychological and social changes. “Population Ageing” is a term used to refer to the process, which result in rising proportions of older persons in the total population.<sup>1</sup> This is a positive result as it indicates increased life expectancy rates and lower birth rates. However this phenomenon has profound impact on the socio economic structure of the society. The balance among age groups in the global population is also changing significantly.

Age groups are broadly divided into four, namely (1) children and adolescents under the age of 20 years; (2) “young” adults 20 to 39 years of age; (3) “middle-aged” adults aged 40 to 59 years; and (4) older persons aged 60 years or over. Historically, the group of older persons was much smaller than any of the other three groups.<sup>2</sup> But studies suggest that this situation is no longer true in the more developed regions and the global situation will change significantly as the older population continues to grow rapidly while the younger age groups begin to stabilize. According to United Nations population projections, older persons aged 60 years and above in more developed areas will

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<sup>1</sup>See generally UNITED NATIONS ECONOMIC AND SOCIAL COUNCIL, WORLD POPULATION AGEING 2013( United Nations, New York, 2013).

<sup>2</sup> *Id.* at 17.

outnumber children in 2047 and the proportion of older persons is expected to double over the next four decades.<sup>3</sup>

This changing population pyramid brings about various socio economic and inter-generational equity issues. Whether our society and legal system is suited to accommodate these changes is a matter of inquiry in this chapter. It is to be remembered that human rights do not wither away as a person advances in age. On the contrary the ideal of distributive justice requires special provisions and facilities to make available to the older persons, their basic rights.

### 5.1 POPULATION AGEING AND OLD AGE DEPENDENCY RATIO

As per 2011 Census, the total population of India is 121.05 crores and the total population of Senior Citizens is 10.38 crores. This would mean that Senior Citizens constitute 8.57% of the total population of the country. The projected population of persons aged 60 years and above in India from 2006 to 2026 for India is as under:

**Table 1: Projected population aged 60+ (2006-2026)**

Year	Projected Senior Citizens Population (Crore)	Percentage share in total population (%)	Projected share in total population of the State of Kerala
2006	8.36	7.5	11.2
2011	9.85	8.3	12.3
2016	11.81	9.3	14.0
2021	14.32	10.7	16.0
2026	17.32	12.4	18.3

*Source: Report of the Technical Group on Population Projections, May 2006 constituted by the National Commission on Population, published by the Office of the Registrar General of India*

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<sup>3</sup> *Id.* at 18.

As per this projection, if in 2006 the percentage of persons aged 60+ is 7.5% of the total population, it grows to 8.3%, 9.3% and 10.7% in 2011, 2016 and 2021 respectively and thereafter goes up to 12.4% in 2026.

The population of the State of Kerala as per 2011 Census is 3.34 Crores, of which 60+ constitute 12.6% with 4,193,393 persons. The State's elderly population is growing at a perpetual rate of 2.3%. The projected population of senior citizens (as of percentage of total population of the State) for the State of Kerala is as follows:

**Table 2 - Projected share of 60+ population (% of Total population)**

2006	2011	2016	2021	2026
11.2 %	12.3 %	14 %	16 %	18.3 %

*Source: Report of the Technical Group on Population Projections May 2006, constituted by the National Commission on Population, published by the Office of the Registrar General of India*

Table 2 shows that the share of senior citizens population (projected) in Kerala is seen to grow from 11.2% in 2006 to 18.3% in 2026 which is the biggest in India.

The total population of State of Goa is 14.57 lakhs and senior citizens constitute 11% in 2011 with a total of 1,63,495 persons above 60 years of age. The increase in population share has increased 2.25% in ten years which is shown in Table 3.

**Table 3 – Increase in the percentage of older population in Goa for 2001- 2011**

Year	Population of 60+ in Goa (Lakhs)	Percentage share in total population of Goa
2001	119285	8.85%
2011	119285	11%

The impact of increasing share of older population would be on the consequent old age dependency ratio. Old Age Dependency Ratio is defined as the number of persons in the Old Age group 60+ per 1000 persons in the age group 15-59. The Old Age Dependency Ratio in India has grown from 122 in 1992 to 131 in 2001 and is 142 as per Census 2011. Kerala and Goa are the top two in India regarding Old Age Dependency Ratio. The statistics is given below.

**Table 4 – Old Age Dependency Ratio by Residence as per Census 2011**

	India	Kerala	Goa
Old Age Dependency Ratio	142	196	168

*Source: Annual Report 2014-15, Department of Social Justice and Empowerment, Government of India*

Taking into consideration the high Old Age Dependency in Kerala and Goa and the rate of growth of elderly population at the rate of 2.25% from 2001 and 2011, the research focuses on the State of Goa and the State of Kerala for studying the rights of older persons, its protection and promotion.

## **5.2 EMPIRICAL STUDY OF RIGHTS OF OLDER PERSONS IN THE STATE OF GOA AND STATE OF KERALA: THE SCHEME**

The study on the Protection of the Rights of Older Persons – A Socio Legal Study in the State of Goa and State of Kerala was initiated also with the objective of assessing the protection of rights in India and in the States of Goa and Kerala keeping in mind the United Nations Principles for Older Persons, 1991 as the attainment criteria. The study initiated with the hypotheses which are tested through doctrinal as well as empirical study. As part of empirical study, structured and unstructured questionnaires were used to

collect information. The information collected has been studied by converting the responses into data and further analyzed through tabulation and cross tabulation. Each of the questions has options which tend to indicate the perception or condition of the respondent as the case may be. Cross tabulation has helped in relating the specific responses with specific information pertaining to each respondent, and thereby to verify the hypothesis based on findings and leading to relevant suggestions.

The field study has been restricted to the State of Goa and Kerala. A sincere attempt has been made to take sample depicting the cross section of the society in each of the States. Through questionnaire method, response was collected from four categories of persons namely,

- (i) Senior citizens,
- (ii) Persons above 25 years who are living with parents/ senior citizens,
- (iii) Persons above 25 years residing separately from parents and
- (iv) Persons between 18 – 25 years, who are mostly students.

In total, 400 responses from 400 persons were collected, 200 from each of the states. The questionnaires are added as Annexure I, II, III and IV respectively.

Unstructured questionnaires were also used to study the actual difficulties faced by senior citizens, where a number of senior citizens and care takers were interviewed. Case studies are included wherein the researcher visited the senior citizens and caretakers and observations so drawn are also included in this chapter.

The primary objectives of the questionnaires were to identify the following:

- (i) Whether the entitlements of senior citizens as contained in the United Nations Principles for Older Persons are available to the senior citizens in the State of Goa and State of Kerala.
- (ii) Whether the challenges, to full enjoyment of human rights by older persons namely (a) poverty; (b) violence and abuse; (c) discrimination and (d) lack of specific measures and services are satisfactorily addressed by the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and the governmental programs at the national level as well as at the state level in the States of Goa and Kerala.

Other objectives were:

- (iii) To understand the difficulties faced by reason of age by senior citizens and suggest solutions for them
- (iv) To understand the perspective of the senior citizens as well as others towards old age and to ascertain their expectations and preparation for old age, so that the same could be taken for consideration in the formulation of policy for senior citizens.

Questionnaire-1 was addressed to senior citizens in the State of Goa and Kerala. This questionnaire points towards the financial independence, living conditions, perceptions, difficulties and expectations in respect of their age. Preliminary information about the respondent was collected through a prefix to the questionnaire seeking information on their age, sex, income level, source of income, marital status, parental status and education. These indicators proved useful for studying and analyzing the data collected.



Questionnaire 1 contains specific questions to senior citizens and some general questions pertaining to the facilities and rights available to senior citizens. These general questions are also included in Questionnaire 2, 3 and 4 where the perception on others on the same matter could be studied.

Questionnaire-2 was addressed to persons who are not residing with their parents. Other than the general questions mentioned above, this questionnaire contained specific questions focused on the maintenance and welfare of parents by children.

Questionnaire-3 was addressed to persons who are above 25 years and residing with their parents. The specific questions in this Questionnaire include the care aspect, dependency level and the perspective on residing together with parents.

Questionnaire-4 was addressed to persons between 18 years and 25 years. This contains mostly the general questions and specific question on choice of residence during old age.

### **5.3 QUESTIONNAIRE - 1 – SPECIFIC INFORMATION FROM SENIOR CITIZENS**

The respondents were senior citizens. Details regarding the sample group for Questionnaire No.1 are presented in Table 5 given below

**Table 5 – Composition of Respondents for Questionnaire-1**

		Goa	Kerala
Sex	Male	28	24
	Female	20	26
Age	Aged 70+	13	15
	60-69 years	35	35
Income	Own income	35	38
	No income	13	12

		Goa	Kerala
Employed	Employed	4	6
	Not employed	44	44
Marital Status	Married	34	38
	Widow/er or Single	14	12
Parental Status	Have children	45	50
	Childless	3	-

The questions are categorized under various themes and the data so collected is thereby analyzed.

**a) Financial independence:**

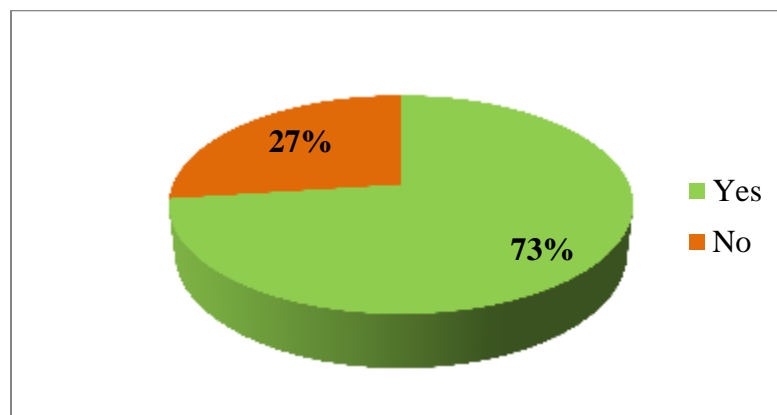
In spite of the preliminary information section in the questionnaire regarding income and source of income, Question 3 was specifically seeking information on who provides for the respondents' needs in case they do not have their own income. From this, two facts could be deducted. Firstly, how many senior citizens who responded to the questionnaire have their own income and how many do not. Secondly, in case they do not have their own income, who provides for their needs. The data so received is depicted as follows:

**Table 6 – Senior Citizens: Own income**

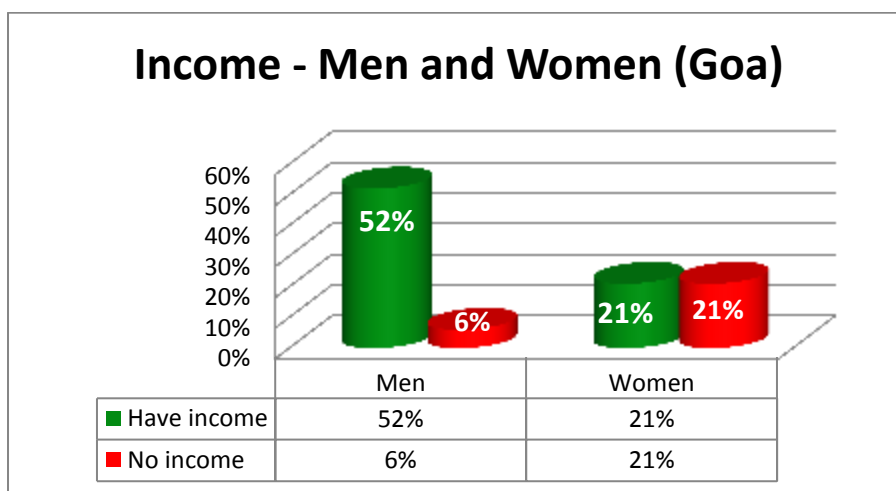
		Have income	No income
Goa	Men	25	3
	Women	10	10
	Total	35	13
Kerala	Men	20	4
	Women	18	8
	Total	38	12

The percentage of senior citizens in Goa who have their own income can be seen from Figure 1 and the percentage of men and women in this category can be seen in Figure 2.

**Figure 1 – Senior Citizens, Goa: Own Income**



**Figure 2**

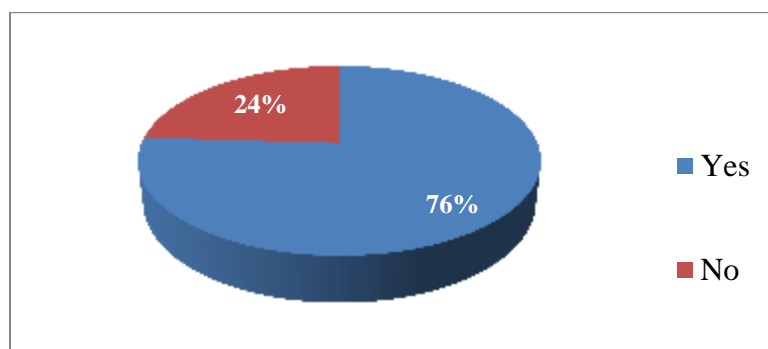


From Figure 1, it can be seen that 73% of the respondents in Goa had their own source of income and 27 % did not have any income of their own. This shows that economic dependency exists only for 27% of the senior citizens in Goa. From figure 2, it can be seen that 52% senior citizens have their own income are men and 21 % are women. Out

of the total 27% with no income, 6% constitute men and 21% constitute women. This shows a great disparity between men and women in Goa as far as income is concerned.

The percentage of senior citizens in Kerala who have their own income can be seen from Fig 3 and the percentage of men and women in this category can be seen in Fig 4.

**Figure 3 – Senior Citizens, Kerala: Own income**



**Figure 4**

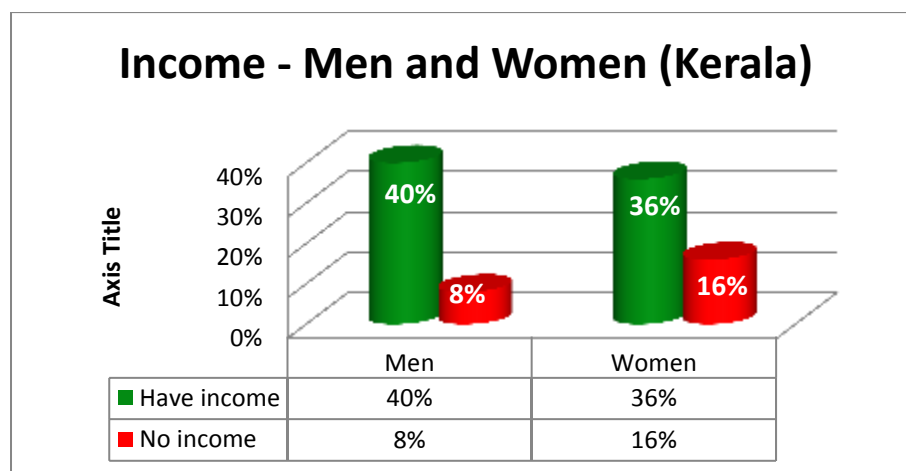
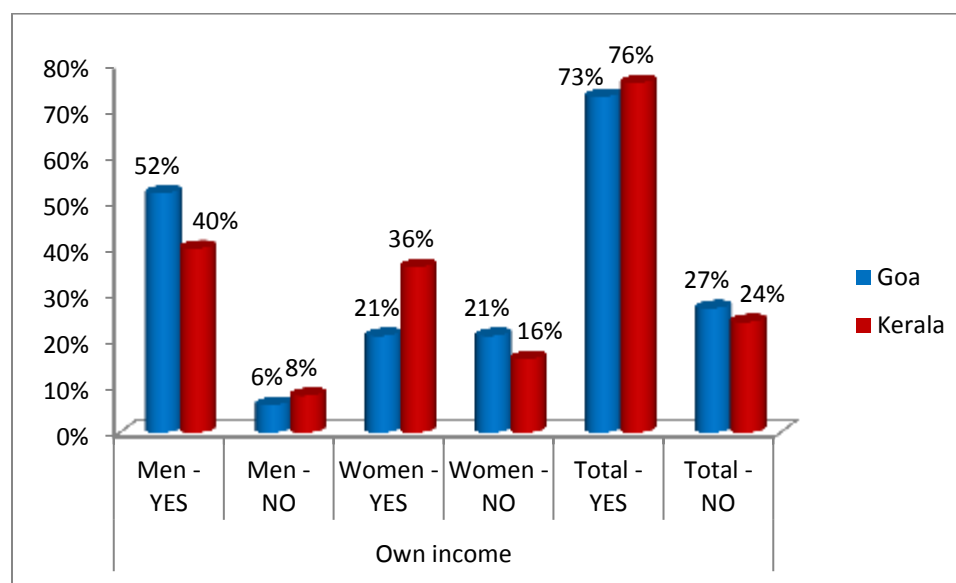


Figure 3 shows that that 76% of the senior citizens in Kerala had their own source of income and only 24 % did not have any income of their own and therefore financially dependent. From figure 4, it can be seen that 40% senior citizens who have their own income are men and 36% are women. This shows that there is not much disparity

between men and women in Kerala as far as income is concerned. Out of the total 24% with no income, 8% constitute men and 16% constitute women.

A comparison of the man-woman income holding in the two states is given in Figure 5.

**Figure 5 – Comparison of men and women regarding income holding**



Among senior citizens, 76% have own income in Kerala and 73% have own income in Goa. Therefore the corresponding financial dependency percentage in Kerala and Goa are 24% and 27% respectively. This means that 4% more senior citizens in Goa are financially dependent on others than those in Kerala. In Goa, 52% of those senior citizens who have income are men and 21% are women. Such a big disparity between men and women in terms of income does not exist in Kerala, where men constitute 40% and women constitute 36%. In Goa, out of the 27% who do not have income, 6% are men and 21% are women. In Kerala, out of the 24% who do not have income, 8% men and 16% women. It can be inferred that women in Goa are more vulnerable to dependency related issues than in Kerala, as regards income.

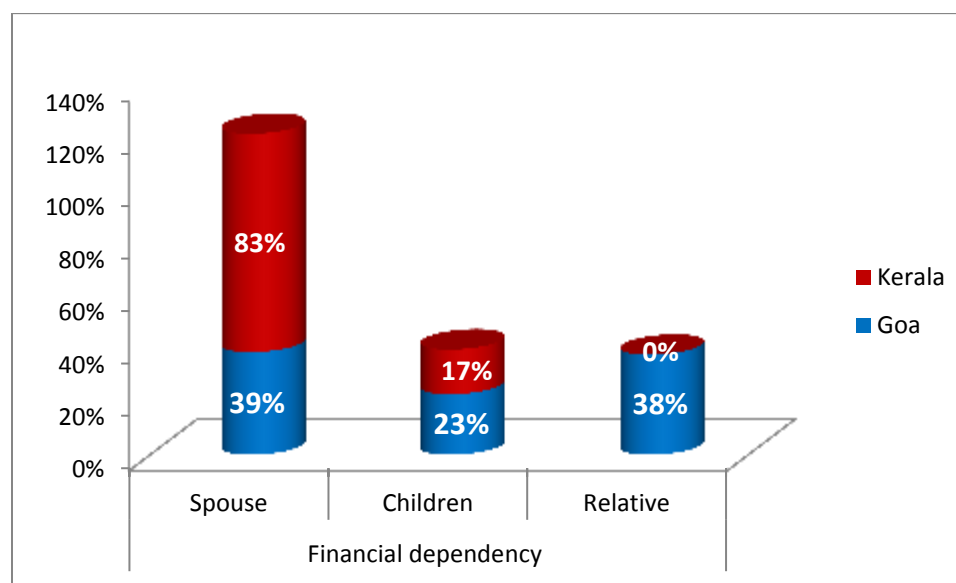
The total 27% and 24% who did not have their own source of income in Goa and Kerala respectively were dependent on their spouses, children and relatives. This can be understood from response to Q.3, which is as follows:

**Table 7 – Financial Dependency**

	Spouse	Son/daughter	Relative
Goa	5	3	5
Kerala	10	2	-

The data in Table 7 can be analyzed with the help of Figure 6

**Figure 6 – Financial Dependency**



As can be seen from Figure 6 that 39% of senior citizens in Goa who do not have their own source of income, are provided for by their by spouses, 38% by relatives and 23% by children. In Kerala it is 83% by spouses and 23% by children. Relatives do not provide for any. This could probably be because of the fact that since men and women are almost at par with respect to having own means of income, in the event of one of the spouses becoming income-less, the dependency falls on the other spouse. This is probable looking

at the 83% in Kerala who depend on their spouses financially, while in Goa it is only 39%.

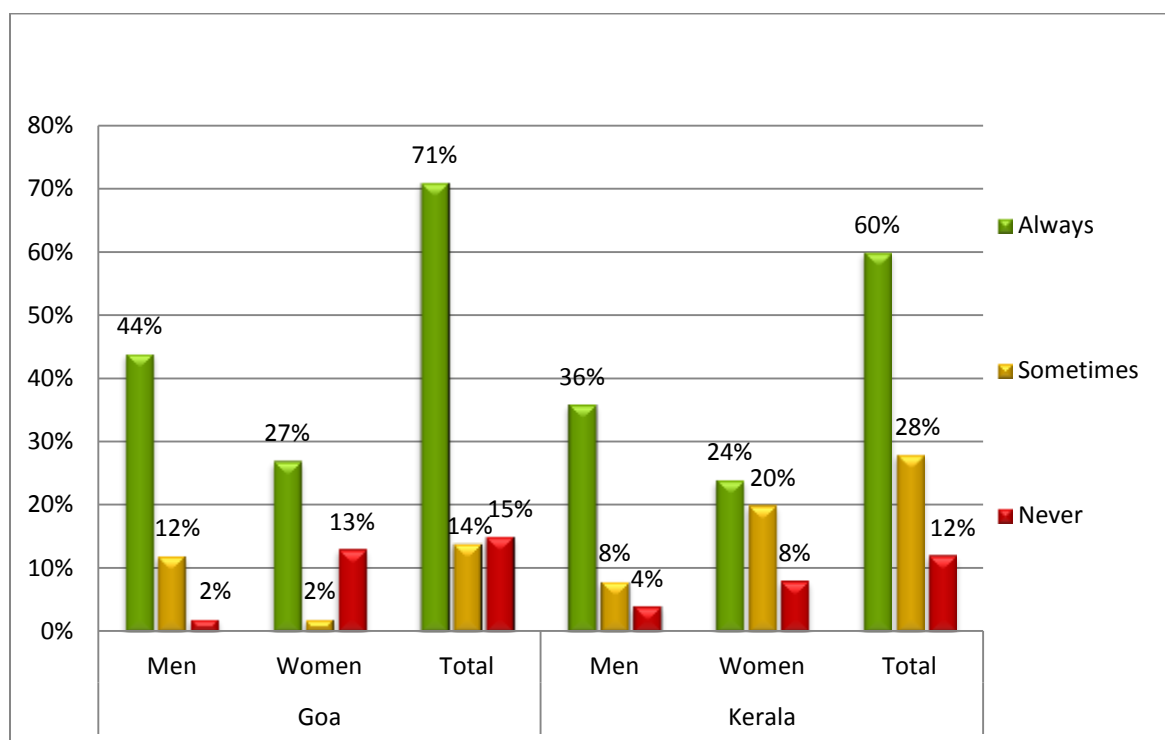
Question 2 was aimed at finding out the financial independence in terms of freedom to spend as per one's wish. The question was worded "Do you have the freedom to spend the way you want?" Three options were given namely, "Always", "Sometimes" and "Never". The findings are tabulated, based on the sex and age of the respondent, State-wise. Table 8 below shows the findings.

**Table 8**

		Freedom to spend		
		Always	Sometimes	Never
Goa	Men	21	6	1
	Women	13	1	6
	Total	34	7	7
Kerala	Men	18	4	2
	Women	12	10	4
	Total	30	14	6

This information is projected in Figure7 below to study the number of men and women who enjoy economic independence in terms of freedom to spend.

**Figure 7 – Freedom to spend**



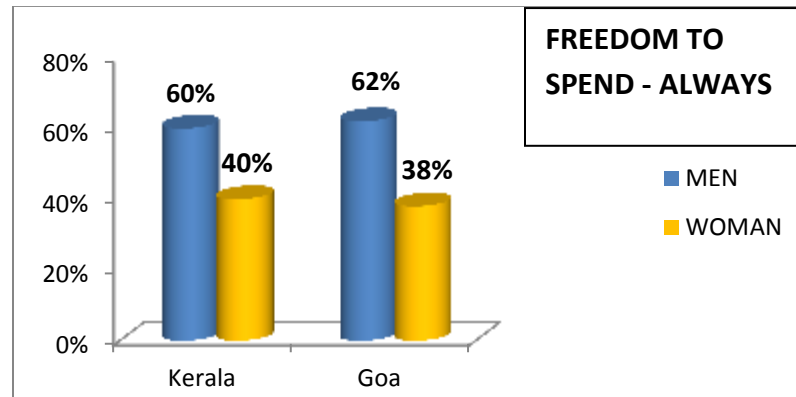
In Goa, 71% senior citizens said that they always have the freedom to spend, of which 44% are men and 27% are women. 14% senior citizens said they sometimes have the freedom, comprising of 12% men and 2% woman. 15% said they never have the freedom to spend, of which 13% are women (12%) and 2% are men.

In Kerala, 60% senior citizens including 36% men and 24% women said they always have the freedom to spend; 28% comprising of 20% women and 8% men said they sometimes have the freedom and 12% senior citizens, including 8% women and 4% men said they never have the freedom to spend.



To further analyze the disparity in economic freedom between men and women in both the states, in terms of percentage, each of the option is separately projected in Figure 8, 9 and 10. Analysis of those who marked the option “Always” is shown in Figure 8.

**Figure 8**



It can be understood from Figure 8 that in Kerala, from the respondents who said they always have the freedom to spend, 60% are men and 40% are women. There is a considerable disparity here between men and women. A similar disparity can be seen in Goa also where, from those who said they always have the freedom to spend, 62% are men and only 38% are women. Analysis of those who marked the option “Sometimes” is shown in Figure 9.

**Figure 9**

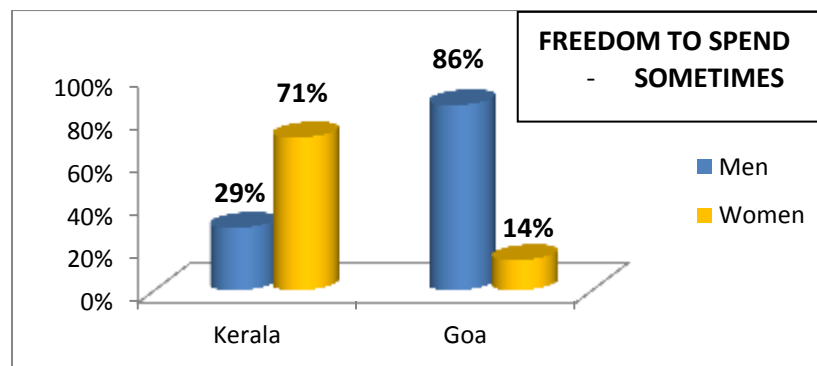


Figure 9 shows that in Kerala, of the senior citizens who said they sometimes have the freedom to spend, 71% are men and 29% are women. This is a very big disparity between men and women in terms of financial independence. In Goa, the same category contains 86% men and 14% women. The disparity is even higher in Goa.

Analysis of those who marked the option “Never” is shown in Figure 10

**Figure 10**

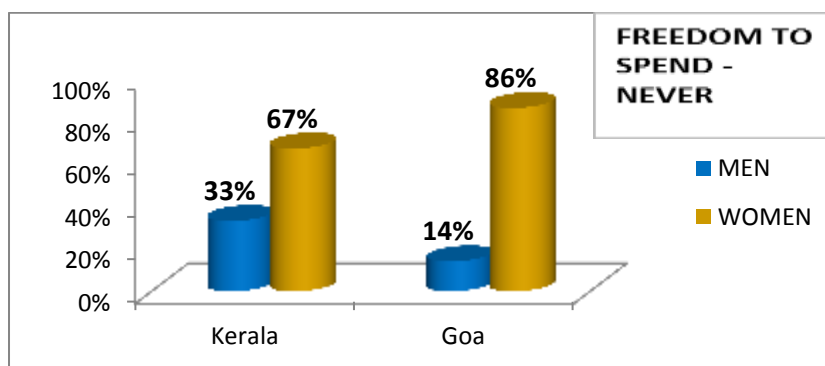


Figure 10 shows that in Kerala those respondents who said they never have the freedom to spend as per their wish, 67% are women and 33% constitute men. In Goa it is 14% women and 86 % men.

The cumulative inference that can be drawn from Figures 8, 9 and 10 is that in both the States among senior citizens, women enjoy much lesser financial freedom than men in terms of freedom to spend.

## **b) Welfare Schemes**

Two questions probed into the welfare schemes available to senior citizens. Question 4 aimed to find out how many respondents have availed of the schemes, whereas Question 25 inquired about the awareness of such schemes among senior citizens.

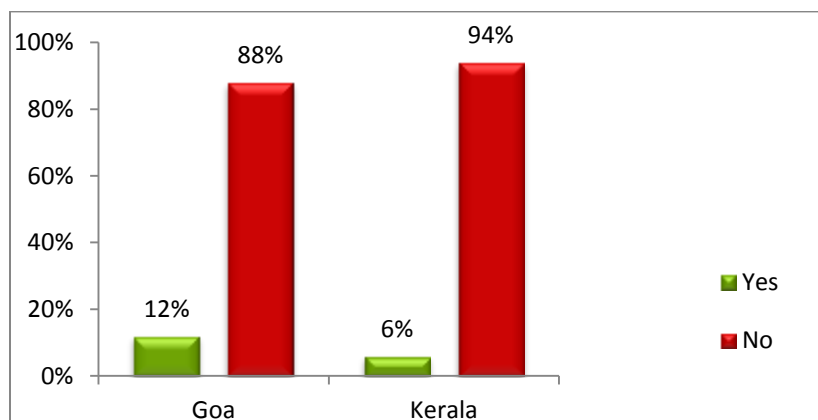
Question 4: Do you get any pension or benefit under any welfare schemes of the government? If yes, specify the scheme.

The response to this question is contained in Table 9. The same is projected in Figure 11.

**Table 9 – Availing Welfare Schemes**

	Yes	No
Goa	6	42
Kerala	3	47

**Figure 11 – Persons availing welfare schemes**



From Figure 5, it was already seen that 27 % of the respondents in Goa and 24% in Kerala do not have any income on their own. Figure 11 shows that in Goa, 12% and in Kerala 6% are availing of welfare schemes in the respective States. The schemes specified by the respondents in Goa are *Griha Adhar* Scheme and Dayanand Social Security Scheme. Respondents in Kerala specified Old Age Pension.

To verify the awareness that exists among senior citizens regarding the welfare schemes, Question 25 stated: “Are you aware of the schemes for senior citizens provided by the

government?” The response is shown in Table 10 below. The same is depicted in Figure 12.

**Table 10 – Awareness of Welfare Schemes**

	Yes	No
Goa	6	42
Kerala	3	47

**Figure 12 – Awareness of Welfare Schemes**

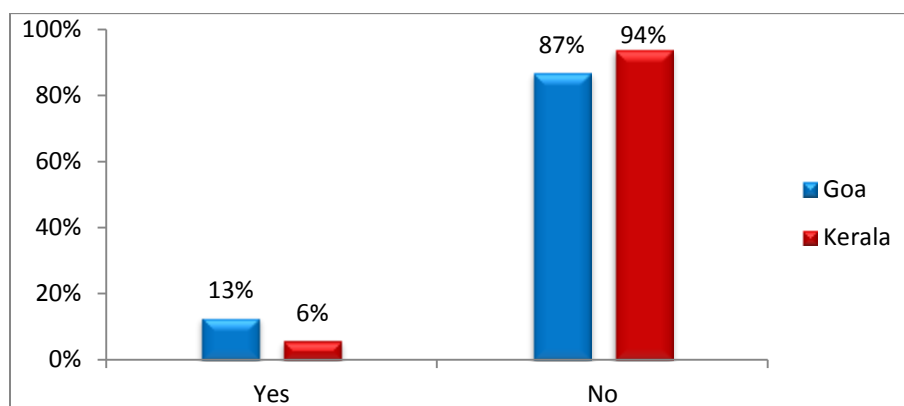


Figure 12 shows that in Goa only 13% of senior citizens are aware of the welfare schemes for senior citizens. In Kerala only 6% is aware of the same. This being a very less percentage indicates the need for intensive awareness campaign in this regard.

### c) Holders of Medical Insurance Policy

To find out the percentage of senior citizens who are holding any medical insurance policy, Question 5 was included which stated, “Do you have any medical insurance policy?” The response is recorded in Table 11 and the percentage projection is made in Figure 13.

**Table 11 – Hold Medical Insurance Policy**

	Yes	No
Goa	16	32
Kerala	14	36

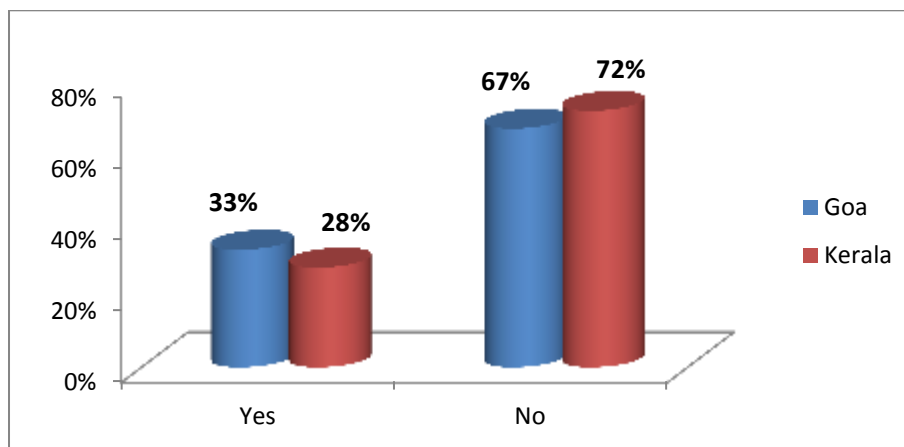
**Figure 13 – Senior Citizens holding Medical Insurance Policy**

Figure 13 reveals that 33 % of senior citizens in Goa, and only 28% in Kerala hold medical insurance policy. This points out to the importance of creating awareness on Medical Insurance Policy among senior citizens and providing a variety of suitable and affordable policy options as well.

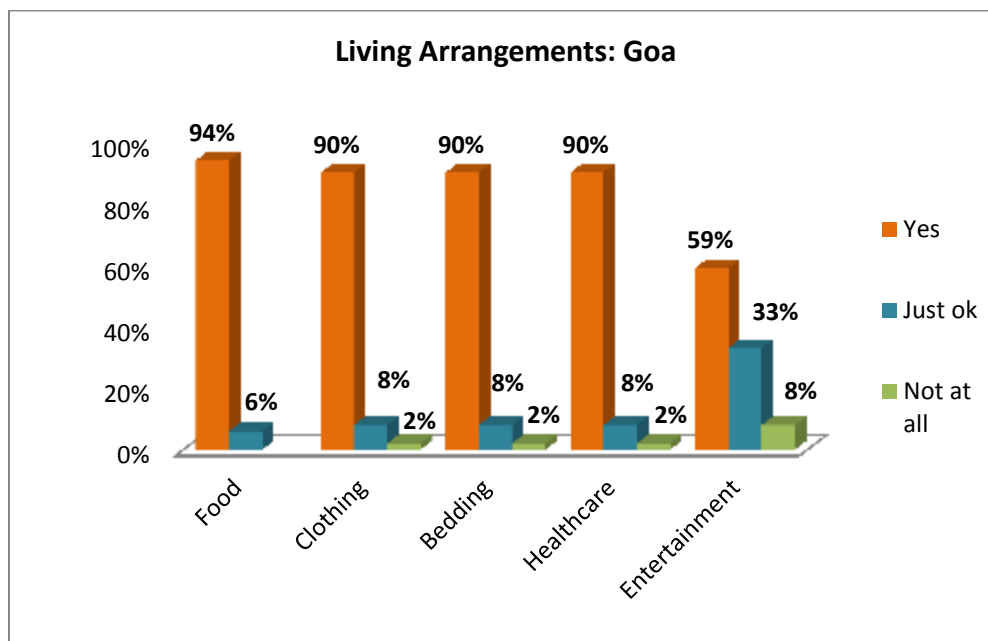
#### d) **Living Arrangements**

To study the living arrangements, Question 6 stated, “Do you get your needs met as per your satisfaction with respect to food, clothing, bedding, medicine and healthcare and entertainment”. The options given were “Yes”, “Just Ok” and “Not at all”. The response is tabulated as below:

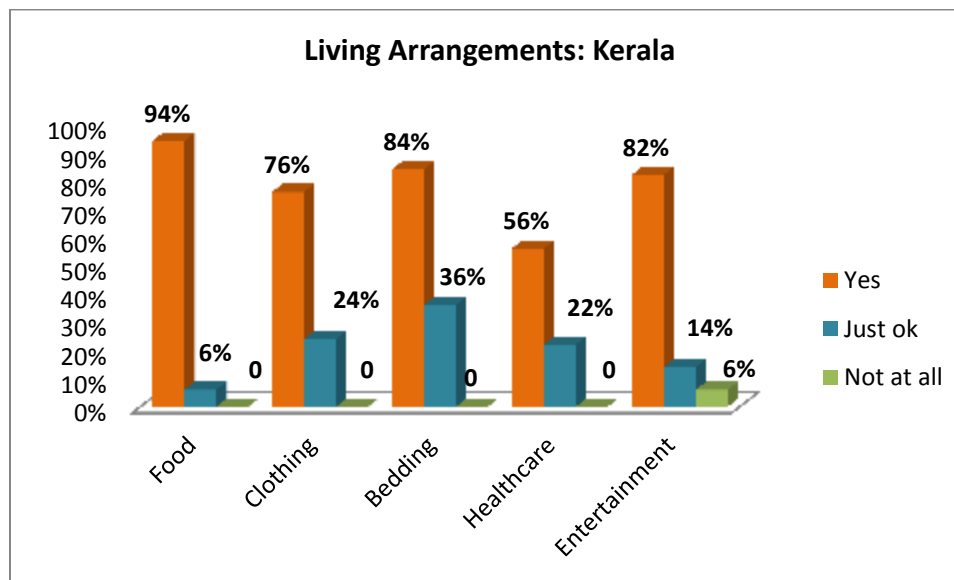
**Table 12 – Living Conditions**

		Food	Clothing	Bedding	Medicine &Healthcare	Entertainment
Goa	Yes	45	43	43	43	28
	Just ok	3	4	4	4	16
	Not at all	-	1	1	1	4
Kerala	Yes	47	38	42	28	41
	Just ok	3	12	18	22	7
	Not at all	-	-	-	-	3

The separate response with each of the category is analyzed in Figure 14 and Figure 15 representing Goa and Kerala respectively.

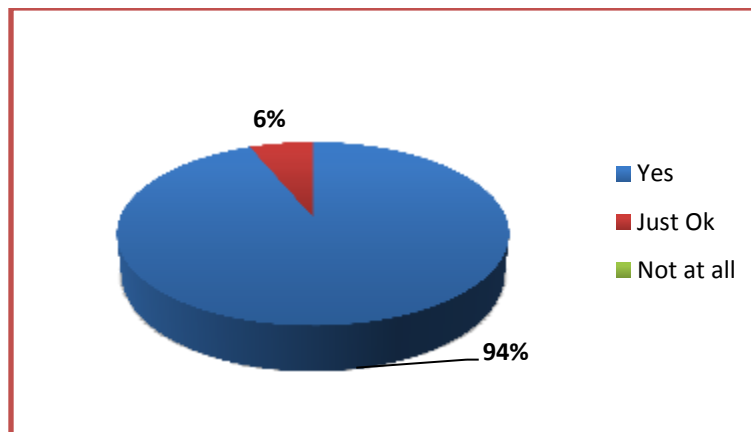
**Figure 14 – Living Arrangements - Goa**

**Figure 15 – Living Arrangements - Kerala**



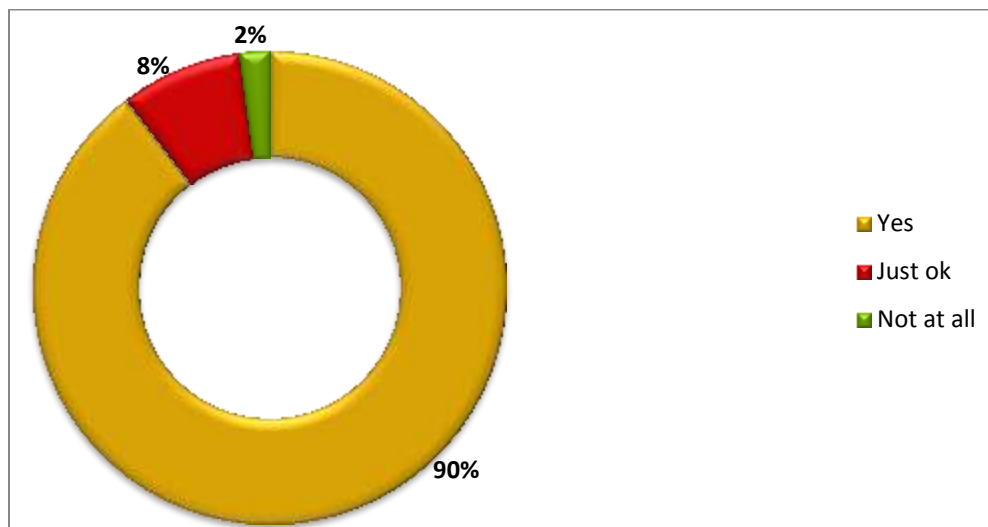
(i) **Analysis of Living Arrangements of Senior Citizens in Goa**

**Figure 16 – Living arrangement, Goa : Food**



As far as food is concerned, no one said that they are not getting food. 94 % said that they get food to their satisfaction and 6 % said food is “Just Ok”.

**Figure 17 – Living arrangement, Goa : Clothing, Bedding, Medicine, Healthcare**



With respect to Clothing, Bedding and Health Care the response was the same. 90% said it is to their satisfaction, 8% said it is “Just Ok” and 2% said it is “Not at all” met.

Even though the persons who said that they do not get clothing, bedding, medicine and healthcare at all is just 2%, identifying the reason is important, especially because the study demands more focus on the marginalized.

Therefore the data was further studied classifying the respondents this time, based on their sex, marital status and dependency.

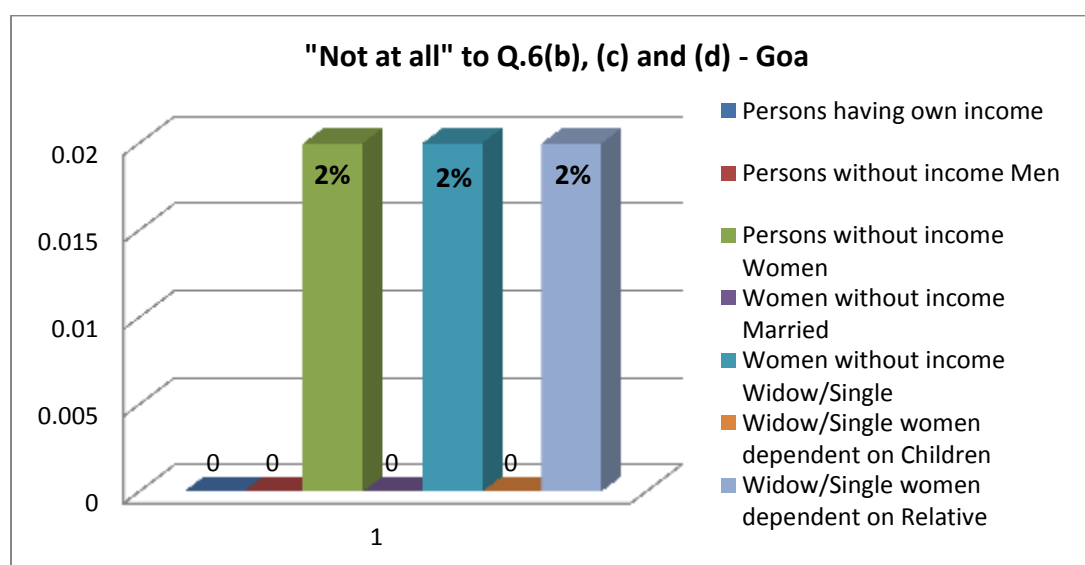
For this purpose, preliminary information was used to cross tabulate the information provided in Q.3 and Q.6 (b), (c) and (d). The result can is contained in Table 13.



**Table 13 – Cross tabulation - Q.3 and Q. 6(b), (c) and (d), Questionnaire 1**

Category		Response “Not at all” to Q.6 (b) (c) and (d)
Persons having own income		0
Persons without income	Men	0
	Women	2%
Women without income	Married	0
	Widow/Single	2%
Widow/Single women dependent on	Children	0
	Relative	2%

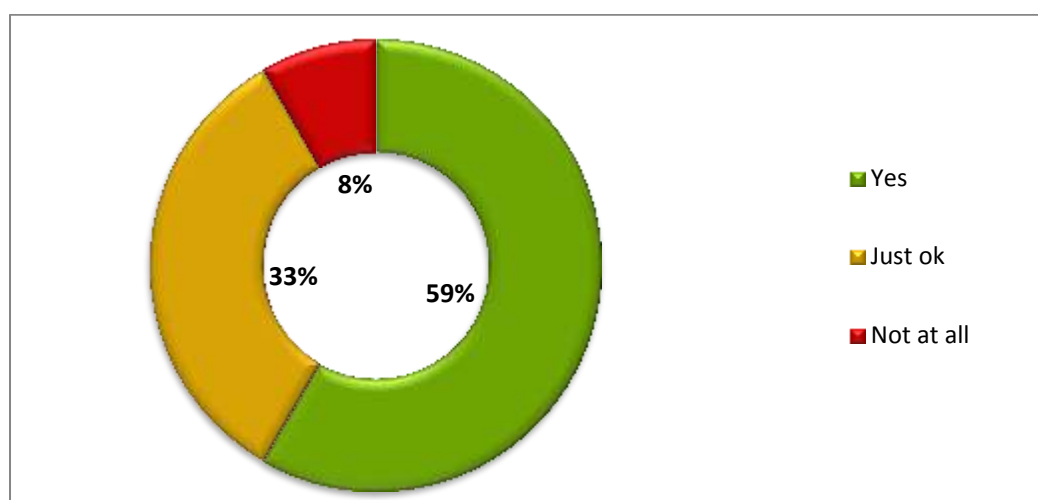
The data is projected in Figure 18 below

**Figure 18 – Cross tabulation - Q.3 and Q. 6(b), (c) and (d), Questionnaire 1**

Thus it is seen that the 2% that constitutes persons who said that their living condition with respect to clothing, shelter and healthcare are “Not at all” met comprises of single women without own income, dependent on relatives.

Q 6 (e) which sought information on how far the respondents are satisfied with the entertainment facilities/conditions, the response is as below:

**Figure 19 – Facilities/Conditions for Entertainment for Senior Citizens, Goa**



When 59% said they are satisfied with the provisions/ conditions for entertainment, 33% said the provisions are “Just ok” and 8 % said they are “Not at all” satisfied with the provisions.

A comparison of Figure 19 (Entertainment) with Figure 17 (food) and Figure 18 (clothing, bedding and healthcare) it can be understood that even when 94 % was satisfied with provisions for food and 90 % were satisfied with their clothing, bedding and healthcare, only 59 % said that they were satisfied with the provision for entertainment.

(ii) **Analysis of Living Arrangements of Senior Citizens in Kerala**

Each of the living conditions of senior citizens in Kerala is analyzed as follows:

**Figure 20 – Living arrangement , Kerala: Food**

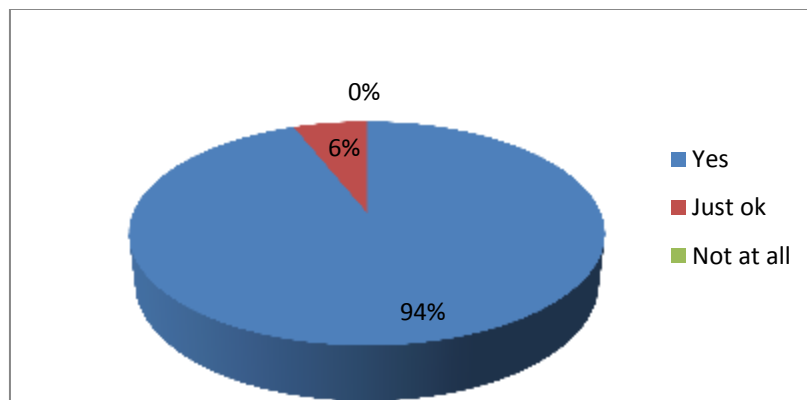
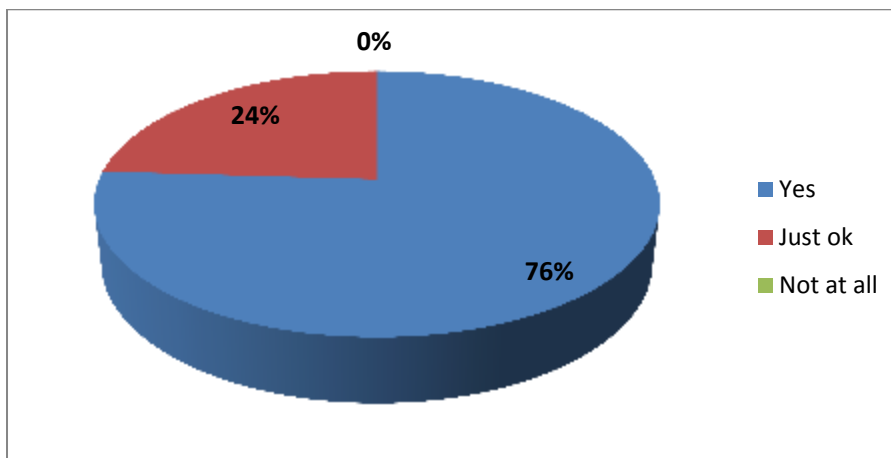


Figure 20 reflects that 94% of the senior citizens are totally satisfied with food they eat and only 6 % marked “Just Ok”. None of the respondents said they are not at all satisfied.

**Figure 21 – Living arrangement, Kerala: Clothing**



Regarding clothing, 76% said they are satisfied and 24% said it is just ok. There seems to be less satisfaction quotient as regards clothing, when compared to food. Here again nobody marked, “Not at all”.

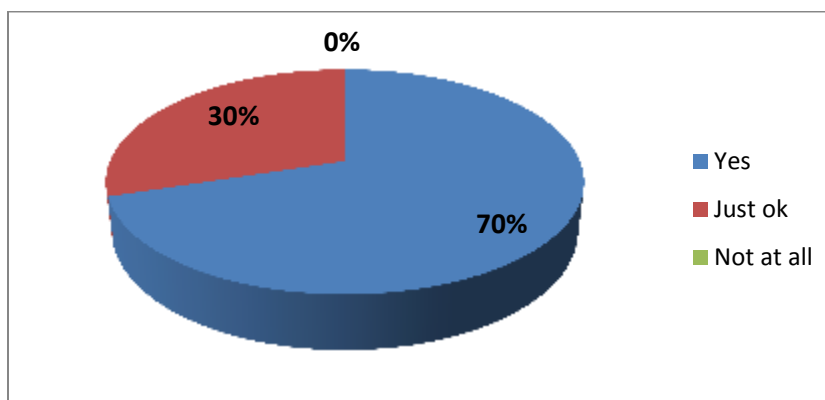
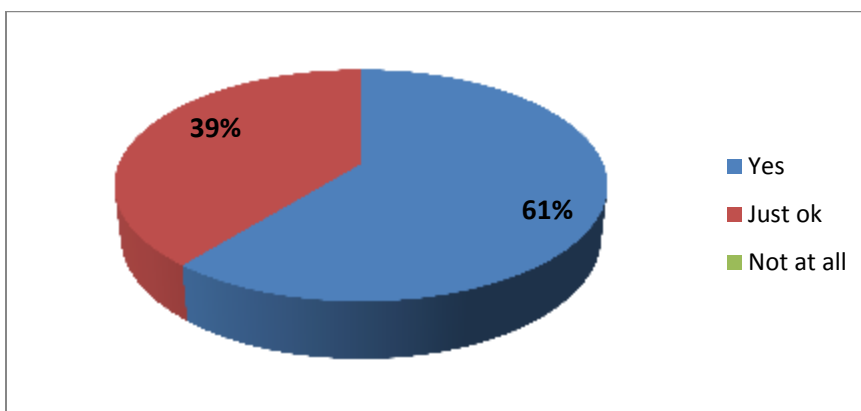
**Figure 22 – Living arrangement, Kerala: Bedding**

Figure 22 shows that there is a drop in satisfaction quotient of bedding facility which is 70% and 30% said they find it just ok. No one found it is not at all satisfactory.

**Figure 23 – Living arrangement, Kerala: Healthcare**

In the matter of healthcare also, nobody said they are not at all satisfied. But from Figure 23, a further drop in percentage can be seen in those who said “Yes” which is just 61%, compared to their responses for food, clothing and bedding facilities.

**Figure 24 – Facility/Condition for Entertainment for Senior Citizens, Kerala**

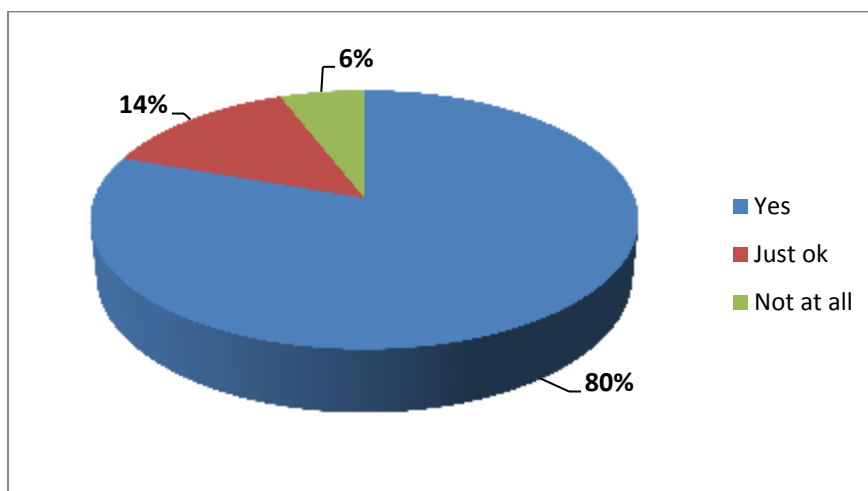


Figure 24 reveals that 80% of senior citizens in Kerala said that they are satisfied with the entertainment facilities available to them.

Among the living conditions asked about in Question 6, the senior citizens in Kerala showed most satisfaction with food where 94% is marked, followed by Entertainment marked by 80%, clothing 76%, Bedding 70%, and the least satisfaction is recorded for healthcare and medicine, which is 61%. This finding points towards need for improvement and access to healthcare facilities to senior citizens in Goa. However only regarding entertainment, 6% marked “Not at all” which was otherwise not marked regarding any of the other facilities.

#### **e) Residence - Safety to Life and Property**

Protection to life and property is more important when senior citizens live alone in houses. Question 7 was aimed at collecting information on whom do the senior citizens live with. The options provided were, “children”, “relatives” and “domestic help”. Question 8 supplemented the previous question by finding out where the senior citizens

live. The options provided were, “own house”, “children’s house”, “relative’s house” and “old age home”. The information is tabulated as in Table 14 given below.

**Table 14 – Residence: Where and With Whom**

	Lives in whose house				Lives with whom			
	Own	Children’s	Relative’s	Old Age Home	Children	Relatives	Domestic help	Alone
Goa	45	1	2	0	35	2	2	9
Kerala	42	8	0	0	14	0	12	24

This can be projected in Figures 25 and 26 for Goa and Kerala respectively.

**Figure 25**

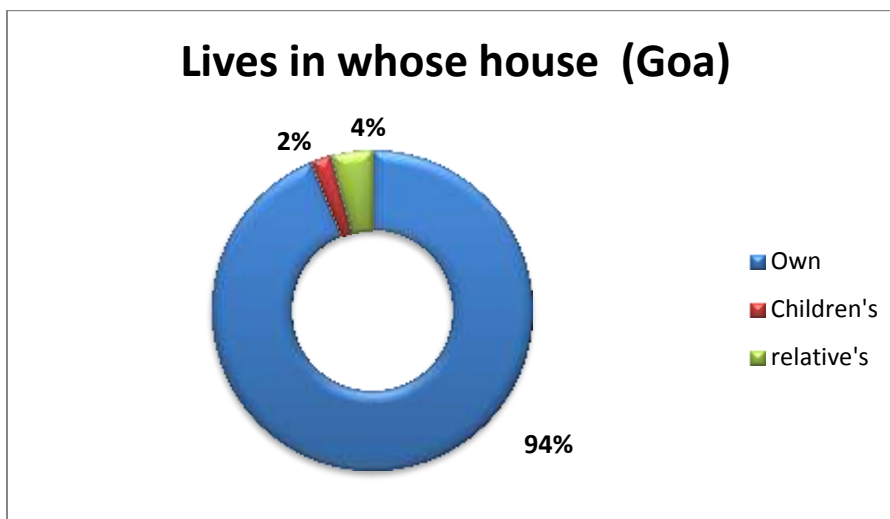
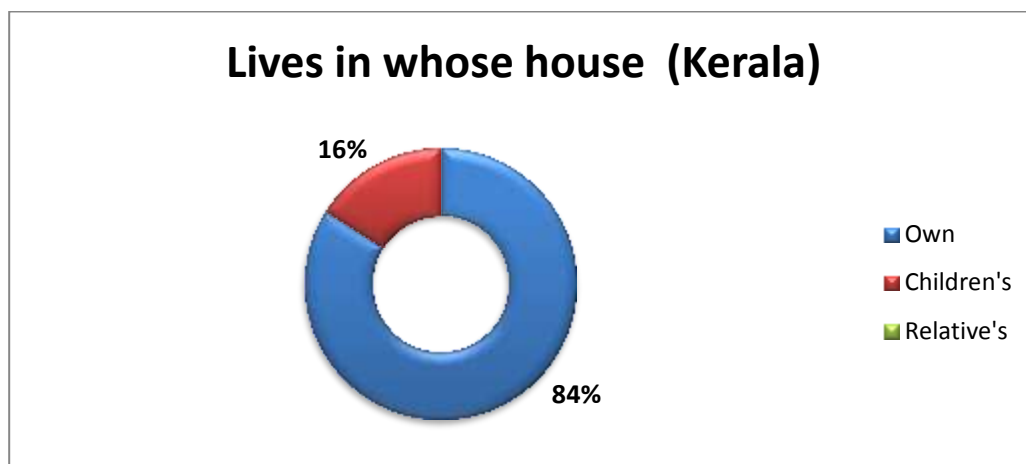


Figure 25 shows that in Goa, 94 % of the respondents live in own house, 4 % live with relatives and 2 % live with children. None of the respondents are staying in old age homes. The data for the same for Kerala is shown in Figure 26 below.

Figure 26

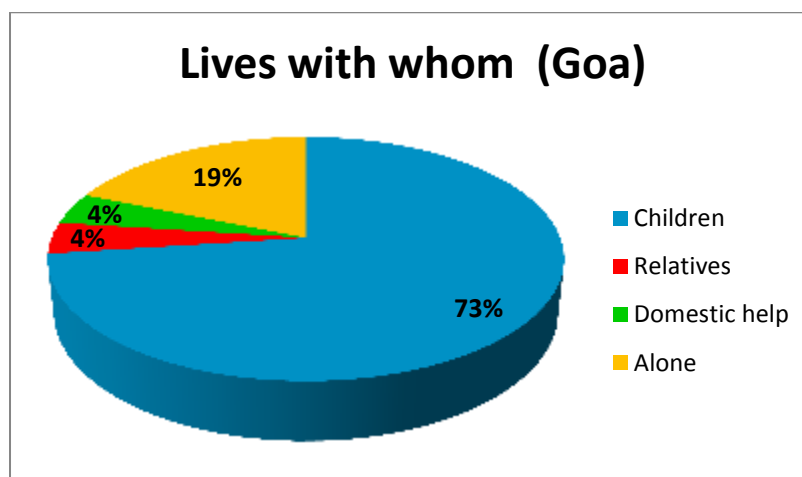


In Kerala 84% of the respondents live in their own houses and 16% live in their children's houses. No respondent marked the option "Relative's House" or "Old Age Home". It can be seen from Figure 25 and 26 that in Kerala the percentage of parents living in their children's house is much more (16%) than in Goa, where it is only 2%.

The next aspect is to analyze the data regarding whom does the senior citizens live with.

For Goa it is depicted in Figure 27.

Figure 27

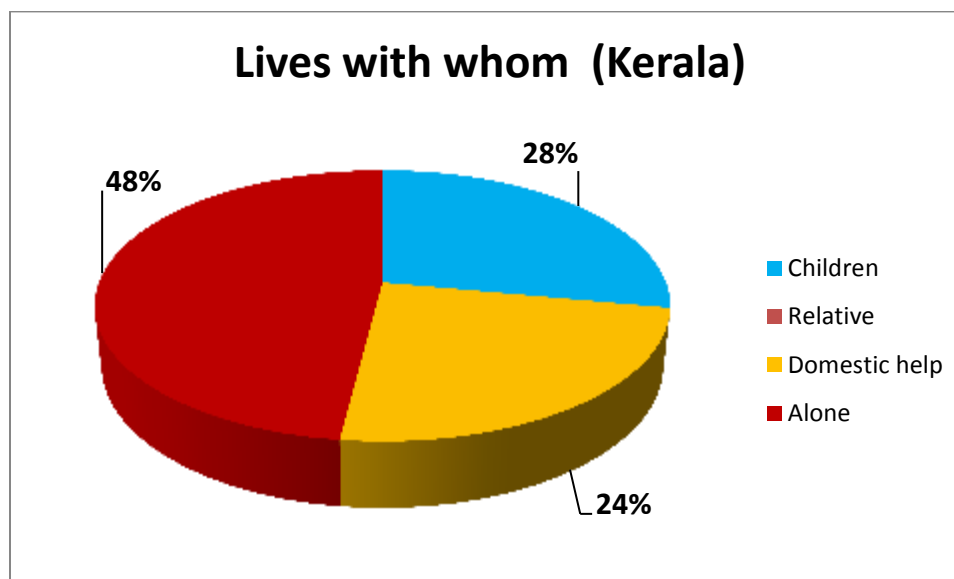


It can be seen that 73 % live with children, 19 % live alone, 4 % live with domestic help and 4 % live with relatives.

A comparison between Figure 27 (Lives with whom - Goa) and Figure 25 (Lives in whose house - Goa) shows that though 73% live with children, only 2% lives in their children's house. Therefore it can be inferred that 71% lives in their own houses and children stay with them. This indicates that joint family continues to exist. The finding that, 19% of senior citizens live alone in their houses, calls for vigilance on the part of law enforcement authorities, to take steps to ensure safety to the lives and property of senior citizens in Goa.

The same aspect with respect to Kerala is analyzed hereafter.

**Figure 28**



It can be seen from Figure 28 that When 48% of the respondents in Kerala live alone, 28% live with their children and 24% live with domestic help. The proportion of people staying with domestic help indicates the necessity to have registration of the domestic



helpers with the police, as a precautionary measure to combat crime against older persons. 48% living alone is also suggestive of increasing the efficiency of police visits, helpline numbers and such other measures as to ensure the lives and property of senior citizens in Kerala.

There is a marked decline of joint family system as can be seen from the fact that only 28% live with children and as seen in Figure 26 only 16% live in their children's houses. This would mean that the percentage of persons staying with parents in their parental house, which is the essence of joint family system, is a meager 12%.

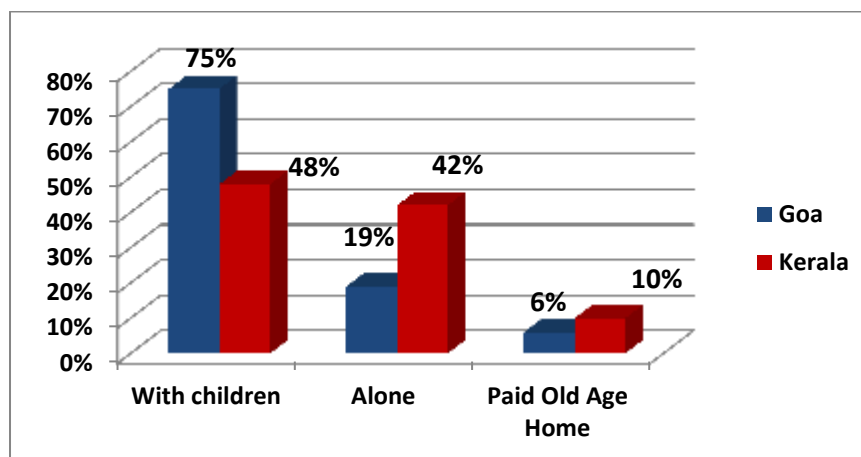
#### f) Preference of residence

Question 36 probed into the preference of respondents regarding their residence. The question stated, "Which of these do you prefer?" The options provided were (a) living with children, (b) living alone, (c) living in a paid old age home with all facilities and (d) living in a free old age home. The response to this question for Goa and Kerala is contained in Table 15 below.

**Table 15 – Preference of Residence**

	With children	Alone	Paid Old Age Home	Free Old Age Home
Goa	36	9	3	-
Kerala	24	21	5	-

The data is shown in percentage in Figure 29 below

**Figure 29 – Preference of residence**

An interesting inference from Figure 29 is the disparity in the preference of residence between the respondents in Goa and Kerala. When 75% in Goa prefer to live with children, only 48% showed such a preference in Kerala. This is a strong indication of the breakdown of the joint family system, which is not merely attributed to the changing mindset of the children but also of the parents. Even the parents do not seem to prefer a joint family system in Kerala as is evident from the 48% who opted for it in comparison to the 42% who prefer to live alone. In Goa, those who prefer to live alone is only 19%. When it comes to old age homes, both the States show a lesser preference of 6% and 10% who prefer paid old age home with all facilities in Goa and Kerala respectively. No one from either of the States marked their preference for free old age homes.

**g) Participation in home – Involvement and Perception regarding household work**

Question 9 aims to find out the involvement of senior citizens in daily household chores.

Different options were provided namely (a) taking care of grandchildren, (b) Payment of

Bills, (c) Buying provisions and groceries, (d) Cooking and Cleaning (e) any other (to specify) and (f) do not do any of these work. The response is as mentioned hereunder.

**Table 16 – Involvement and Perception regarding household work**

	Taking care of grandchildren	Payment of Bills	Buying provisions and groceries	Cooking and Cleaning	Any other	Do not do these work
Goa	17	22	30	28	1	2
Kerala	10	36	38	22	-	12

The data can be projected in the following way.

- (i) Participation of Senior Citizens in household work in Goa

**Figure 30**

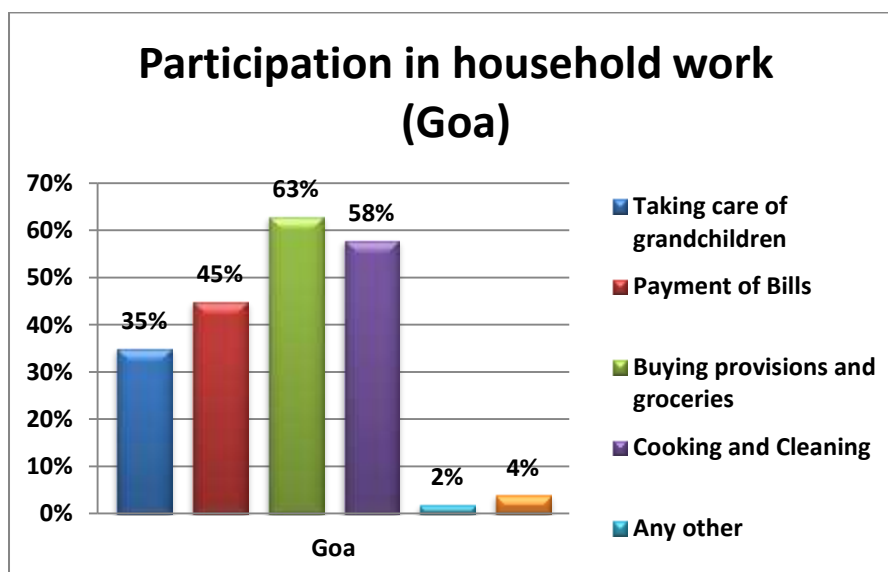
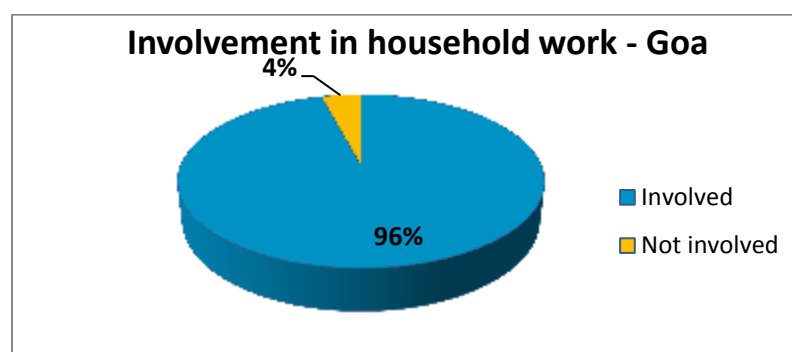


Figure 30 shows that maximum involvement of respondent senior citizens in Goa is in buying provisions and groceries where 63% respondents tick marked the option. 58% participate in cooking and cleaning, 45% in payment of bills, 35% in taking care of grandchildren and 4% said they do not do any of these work. 2% said “Other” specifying repairing household things, stitching and gardening. The percentage of senior citizens contributing to household work is as follows.

**Figure 31**



In Goa, 98 % of the respondents are involved with one or the other household work, whereas 2 % do not involve with the same.

(ii) Participation of Senior Citizens in household work in Kerala

**Figure 32 – Participation in household work (Kerala)**

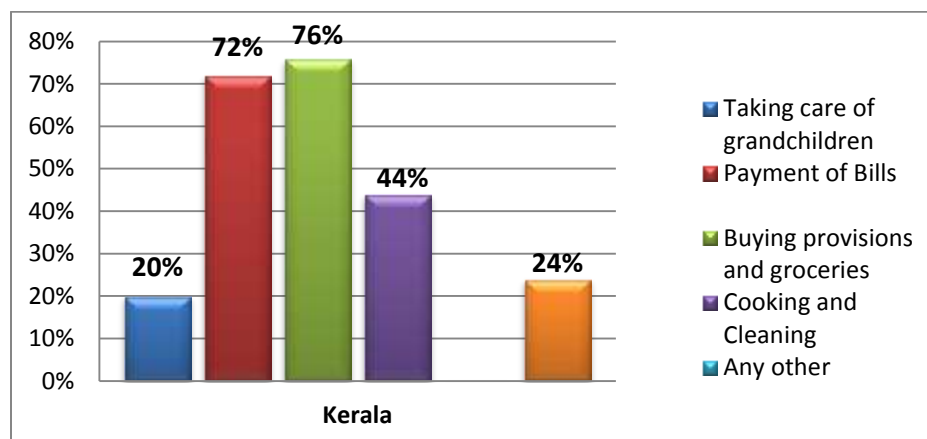
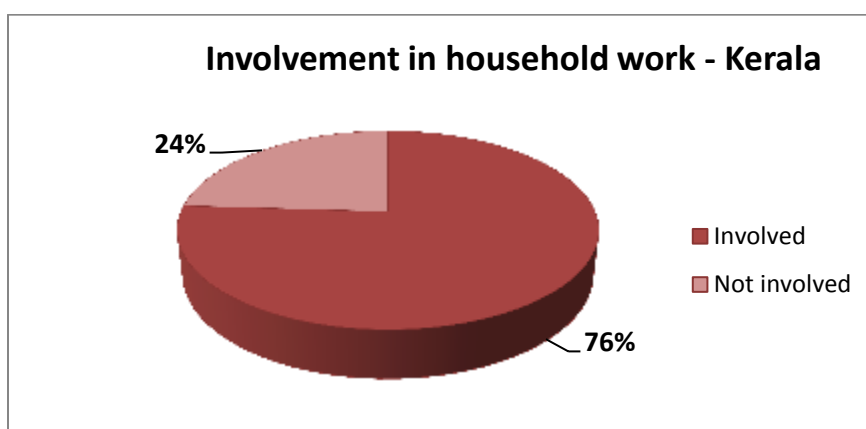


Figure 32 shows that in Kerala also, the maximum involvement of respondent senior citizens is in buying provisions and groceries where 76% respondents tick marked the option. Paying Bills comes next in line with 72%, followed by cooking and cleaning by 44%. Only 20% said they take care of grandchildren and 24% said they do not any of these work. The percentage of senior citizens contributing to household work is as follows.

**Figure 33**



10% of the respondents said they do not do any household work. Therefore 90% of the respondents is involved in one or the other household work in Kerala.

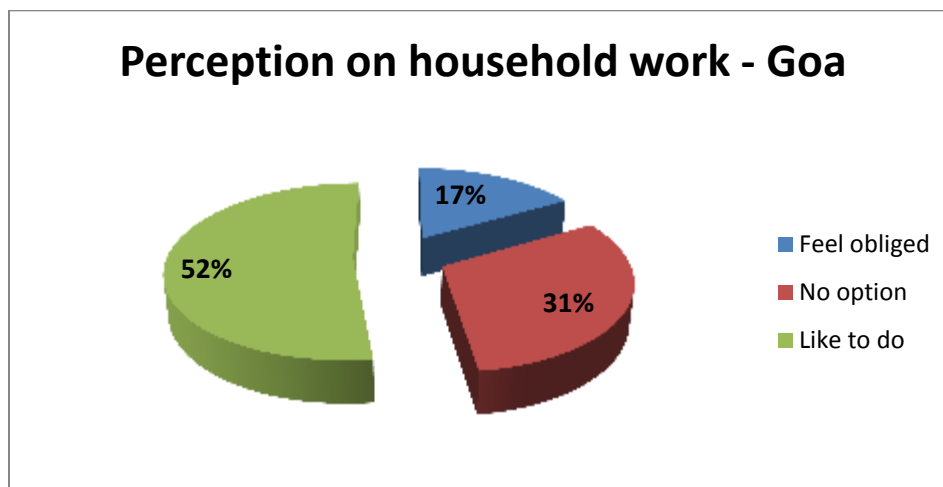
### **Perception on Household work**

Question 10 focuses on identifying the mindset of the senior citizens in doing such household work. The question stated, “While doing any of these work, what do you feel?” The options provided were (a) I feel obliged to do as I am living with my children/ relatives, (b) I do not have an option not to do these work and (d) I like to do these work. The respondents were asked to mark any one option.

The response is tabulated in Table 17 below.

**Table 17**

	Feel obliged	No option	Like to do
Goa	8	15	25
Kerala	8	10	14

**Figure 34**

52% like to do household work, 31 % said they do such work because they do not have an option and 17 % said that they feel obliged to do such work as they live with children/relatives.

This data points towards the need for an affordable and accessible support system.

The response of respondents in Kerala is shown in figure 35 below.

Figure 35

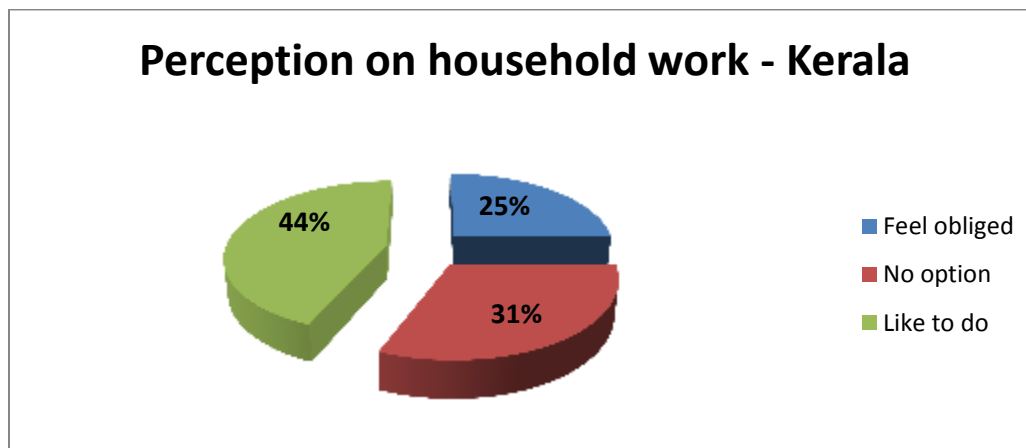


Figure 35 reveals that 44% of the respondents in Kerala who are involved in one or the other household work like to do the same. 25% feel obliged as they are living with children and 31% said they do these work as they have no option. Need for support system surfaces out of this data.

#### **h) Participation in social life**

To analyze the participation of senior citizens in social life, three different related questions were included in the questionnaire.

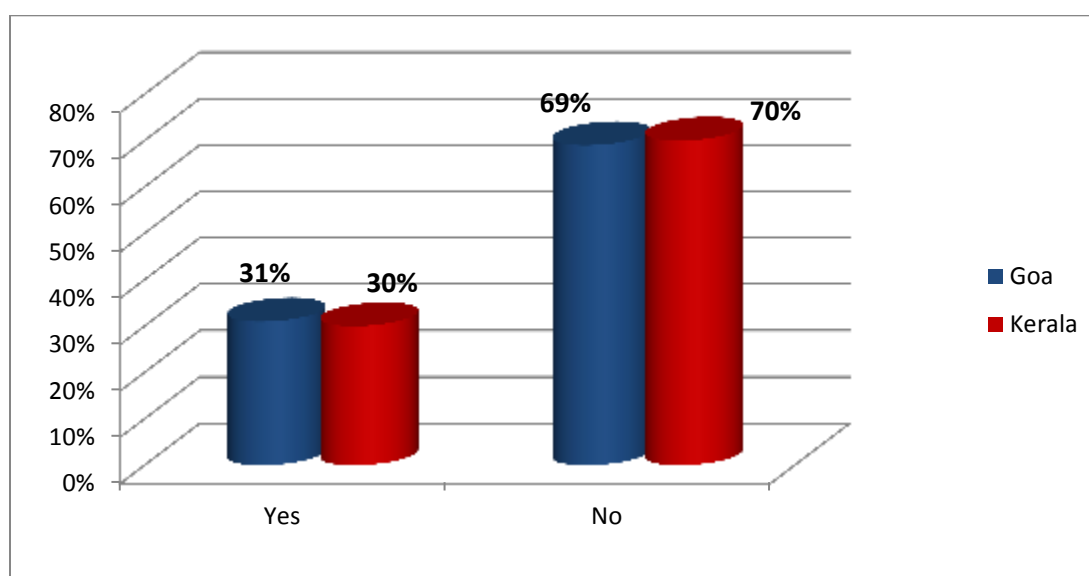
Question 11 dealt with membership in association, Question 12 on the frequency of meeting friends/relatives and Question 18 sought information on how often they travel out of home. Each of these is analyzed separately.

Question 11: Are you a member of any Association, Group, Club etc? If Yes, Please specify.

The responses can be seen in Table 18 below.

**Table 18**

	Yes	No
Goa	15	33
Kerala	15	35

**Figure 36– Membership in Association/ Group**

69 % in Goa and 70% of the respondents in Kerala said they are not members of any association, while 31% and 30% respectively said they are members in various organizations which are in the nature of spiritual, professional, local clubs etc. The Associations specified include Senior Citizens' Help Desk, NGOs, Self Help Groups like Mahila Mandal, Local clubs, Professional Bodies, Literary groups, Political parties, Residents Association, Spiritual groups and Religious groups.

To find out the frequency of the senior citizen meeting his/her friends and relatives as well as the frequency of travelling out of home, two questions were included. Question

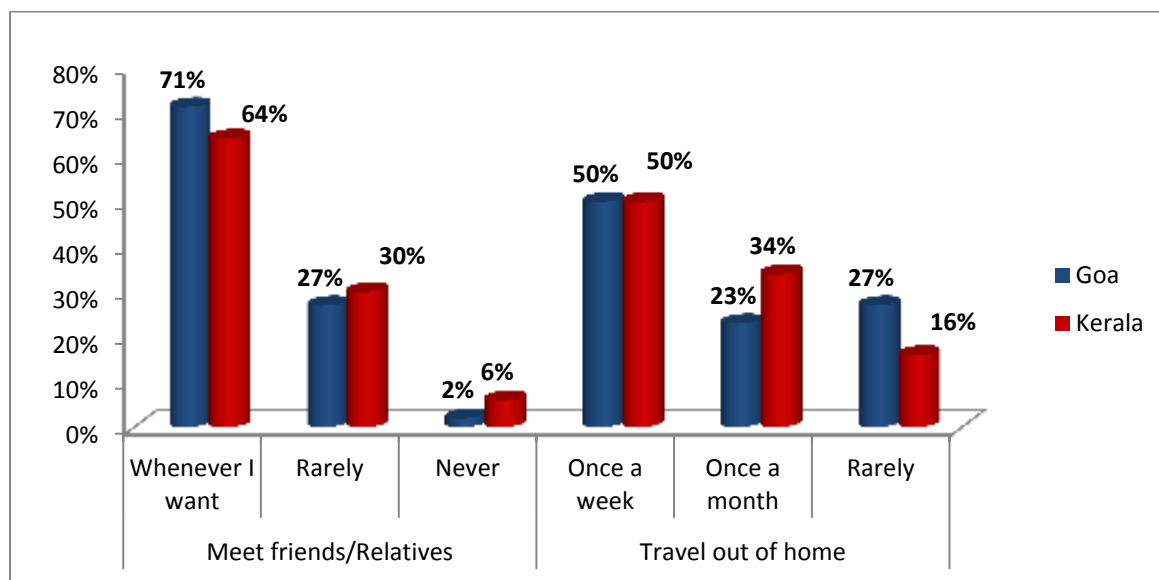


12 stated, “How often do you meet friends/relatives?” The options were (a) Whenever I want to, (b) Rarely and (c) Never. Question 18 was worded, “How often do you travel out of home?” For this, the options provided were (a) Atleast once a week, (b) Once a month and (c) Rarely (once in many months). The response is given in Table 19 and data projection in Figure 37.

**Table 19 – Socializing and Moving out**

	Meet friends/Relatives			Travel out of home		
	Whenever I want	Rarely	Never	Once a week	Once a month	Rarely
Goa	34	13	1	24	11	13
Kerala	32	15	3	25	17	8

**Figure 37 – Socializing and Moving Out**



It can be seen from Figure 37 that in Goa, 71 % said they meet their friends/relatives whenever they want to, 27 % said they rarely meet and 2% said they never meet. The corresponding data in Kerala is 64%, 30% and 6%. Those who never meet friends and relatives are very vulnerable to being marginalized, if not already marginalized. The 27% and 30% who marked “Rarely” are also vulnerable to being cut off from social life, in course of time.

With respect to the aspect of travelling out of home, 50% of the respondents in both the States stated that they move out of home atleast once a week. In Goa, 23% and in Kerala 34% said they travel out of home once a month. 27% in Goa and 16% in Kerala said that they rarely go out of home. This last category is alarming taking into account the percentage of persons who said they rarely or never meet their friends and relatives. This finding points towards the initiatives to make a social life possible for them by identifying and removing the hurdles.

#### **i) Independence or Dependency**

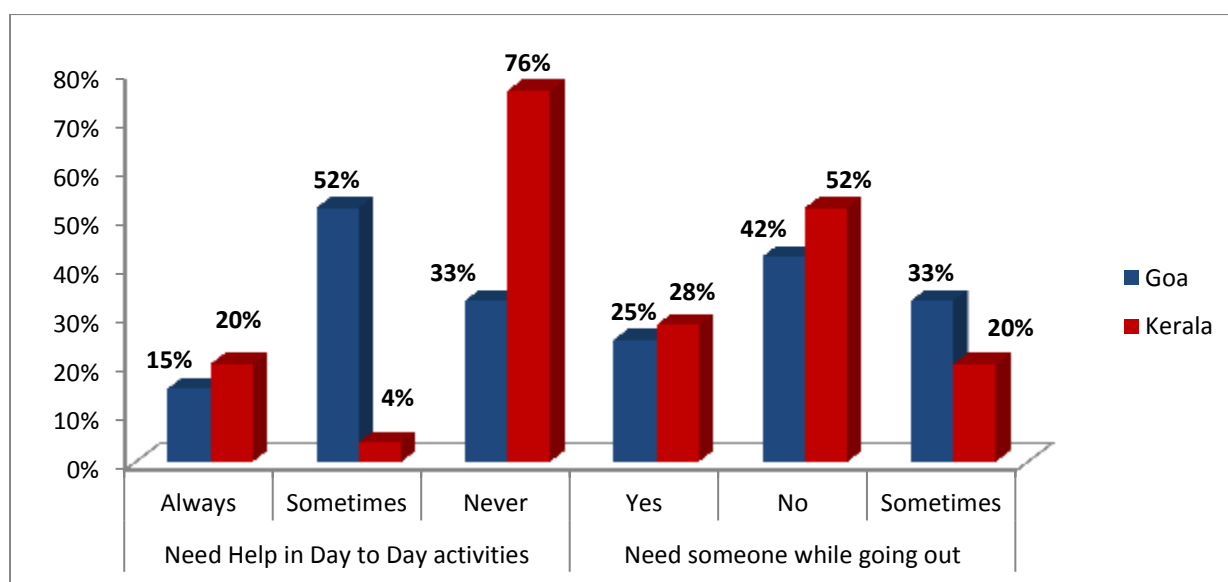
Financial independence and dependency has already been covered in Figure 5 and Figure 7 (*supra*).

To find out other dependency, two questions were included. Question 14 stated, “For your day to day activities, do you require help?” The options were (a) Always, (b) Sometimes and (c) Never. Question 15 stated, “Do you feel you need someone with you when you go out?”. The respondents could mark the options, (a) Yes, (b) No and (c) Sometimes. The data collected on these questions is tabulated in Table 20 below.

**Table 20**

	Need Help in Day to Day activities			Need someone while going out		
	Always	Sometimes	Never	Yes	No	Sometimes
Goa	7	25	16	12	20	16
Kerala	10	2	38	14	26	10

The percentage of dependency can be projected as follows:

**Figure 38**

**Analysis of dependency in Goa:** 33 % of respondents show independence in day to day activities and said they do not require any help in carrying out their day to day tasks. 52 % said that they need help sometimes and 15 % said that they always need help. One of the respondents after marking “Always, also noted that he never gets help. In the matter

of help while going out, 42 % feel they do not need anyone, 25% feel they need someone and 33% sometimes feel that they need someone with them while going out.

**Analysis of dependency in Kerala:** Regarding the need for help in day to day activities, 20% said they always need help, 4% said “Sometimes” and 33% said they never need help. About help while going out, 28% required someone with them, 52% said they don’t need anyone and 20% said sometimes they feel they need someone while going out of home.

Figure 38 throws light on the need for support system and convenient facilities which would enable them with a feeling of independence and assistance wherever required. Persons’ ability to carry on day to day activities as well as travelling out is crucial in determining their physical and mental independence.

#### **j) Health – Physical well-being**

Two questions were asked to find out the health and healthcare of the respondents.

Question 16 inquired how often they go for health check-up. The options given were (a) At least once a year, (b) Whenever I don’t feel well, (c) Do not go unless severely sick and (d) Do not go at all.

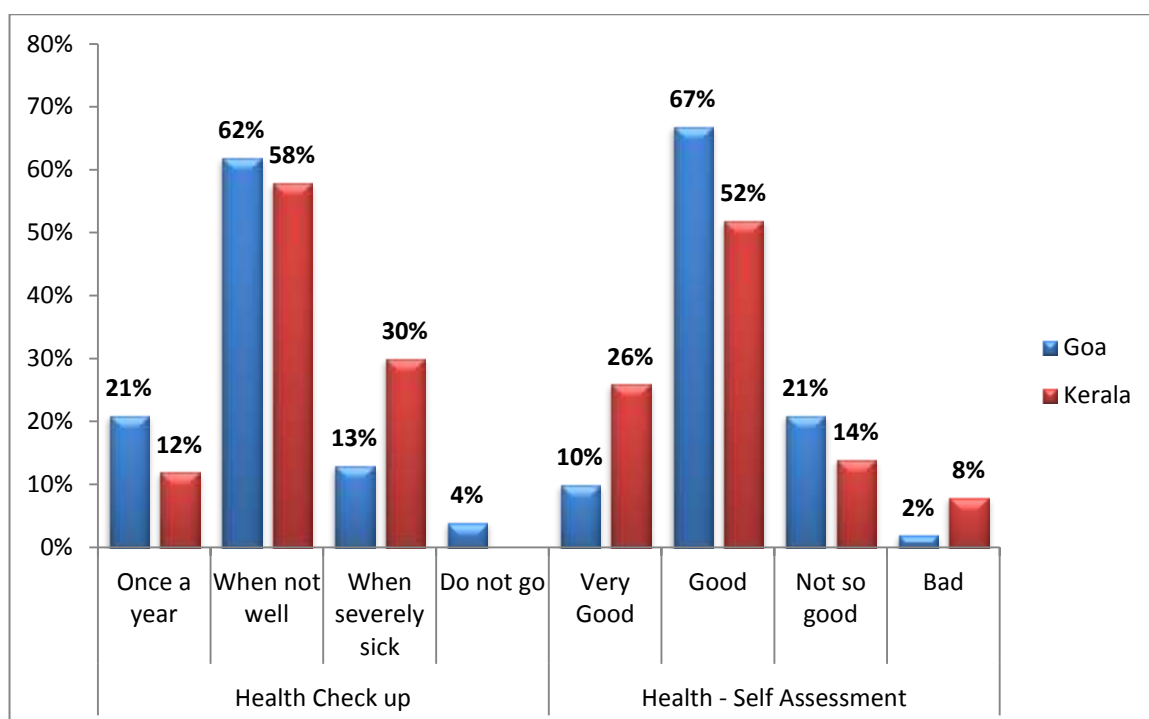
Question 34 stated, “How do you rate your health?” The options given were, (a) Very good, (b) Good, (c) Not so good and (d) Bad.

Tabulation of these data is given in Table 21 below.

**Table 21**

	Health Check-up				Health			
	Once a year	When not well	When severely sick	Do not go	Very Good	Good	Not so good	Bad
Goa	10	30	6	2	5	32	10	1
Kerala	6	29	15	-	13	26	7	4

The percentage of self-assessment of health and the frequency of health check-up can be projected as follows.

**Figure 39**

**Self-assessment of health in Goa** - 10 % rate their health as very good, 67% said health is good, 21 % stated that health is no so good and 2% rated it as bad. The fact that only 10 % rated their health as very good and 67% as good suggest the possibility of minor ailments, associated with age. Regular health check-up atleast once a year is undertaken only by 21% of respondents. Majority constituting 62% state that they go for health check-up whenever they feel ill. 13% goes for health check-up only when they are severely sick and 4% said that they do not go at all. The data shows the lack of awareness about the importance of regular health check even if a person is without illness or severe sickness.

**Self-assessment of health in Kerala** – Persons going for regular health check-up at least once a year is merely 12%. At the same time 26% assess their health as “Very Good” and 67% as “Good”. This clearly shows the lack of awareness on the need for regular health check-up and points out to the perception of senior citizens towards health and health care. Majority of 62% said they go for health check-up whenever they feel and another 30% said they go only if they are severely sick. No one said they do not go at all. 14% rated their health as “Not so good” and 8% as “Bad”. It can be inferred that the conception of health in the minds of people is absence of illness or severe sickness.

**k) Mental and emotional well-being – The Dignity Factor**

Different questions were included to get information on the mental and emotional well-being of the senior citizens – respondents.

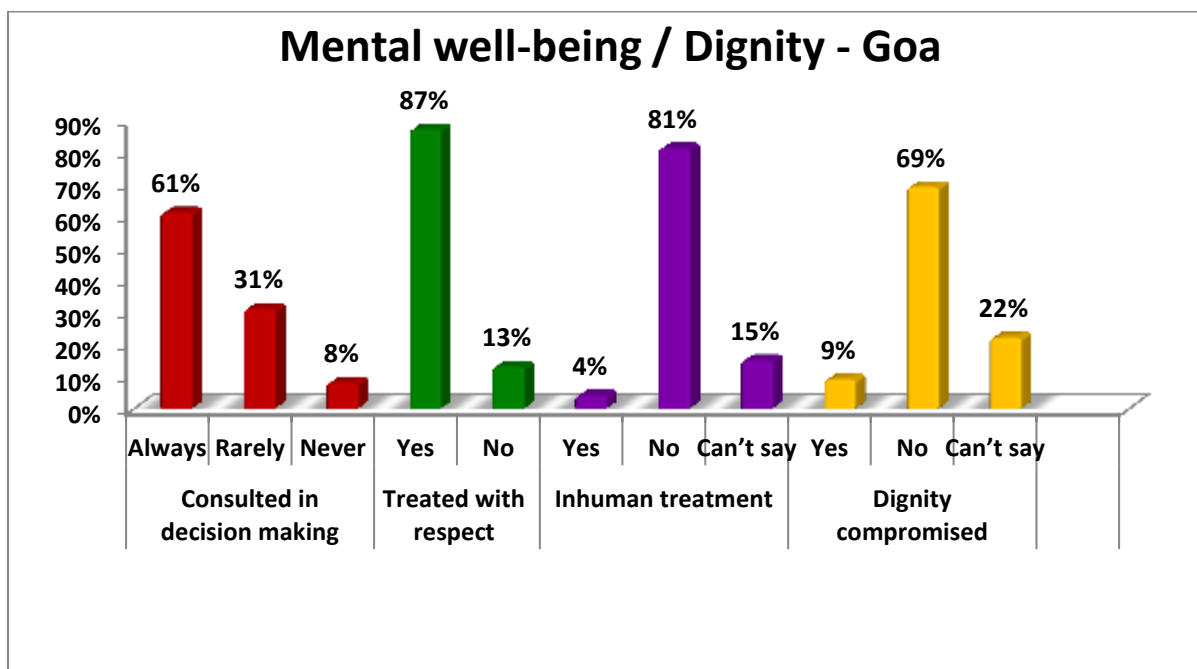
1. Question 13 ponders on whether at home the senior citizen is consulted in decision making regarding home matters. This question had the options, namely (a) Always, (b) Sometimes, (c) Rarely and (d) Never.
2. Question 22 inquired if others treat the respondents with respect at home, for which the options were (a) Yes and (b) No.
3. Question 37 sought information on whether they are subjected to any inhuman treatment or torture at home. The options provided were (a) Yes, (b) No and (c) Can't say.
4. . Question 38 stated, "Do you feel your dignity is being compromised at home?" The options for the respondent were (a) Yes, (b) No and (c) Can't say.
5. Question 35 inquired if the respondents feel lonely. The options were (a) Mostly, (b) Sometimes, (c) Rarely, (d) Never.

The data so collected under Questions 13, 22, 37 and 38 is contained in Table 22 and represented in Figures 40 and 41.

**Table 22**

	Question 13			Question 22		Question 37			Question 38		
	Consulted in decision making			Treated with respect at home		Inhuman treatment			Dignity compromised		
	Always	Rarely	Never	Yes	No	Yes	No	Can't say	Yes	No	Can't say
Goa	29	15	4	42	6	2	39	7	4	31	10
Kerala	36	11	3	37	13	3	34	13	10	28	12

Figure 40



### Analysis of Mental Well-bring and Dignity Factor in Goa

It can be understood from Figure 40 that while taking decisions regarding home matters, 61% respondents said that their opinion is always taken, 31 % feel that they are sometimes consulted and 8 % said that they were never consulted for opinion.

On the question of whether others treat them with respect at home, 87% feel that they are treated with respect at home, while 13% feel they are not treated with respect.

Response to Question 37 shows that 4% feel that they are subject to inhuman treatment or torture at home, 15% marked the option, “Can’t say” and 81% do not feel that they are subject to any such treatment.

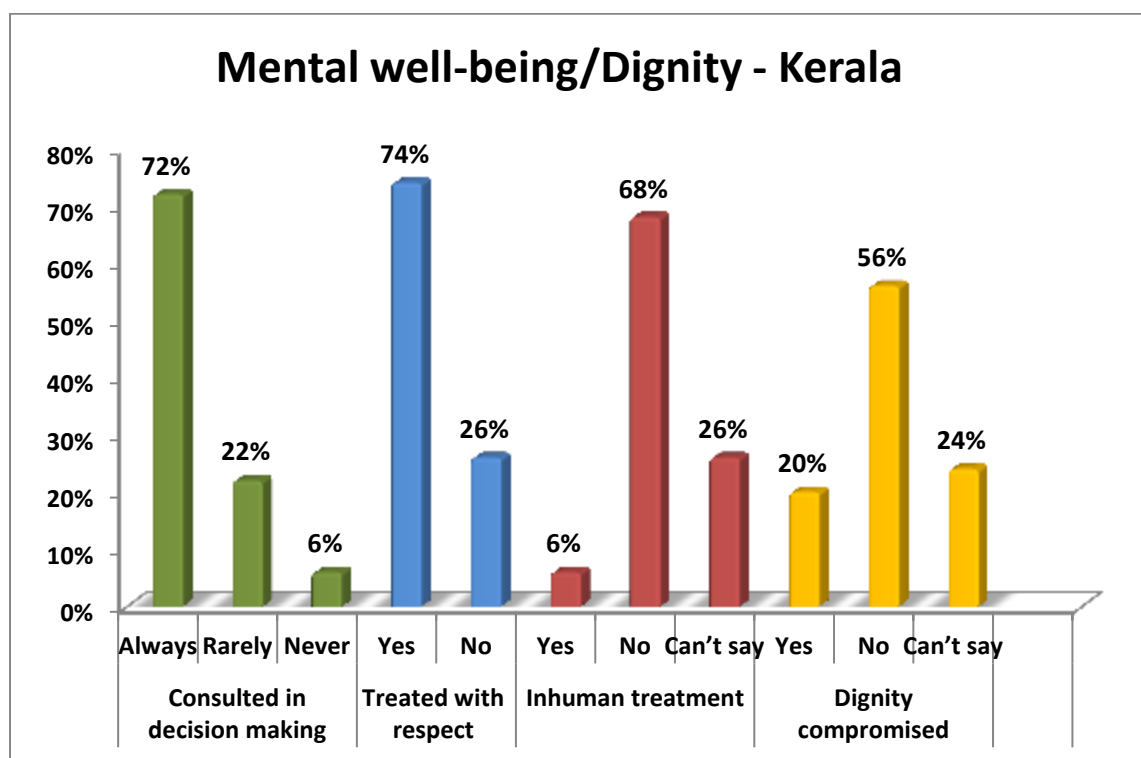
Response to Question 38 reveals that when 69 % feel that their dignity is not compromised at home, 9 % feel it is compromised and 22% have responded, “Can’t say”.



A comparison of the responses to Questions 37 and 38 show that a larger percentage of persons feel that their dignity is compromised at home, when compared to inhuman treatment or torture. There is a rise in 5% in those who said “Yes”, 7 % in those who marked “Can’t say”. There is also a 12% reduction in “No”. That is, when 81% felt that they are not subjected to any inhuman treatment or torture at home, only 69% did not feel that their dignity is not compromised.

It is interesting to note a comment written in the questionnaire by one of the respondents, against the question regarding consultation in decision making. The comment read, “Not Now”. This is clearly indicative of the drop down of dignity factor of senior citizens with age.

**Figure 41**



### ***Analysis of Mental Well-being and Dignity Factor in Kerala***

On being asked if the respondents were consulted in decision making on home matters, 72% said they are always consulted, 22% said they are rarely consulted and 6% said they are never consulted. Moreover, 74% said they are always treated with respect whereas 26% said they are not treated with respect at home.

In the matter of subjection to any inhuman treatment or torture, 6% said they are, 26% said they are not and 20% said they “can’t say”. With regard to dignity being compromised, 20% felt it is compromised, 56% felt it is not compromised and 24% marked the option, “Can’t say”.

A comparison of the responses to the questions on inhuman treatment and dignity compromised shows that 16% more persons felt that their dignity is being compromised, when compared to subjection to inhuman treatment. 12% less persons felt that they are not subjected to inhuman treatment than those who said their dignity is not being compromised. There is not much disparity in the percentage showing uncertainty by marking, “Can’t say”.

### ***Influence of Individual Perception/Convictions in assessing the dignity factor***

It is to be noted that, all the questions to which responses are analyzed here are based on individual perceptions and cultural factors do play a role in shaping such perceptions. Whether acts and events resulting in a feeling of compromising one’s dignity would amount to inhuman treatment meted out to such a person depends ultimately on the comprehension of these concepts in the mind of the person concerned. Even then the 6% in Kerala and the 4% in Goa who said they are subjected to inhuman treatment or torture

at home strongly points towards the occurrence of elderly abuse and the need for evolving remedial as well as preventive measures.

### 1) Mental well-being: The Loneliness Quotient

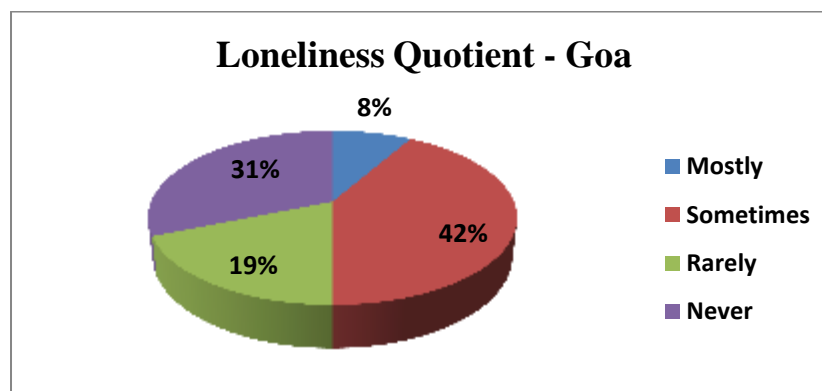
Response to Question 35 which inquired if the respondent feels lonely is tabulated in Table 23 below.

**Table 23**

	Mostly	Sometimes	Rarely	Never
Goa	4	20	9	15
Kerala	5	14	6	25

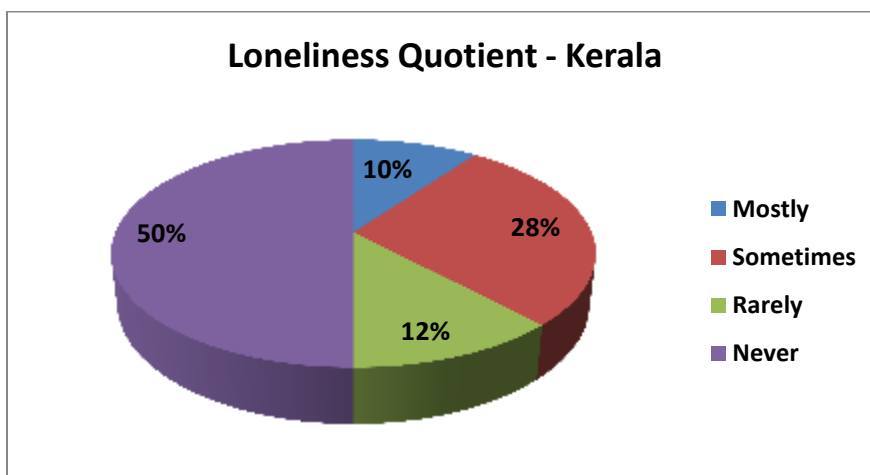
The data for Goa is projected in Figure 42 and for Kerala in Figure 43 below.

**Figure 42**



Response to Question 35 shows that in Goa, 42% sometimes feel lonely and 8 % always feel lonely. At the same time, 31% said that they never feel lonely, and 19 % said that they rarely feel lonely.

Figure 43



In Kerala, 10% of the respondents said that they mostly feel lonely and 28% said they sometimes feel lonely. When 12% person said they rarely feel lonely, 50% said they never feel lonely.

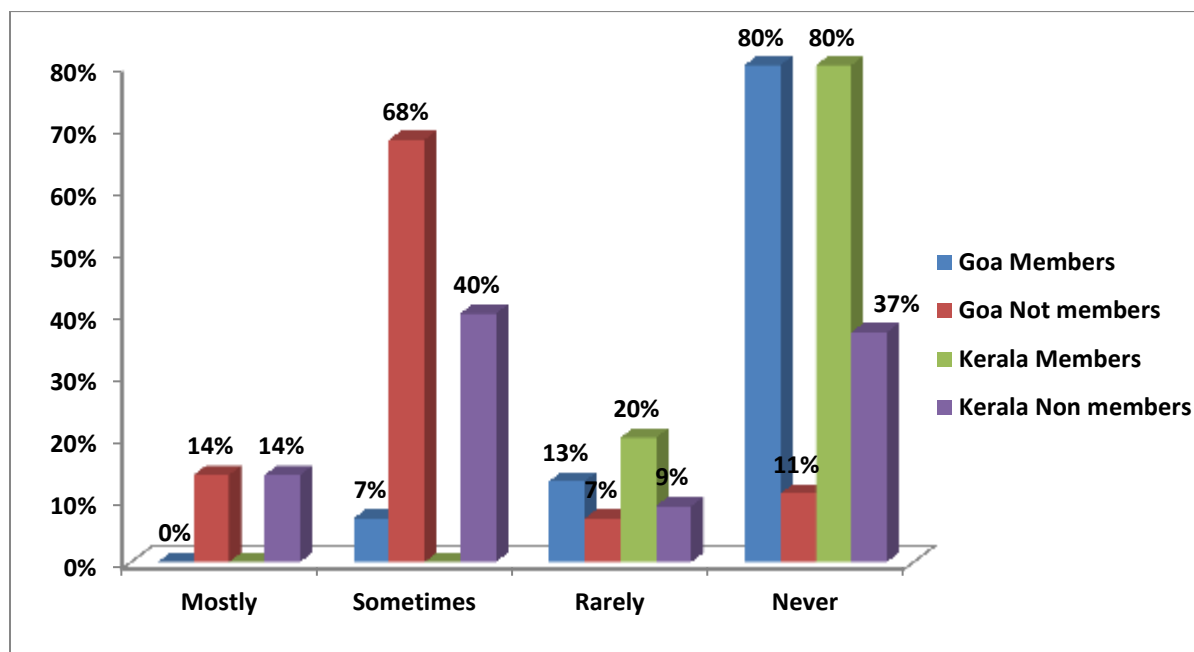
Loneliness, being a factor also associated with societal interaction, it is important to cross tabulate Question 35 with Question 11 which deals with membership in any association group etc. The tabulation data is given in Table 24 below.

Table 24 – Cross tabulation – Q.35 and Q.11

	Category	Feels Lonely			
		Mostly	Sometimes	Rarely	Never
Goa	Members of associations etc.	-	1	2	12
	Not members of association etc.	4	19	7	3
Kerala	Members of associations etc.	-	-	3	12
	Not members of association etc.	5	14	3	13

The proportion of persons who are members and who feel lonely in comparison with persons who are no members and who feel lonely is projected as follows:

**Figure 44 - Cross tabulation of Question 35 (Loneliness) with Question 11 (Membership in Association etc.)**



From Figure 44, it can be seen that in Goa when 80% of the respondents who are members of associations, clubs etc. never feel lonely, only 11% of those who are not members of such associations, feel so. When 13% of members said they rarely feel lonely, 7% of non-members said the same. When 7% of members sometimes feel lonely, 68% of non-members sometimes feel lonely. None of the respondents who are members of associations etc said that they mostly feel lonely, whereas 14% of respondents who are not members in any association etc. said that they mostly feel lonely.

In Kerala, none of the respondents who are members of any association etc. marked the options, “Mostly” or “Sometimes”. Moreover, same as in Goa, 80% of the members said they never feel lonely. 20% of those who are members said they sometimes feel lonely.

Among the respondents who did not have membership in any association or group, 14% said that they mostly feel lonely, 40% said they sometimes feel lonely, 9% said they never feel lonely and 37% said they never feel lonely.

It can be inferred from this data that loneliness quotient is very less in senior citizens who are members of various associations and groups when compared to those who are not members in any associations or groups. This focuses on the importance of associations and forums for senior citizens.

#### **m) Self-fulfillment**

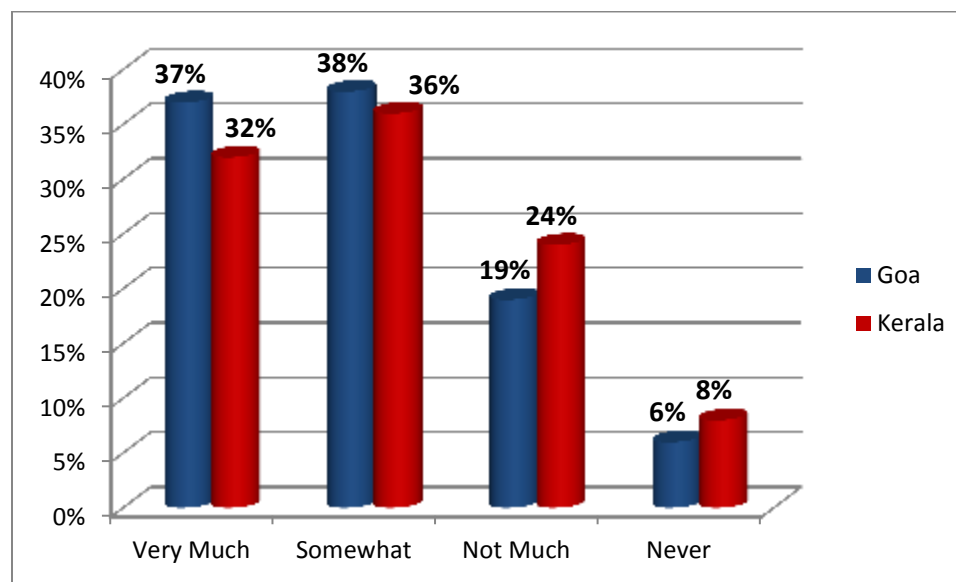
A feeling of self-worth and self-fulfillment are factors that add to a person's mental well-being. To find out this Question 17 was included which states, "Do you feel you are doing any creative or fruitful work at home or in society?" The option provided were (a) Very much, (b) Somewhat, (c) Not much and (d) Never.

The response is tabulated in Table 25 given below.

**Table 25**

	Very Much	Somewhat	Not Much	Never
Goa	18	18	9	3
Kerala	16	18	12	4

The data can be studied from Figure 45, which is a comparative showing the percentages for each response in each of the States.

**Figure 45 – Feeling of self-fulfilment**

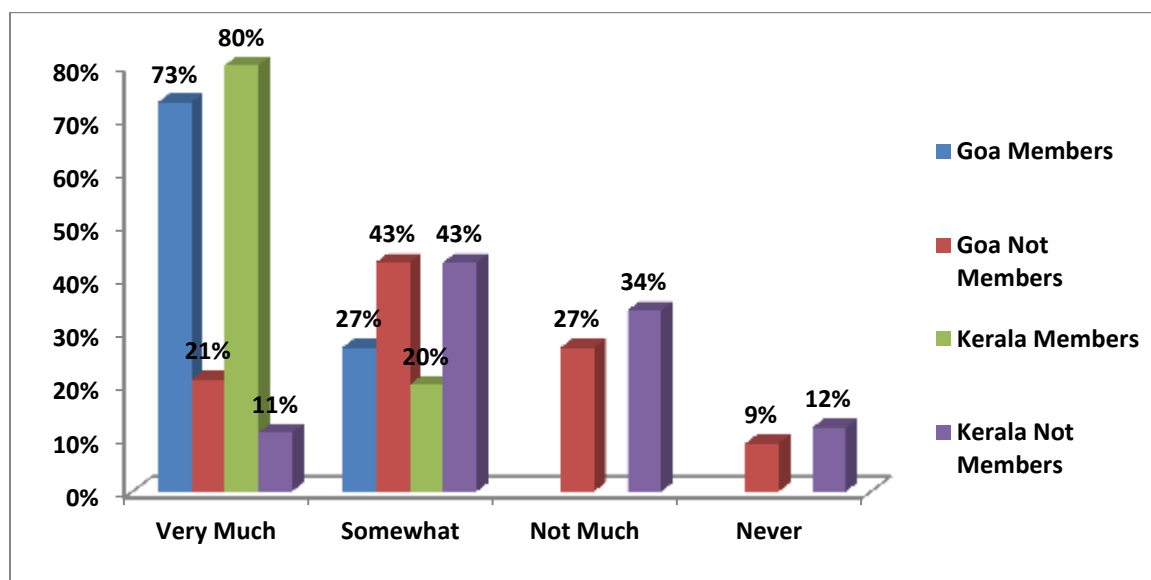
When 37% of senior citizens in Goa said that they very much feel that they are doing any creative work to society or at home, 32 % of the senior citizens in Kerala said the same. 38% in Goa said they somewhat feel that they do some creative work, 36% in Kerala said the same. In Goa 19 % felt they do not do much of fruitful work, in Kerala 24 % felt so. It is also seen that 6% of senior citizens in Goa said they never feel that they do any fruitful or creative work at home or in society, 8 % felt the same in Kerala. Though there is no major disparity in the responses in both the States, still it can be inferred that senior citizens in Goa feel more self-fulfillment and self-worth than those in Kerala.

To find out whether there is any relation between those who are members in various groups and associations, as far as self-worth is concerned, a cross tabulation is made as depicted in Table 26 below.

**Table 26 – Cross tabulation – Q. 11 and Q.17**

SELF-WORTH		Very Much	Somewhat	Not Much	Never
Goa	Members	11	4	-	-
	Not Members	7	14	9	3
Kerala	Members	12	3		
	Not Members	4	15	12	4

The comparison in percentage is given in Figure 46.

**Figure 46 – Cross Tabulation of Question 17 (Self- fulfillment) with Question 11(Membership in Association)**

From Figure 46, it can be seen that 73% of respondents in Goa who are members of association etc., said that they feel that they are “Very Much” doing creative or fruitful work at home or in society. In Kerala, 80% of respondents who are members said the same. Further, in Goa 27% of senior citizens who are members, marked “somewhat” and



in Kerala 20% marked the same, indicating that they somewhat feel they are doing some creative and fruitful work.

Among the persons who are not members of any association etc., 21% in Goa said that very much feel that they do creative work, whereas in Kerala 11% said the same. This shows that the level of self-worth is much more among the Goa respondents, when compared to Kerala even if they are not members of any association.

Among the respondents who were not members of any association etc., both in Goa as well as in Kerala 43% marked “Somewhat”. 27% of the non-members in Goa marked “Not Much”, and in Kerala the same is 34%. The Non-members in Goa who marked “Never” is 9% and that in Kerala is 12%.

The importance of Senior Citizens forums or other forums where senior citizens participate can be seen from this cross tabulation and data. In both the states, none of the members marked “Not much” or “Never” for this question. This shows that involving in associations and groups have great impact on their feeling of self-worth. It can be inferred that Self-fulfillment and self-worth is higher in persons who are involved in associations, groups etc.

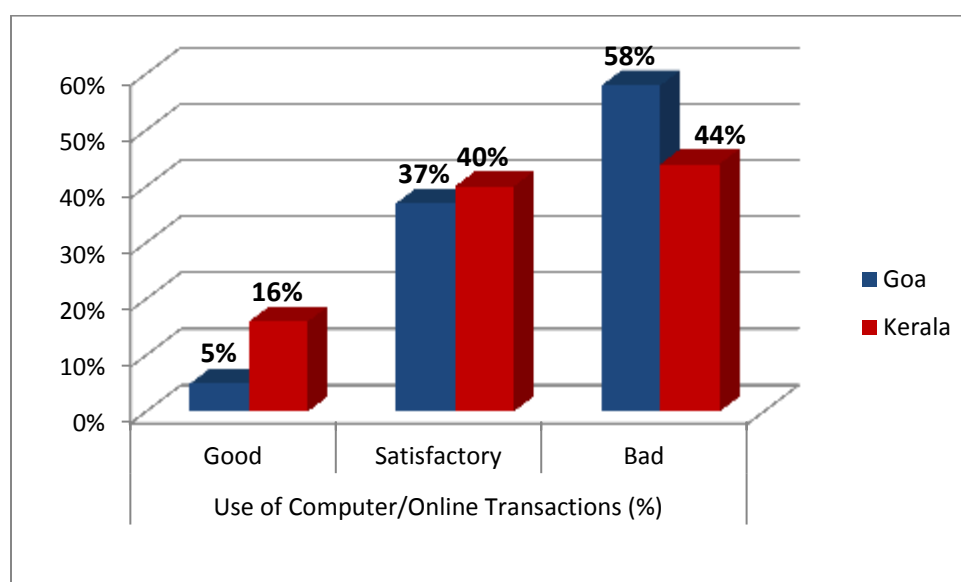
#### **n) Computer Literacy**

Two questions were included to find out the knowledge and interest of senior citizens in respect of use of computer. Question 39 inquired the respondents to rate their knowledge of computer and online transactions. The options provided were (a) Good, (b) Satisfactory and (c) Bad. The data collected is contained in Table 25 below.

**Table 27 – Computer Literacy**

	Good	Satisfactory	Bad
Goa	2	18	28
Kerala	8	20	22

This data can be projected as follows:

**Figure 47 – Computer Literacy**

In Kerala, 16 % of the senior citizens said they have good knowledge of use of computer and online transactions, whereas only 5% in Goa said so. When 37% in Goa marked, “Satisfactory”, 37 % marked the same in Kerala. In Goa, 58 % of the senior citizens said that their knowledge of use of computer and online transaction is bad, whereas in Kerala only 44% marked, “bad”.

From this data it can be understood that Kerala stands much ahead than Goa as far as computer literacy among senior citizens is concerned.

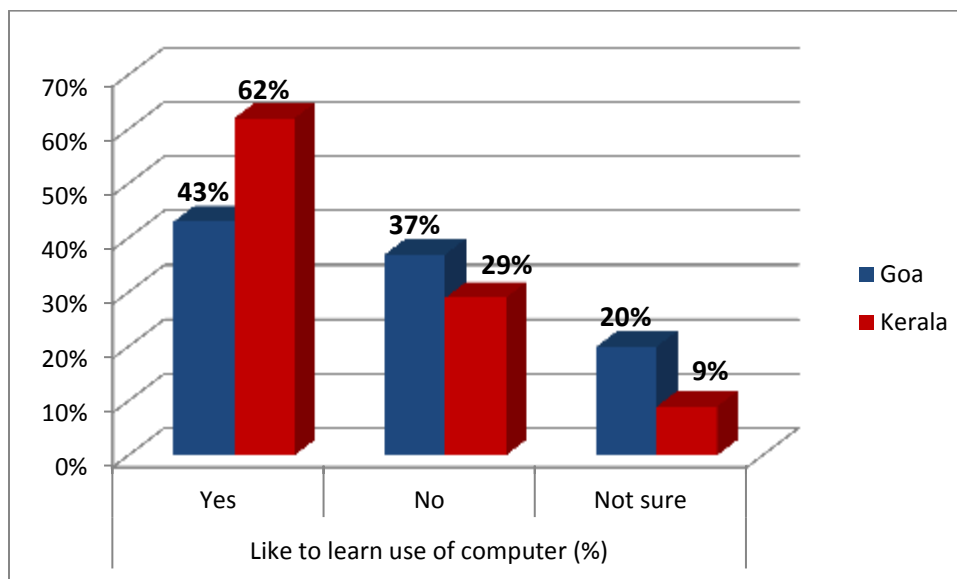
To find out whether the senior citizens are interested in learning computer, Question 40 stated, “In case you do not know to use computer, would you like to learn it?” The options were (a) Yes, (b) No and (c) Not sure. The response to this question is tabulated in Table 28.

**Table 28 – Interest in learning use of computer**

	Yes	No	Not sure
Goa	20	17	9
Kerala	26	12	4

Percentage depiction of this data is shown in Figure 48.

**Figure 48 – Interest in learning computer**



It can be inferred from Figure 48 that senior citizens in Kerala show greater interest in learning computer as 62% said “Yes”, 37% said “No” and 9% said “Not sure”. The corresponding response in Goa is 43%, 37% and 20 %.

Considering the interest shown by 62% and 43% in Kerala and Goa respectively, Computer Literacy Programs for senior citizens is significant. Also considering the 20% and 9% in Kerala and Goa respectively who said that they were not sure if they would like to learn to use computers, awareness and sensitization programs to enroll more people into computer literacy programs is also equally important. This is especially so taking into account the convenience in online shopping and online payment of bills, which will be very much beneficial for the senior citizens.

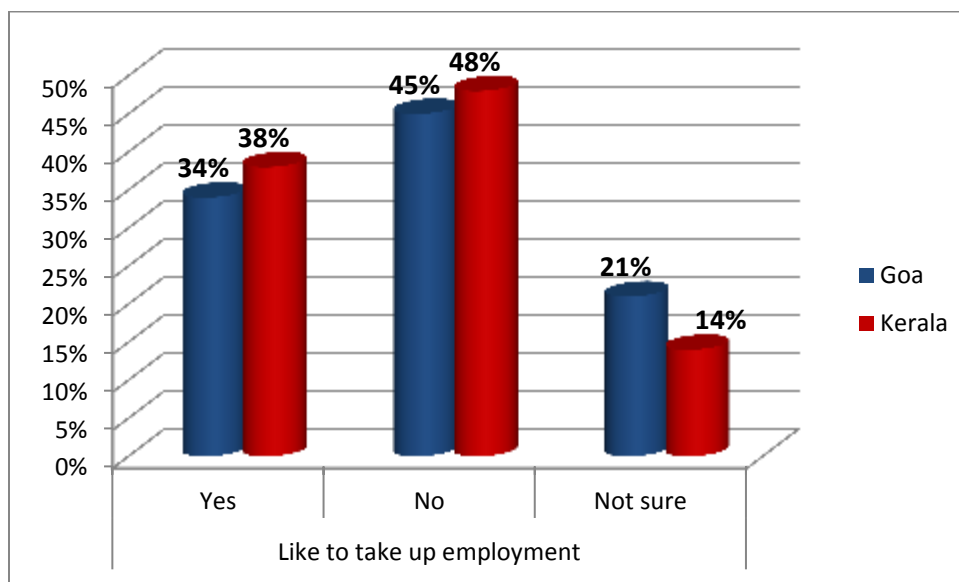
#### **o) Employment**

To find out whether senior citizens would prefer to take up employments, Question 41 stated, “In case you are not employed already, are you willing to take up a job that suits your health and capability?” The options were (a) Yes, (b) No and (c) Not sure. The information is tabulated in Table 29.

**Table 29 – Willingness to take up employment**

	Yes	No	Not sure
Goa	15	20	9
Kerala	17	21	6

The data is represented in Fig 49.

**Figure 49- Willingness to take up employment**

It can be seen that 38% of senior citizens in Kerala and 34% in Goa would like to take up a job that suits their health and capability. However 45% in Goa and 48% in Kerala said they do not like to. 21% in Goa and 14% in Kerala said they were not sure. These numbers point out to the need for suitable income generation programs for senior citizens, as a good proportion of them is willing to take up jobs.

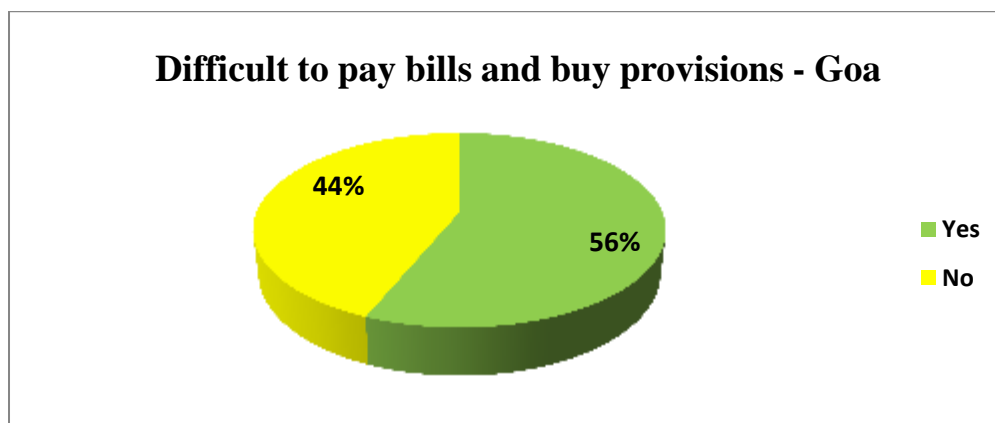
**p) Difficulties in bill payment and purchases**

To identify the difficulties faced by the senior citizens, if any, regarding payment of bills, buying of provisions and groceries, Question 32 was included in Questionnaire-1. This question had two components.

The first part of Question 32 inquired, if the respondent finds it difficult to pay bills, buy provisions etc. on his/her own? The response to this question is depicted in Table 30.

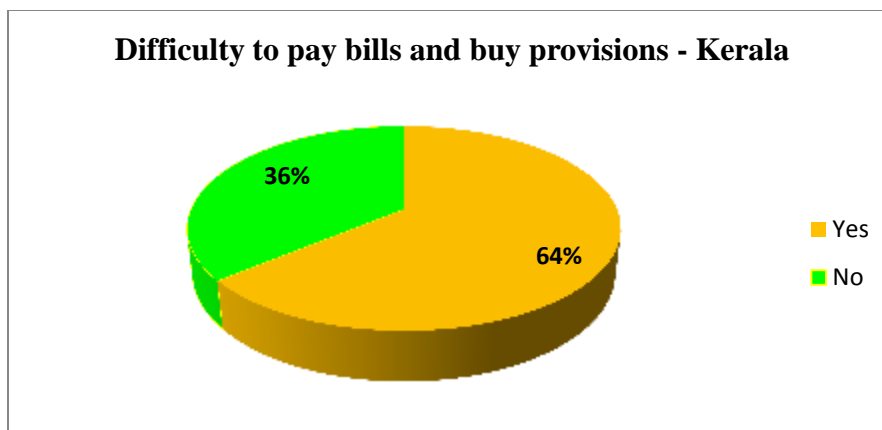
**Table 30 – Difficulty in paying bills and shopping**

	Find it difficult to pay bills and buy provisions	
	Yes	No
Goa	27	21
Kerala	32	18

**Figure 50**

In Goa, 56% respondents said it is difficult to pay bills and buy provisions on their own.

This is an indicator of increasing dependency with advancement of age, as well.

**Figure 51**

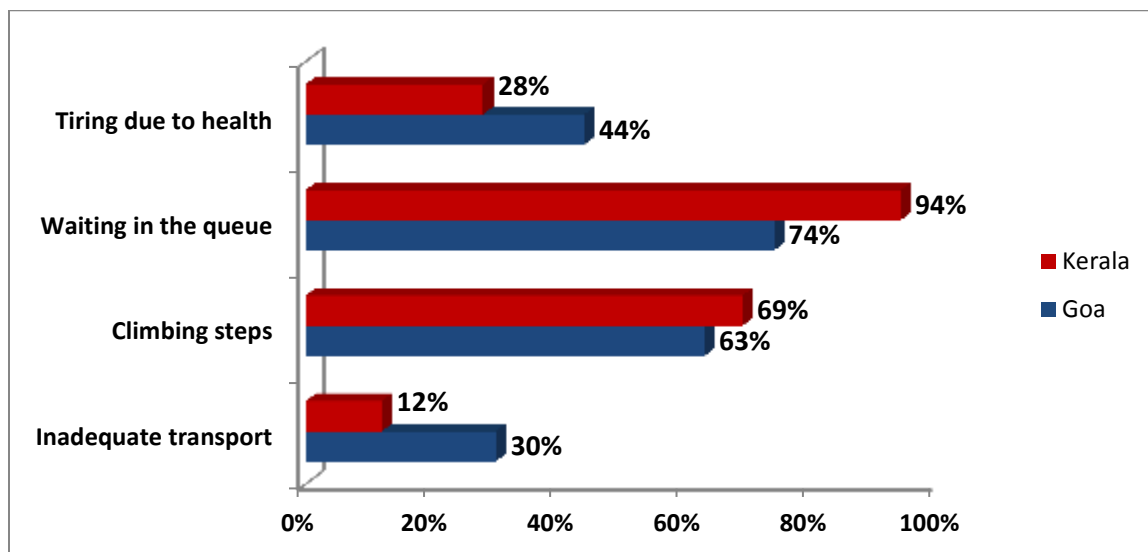
In Kerala 64% said it is difficult on their own to buy provisions and pay bills. Here arises the relevance of identifying the barriers that prevent the senior citizens from independently carrying out their requirements.

To identify the barriers, the second part of Question 32 prompted the respondents, if their answer was “Yes”, to specify if one or more of the mentioned grounds was the reason for such difficulty. The options given were (a) Inadequate transport, (b) Climbing steps is difficult, (c) Waiting in the queue is difficult and (d) It is tiring because of my health. The response to this part of the question is contained in Table 31 and represented in Figure 52.

**Table 31**

	Inadequate transport	Climbing steps	Waiting in the queue	Tiring due to health
Goa	8	17	20	12
Kerala	4	22	30	9

**Figure 52 – Reason for the difficulty in paying bills and buying provisions on their own**



In Goa, 74% and in Kerala, 94% of the respondents who said they find it difficult to do the said tasks on their own, because of waiting in the Queue. When 63% in Goa identified the difficulty in climbing steps, 69% in Kerala said the same. Inadequate transport was shown as a difficulty by 30% in Goa. But in Kerala only 12% specified inadequate transport as a ground. And 44% in Goa and 28% in Kerala said that doing these tasks is tiring because of their health.

In both the states majority found waiting in the queue as a barrier to their independence in managing their requirements. Transport facilities appear to be grossly inadequate in Goa when compared to Kerala. Climbing steps is almost an equal difficulty identified by the respondents in both the States. Health is also seen as a serious restraint on self-sufficiency among senior citizens. All this calls for an effective support mechanism, convenient methods and infrastructural requirements to suit the needs of the older persons.



#### 5.4 GENERAL QUESTIONS TO SENIOR CITIZENS AND OTHERS – QUESTIONNAIRES 1, 2, 3 & 4

Certain questions regarding various facilities available to senior citizens, awareness of legal rights of senior citizens, elderly abuse, discrimination against older persons and perspective on aspects of old age were the content of these questions which were common in all the four questionnaires.

The respondents for these general questions comprise of senior citizens and others of age group 18 – 59 years, details of which is given in Table 32.

**Table 32 – Respondents for General Questions included in Questionnaires 1 - 4**

		No. of respondents	
		Goa	Kerala
Senior Citizens (Persons 60 Years above)		48	50
Others	Persons above 25 years residing with parents	50	50
	Persons above 25 years residing away from parents	50	50
	Persons of 18-25 years	50	50
Total		198	200

#### a) **Separate Queue/ Seating arrangement in Bill Counters, Banks, Hospitals and Other Places of Public Utility**

Question 33 of Questionnaire – I, Question 16 of Questionnaire 2 & 3 and Question 2 of Questionnaire – 4 aimed to find out if they have seen separate queue and/or seating

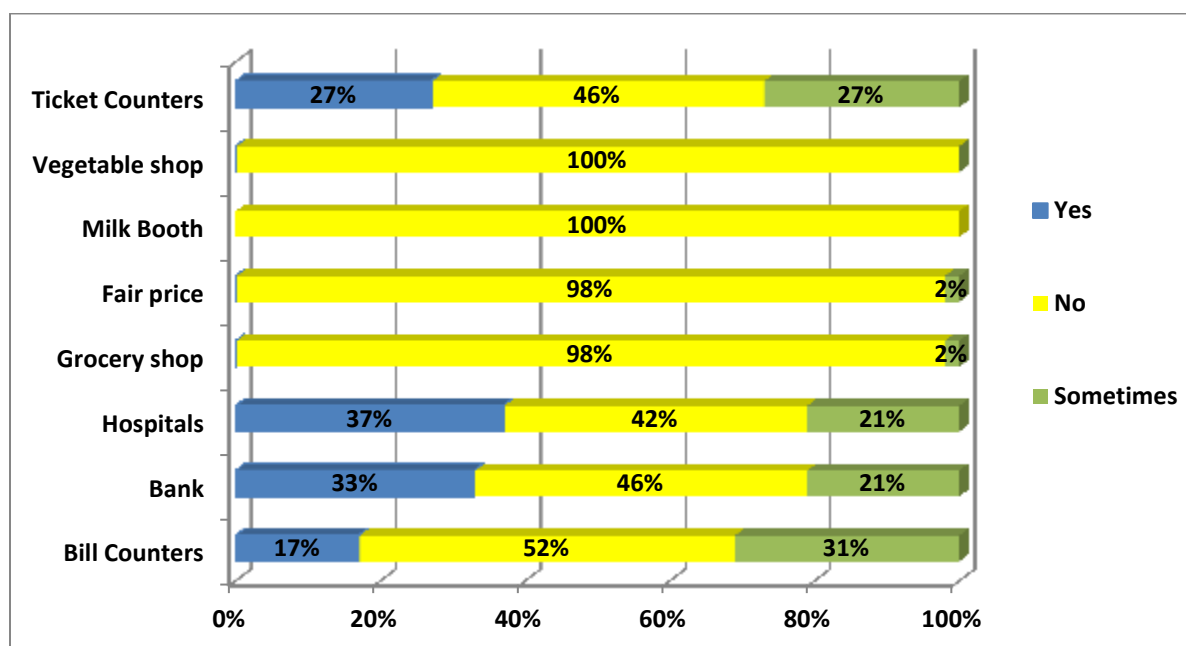
facility for senior citizens in Bill payment counters, Banks, Hospitals, Grocery shops, Fair-Price shops, Milk booth, vegetable shops and ticket counters.

The respondents were given the option to mark (a) Yes, (b) No or (c) Sometimes, which is tabulated in Table 33.

**Table 33—Separate Queue / Seating arrangement at Various Places of Public Utility for Senior Citizens**

		Response from senior citizens			Response from others		
		Yes	No	Sometimes	Yes	No	Sometimes
Bill Counters	Goa	8	25	15	51	72	27
	Kerala	10	35	5	24	36	90
Bank	Goa	16	22	10	66	57	27
	Kerala	16	30	4	60	36	54
Hospitals	Goa	18	20	10	87	36	27
	Kerala	15	26	9	30	30	90
Grocery shop	Goa	-	47	1	6	129	15
	Kerala	-	50	-	-	145	5
Fair price	Goa	-	47	1	21	105	24
	Kerala	-	46	4	6	120	24
Milk Booth	Goa	-	48	-	2	140	8
	Kerala	-	50	-	-	150	-
Vegetable shop	Goa	-	48	-	9	123	18
	Kerala	-	45	5	-	138	12
Ticket Counters	Goa	13	22	13	63	57	30
	Kerala	14	24	12	48	72	30

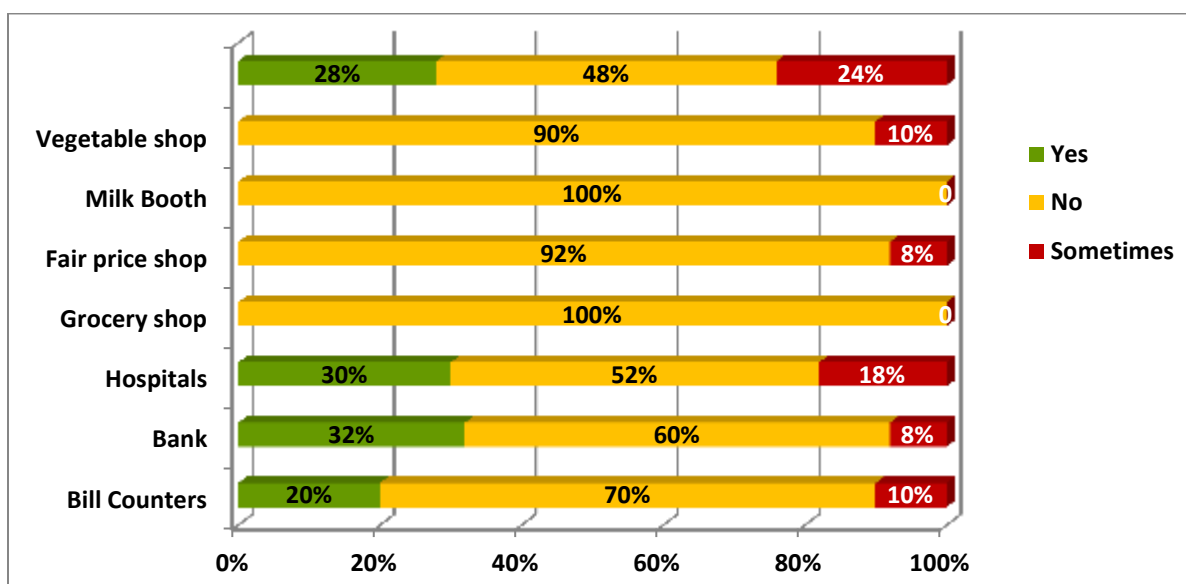
**Figure 53 – Separate Queue / Seating Arrangement: Senior Citizens, Goa**



***Ticket Counters, Hospitals, Banks and Bill Counters in Goa-*** As can be seen from Figure 53, the response given by senior citizens in Goa shows that, to some extent separate queue and/or seating arrangement is provided in Ticket Counters, Hospitals, Banks and Bill Counters. The percentage of respondents who said there is separate queue or seating arrangement for these public utility places are 27%, 37%, 33% and 17% respectively. 27%, 21%, 21% and 31% have said that they have seen such facilities sometimes in these places respectively. 46%, 42%, 46% and 52% said they have not seen separate queue or seating arrangements for senior citizens in these places.

***Vegetable Shops, Milk Booth, Grocery Shops and Fair Price Shops in Goa –*** When 100% of the respondents said they have not seen such facilities in Vegetable Shops and Milk Booths, 98% said the same about Fair Price Shops and Grocery Shops. The remaining 2% said they have seen these facilities sometimes.

**Figure 54 – Separate Queue / Seating Arrangements: Senior Citizens, Kerala**

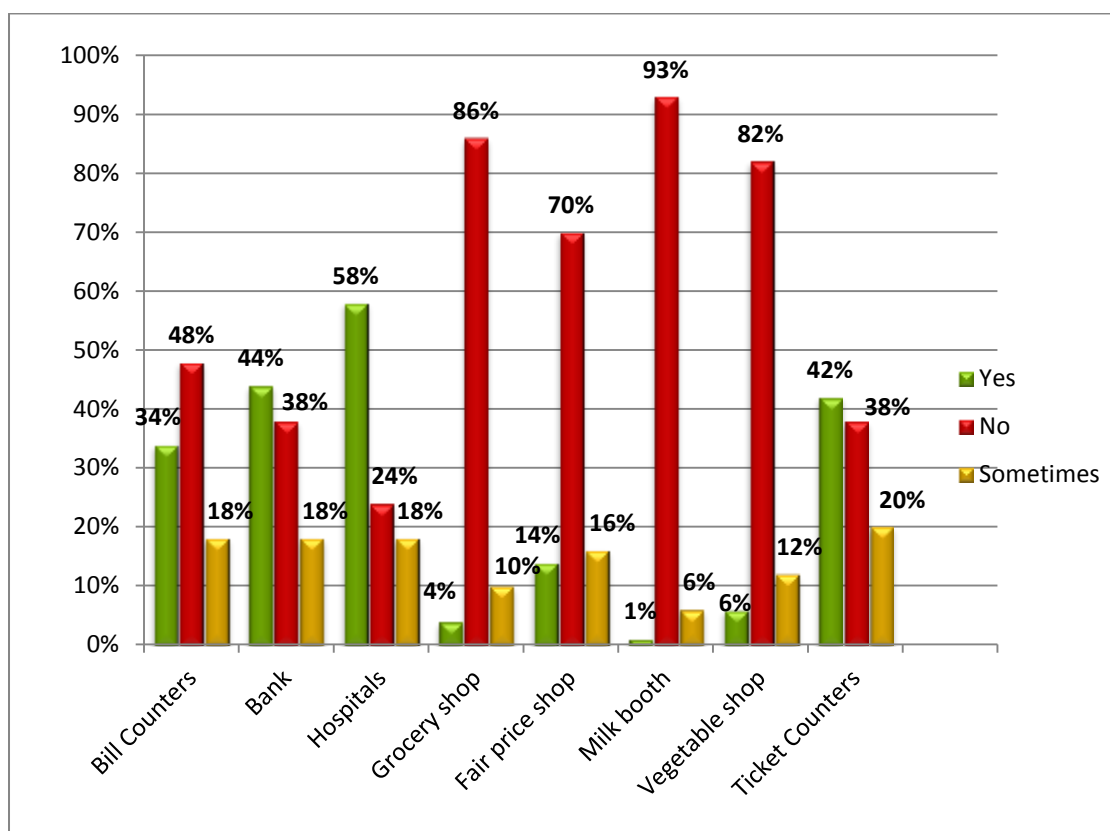


*Ticket Counters, Hospitals, Banks and Bill Counters in Kerala* – Same as in Goa, the senior citizens in Kerala too said that they have seen separate queue and/or seating arrangements in these places. 28% said they have seen it in Ticket counters, whereas 30%, 32% and 20% said they have seen these facility in Hospitals, Banks and Bill Counters respectively. 48%, 52%, 60% and 70% said they have not seen and 24%, 18%, 8% and 10% said they have seen it sometimes.

*Vegetable Shops, Milk Booth, Grocery Shops and Fair Price Shops in Kerala* – In Kerala also, none of the respondents said that they have seen separate queue and/or seating arrangement for senior citizens in these places.

The same question was asked to 150 others in each of the States. The response is represented in Figures 55 and 56.

**Figure 55 - Separate Queue / Seating Arrangements: Others, Goa**



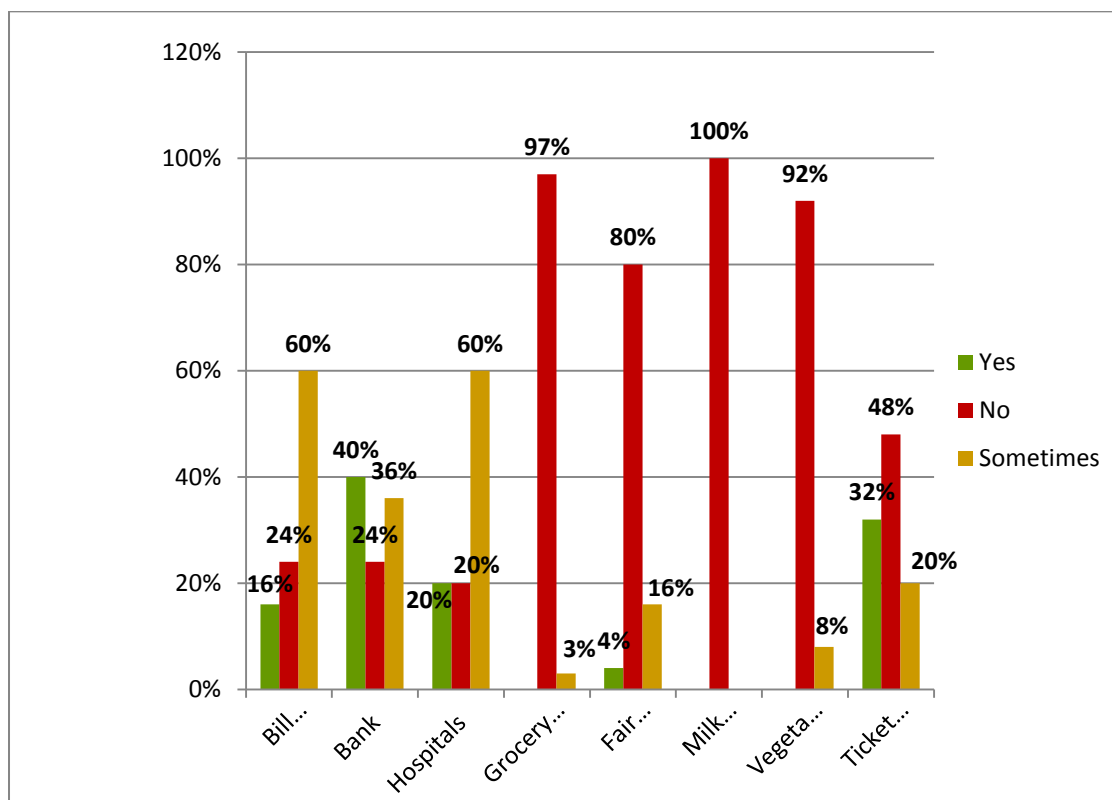
*Separate Queue/ Seating Arrangement for senior citizens in Goa: Response given by Others (not senior citizens)* - Figure 55 shows that, in all the places no one has said that they have not seen such facility. The response given by others in Goa shows that, 58% of them had seen separate queue and/or seating arrangement for senior citizens in the Hospitals, where as 44%, 42%, 34% and 14% said they have seen it in Banks, Ticket Counters, Bill Counters and Fair Price Shops respectively. A diminutive percentage of 6%, 1% and 4% said they have seen such arrangement in Vegetable Shops.

A large percentage, that is, 82%, 93%, 70% and 86% said that they have not seen such facility in Vegetable Shops, Milk Booths, Fair Price Shops and Grocery Shops

respectively. However 12%, 6%, 16% and 10% said they have seen it sometimes in these places.

In Ticket Counters, Hospitals, Banks and Bill Counters, such facility was said to be not seen by 38%, 24%, 38% and 28% of the respondents between 18 – 59 years of age. 18% said they have seen such facility sometimes in Hospitals, banks and Ticket Counters. 20% of others said they have seen it sometimes in Bill Counters.

**Figure 56 - Separate Queue / Seating Arrangements: Others, Kerala**



**Separate Queue/ Seating Arrangement for senior citizens in Kerala: Response given by Others (not senior citizens)** – In Milk Booths, 100% said they have not seen such facility. 92% said they have not seen it in Vegetable Shops and 8% said they have seen it sometimes. In Fair Price Shops, 80% said there is no such facility, 4% said there is

facility and 16% said they have seen it sometimes. In Grocery Shops, 97% said there is no such facility and 3% said they have seen it sometimes.

When 40% said there is separate queue and/or seating arrangement for senior citizens in Banks, 32%, 20% and 16% said the same regarding ticket counters, Hospitals and Bill Counters respectively. 48% said there is no such facility and 20% said facility is there sometimes in Ticket Counters. As far as hospitals are concerned, 20% says there is no such facility while 60% marked the option “Sometimes”. In Banks, 24% said there is no facility and 36% said they have seen it sometimes. In Bill Counters, 24% marked “No” and 60% marked “Sometimes”.

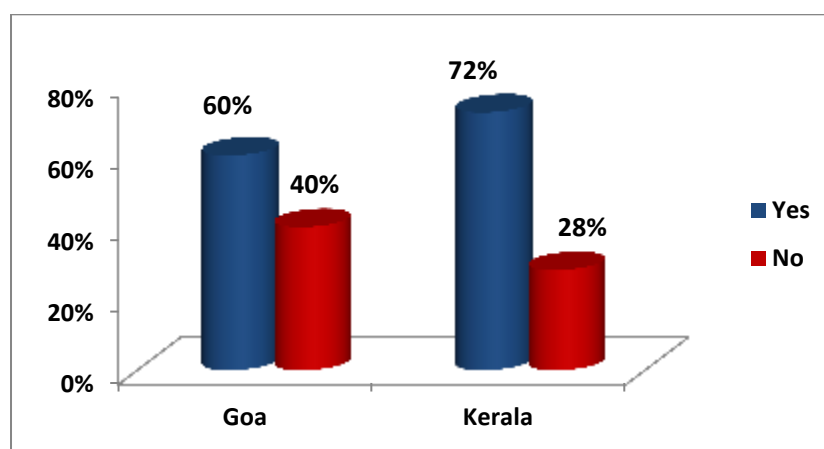
***Cumulative Inference with respect to Separate Queue and/or seating arrangement for senior citizens*** – Already in figure 52, which represents the response to Question 32 in Questionnaire – 1, it was seen that 94% of respondents in Kerala and 74% in Goa said that it is difficult for them to do purchases and make bill payments on their own because it is difficult to wait in the queue. From Figures 53-56, it can be inferred that in some places of public utility where a senior citizen requires to frequent, like Vegetable Shops, Fair Price Shops, Grocery Shops and Milk Booths, there is little or scarce facilities. However in Hospitals, Banks, Bill Counters and Ticket Counters there seems to be better adoption of facilities for senior citizens, though not satisfactory and commensurate to the needs of senior citizens.

#### **b) Public Transport and facilities**

Question 19 of Questionnaire-1 sought to find out whether the respondent senior citizens travel by public transport, the response of which is given in Table 34.

**Table 34 – Use of public transport**

	Travel by public transport	
	Yes	No
Goa	29	19
Kerala	36	14

**Figure 57 – Use of Public Transport by Senior Citizens**

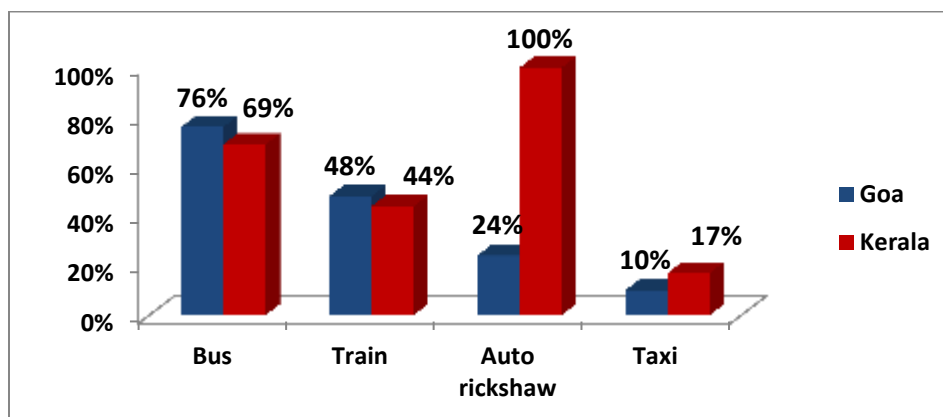
Question 20 sought to identify the mode of public transport frequented by senior citizens. The options given were (a) Bus, (b) Train, (c) Auto Rickshaw and (d) Taxi. The response is shown in Table 35.

**Table 35 – Mode of public transport**

	Bus	Train	Auto rickshaw	Taxi
Goa	22	14	7	3
Kerala	25	16	36	6



**Figure 58 – Mode of transport used by senior citizens**



The percentages are drawn based on the total number of respondents who said they travel by public transport.

It can be understood from Figure 58 that in Kerala all the senior citizens who use public transport travel by auto rickshaws. From this 100%, it can be inferred that auto rickshaws in Kerala is accessible, convenient and probably affordable. However in Goa only 24% of those who avail of public transport are availing of auto rickshaws.

While in Goa 76% travel by bus, in Kerala it is 69%. Taxis are hired only by 10% in Goa and 17% in Kerala. 48% of senior citizens in Goa and 44% in Kerala said they travel by train.

The suitability of Public transport facilities in connection with buses and trains for senior citizens was surveyed through Question 21 of Questionnaire-1, Question 17 of Questionnaire-2 & Questionnaire-3 and Question 5 of Questionnaire – 4. These questions stated: Is the public transport suitable for senior citizens in terms of the following aspects?

The response of the senior citizens as well as 'Others' (persons between 18 years - 59 years) is tabulated in Table 36.

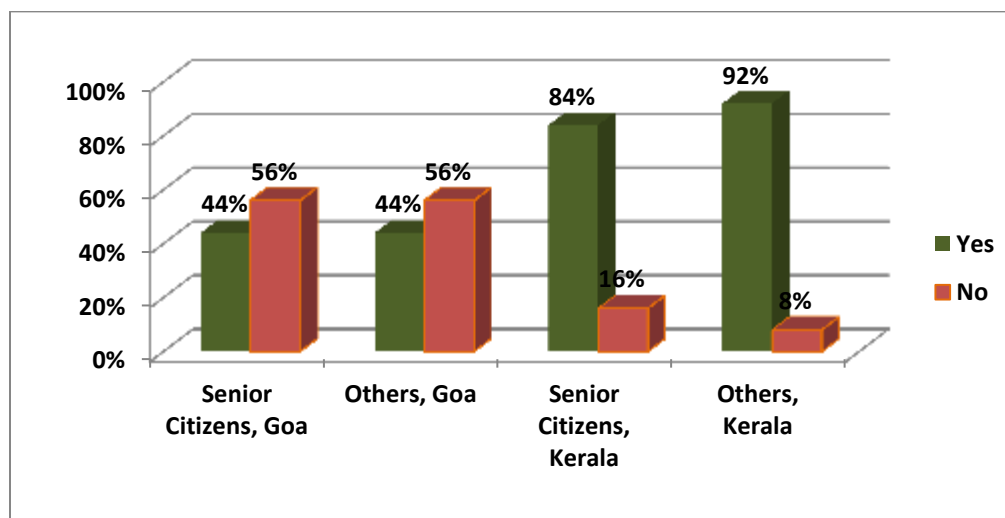
**Table 36 – Suitability of facilities in connection with buses and trains for senior citizens**

	Response by senior citizens				Response by others			
	Goa		Kerala		Goa		Kerala	
	Yes	No	Yes	No	Yes	No	Yes	No
Buses available near residence	21	27	42	8	22	28	46	4
Steps to enter bus is convenient	10	38	6	44	5	45	3	47
Seats are reserved	48	-	45	5	50	-	50	0
Reserved seats are sufficient	19	29	12	38	27	23	12	38
Others occupy reserved seats	20	28	45	5	21	27	39	11
Unreserved seats are offered	22	26	13	37	28	22	10	40
Waiting Room/Sitting facility in bus stations is appropriate	2	46	6	44	5	45	0	50
Toilet facility in Bus station is appropriate	3	45	2	48	2	48	0	50
Steps to enter train is convenient	6	42	4	46	5	45	2	48
Waiting Room/Sitting facility in railway stations is appropriate	38	10	35	15	42	6	38	12
Toilets in railway stations is appropriate	36	12	22	28	42	8	32	18
Platforms in railway station are easily accessible	4	44	0	50	0	50	5	45

### *Availability of buses*

The response of senior citizens and others in both the States regarding availability of buses near the respondents' places of residence is represented in Figure 59.

**Figure 59 – Availability of buses: Response of Senior Citizens and Others in Goa and Kerala**

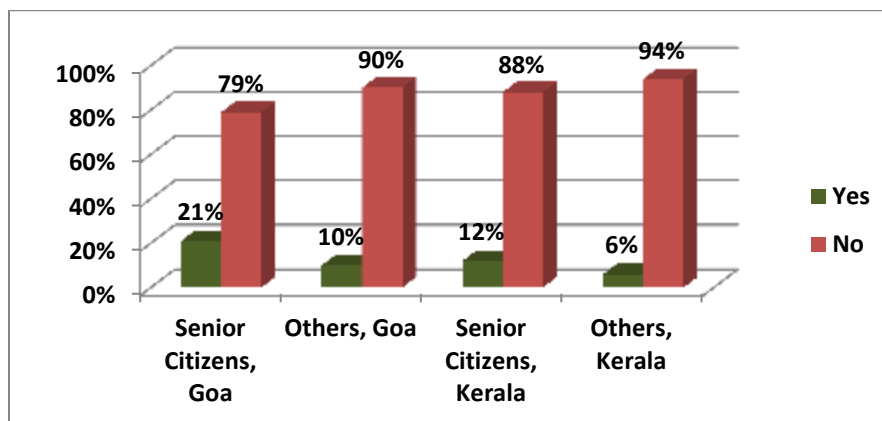


Regarding the availability of public transport buses near their places of residence, 44% of senior citizens responded that it is available, and 56% stated that it is not. The same proportion of other respondents in Goa of 18years -59 years said the same. In Kerala, 84% of senior citizens and 92% of 'Others' marked that buses are available whereas 16% of Senior Citizens and 8% of 'Others' said buses are not available.

### *Suitability of steps to enter the buses*

Availability of buses by itself is not sufficient. Whether the buses are built in a way whereby the passenger senior citizens can easily board the buses and alight from the buses is an important point to inquire. Therefore it was added as a component aspect in this question.

**Figure 60 – Steps in the bus – Convenient for Use by Senior Citizens: Response of Senior Citizens and Others in Goa and Kerala**



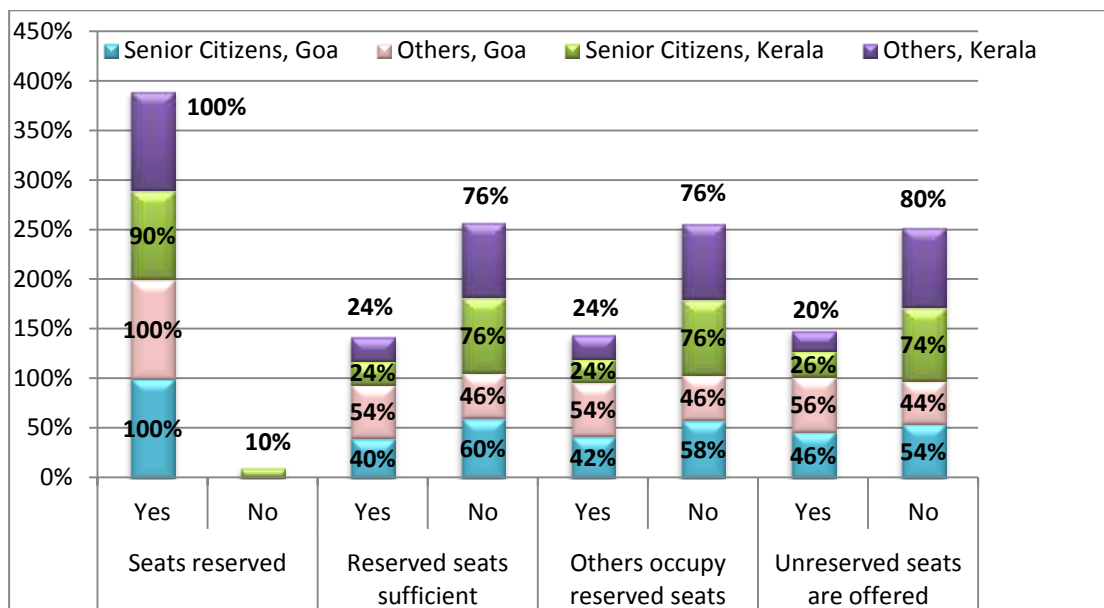
With respect to the question whether the buses to enter the buses is convenient for use by Senior Citizens, 79% of Senior Citizens and 90% of Others in Goa said it is not convenient. However 21% and 10% respectively said it is convenient. In Kerala for the same question, 88% of Senior Citizens and 94% of ‘Others’ responded that it is not convenient, and 12% and 6% respectively said it is convenient.

An interesting point to note is that a greater proportion of ‘Others’ than Senior Citizens marked that the steps to enter the public transport buses are not convenient for use by Senior Citizens. It can be deduced from human nature that a person judges whether a certain facility is suitable for a group with lesser physical ability than him by keeping his own convenience level as a criteria. This amplifies the need to relook at the design of buses to make it appropriate for use by all citizens.

### ***Reservation of Seats for Senior Citizens in buses***

The response on the availability of reserved seats for senior citizens in the buses and its sufficiency is represented in Figure 61.

**Figure 61 – Regarding Sufficiency of Seats in Bus: Response of Senior Citizens and Others in Goa and Kerala**



Responses for four questions are represented in Figure 61 namely (i) Reservation of Seats, (ii) Sufficiency of reserved seats, (iii) Availability of reserved seats to senior citizens and (iv) Offer of Additional seats for senior citizens by others.

Except for the 10% Senior Citizens in Kerala all others in both the states said that seats are reserved in the buses for senior citizens. This shows that seats are reserved for senior citizens in buses. Yet the 10% senior citizens in Kerala suggest that there could be instances where the rule of reserving seats may not be strictly followed in certain cases.

Regarding the sufficiency of reserved seats, in Goa 40% senior citizens and 54% others find that the number of seats reserved is sufficient. However 60% senior citizens and 46% others find it insufficient. In Kerala there is unanimity in the opinion held by senior citizens and others in this respect. Only 24% of each group found the reserved seats sufficient, where as 76% of them found it insufficient. The high percentage who has

marked “No” for this point throws light on the dissatisfaction among people about the insufficiency of the number of seats reserved for senior citizens.

To the question whether others occupy the seats reserved for senior citizens, in Goa 42% of senior citizens and 54% others said it happens and 58% of senior citizens and 46% of others said it does not. At the same time 46% senior citizens and 56% others said that even unreserved seats are offered to senior citizens in buses in Goa. Contrary opinion was given by 54% senior citizens and 44% others. The inference that can be drawn from such varied opinion is that there is occurrence of others occupying such reserved seats in Goa as well as there are cases where even unreserved seats are offered to senior citizens. The finding points towards the need for enforcing the rule in its entirety as well as sensitizing the passengers generally on such matters.

On the issue of whether others occupy reserved seats in Kerala, 76% of both group of respondents said “No” and 24% said “Yes”. Compared to Goa it appears there is more compliance with the rule, though absolute compliance should be the focus of the implementation authority.

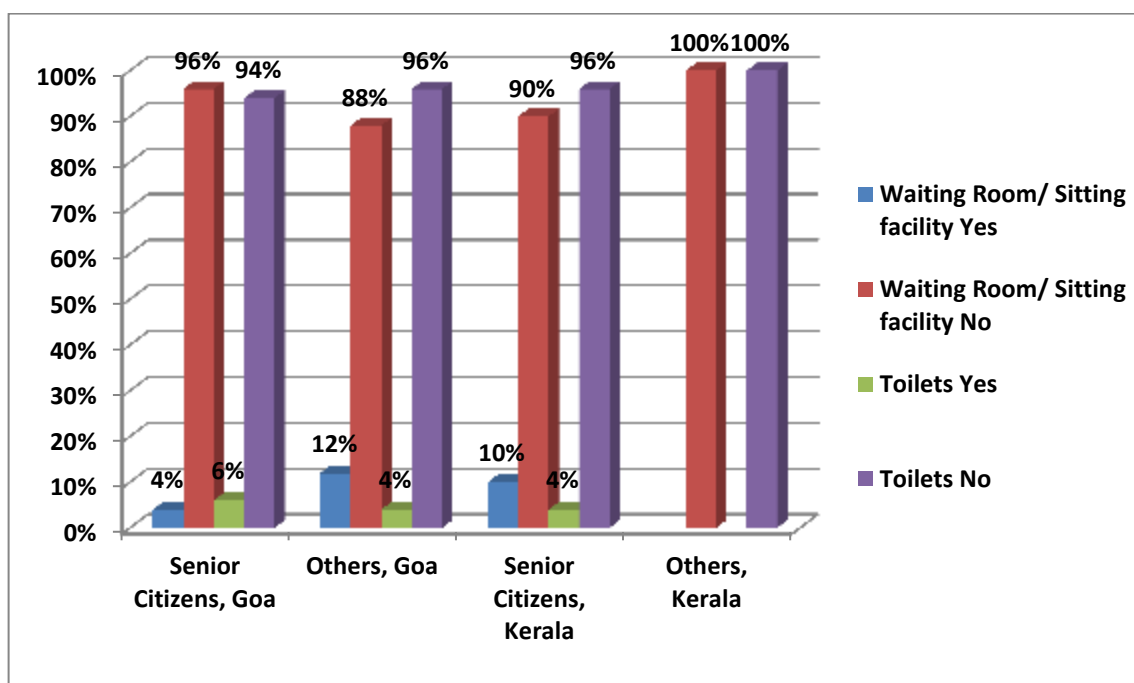
26% of senior citizens and 20% of others opined that unreserved seats are offered to senior citizens where as high 74% Senior Citizens and 80% others are of the opinion that unreserved seats are not offered to senior citizens.

Legislations and rules per se can achieve limited results whereas with sensitization of the cause among general public the result would be magnified. It can be inferred that the passengers in Kerala are not sensitized to the cause of senior citizens to a great extent.

### *Facilities in Bus Stations*

The points covered are whether the waiting rooms/sitting facility and toilet facility in bus stations are appropriate for senior citizens.

**Figure 62 – Convenience of facilities in Bus Station**



**Waiting Room/ Sitting Facility:** 96% of Senior Citizens and 88% ‘Others’ in Goa said that the waiting room/sitting facility in bus stations is not appropriate. The same was the opinion of 90% Senior Citizens and 100% ‘Others’ in Kerala.

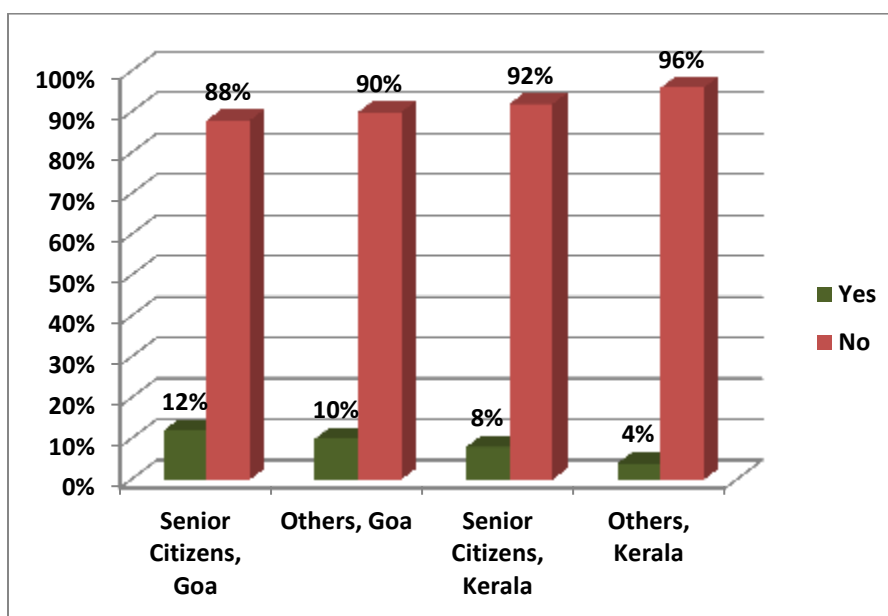
**Toilet facility:** In Goa 94% of Senior Citizens and 96% ‘Others’ said that the toilet facility in bus stations is inappropriate. In Kerala, 96% of Senior Citizens and 100% of ‘Others’ said the same.

The response of all groups of respondents show a strong discontent of the facilities in the bus stations as far as its appropriateness for senior citizens is concerned.

### *Suitability of steps in the trains*

The response to the issue of whether the steps in trains is convenient for senior citizens is represented in Figure 63.

**Figure 63 – Steps to enter the train: Convenient?**



A consistently high percentage of respondents including senior citizens and others in both the States marked their opinion that steps to enter the trains is not to the convenience of senior citizens. 88% of Senior Citizens and 90% of Others in Goa as well as 92% of Senior Citizens and 96% of Others in Kerala hold such an opinion. This significantly indicates the need to design the steps in a way easy for entry and exit by senior citizens.

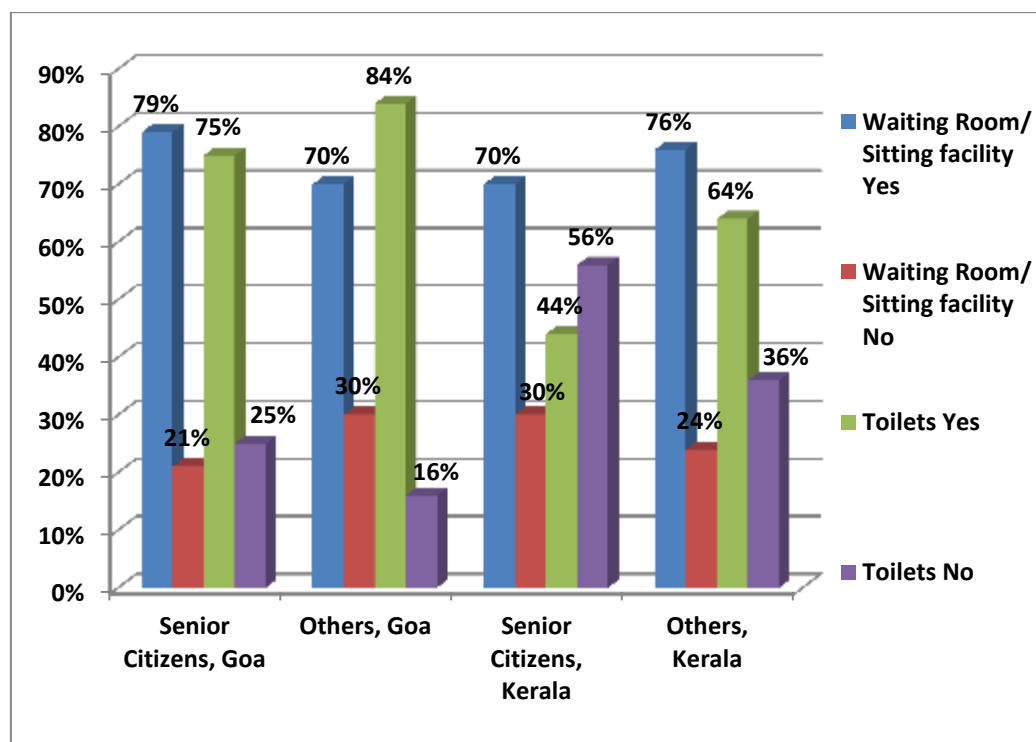
It is also to be noted that it is not only a matter of convenience or inconvenience of boarding and alighting the train, but also a greater matter of concern, that is, safety of the older passengers. Steps in the trains that are inconvenient for use by senior citizens poses a threat to the very life of the passengers and needs amends.



### *Facilities at Railway Stations*

Two issues addressed here is whether the Waiting Room/Sitting facility and toilet facility at the railway stations are appropriate for Senior Citizens' use. The response is depicted in Figure 64.

**Figure 64 – Waiting Room and Toilets at Railway Stations: Convenient?**



#### *a) Waiting Room/Sitting Facility in Railway Stations*

Not less than 70% of the respondents agree that the Waiting Room/Sitting facility in the railways stations is appropriate for senior citizens, the precise percentage being 79% Senior Citizens in Goa, 70% Others in Goa, 70% Senior Citizens in Kerala and 76% Others in Kerala. Even though this is a positive fact, there appears to be lapses as is understood from the response of the 21% senior citizens and 30% others in Goa as well

as that of 30% senior citizens and 24% others is Kerala who finds the waiting room facility inappropriate.

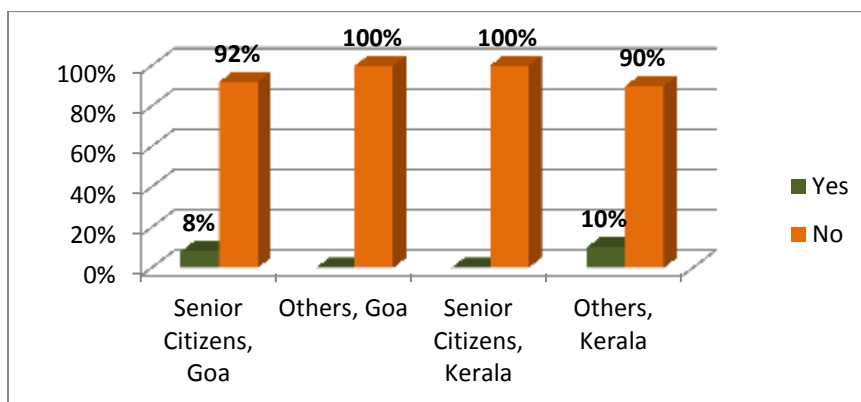
*b) Toilet facility in Railway Stations*

In Goa, more than three quarters of the respondents are of the opinion that toilet facility is appropriate at the railway stations. 75% and 84% of senior citizens and others respectively have marked “Yes”. In Kerala however only 44% of senior citizens said that toilets are appropriate and 64% others also hold the same view. Regarding essentials like toilet facility, the disapproval of 25% senior citizens and 16% others in Goa as well as 56% senior citizens and 36% others in Kerala is not negligible. It can be understood that much improvement is desirable regarding these facilities in the railway stations so as to make it convenient and suitable for use by senior citizens.

*Accessibility of Platforms in Railway Stations to Senior Citizens*

The question was whether the different platforms in the railway stations easily accessible to senior citizens. The response is projected in Figure 65.

**Figure 65 – Platforms at the Railway Stations: Easily Accessible**



Except for 8% Senior citizens in Goa and 10% others in Kerala, all the respondents gave their opinion that the different platforms are not easily accessible to senior citizens. This is clear indication of the lack of the infrastructural requirements and supportive mechanism to make access to the different platforms easy for senior citizens as well as for disabled persons.

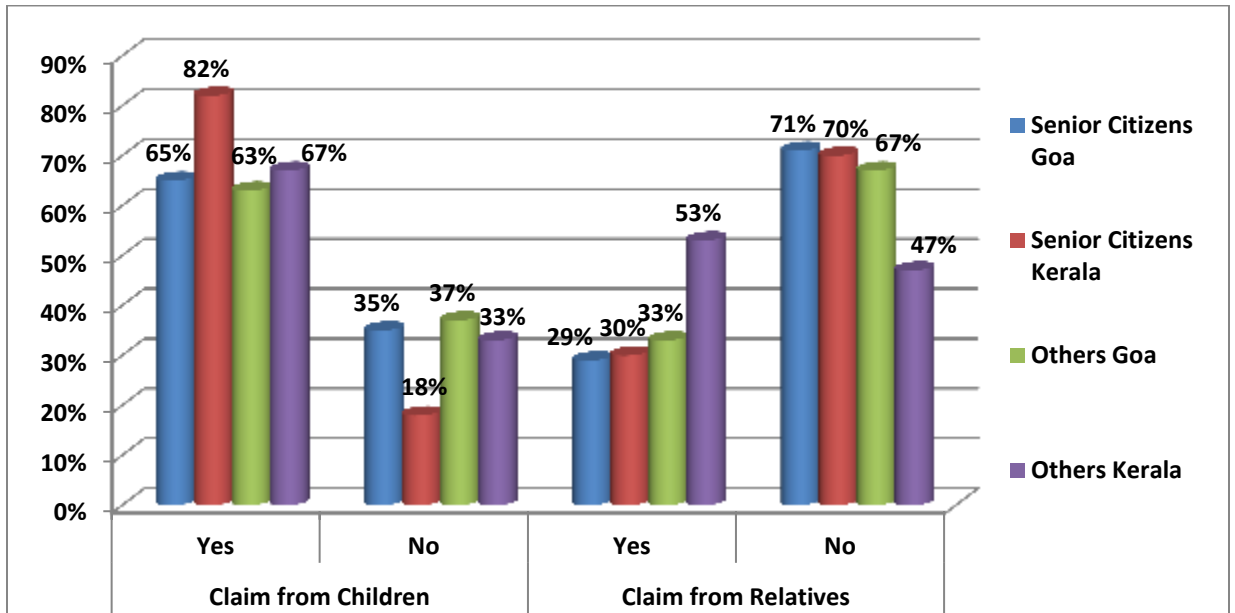
**c) Awareness of Rights of Parents and Senior Citizens under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007**

The impact and reach of any legislation, especially a welfare legislation depends on the people knowing the law, the entitled knowing their entitlements and the obliged knowing their obligations under the law. To determine the awareness of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, two questions were included, inquiring whether the respondent is aware that, (1) A parent can claim maintenance from children (Question 23 of Questionnaire-1, Question 18 of Questionnaire-3 & 4 and Question 3 of Questionnaire-4) and (2) A childless senior citizen can claim maintenance from relatives who will inherit their property. (Question 24 of Questionnaire-1, Question 19 of Questionnaire-3 & 4 and Question 4 of Questionnaire-4). The response is contained in Table 37.

**Table 37**

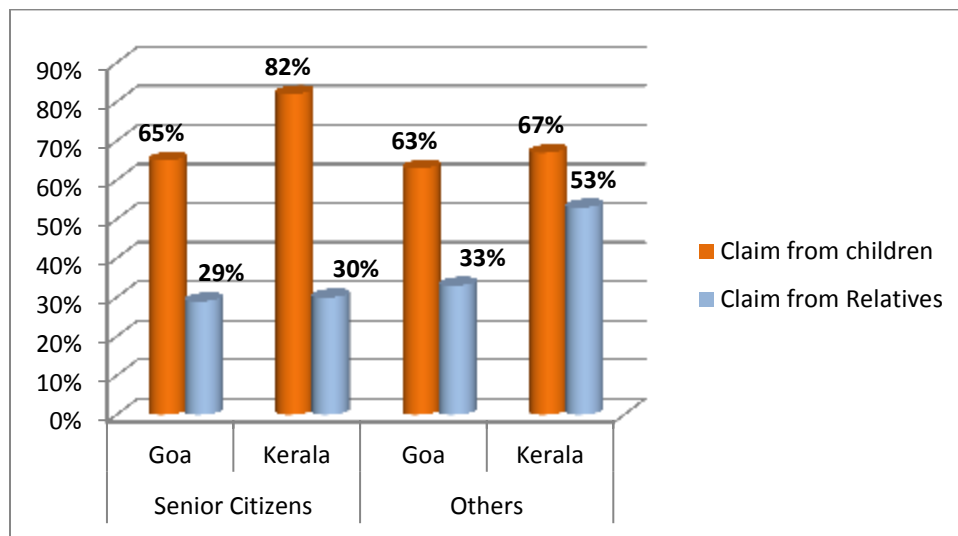
		Claim from Children		Claim from Relatives	
		Yes	No	Yes	No
Senior Citizens	Goa	31	17	14	34
	Kerala	41	9	15	35
Others	Goa	95	55	49	101
	Kerala	101	49	79	71

**Figure 66 – Awareness of MWPS Act**



The cumulative representation including all the responses is contained in Figure 66. For the purpose of comparing the percentage of awareness with respect to the two rights specified, the percentage of persons who are aware of the rights is represented in the Figure 67.

**Figure 67 – Aware of the right to claim maintenance from children and relatives**



It can be seen from Figure 67 that a fairly good proportion of respondents are aware that the parents are entitled to claim maintenance from their children. More Senior citizens themselves appear to be aware of their rights than others in both the States. In Goa 65% of senior citizens and 63% of others said that they are aware of the right to claim maintenance from children. Awareness is more in Kerala where 82% senior citizens and 67% others recorded their awareness on the matter.

However when it comes to awareness of the right of childless senior citizens to claim maintenance from relatives, awareness among all categories of respondents is much lesser as can be seen from the response of 29% senior citizens and 30% others in Goa as well as 33% and 53% others in Goa and Kerala respectively.

It can therefore be inferred that a minimum awareness of the basic right of parents to claim maintenance from their children exists among majority in both the States. Awareness among 82% of senior citizens in Kerala probably point towards the success of Senior Citizens Help Desk run by senior citizens attached to police stations. The importance of these Help Desks is that it is run as part of the *Janamaithri* Police, which brings to its activities a larger reach. These Desks conduct awareness programs on a regular basis. The stronger the senior citizens' associations, greater will be the awareness of rights as well.

At the same time the lesser percentage of persons who are aware of the right of childless senior citizens to claim maintenance from certain relatives, shows that the intricacies of the Act and the entitlements in its entirety is not known to a large majority of the people.

d) **Elder abuse**

To determine the existence or not of elder abuse, the respondents were asked if they know about any senior citizen being neglected, ill-treated or tortured physically or mentally. Question 28 of Questionnaire-1; Question 23 of Questionnaire-2 & Questionnaire-3 and Question 8 of Questionnaire-4 dealt with this.

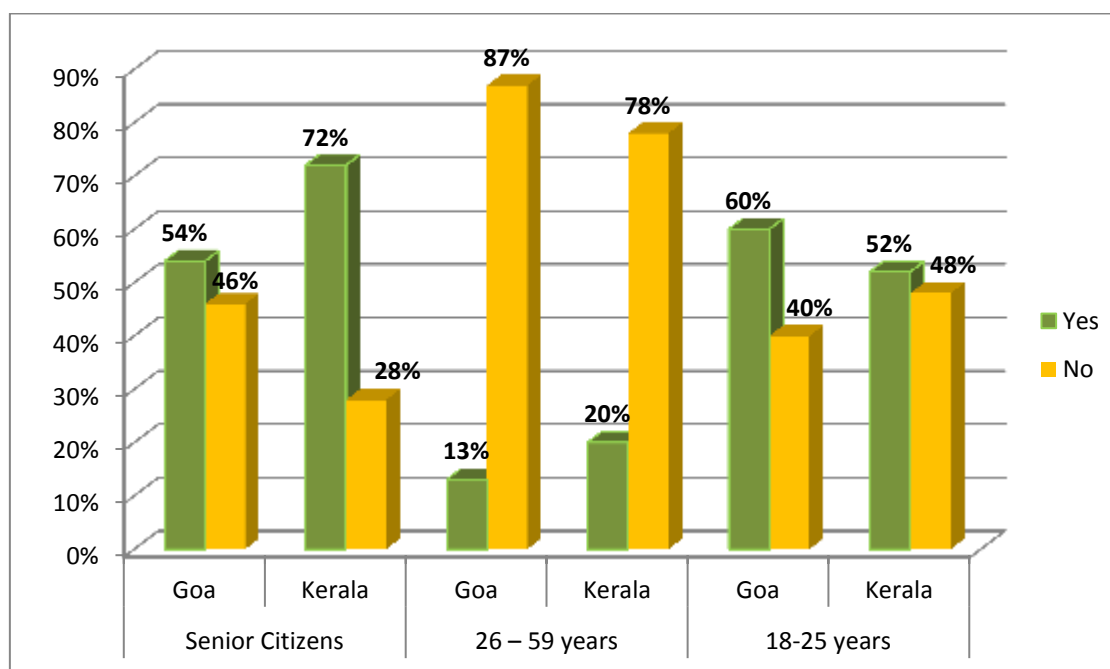
Considering the fact that the opinion of what amounts to abuse also amounts to the perception of the beholder, the data is analyzed as the responses of three age groups, namely (i) Senior Citizens, (ii) age group 26-59 and (iii) age group 18-25. Each of the groups is from each of the States also. The response is shown in Table 38.

**Table 38 – Elder Abuse**

		Yes	No
Senior Citizens	Goa	26	22
	Kerala	36	14
26 – 59 years	Goa	13	87
	Kerala	20	78
18-25 years	Goa	30	20
	Kerala	26	24

The data is represented in Figure 68.

Figure 68 – Elderly Abuse



On the question whether the respondents have come to know about any senior citizen who had been abused, the answers vary immensely depending on the age group to which the respondents belong to. When 54% Senior Citizens felt there are such cases, only 13% of age group 26-59 years said that they had come across elderly abuse. And interestingly 60% of persons between 18-25 years expressed the presence of abuse.

In Kerala also the respondents between 26-59 years marked the least, that is, 20% in this matter. When 52% of 18-25 years group said they have knowledge of senior citizens who are neglected, ill-treated or tortured, a very high 72% of the Senior Citizens certify the same.

This indicates that the perception of abuse changes with the perceiver. In both the States, a considerable percentage of the youngest of the respondents think that there is occurrence of elderly abuse. The persons of 26-59 years perceive abuse as the least

existent. Insensitivity to the matter of abuse could be a probable reason why the middle age group considers it the least. Extra sensitivity on the part of the younger respondents is to be ruled out as 54% and 72% of the senior citizens themselves in Goa and Kerala respectively hold the same opinion.

It is relevant to note that when the senior citizen respondents in the States were asked if they had been subjected to any inhuman treatment or abuse, in Question 37 of Questionnaire-1 only 4% of senior citizens in Goa and 6% in Kerala said they had experienced such treatment at home.<sup>4</sup>

In Goa, 46% Senior Citizens, 87% of 26-59 years group and 40% of 18-25 years group said they have not had any knowledge of elderly abuse. Correspondingly in Kerala, 28%, 78% and 48% said that they do not know about any senior citizen being neglected, ill-treated or subjected to physical or mental torture.

#### **e) Discrimination of older persons**

All the respondents were asked whether they think that senior citizens are given a second class treatment in society generally. Question 29 of Questionnaire-1; Question 15 of Questionnaire-2 & Questionnaire-3 and Question 1 of Questionnaire-4 posed this query to the respondents. The options provided were (a) Always, (b) Sometimes and (c) Never.

The data so received is tabulated in Table 39 and graphically represented in Figure 69.

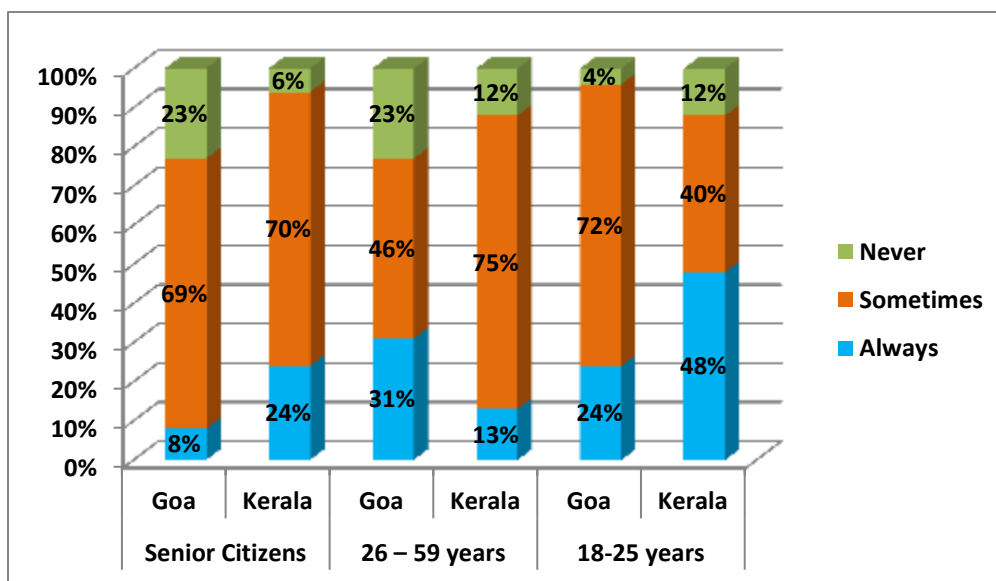
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<sup>4</sup> See *supra* Figure 40, 41 for analysis on questions relating to respect, inhuman treatment, compromising dignity



**Table 39 – Discrimination of Older Persons**

		Always	Sometimes	Never
Senior Citizens	Goa	4	33	11
	Kerala	12	35	3
26 – 59 years	Goa	31	46	23
	Kerala	13	75	12
18-25 years	Goa	12	36	2
	Kerala	24	20	6

**Figure 69**

For the purpose of analysis the respondents are grouped into three age groups: Senior Citizens, age group 26-59 and age group 18-25.

Since the given options were “Always”, “Sometimes” and “Never”, to determine whether discrimination exists or not, the “Never” option is the indicator. Very less percentage of

all groups have said there is never discrimination or second class treatment to senior citizens in society. Only 6% of senior citizens in Kerala have marked “Never”. In Goa, senior citizens who marked so forms 23%. Among the middle age group, 6% and 23% said senior citizens are never discriminated in society. A very less percentage of younger age group, that is, merely 4% in Goa and 12% in Kerala holds the same view.

Except for the persons of 18-25 years in Kerala, majority proportions of all the other respondents have marked the option, “Sometimes”. 69% and 70% of senior citizens in Goa and Kerala respectively have said that sometimes there is discrimination. In the age group 26-59 years, 46% in Goa and 75% in Kerala also feel the same. 72% of the youngest age group in Goa too said that sometimes the senior citizens are given second class treatment in society. In Kerala, 40% of this age group takes the same stand.

Among senior citizens, those who opined that there is always discrimination constitute 8% in Goa and 24% in Kerala. From Group 26-59 years, 31% in Goa and 13% in Kerala feel there is discrimination always. The same view is expressed by 24% and 48% of 18-25 years group in Goa and Kerala respectively.

When less than a quarter or even minimal percentage of respondents in each group feels that there is never discrimination of older persons, the inference is that discrimination does exist in society but with varying intensity and proportion. All senior citizens may not be treated in the same manner, but on the ground that a person is advanced in age does make him or her vulnerable to a second class treatment in society.

### **f) Opinion on Old Age Home and Day Care Centre Generally**

Under the MWPS Act, 2007 establishment of old age homes for indigent senior citizens is a statutory obligation on the States. Establishment of Day Care Centers for Senior Citizens is promoted through welfare schemes of the various governments. However to understand the mind set of people of different age groups regarding the concept and suitability of old age homes and day care centres, two questions were included in all the four questionnaires. They are:

(1) “Do you think it is better for senior citizens to stay in old age homes?”

The options provided were (a) Agree, (b) Disagree, (c) Agree only if there is nobody to take care of the senior citizens and (d) Do not know. Question 26 of Questionnaire-1, Question 20 of Questionnaires-2 & 3 and Question 6 of Questionnaire 4 corresponds to this.

(2) “Do you think Day Care Centres for Senior Citizens is good?”

The options were (a) Yes, (b) No, and (c) Good only in some cases. Question 27 of Questionnaire-1, Question 21 of Questionnaire-3&4 and Question7 of Questionnaire-4 relates to this.

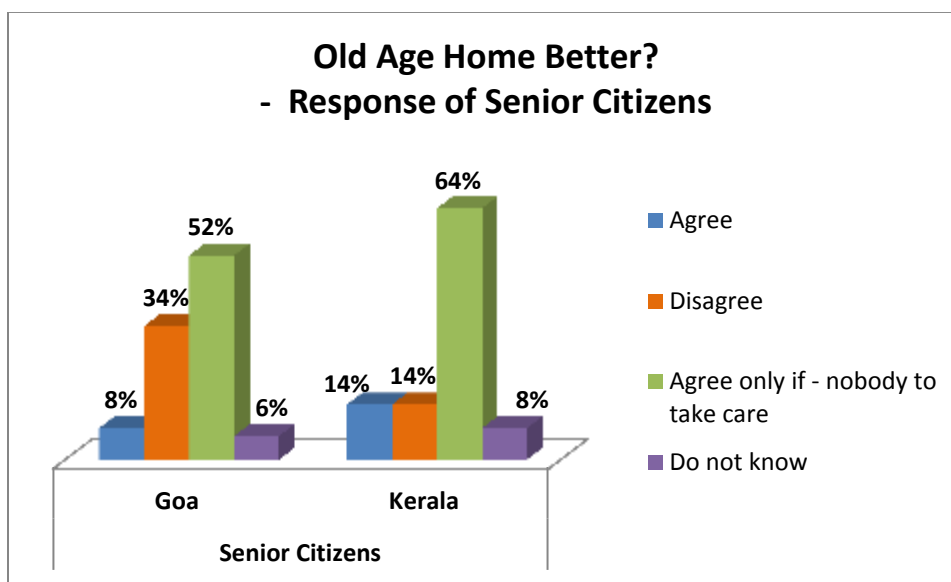
### ***Old Age Homes – Public Perception***

Table 40 shows the response received on the issue of old age homes, which are classified as that of Senior Citizens and others.

**Table 40**

		Old Age Home Better?			
		Agree	Disagree	Agree only if - nobody to take care	Do not know
Senior Citizens	Goa	4	16	25	3
	Kerala	7	7	32	4
Others	Goa	9	89	52	0
	Kerala	6	52	90	2

Response of Senior Citizens is depicted in Figure 70

**Figure 70**

In Goa 34% and in Kerala 14% do not agree that old age homes is a better place for older persons to live in, where as 8% and 14% in the respective States agree to the concept.

52% and 64% in Goa and Kerala respectively think that Old Age Homes can be an option only if there is nobody to take care of the older persons. 6% from Goa and 8% from Kerala have marked the option, “Can’t say”.

The proportionately high percentage who feel that old age homes is good only when there is no other care taker, shows the inherent interest of persons to stay in their own homes which according to them is the most suitable place a person can be.

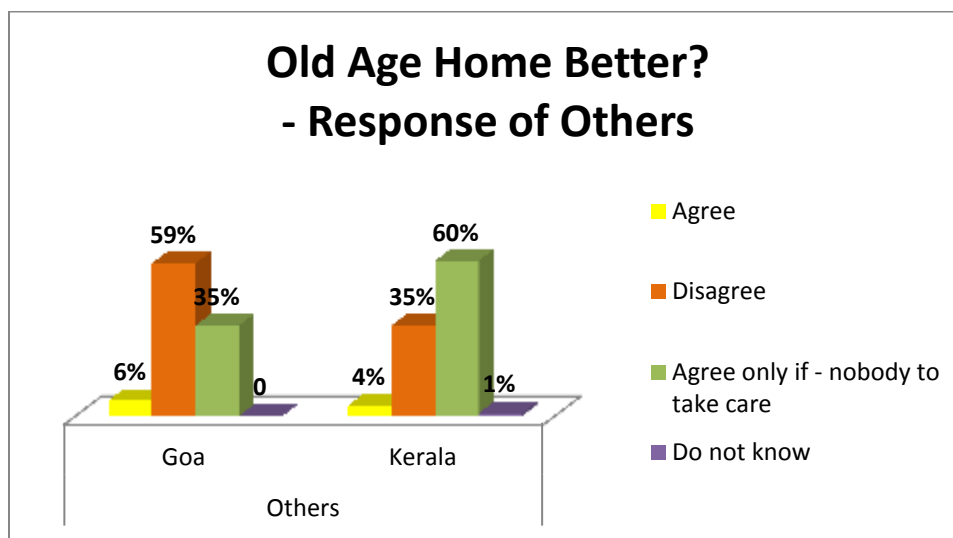
The 6% and 28% who have shown indecisiveness point towards the confusion in the mind of senior citizens themselves as to whether their homes may not be the most suitable place for them to stay.

It is pertinent to note that when senior citizens were asked about their own choice of residence 6% in Goa and 10% in Kerala had opted for it. (Supra Figure 29, table 11). This along with the response of 8% and 14% here point towards the existence of a proportion of senior citizens who do not prefer their own houses as the best option of residence for them, as well as for other older persons.

### ***Response of ‘Others’***

Figure 71 reflects the opinion of Others on the issue of whether old age homes are better places for senior citizens to live.

Figure 71



It can be understood from the figure that majority of respondents amounting to 59% in Goa disagree to the proposition, whereas 35% agree to the concept of old age homes only if there are no care takers for the older person and 6% agree to the proposition unconditionally. In Kerala, 60% said that they agree only in the absence of caretakers, 35% disagree, 4% entirely agree and 1% said they do not know.

From the minimal 6% and 4% in each of the States who agreed that old age homes are better places for older persons to live in, it can be inferred that acceptability to old age homes is very less among the general population. However, the need for care is well understood by the respondents who said old age homes are better if there is nobody to take care of the older persons. Therefore the relevance of old age homes will be based on whether the joint family system where children live with parents continues to exist or not. In the absence of children living with parents or parents themselves opting to live alone, there is a need to develop an old age care system as old age homes will continue to be seen as a last option by majority of the society.

### *Old Age Home for One's Own Parents*

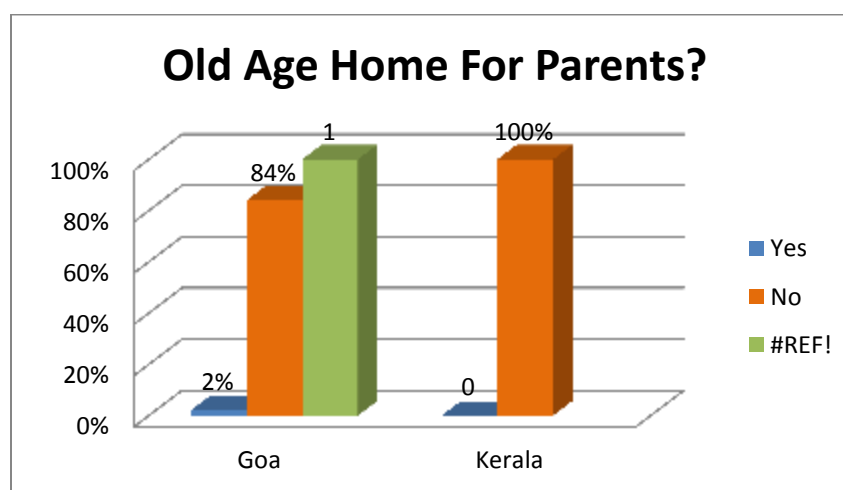
A further question was asked to the persons of 26-59 years group, if they would consider a well-maintained old age home as a good place for their parents to stay. This was contained as Question 14A of Questionnaire-2 and Question 12 of Questionnaire-3. The options provided were, (a) Yes, (b) No and (c) Can't say. The respondents included persons staying with parents as well as residing away from parents, at an equal proportion. The response is tabulated in Table 41.

**Table 41 – Old Age Home For Parents?**

	Yes	No	Can't Say
Goa	2	84	14
Kerala	-	100	-

The response is represented in Figure 72

**Figure 72**



It can be understood from Figure 72 that from the respondents between 18-59 years of age, 100% in Kerala and 84% in Goa are against the concept of Old Age Homes as a good place for their own parents to stay. In Goa, 2% consider it as a good place and 14% has marked “can’t say” denoting their uncertainty on the matter.

It can be inferred that sending one’s own parents to an old age homes is a concept unacceptable to every one of the respondents in Kerala and a very high percentage in Goa. At the same time, considering the fact that half of the respondents are persons not residing with their parents, it could also be a social stigma that makes it unacceptable.

#### ***Day Care Centres – Public Perception***

The response to the question on day Care Centre is contained in Table 42.

**Table 42**

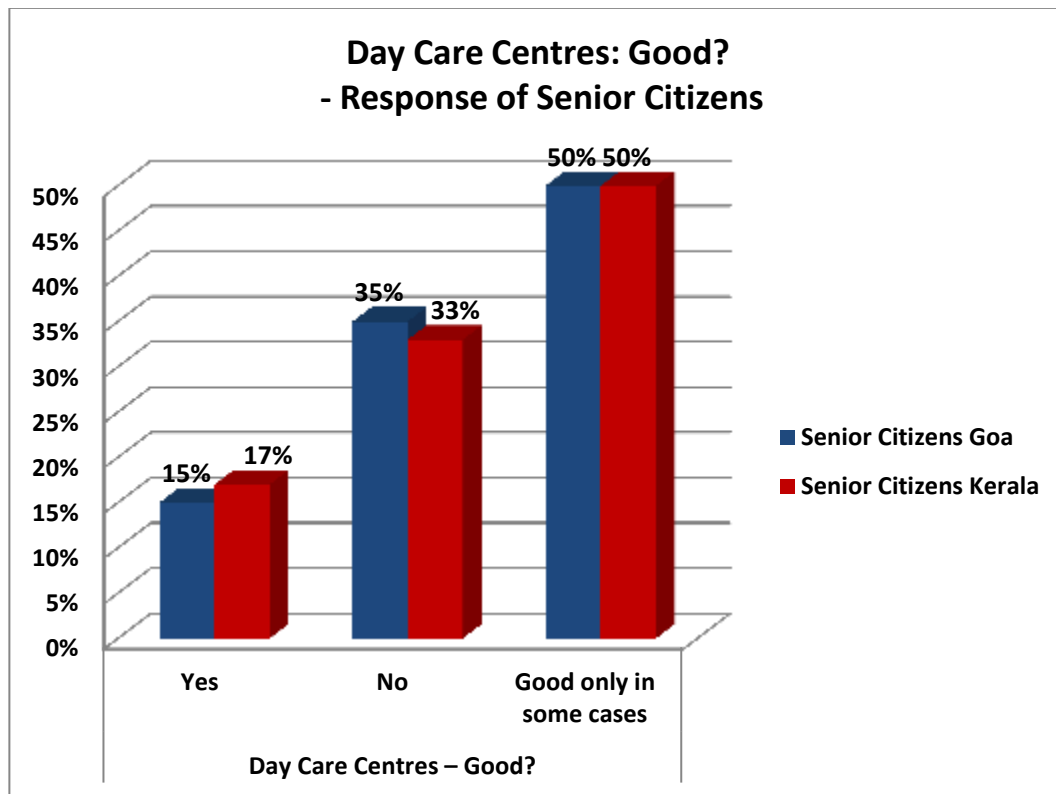
		Day Care Centres – Good?		
		Yes	No	Good only in some cases
Senior	Goa	6	32	10
Citizens	Kerala	10	38	2
Others	Goa	25	50	75
	Kerala	22	53	75



### Response of Senior Citizens on Day Care Centers

The response of senior citizens on the question of whether day care centres for older persons is good, is studied through Figure 73.

Figure 73

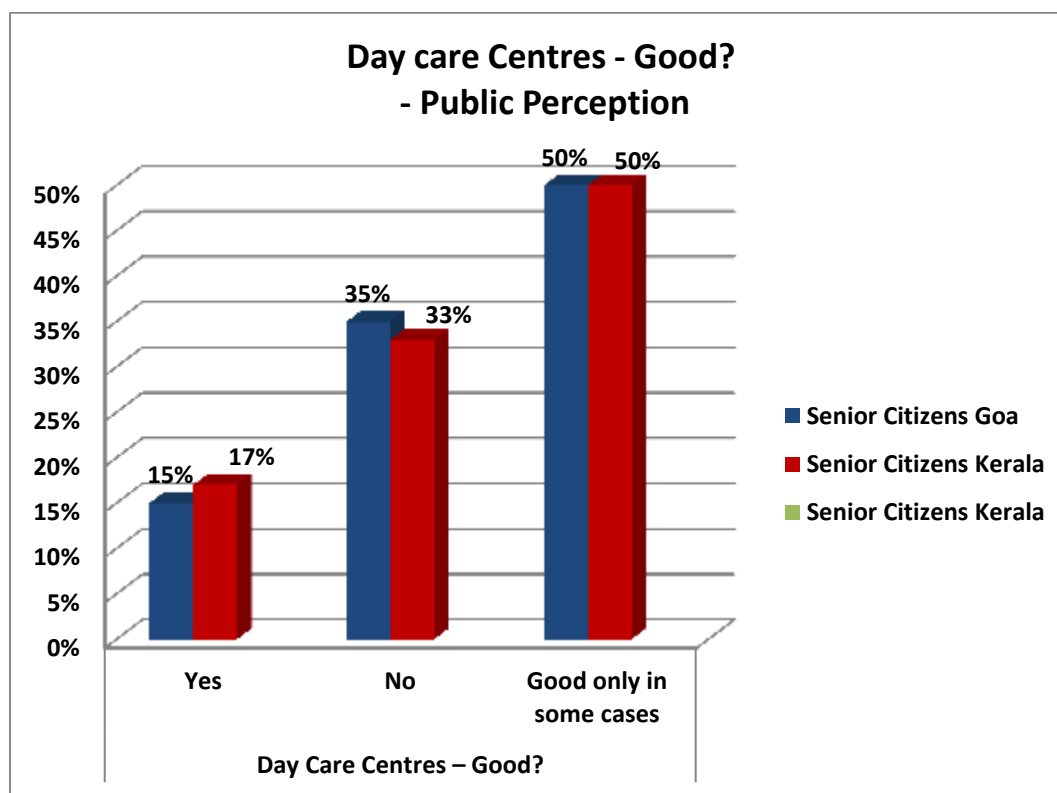


It can be deciphered from Figure 73 that in both the States, among senior citizens, there is a majority disapproval for day care centres, which is reflected in the option “No” marked by 67% and 76% in Goa and Kerala respectively.

21% and 4% in Goa and Kerala respectively expressed uncertainty by marking the option, “Can’t say” and 12% and 20% felt that Day Care Centres are good for senior citizens. This shows an aversion probably arising out of ignorance about the concept of Day Care Centres.

The response of others on this question is examined through Figure 74

**Figure 74**



The response in both the states looks to be more or less the same. 17% in Kerala and 15% in Goa said day care centres are good, 33% and 35% said it is not good and 50% each said it is good only in some cases.

It can be deduced that Day Care Centres are probably seen as an extended limb of old age homes, both being unfortunate options to be resorted to when senior citizens are without any care at home. Therefore social stigma too would be attached to these centres because when a senior citizen joins a day care centre the presumption could be that there is no one to care for those persons. This mindset throws light on the need

to popularize day care centres as a positive concept for older persons who may feel the need for companionship and creative action.

### Day Care Centre for One's Own Parents

A further question was included in Questionnaire-2&3 to find out if the respondents would like to join their parents in a day care centre, if available in their locality.

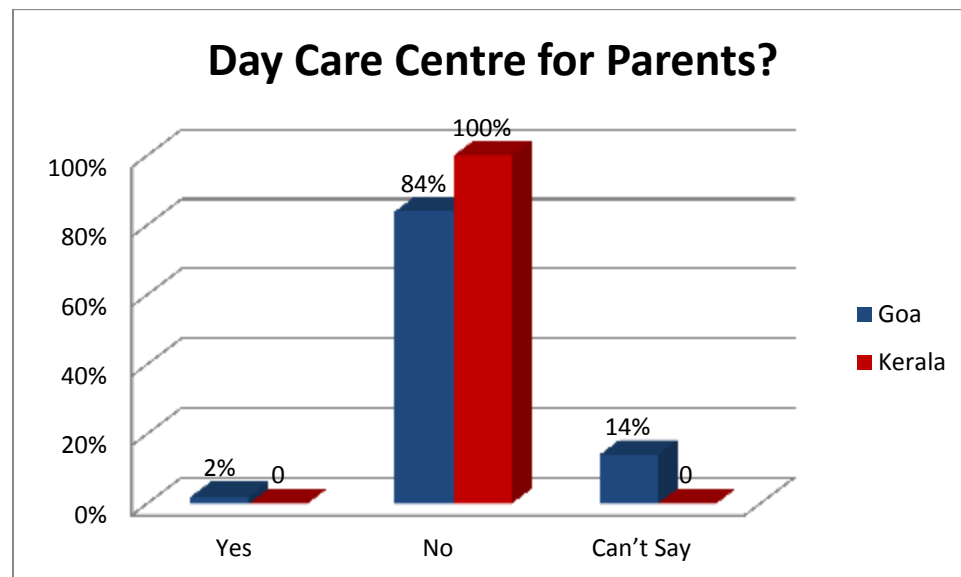
Question 22 of these Questionnaires relate to this matter. The response is shown in the table given below.

**Table 43 – Willingness to join day care centre**

	Yes	No	Can't Say
Goa	2	84	14
Kerala	-	100	-

This can be studied through Figure 73.

**Figure 75**



It is evident from Figure 75 that there is a blanket “No” to Day Care Centres when it comes to one’s own parents in Kerala. 100% of the respondents have said that they do not like to join their parents in any Day Care Centres. In Goa too a great majority of 82% hold the same view, while 2% responded that they would like to join their parents and 14% was not sure of the matter. Having seen such unacceptability to the concept of Day Care Centres, methods need to be evolved to popularize the concept as an antidote to loneliness factor of older persons among others.

**g) Perception on Old Age**

Perception of the general population as well as older persons themselves about old age will be an indicator of the prejudices and expectations regarding old age. Knowing the mindset is a pre requisite for any corrective sensitization programs, if required. It is also required to be considered while policies are being formulated and schemes are being designed for the benefit of the elderly. Three aspects were included in the questionnaires to gauge such convictions and expectations. Firstly, whether the society considers the older persons as positively contributing to society and home; secondly, whether old age is to be spent in leisure and not in supporting children and thirdly, whether senior citizens require special protection and benefits. Each of these is analyzed separately.

***1. Contribution of Older Persons to society and at homes***

To determine whether the society thinks that older persons are able to positively contribute to society and at homes, a question was included as Question 26 in Questionnaires-2& 3 and as Question 11 in Questionnaire-4.

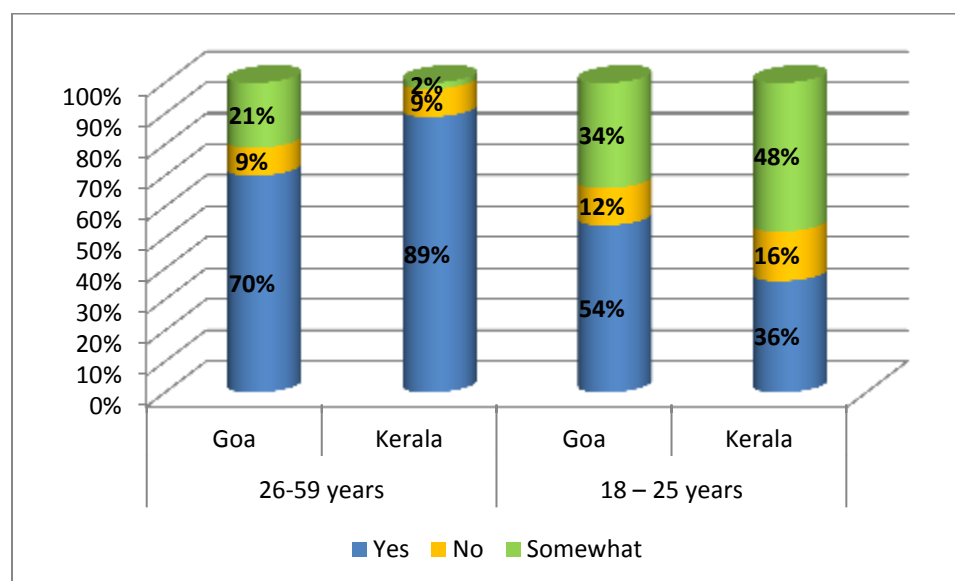
The options provided were, (a) Yes, (b) No and (c) Somewhat.

The response is as follows.

**Table 44 – Opinion on Ability of Older Persons to make positive contribution**

		Yes	No	Somewhat
26-59 years	Goa	70	9	21
	Kerala	89	9	2
18 – 25 years	Goa	27	6	17
	Kerala	18	8	24

**Figure 76 – Perception on Positive Contribution of Older Persons**



A small percentage of respondents amounting to 9% of respondents of age group 26 – 59 years in both the States think that older persons are unable to make any positive contribution to society or at home. In the age group 18-25, the corresponding percentage is 12% in Goa and 16% in Kerala. In the latter age group people who think that older

persons can contribute, are lesser; the difference though is not considerable. This shows the pre conception which a part of the society holds about older persons, which could be a cause for stereotyping older people which further leads to discrimination and violation of dignity.

Among the respondents belonging to age group 26-59, 70% in Goa and 89% in Kerala believe that older persons are able to make positive contribution. However in age group 18-25 years, only 54% in Goa and 36% in Kerala think so. It is evident that compared to age group 26-59 years, a lesser proportion of age group 18-25 years think that old persons are able to positively contribute. This would mean that the more of younger age group do not think older persons can effectively contribute to society and at home.

However the younger age group has shown their uncertainty by a 34% in Goa and 48% in Kerala who marked the option "Somewhat". In the 26-59 years group, 21% in Goa and 2% in Kerala have expressed that older persons contribute somewhat. This points towards the group of population who are unable to accept that older persons are able to be useful to society and homes and at the same time are not convinced enough to stereotype them as totally ineffective. Such a mindset could probably be due to the older persons being withdrawn from income generation activities such as employment. It is a matter of concern when especially the younger age-group is so pre-determined because it affects inter-generational bonding which is very much needed in a society which is supposed to house more number of older persons in the years to come than the younger ones.

## 2. Leisure Factor during Old Age

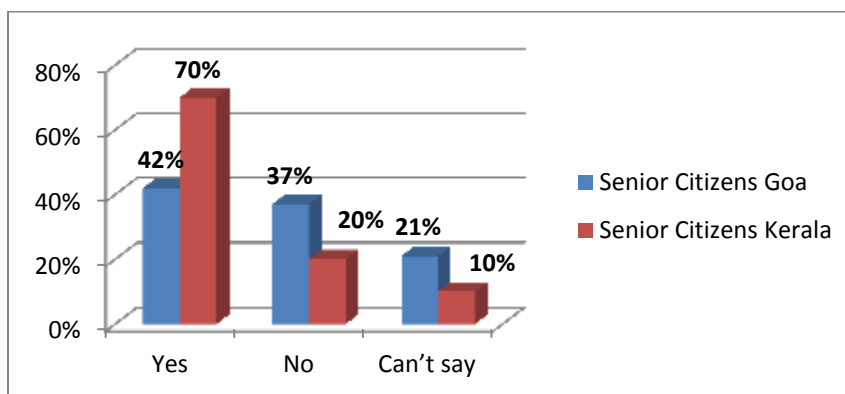
The role that is expected of older persons by the society as well as the role the senior citizens perceive for themselves during old age is necessary to be analyzed because when such societal expectations are not met or when it is physically or mentally tiring for the older people to meet such expectations, that would tend to have adverse impact on the physical and mental well-being of the older persons. A question probing into this aspect was included in all the four questionnaires. Question 42 of Questionnaire-1, Question 27 of Questionnaire-2&3 and Question 12 of Questionnaire-4 relates to this aspect. The options provided were, (a) Yes, (b) No and (c) Can't say.

The questions reads: "Do you think old age is to be spent in leisure and not in supporting children?" Response is tabulated and analyzed as follows.

**Table 45 – Whether Old Age is to be spent in leisure alone**

		Yes	No	Can't say
Senior Citizens	Goa	20	18	10
	Kerala	35	10	5
26-59 years	Goa	59	31	10
	Kerala	92	5	3
18 – 25 years	Goa	25	25	-
	Kerala	28	22	-

**Figure 77 – Whether old age is to be spent in leisure – Response of Senior Citizens**



Response of Senior Citizens: It can be understood from Figure 77 that a great majority of respondents in Kerala comprising of 70% recorded that they approve the statement. In Goa this view was taken by 42% of respondents. That is, they think that old age is to be spent in leisure and not in supporting children. It can be inferred from this response that after having lived a life time shouldering responsibilities towards children, at old age they would like to live in leisure and at ease. This shows also that they do not wish any more expectation of duties be raised on them. It could be because of the physical and mental rest they desire from the stress of living for others.

Indecisiveness can be seen in the 37% in Goa and 20% in Kerala who marked the option, “Can’t say”. It is important to note that only 37% and 20% Senior Citizens corresponding to Goa and Kerala have disagreed with the statement contained in the question. They do not think that old age is to be devoid of supportive role towards children and to be spent merely in leisure. This shows a continuing obligation towards children disregarding the age.



**Figure 78 – Whether old age is to be spent in leisure: Societal Response**

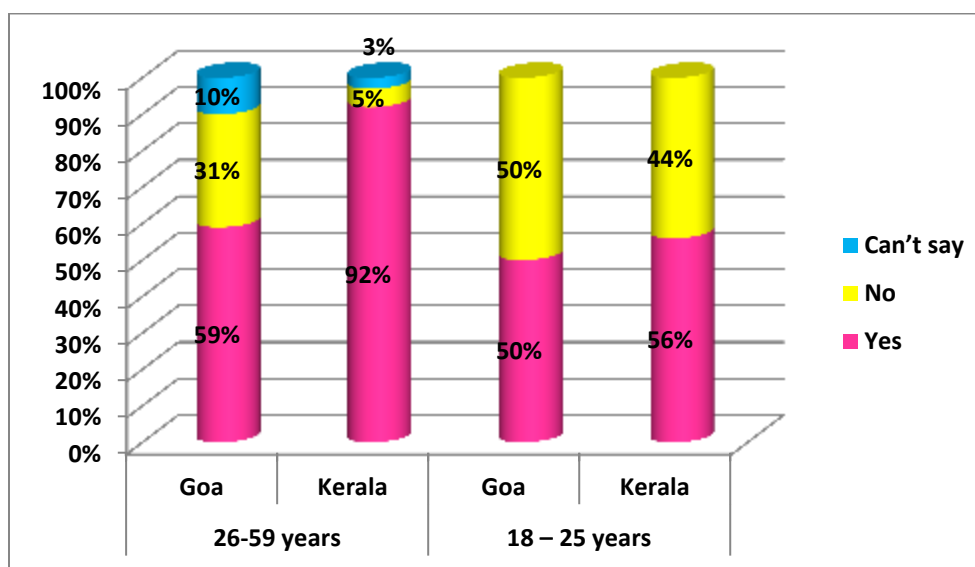


Figure 78 shows that in the age group 26-59 years, 92% respondents in Kerala feel that old age is to be spent in leisure without any obligations towards children. In Goa, among the same group, 59% hold this view. In the younger age group of 18-25, 50% and 56% in Goa and Kerala respectively also feel that old age is to be spent in leisure. This response could mean either that they expressed their view with respect to the older persons around them who needs the much deserved leisure or it could also be that assuming their own old age, they provided the response as an expectation of leisure during their own days of old age.

From the middle age group, 10% and 3% in Goa and Kerala respectively, marked “Can’t say” as their option. In the same category in Goa when 31% disagreed with the statement, merely 5% in Kerala felt old age is not to be spent only in leisure, but should be spent in supporting children. In the 18-25 years age group, 50% in Goa and 44% in Kerala also endorse the same view. This is a relatively high percentage depicting an expectation of a demanding nature that imposes a duty on the older persons to continue their supportive

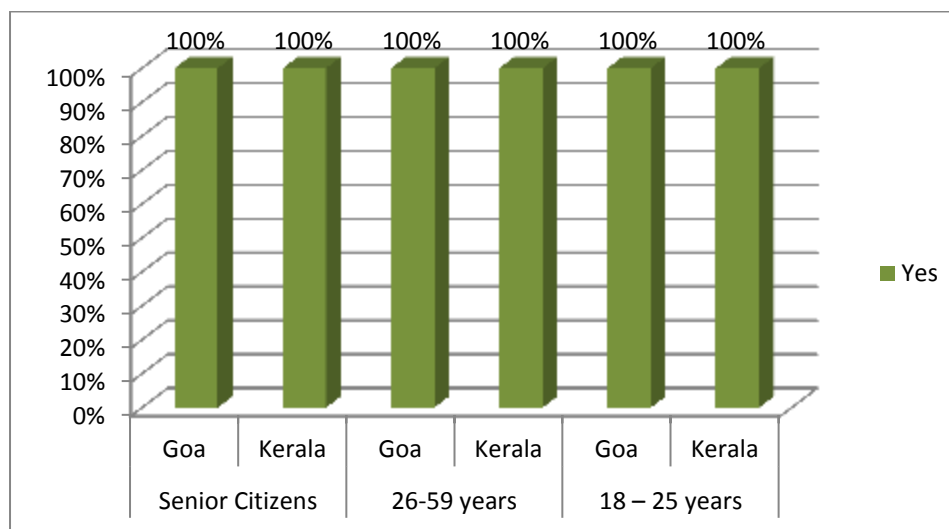
roles and all that goes along with that. This again could also mean an undertaking by the respondents to continue so during their own times of old age.

### 3. Special Protection and Benefits

To assess the societal expectation on State responsibility to provide special protection and benefits to older persons, a question was included in all four questionnaires. This query was contained as Question 30 of Questionnaire-1, Question 28 of Questionnaires-2&3 and Question 13 of Questionnaire-4. The question reads: “Do you think senior citizens require special protection and benefits?” The response is contained in Table 46 and analysed in Figure 79 below.

**Table 46 – Special Protection and Benefits to Senior Citizens**

		Yes	No
Senior Citizens	Goa	48	-
	Kerala	50	-
26-59 years	Goa	100	-
	Kerala	100	-
18 – 25 years	Goa	50	-
	Kerala	50	-

**Figure 79 –Need for special protection and benefits**

This is the single response which is unanimous, where all the respondents say that special protection and benefits are required for senior citizens. This also shows an expectation towards the State that it would take up the responsibility of making lives easier for senior citizens through special protective measures and beneficial schemes and projects.

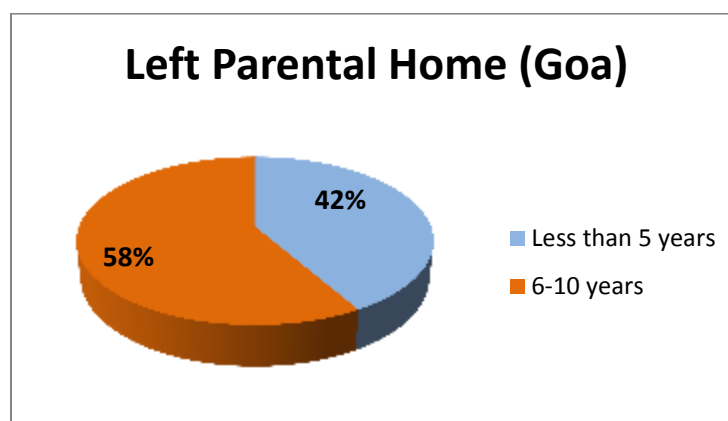
### **5.5 RESPONSIBILITIES TOWARDS PARENTS: SPECIFIC QUESTIONS TO PERSONS ABOVE 25 YEARS RESIDING AWAY FROM PARENTS – QUESTIONNAIRE-2**

The respondents for Questionnaire-2 were persons above 25 years who were residing away from parents. The respondents comprised of 50% male and 50% female. The purpose of this questionnaire was to inquire into the extent to which responsibilities towards parents are fulfilled by the respondents and to find out the living conditions of such parents and to what extent responsibilities towards parents are fulfilled. The respondents through Question 3 were asked to specify the time since they left their parental home, the response to which is categorized as follows.

**Table 47**

	Less than 5 years	6-10 years	More than 10 years
Goa	10	14	26
Kerala	8	16	26

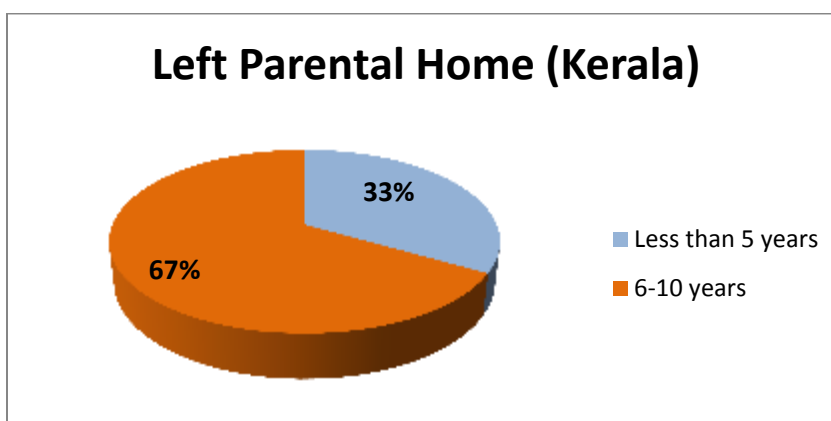
This data for Goa is represented in Figure 80.

**Figure 80**

The respondents comprise of 52% people who have left their parental home for more than 10 years, 28% who have moved separately since 6-10 years and 20% who has shifted for less than 5 years.

The data for Kerala is projected in Figure 81.

Figure 81



The respondents from Kerala also comprise of 52% who are residing away from parents for more than 10 years. Those who left their parental home since 6 – 10 years comprise 32% and 16% have left less than 5 years back.

#### ***Reasons for leaving parental homes***

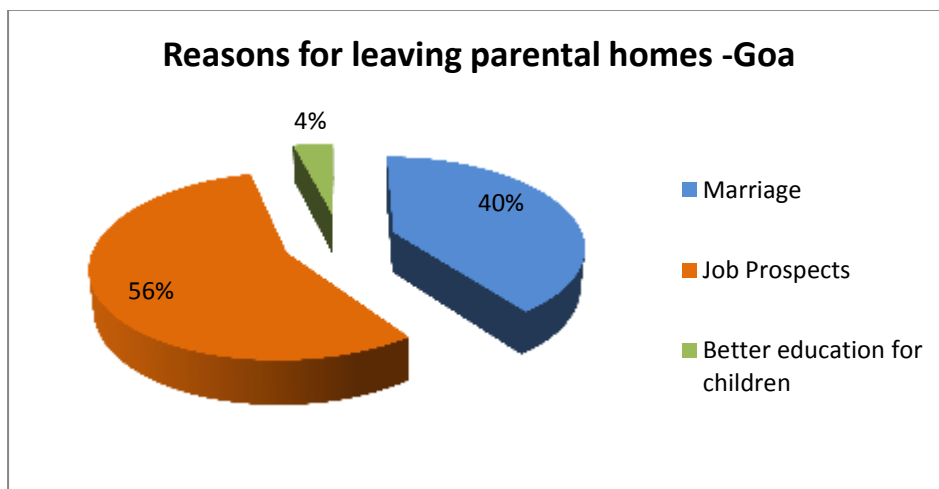
To identify the reasons which prompt people to leave their parental homes, Question 4 inquired into the same. The options given were, (a) Got married (b) Job Prospects, (c) Better living facilities, (d) Better education for children and (e) Prefer to stay separate. The respondents were also given the option to specify other reasons, if any. The response for each of the States is as follows.

**Table 48 – Reasons for leaving parental homes**

	Marriage	Job Prospects	Better living facilities	Better education for children	Prefer to stay separate
Goa	20	28	-	2	-
Kerala	23	23	-	-	4

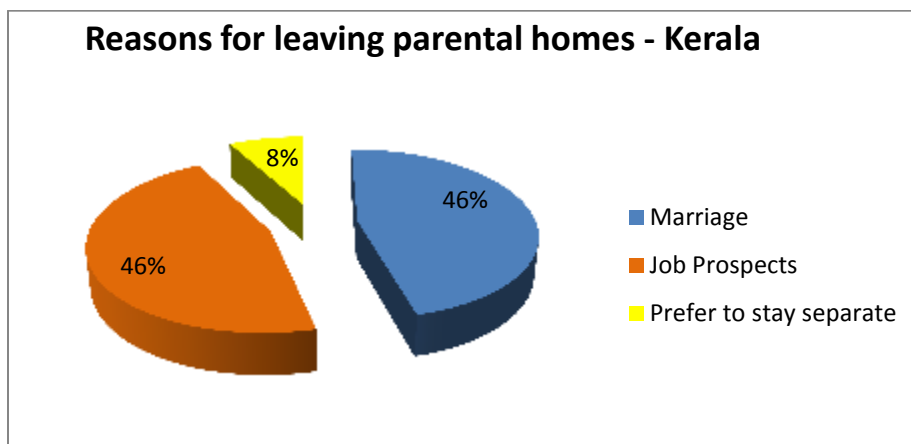
The reasons which prompt the “children” to leave their parental homes and start a separate residence can be understood from Figures 82 and 83 corresponding to each of the States.

**Figure 82**



56% respondents in Goa left their parental homes for better Job Prospects, 40% on getting married and another 4% said they moved for better education for their children.

**Figure 83**



In Kerala, 46% said they have shifted for job prospects, 46% after getting married and 8% said that they wish to stay separate.

The response of respondents from both the States shows that marriage and better job prospects remain the prominent reasons for withering away of the joint family. In Kerala there is a marked preference towards nuclear family as a choice, apart from other reasons. In the event of children not sharing the residence with their parents, apprehensions do arise as to the care and well-being of the parents in their old age. There are financial as well as emotional implications which are to be studied.

### ***Maintenance of Parents***

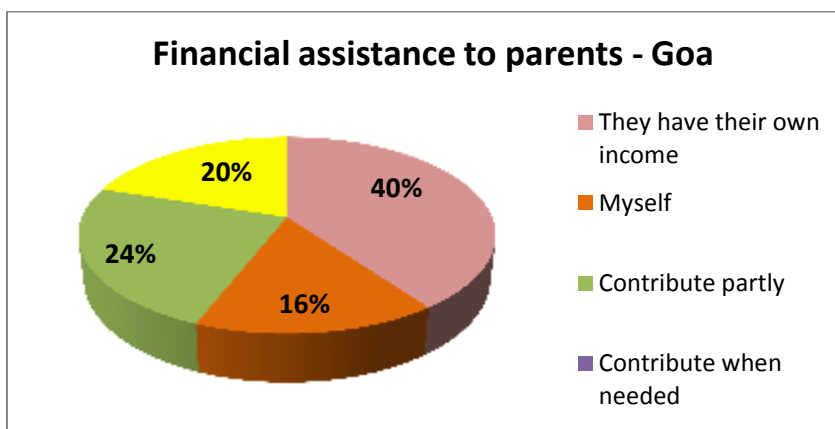
Question 5 inquired into the financial aspect and the assistance of children in meeting the expenses of their parents. The question was direct inquiring, “Who meets the expenses of your parents?” The options were (a) They have their own income, (b) Myself, (c) I contribute partly and (e) I contribute wherever there is a need. The responses are tabulated and studied as under.

**Table 49 – Meeting expenses of parents**

	They have their own income	Myself	Contribute partly	Contribute when needed	Did not answer
Goa	20	8	12	-	10
Kerala	30	2	7	6	5

The financial responsibility towards parents in the two states is studied separately in Figures 84 and 85.

Figure 84



It can be learnt from Figure 84 that in Goa, 40% respondents state that their parents have their own income indicating assistance from children as not required. 16% said that they meet the expenses of their parents and 24% said they partly contribute towards the expenses. Interestingly 20% of the respondents did not answer this question. It can be inferred from this that the 20% who did not answer probably are not even aware of how expenses of parents are met or it could be that expenses are met by siblings or someone else, the option for which was not contained in the question. In both cases, the relevant point is that they do not contribute at all towards meeting the expenses of their parents even when parents do not have sufficient income of their own.

Figure 85

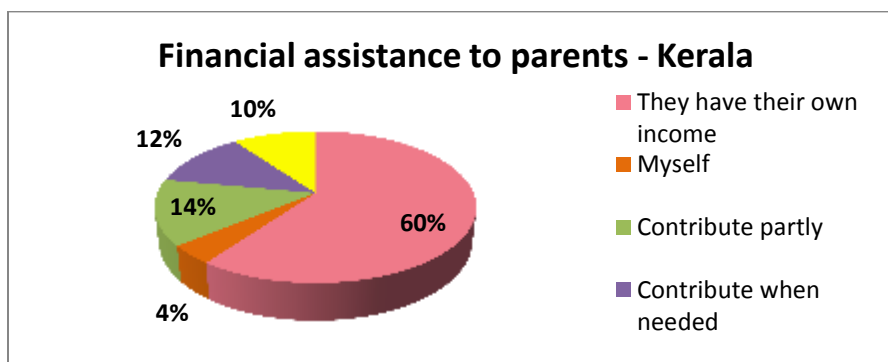




Figure 85 shows that 60% of the respondents from Kerala stated that their parents have income of their own which would mean that there is no need for the children to make any financial assistance. There is a 4% who meet their parents' expenses, 14% who contribute partly and 12% who contribute whenever there is a need. Here again there is a 10% who did not respond to this question. It is an indication of being unaware and uninvolved in the matters of maintenance and welfare of parents once the children leave their parental houses for job prospects, post marriage and otherwise. At the same time it is to be remembered that women who are not earning would find it difficult to provide for their parents out of their husband's income. That could also be a reason for the respondents not answering this question. Therefore, even though the MWPS Act does provide for obligation on the part of both sons and daughters equally, to provide maintenance for their parents, it is probably not taken up by many daughters who settle to their matrimonial houses and do not have own income.

***Emotional Bonding with Parents: The Care Factor***

To determine the emotional connectivity between the respondents who are residing away from parents few questions were included in Questionnaire-2 to check how often the respondents contact their parents and how often they visit them.

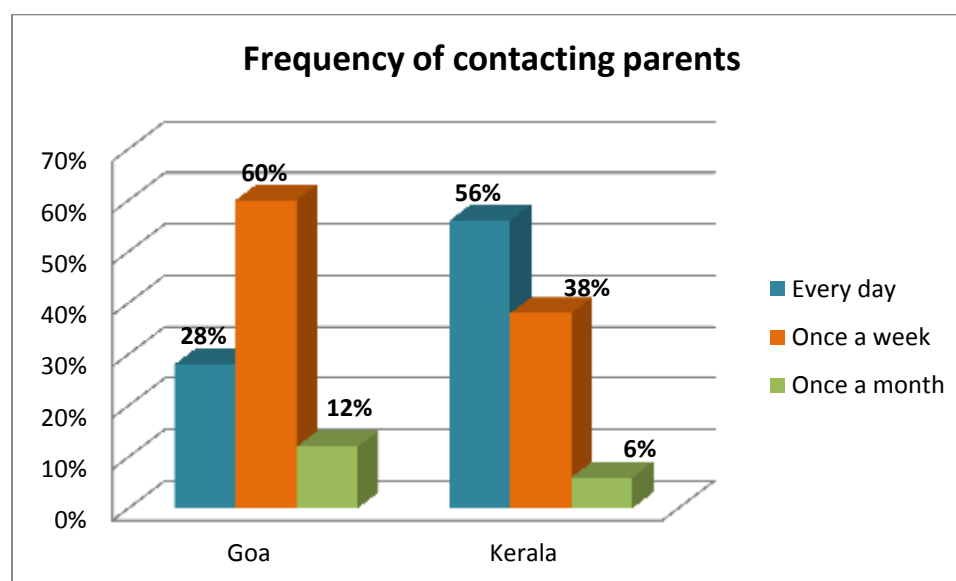
(i) Maintaining contact with parents

Question 10: "How often do you contact your parents?" the options were, (a) Every day, (b) Once a week, (c) Once a month, (d) Once in few months and (e) Only when there is a need. The response is shown in Table 50.

**Table 50 – Frequency of contacting parents**

	Goa	Kerala
Every day	14	28
Once a week	30	19
Once a month	6	3
Once in few months	-	-
Only when there is a need	-	-

The information is represented in Figure 86.

**Figure 86**

It is seen from Figure 86 that 56% of the respondents in Kerala and 28% in Goa contact their parents every day. This is evidence of a routine caring for parents and knowing each other's whereabouts. It is also indicative of a strong emotional bonding. This is seen more in Kerala when compared to Goa. When 38% in Goa said they contact their parents once

a week, so was said by 60% in Goa. In Goa 12% contact their parents once a month when the same is done by 6% in Kerala. It is a positive sign that family bonds do exist in spite of children migrating from parents and native places. However with the existing communication technology available, those who marked the option “Once a month” is probably lesser bonded with parents.

(ii) Mode of communication

It is also important to know whether the communication devices are used for this purpose. To ascertain this, Question 11 inquired, “How do you contact your parents?” Options were, (a) Phone call, (b) Video Call, (c) Text messaging and (d) Post letters. The data is shown in Table 51.

**Table 51**

	Goa	Kerala
Phone call	50	20
Video call	-	13
Text messages	-	2
Post letters	-	3

The data is studied through Figure 87

Figure 87

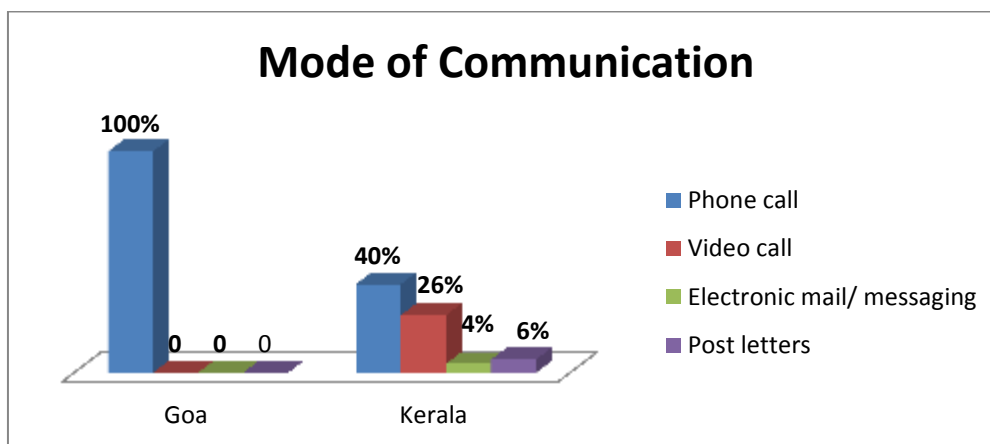


Figure 87 reveals the use of communication technology by persons to contact their parents and probably vice versa. The respondents in Goa have phone call as the only mode of communication to contact their parents as can be seen from the 100%. The respondents from Kerala appear to be using a variety of communication modes namely Video calls used by 26% and email/text messages by 4%, in addition to phone calls which is used by 40%. It is interesting to note that letters are sent through post to parents by 6% of the respondents. It can be inferred from this data that use of video calls, emails and text messages as modes of communication among others, indicate that the parents are acquainted with the use of these technology as well. At the same time, it can be inferred from sole use of postal media by 6% that there is a corresponding percentage of parents who are entirely excluded from the technological advancement in communication. Care is a factor which has as much an emotional aspect as the physical acts of care. When children are residing away from parents, even in far off places use of communication technology will enable the generations to keep the bond going and facilitate caring for each other. Therefore these methods are to be made accessible to the older persons.

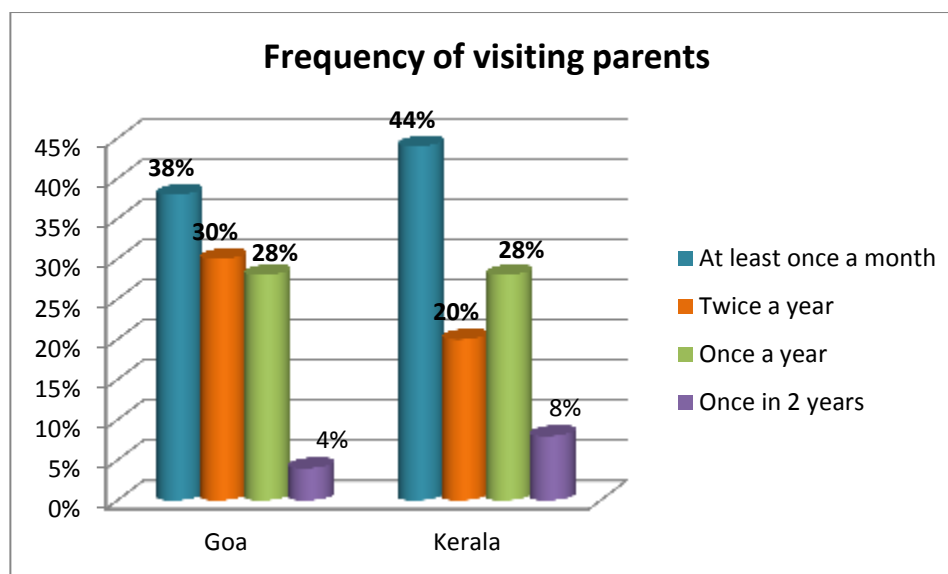
## (iii) Visiting the parents

Question 9 stated, “How often do you visit your parents?” the options were (a) At least once a month, (b) Twice a year, (c) Once a year, (d) Once in 2 years and (e) Once in more than 2 years. The response is shown in Table 52.

**Table 52**

	Goa	Kerala
At least once a month	19	22
Twice a year	15	10
Once a year	14	14
Once in 2 years	2	4
After more than 2 years	-	-

This response is represented in Figure 88

**Figure 88**

It appears from Figure 88 that all the respondents visit their parents atleast once in two years. 38% Respondents from Goa and 44% from Kerala said that they visit their parents atleast once a month. When 30% from Goa visit them twice a year, the corresponding percentage from Kerala is 20%.

In each of the States, 28% respondents said that they visit once a year. When 4% from Goa marked the option “Once in 2 years”, 8% in Kerala also did the same.

Care for the parents would include personally visiting them as well, especially if they are living alone. Except for the 4% from Goa and 8% from Kerala, all the respondents are seen to be visiting their parents minimum once within a year.

### **5.6 RESPONSIBILITIES TOWARDS PARENTS: SPECIFIC QUESTIONS TO PERSONS ABOVE 25 YEARS RESIDING WITH PARENTS – QUESTIONNAIRE-3**

Questionnaire-3 was addressed to persons above 25 years who are residing with parents (including parents-in-law) or other senior citizens. 50% of the respondents are male and 50% female. All the respondents are married. 60% live in their own houses and 40% live in their parental houses which includes matrimonial houses. The specific questions were aimed at ascertaining financial support to parents, care and compatibility resulting in emotional well-being of parents and senior citizens.

(i) *Maintenance of parents*

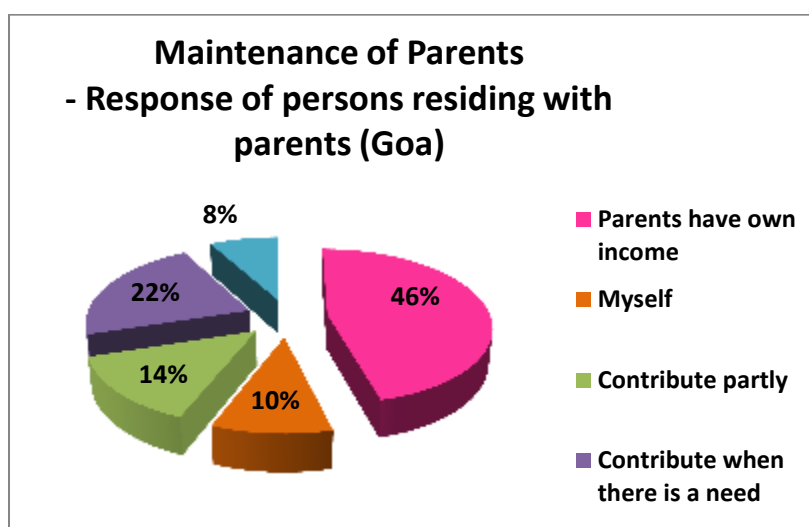
Question 4 probed into who meets the personal expenses of the senior citizen/ parent. The given options were (a) They have their own income, (b) Myself, (c) I contribute partly, and (d) I contribute whenever there is a need. The response is shown in Table 53.

**Table 53 – Maintenance of parents/ senior citizens: Response of persons residing with parents/senior citizens**

	Goa	Kerala
Parents have own income	23	35
Myself	5	15
Contribute partly	7	-
Contribute when there is a need	11	-
Did not answer	4	-

The information received is studied through Figure for 89 Goa and Figure 90 for Kerala

**Figure 89**

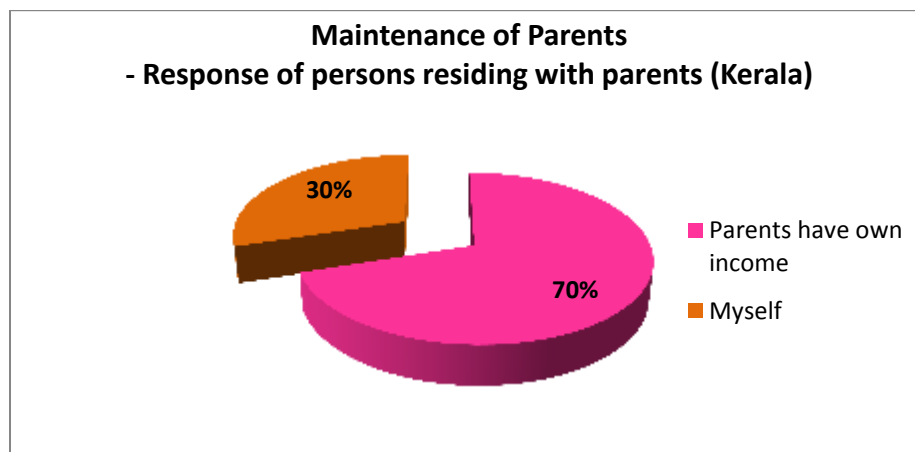


It can be understood from Figure 89 that parents are able to maintain themselves in case of 46% of the respondents. That would mean that in 54% of cases parents do not have sufficient income to maintain themselves.

In such instances, 10% are maintained by the respondents solely, 14% of them make part contribution and 22% contribute when there is a need.

There is another 8% of the respondents who did not answer the question indicating that they are not involved with the maintenance of their parents in any way, even when parents do not have sufficient income of their own.

**Figure 90**



In the case of respondents from Kerala, 70 % said that their parents have income of their own suggesting that the respondents need not provide for their needs. In the remaining 30% who do not have income are maintained by their children (the respondents).

**(ii) Provisions for entertainment**

Provisions for entertainment being an ingredient of welfare, Question 5 was aimed at finding out if the senior citizens are extended such facilities by the family. Question 5:



“How often do you take your parents/senior citizens for film/dinner/other entertainment?”

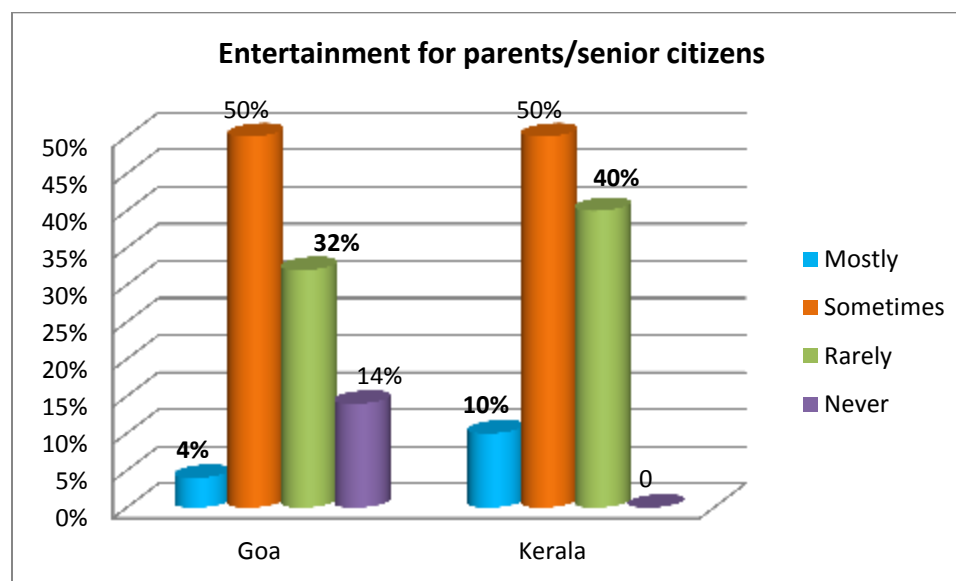
The options were, (a) Mostly, (b) Sometimes, (c) Rarely and (d) Never. The response is contained in Table 54.

**Table 54**

	Mostly	Sometimes	Rarely	Never
Goa	2	25	16	7
Kerala	5	25	20	-

The response is represented in Figure 91.

**Figure 91**



It can be understood from Figure 91 that 14% of respondents in Goa never take their parents out for any form of entertainment, 50% of them said they go out with parents sometimes, 32% said “rarely” and 4% said that mostly they go out with parents for some or the other form of entertainment. In Kerala 10% respondents said that they go out with

parents mostly, 50% seems to take them out sometimes and 40% said that they rarely go out together for entertainment purpose.

Thus in Goa 32% and in Kerala 40% have rare occasions of the family having any entertainment outside home together. Residing together in a house does not by itself make everyone feel cared for and included in the family.

For this togetherness and companionship is required among other factors. The family going out together with parents and senior citizens is an indicator of emotionally healthy family members as well. This is seen absent in 6% of the respondents' houses in Goa.

**(iii) Compatibility and Emotional well-being**

Emotional Well-being of the parents and senior citizens who reside with their children or relatives greatly depends on the acceptance and respect they receive within the family. To study about the emotional compatibility and well-being certain questions were included focusing on the acceptability of parents by children within the family.

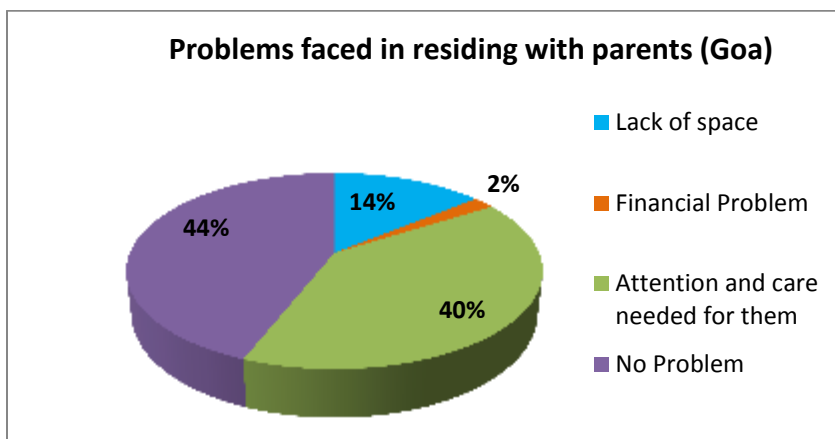
Question 7: Do you find any difficulty because of residing with your parents / senior citizens? The options to mark were, (a) lack of Space, (b) Finance problem, (c) Attention and care needed for them and (d) No Problem. The response is tabulated as follows.

**Table 55**

	Lack of space	Financial Problem	Attention and care needed for them	No Problem
Goa	7	1	20	22
Kerala	-	-	10	40

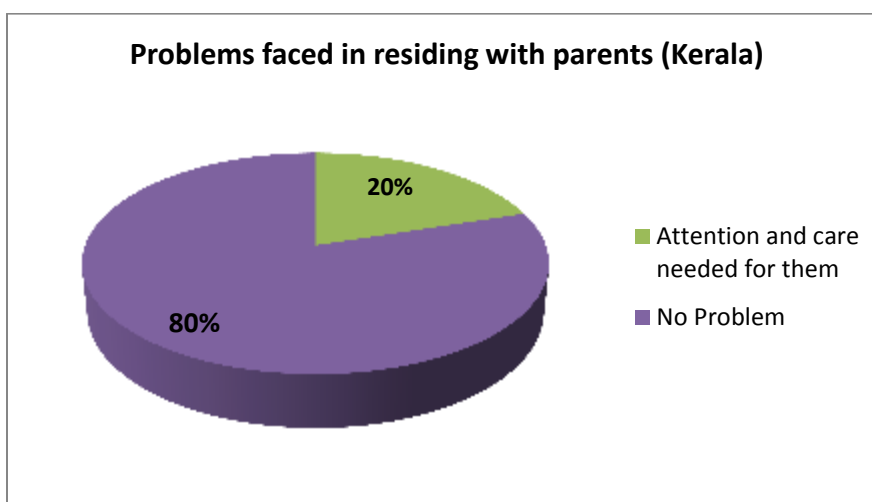
The data is represented in Figure 92 for Goa and Figure 93 for Kerala

**Figure 92**



When 44% endorse that they do not face any problems because of residing with parents, 40% said that the attention and care needed for the parents is a problem faced by them. Financial problem is stated by 2% and 14% said that lack of space is a problem. These are indicators of growing friction which could probably manifest into instances of abuse or neglect after long term stay.

**Figure 93**



The respondents in Kerala have identified only one problem, of attention and care for parents/ senior citizens, which is said by 20%. The other 80% said that there is no problem. The opinion of 20% in Kerala and the 40% in Goa who said that attention and care needed for senior citizens is a problem they face because of residing with parents, is appreciable in a way because the realization that older persons need attention and care is a positive aspect. However when that is seen as a problem by the children, it points towards the need for counseling and supportive systems for the care givers.

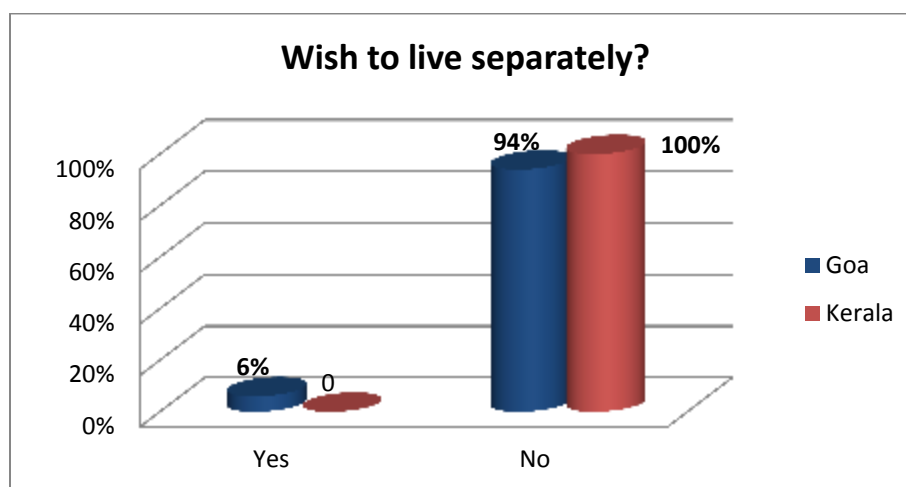
Question 9: Do you wish your parents/senior citizens live separately? The response for this question is in Table 56 below.

**Table 56 – Desire that parents/senior citizens live separately**

	Yes	No
Goa	3	47
Kerala	-	50

The data is represented in Figure 94.

Figure 94



It can be seen from the figure that 100% respondents in Kerala and 94% in Goa said that they do not wish their parents to live separately. Only 6% in Goa said they wish so. This is a sign of incompatibility between the children and their spouses and the parents. This is capable of resulting into disrespect, discrimination, neglect and abuse towards such senior citizens.

Question 11: Do you think that your parents / Senior Citizens are happy living with you?

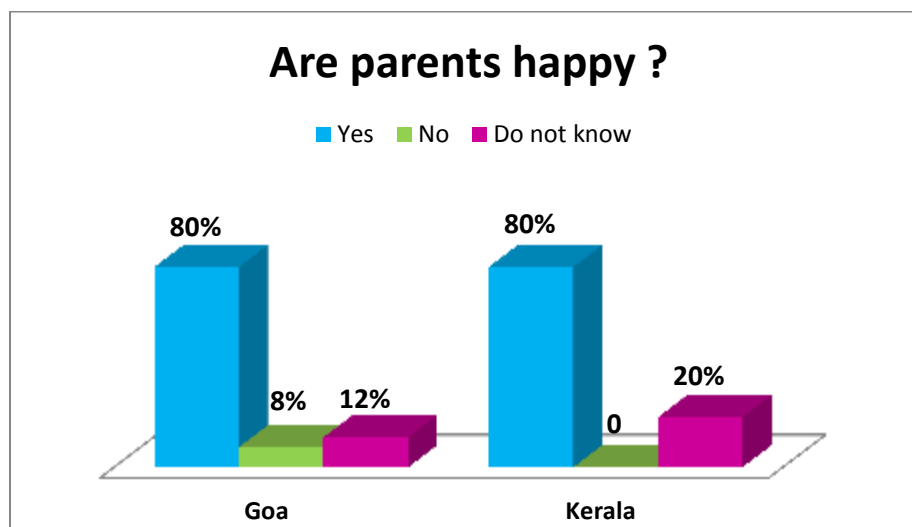
The response to this question is contained in Table 57.

**Table 57 – Whether parents are happy: Response of Children**

	Yes	No	Do not know
Goa	40	4	6
Kerala	40	-	10

The response is studied through Figure 95

Figure 95



It is surprising to see that 8% of the respondents in Goa think that parents are not happy living with them. This is a clear evidence of open hostility or dislike existing between the parents (including parents-in-law) and their children (including their spouses). 80% in both the States said that parents are happy. 12% in Goa and 20% in Kerala expressed that they do not know if their parents are happy living with them or not. It can be inferred that 20% of the respondents in each of the States do not think that it is entirely a happy arrangement for both parents and children to reside together.

**(iv) Involvement of parents in decision making at homes – The Participation Factor**

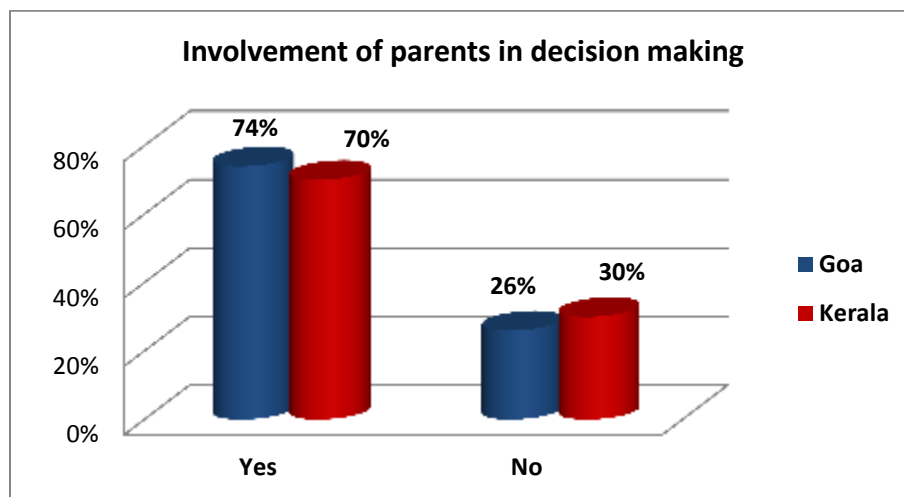
Question 14 was aimed at ascertaining whether the parents have a role in decision making regarding home matters. The Table given below shows the response on this question.

**Table 58 – Consultation with parents**

	Yes	No
Goa	37	13
Kerala	35	15

The information is represented in Figure 96.

**Figure 96**



It is understood from Figure 96 that 74% of the respondents in Goa and 70% in Kerala opine that parents do have a say in decisions regarding home matters. However 26% and 30% in Goa and Kerala respectively said that parents are not involved in decision making regarding home matters. This shows that there are more than 25% of parents who reside along with their children, are probably taken care of regarding all material needs, yet do not have a say in matters regarding home. This would possibly create in the older persons a feeling of self-pity and also being marginalized at one's own homes.

**(v) *Quality time with parents: The Care Factor***

Living together in one house would not suffice the care required for the parents and older persons, if the children do not spend sufficient time with parents/ Senior Citizens. Question 13 inquired how much of quality time does the respondent spends with his/her parents or other senior citizens at home. The options were, (a) Some time every day, (b)

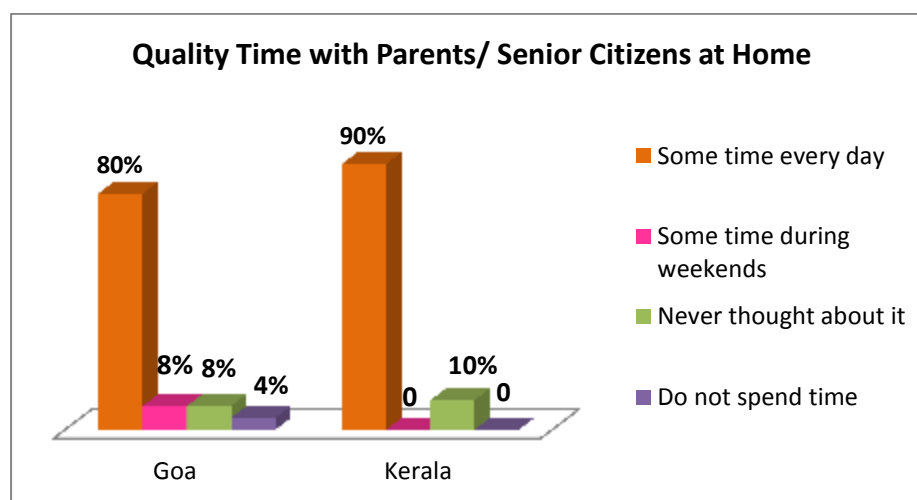
Some time during weekends, (c) Never thought about it and (d) Do not spend time. The responses received in detailed in Table 59.

**Table 59 – Quality time with parents**

	Goa	Kerala
Some time every day	40	45
Some time during weekends	4	-
Never thought about it	4	5
Do not spend time	2	-

The quality time spent that the respondents spend with their parents at home can be analyzed through Figure 97.

**Figure 97**



It is positive to note that 80% of respondents in Goa and 90% in Kerala said that they spend some quality time every day with their parents. In Goa 8% said that they spend some quality time with parents during weekends and 4% said that they do not spend any



time at all. This is an indication of rifted human relations in some houses where emotionally caring for parents appears to be totally absent. Interestingly, 8% in Goa and 10% in Kerala said that regarding quality time with parents, they have never given it a thought. This response shows there are people who do not realize that they need to spend some quality time with parents and other older persons at home. Sensitization on these matters looks to be the need of the hour.

#### **5.7 ASPIRATIONS FOR OLD AGE: SPECIFIC QUESTIONS TO PERSONS BETWEEN 18-59 YEARS – QUESTIONNAIRES - 2, 3 AND 4**

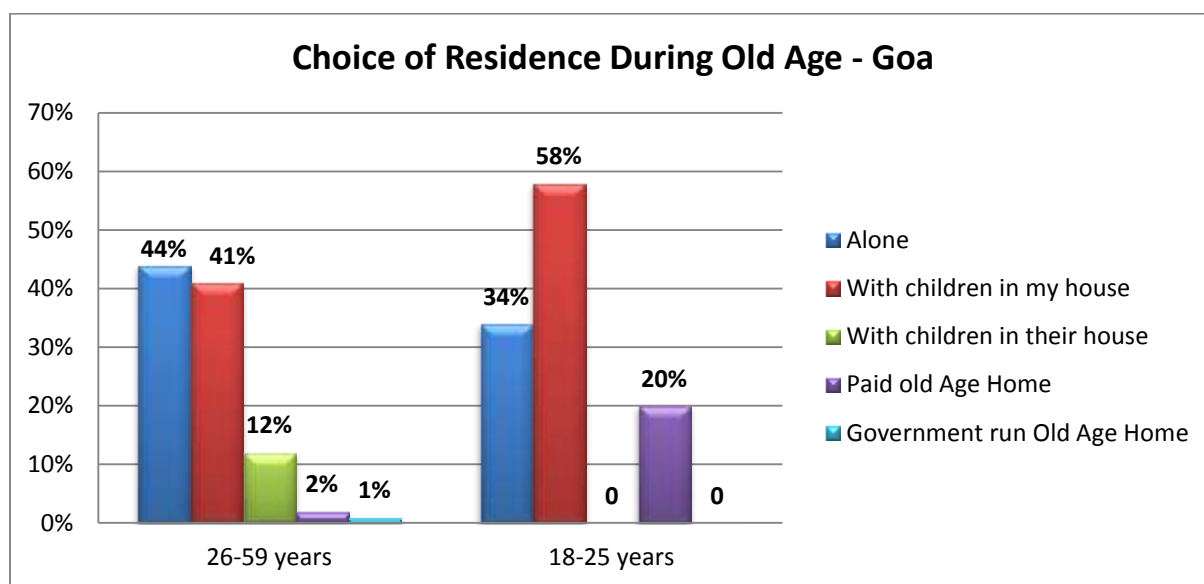
##### ***(a) Choice of residence***

Old age, being an inevitable facet of everyone's life, it is important to take stock of the aspirations and needs of the beneficiaries, while designing facilities and schemes. Preference of residence is one such aspect to be considered. Question 24 of Questionnaires-2&3 and Question 9 of Questionnaire-4 dealt with this matter. The respondents were asked where they would like to stay when they become old. The options given were, (a) Alone (or with spouse), (b) With my children in my house, (c) With my children in their house, (d) In a paid Old Age Home which is well-maintained and (e) In a government run Old Age Home. The response is contained in the Table 60 given below.

**Table 60**

		Alone	With children in my house	With children in their house	Paid old Age Home	Government run Old Age Home
26-59 years	Goa	44	41	12	2	1
	Kerala	74	21	2	3	-
18-25 years	Goa	17	29	-	10	-
	Kerala	30	10	10		

The response is studied through graphical representation in Figure 98.

**Figure 98**

It can be deciphered from Figure 98 that in Goa 58% of the respondents in the Age Group 18-25 years and 44% in the Age Group 26-59 years, aspire to live in their own houses with their children, when they become old. This is a strong pointer towards the tendency among youngsters to hold on to the joint family system.

34% youngsters and 44% middle age group said they want to reside alone. That would mean that their choice itself is to live alone, which would mean self-sufficient support systems are to be developed, so that senior citizens of tomorrow can live alone as a matter of happy choice without having to give up the quality of life.

There is a 12% among 26-59 years who wish to live with their children in their children's houses. 20% of the 18-25 years group and 2% of the 26-59 years group said that they prefer to live in a paid old age homes with all facilities. This would mean that the private establishments will grow in future to cater to such requirements. The service providers need to be then brought within the purview of legal regulations starting with registration itself.

Takers for government run old age homes is minimal, merely 1% from 26-59 years group, implying that it is seen as a misfortune probably to live in such an old age home which is the last resort for the indigents. Also it points towards the need to relook at governmental planning for the older persons to include public private participation in such ventures drawing from each the beneficial aspects, thereby making affordable, accessible and safe places of residence for the later generation to spend the later years of their lives.

Figure 99

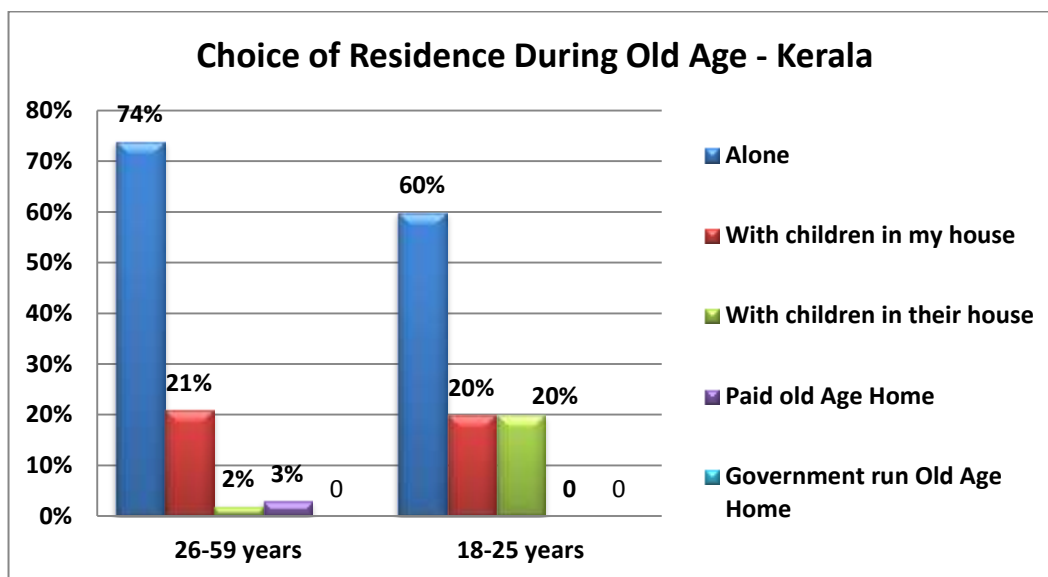


Figure 76 reveals that in Kerala, the majority of respondents amounting to 74% in 26-59 years group and 60% in 18-25 years group wish to live alone during their old age days. This is a strong sign towards further withering away of the joint family system, leaving to each one's own responsibility. In such cases, maintenance of the senior citizens alone can be insisted through a legal obligation. Their well-being becomes a State concern, as the State would have to devise means and methods to provide facilities assuring convenient living for senior citizens. This would mean making the infrastructure and facilities age-friendly. Moreover that is what The United Nations Principle for Older Persons, 1991 call for, that is, "A Society for All Ages".

21% and 20% of each of the groups shows continued affinity to joint family system by saying that they wish to live in their own houses with their children. When 2% of middle age group said that they prefer to live in their children's houses with them, a relatively higher proportion of 20% of the younger age group has also opined the same. Willingness to shift residence is a trend that would be supportive of the migration of children for

various reasons. Emotional dependency is probably the factor behind this preference, for which assurances is impossible from any side. Only 3% opted for paid old age homes, that too only from 26-59 years group. There are no takers for government run old age homes.

***(b) Preparation for Old Age: Financial***

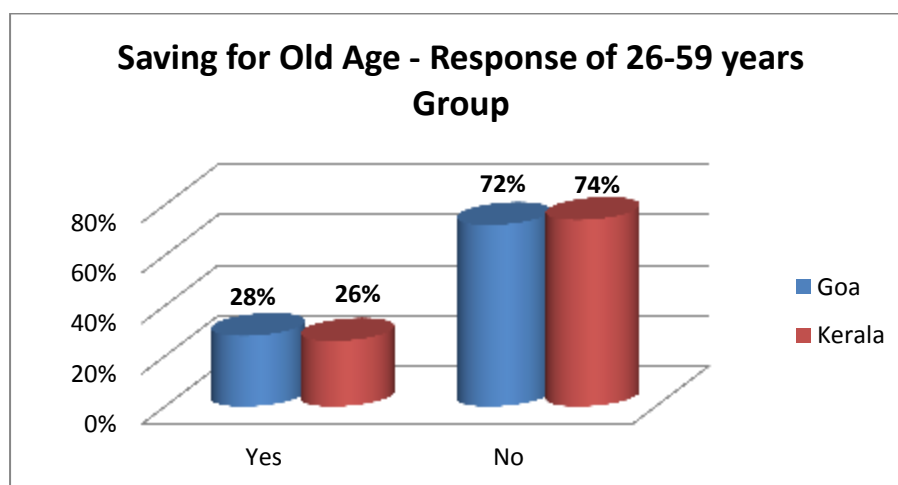
Old Age is not a phase of life which happens overnight. It is natural and most expected, thereby casting obligation of individuals to plan and make investments to meet the later part of their lives. To ascertain how far the individuals have performed this preparatory task, a question was included as Question 25 of Questionnaires-2&3. It inquired, “Are you making any provision for your old age in terms of money?” The response is tabulated in Table 61.

**Table 61**

		Yes	No
26-59 years	Goa	28	72
	Kerala	26	74

This can be studied through Figure 100.

Figure 100



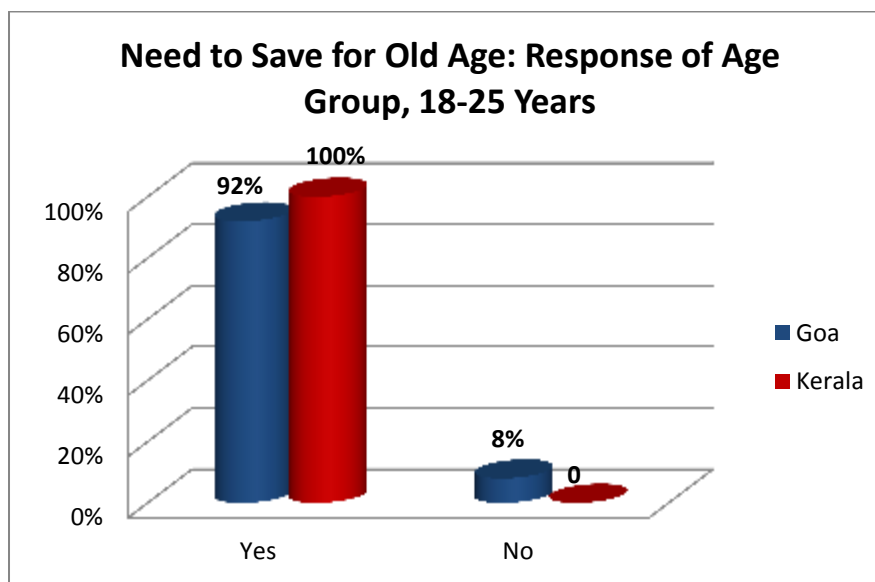
It can be seen from Figure 100 that majority of respondents, that is, 72% in Goa and 74% in Kerala have not started making any provision for old age in terms of money. That means only 28% on Goa and 26% in Goa had started preparing for old age in terms of money. This suggests improved savings schemes and awareness on the need to embark on it be built into the mindset of the population.

With the same purpose Question 10 was included in Questionnaire-4 which reads: “Do you think every person should make any provision for his/her old age in terms of money?” Response can be seen in Table 62 and represented for analysis in Figure 101.

Table 62

		Yes	No
18-25 years	Goa	46	4
	Kerala	50	0

Figure 101



When asked on the need to make savings for old age, 100% of respondents of 18-25 years in Kerala and 92% in Goa opined in the affirmative. Only 8% in Goa has interestingly marked a “No” for this question, throwing light on the impracticable approach to life ahead, which needs to be changed and governmental programmes should hold a pivotal role in bringing about this change.

## 5.8 CASE STUDIES, INTERACTION AND OBSERVATION

Several case studies were conducted as part of the research, coupled with interaction with different stake holders at the various National and State Level Seminars on the Rights of the Elderly. The information received therefrom along with personal observation of the researcher is included here under. The names in the case studies (i) to (v) are changed to protect the privacy of the persons concerned.

(i) Case 1 – Serefina, Goa

Serefina is a 74 years old widow, a retired government servant living alone in her own house. She suffers from partial immobility of limbs which makes it difficult for her to move out on her own. Her two daughters are living abroad and visits her once in few years and they stocks for her the required provisions with longer expiry dates. Her son lives in Goa and visits her at times and supplies her with soon perishable provisions and grocery.

She meets all expenditure required for her living. She cooks on her own and a domestic help comes to help with cleaning. Her greatest difficulty is travelling out and getting her personal things done. She avails of auto rickshaw service to travel out once a month to collect her pension.

But she says that as rickshaws are scarce, it is very difficult to hire a rickshaw as and when she wants. There are no helpline numbers or service provider stations to provide such facility. There are a few rickshaw drivers who have given her their phone numbers to call for one, but ultimately there is no assurance if they will turn up or not. As a result of this even a small but very unavoidable matter like a hair-cut gets delayed for months.

A nearby pharmacy had offered her their services by delivering medicines she require on a phone call. The gravest of her problems is loneliness and fear of being alone, especially at night. She feels lonely most of the time and her only communication is with her children who call her once in a while. It was observed that self-worth is very scanty in her and she is indecisive and insecure.



Serefina's case is an example of many like senior citizens who are financially independent but physically unable to meet their out of home requirements on their own. Supportive services offering bill payment, purchases and transportation would be of immense assistance to such people. Social Workers or Police Helplines who would visit such people or at least make regular phone calls to inquire about the safety would help to do away with the fear and anxiety.

(ii) Case 2 – Esmeralda, Goa

Esmeralda is a 73 year old woman living with her husband aged 80 who is almost bedridden. She is an energetic woman and in good health. She has income of her own from property and is financially sound. Her son who is unmarried has come from abroad and is residing with her. She has incompatibility issues with her son, and wishes that he lives separately. He does not take heed to her interest and has settled himself at his parents' apartment. She finds it difficult to cook for him also and also agree to his way of life.

The case of Esmeralda is almost similar to that of *Justice Santhi Swarup Dewan*, retired Chief Justice of the High Court of Punjab and Haryana<sup>5</sup>. The petitioner in that case had applied to the High Court to devise a special cell to deal with cases where parents are traumatized by their children.

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<sup>5</sup> *Justice Shanti Sarup Dewan, Chief Justice (Retired) and another v. Union Territory, Chandigarh and others* 2014 (5) RCR (Civil) 656. The case is discussed in detail in Chapter IV.

(iii) Case 3 – Savithri, Kerala

Savithri is 97 years old widow, bedridden and almost senile. She had considerable property and wealth which is taken over by her children. She lives in her eldest son's house and is living a vegetable existence. There is a home nurse to take care of her, but the nurse is very irregular and does not come for days together. The family keeps her locked in a room and finds it difficult to take care of her whenever the home nurse absents from duty. They ration her supply of drinking water as she urinates frequently and involuntarily. It is not clear if she needs any emotional support as she is unable to comprehend any need except that of water to drink. Her other children are aware of her state but nobody volunteers to take her over and all of them feel that the eldest son is duty bound to keep her as he was given a major share in her property. The eldest son is ready to pay for meeting the expenses of her care but is personally unwilling to do so. According to them, getting a home nurse permanently is very difficult due to non-availability.

(iv) Case 4 – Issac, Kerala

Issac, a retired medical practitioner and professor, is 88 years old and lives in his own house with his son and family. After his wife died, he is very lonely and is confined to home. He has his pension and is not financially dependent on his son. However he is physically and emotionally weak and is not able to live on his own. He is not treated with respect at home and is not getting food as per his likes. He is subjected to verbal abuse by his daughter-in-law. He does not know a way out and survives.

(v) Case 5 – Padma, Kerala

Padma is a 70 year old widow, retired professor living in her house with her married daughter and family. She is healthy and independent in all ways. She was expected to take care of her grandson when he comes back from school in the evening. The child wanted to watch his cartoon shows in the television making it inaccessible to Padma. She decided to be independent and constructed a studio apartment on the top floor of her house and moved there with all necessary amenities. Daughter's protest were lovingly but sternly discarded when Padma ventured on her Manasarovar pilgrimage. She made it clear to her daughter that she would help in taking care of the grandchild as and when she could. However the daughter had to make independent arrangements for her son and not rely exclusively on her mother. They are living happily in the same house. Padma makes frequent journeys and lives her life, but continues supporting her daughter in all ways possible.

(vi) Case 6 - Sudhi (Care-giver Son)

Sudhi, aged 47 years is a senior journalist and is the care giver for his father aged 78, who has dementia. His parents were living in their house when his father showed severe attacks of dementia. Knowing that his mother would not be able to take care of the patient, he shifted them to an apartment in his neighbourhood so that he could take more care. When attacks become severe, it is extremely difficult to handle as the patients hands need be tied to avoid self-infliction of harm. Being forced to do this creates lot of emotional trauma on the care giver son. Even after a couple of years, Sudhi finds it difficult to adjust to the absolute memory loss of his father and has become emotionally

fragile. His major difficulty is related to availing leave from work, on account of this. He expressed the need to have parental care leave in cases like this.

(vii) Experience shared by Justice Cyriac Joseph, Acting Chairperson, National Human Rights Commission<sup>6</sup>

Justice Cyriac Joseph's mother has dementia and needs constant care. Neither he nor his siblings are able to locate themselves to the parental house due to job requirements. Mother cannot be shifted to their residences as she cannot cope with unfamiliar surroundings. They had thought of keeping her in an old age home with all care and facilities; however refrained from it thinking of the social stigma and condemnation they would face for leaving their old mother in an old age home. They employed sufficient number of home nurses and other maids to take care of their mother in her own residence. Justice also said that he was able to make this arrangement for his mother because he could afford it and expressed concern on the plight of those who could not.

(viii) Information Collected through Interaction Method

The Additional Director General of Police, State of Kerala<sup>7</sup> shared her experience with implementation of *Janamaithri* Police and its role in effectively dealing with offences against senior citizens. A Register of Senior Citizens is maintained at all Police Stations. The *Janamaithri* Police visits the elderly who are living alone at regular intervals. This helps in prevention of offences and instills an element of assurance in the minds of the people. Public perception of police has undergone a change with the launch of

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<sup>6</sup> Justice Cyriac Joseph shared his experience at the National Seminar on the Rights of Elderly Person held at National law School of India University, Bangalore on 11<sup>th</sup>& 12<sup>th</sup> of February 2016, while acting as moderator for the panel discussion on "Old Age – A Blessing or Curse?" on 12<sup>th</sup> February 2016.

<sup>7</sup> Dr.B.Sandhya, IPS

*Janamaithri* Police; this model is followed in the States of Orissa and Karnataka. In Kidangoor Police Station in Thiruvananthapuram District, an old lady was missing. The beat SI searched the Register of Migrants and identified that a migrant is also missing at the same time. The search for the migrant led to the dead body of the old lady as well and immediate arrest was made. Such vigilant action on the part of the police and keeping records of migrant and home servants of the senior citizens helps in preventing further offences.

The Special Public Prosecutor, State of Kerala<sup>8</sup> is of the opinion that lawyers can play an effective role in mentoring the clients and avoiding unnecessary litigation as well as imbibe on them their legal obligation to take care of their parents. He shared his experience of convincing a client who wanted to file a case against his brother and deny the responsibility of providing maintenance to his father. The advocate mentored the client and convinced him about the cost involved in litigation and the futility of wasting money that ought to be spent on maintaining one's parents.

## **5.9 FINAL OBSERVATION**

After having analyzed the responses to the four questionnaires and the case studies, the researcher has come to believe, at the outset, that "care" of the older persons is an enigmatic term, varying with the perspectives of the beholder. The data collected has been analyzed by testing it against the hypothesis framed. The study was initiated under two major premises that the rights of older persons are not adequately protected in India and that the MWPC Act 2007 does not satisfactorily incorporate the United Nations

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<sup>8</sup> Advocate Mohanraj Gopalakrishnan

Principles for Older Persons, 1999. The empirical study was conducted with the purpose of verifying whether the legislation and governmental programs satisfactorily address the challenges to the full enjoyment of the entitlements specified in the United Nations Principles for Older Persons. The questions were framed with the purpose of identifying the problems and challenges associated with the independence, participation, care, self-fulfillment and dignity of older persons and thereby to verify whether the challenges of poverty, abuse, discrimination and lack of specific measures and services are satisfactorily addressed by the existing legal paraphernalia.

Financial independence among senior citizens is more for men compared to women in Goa. However in Kerala, there is less disparity between men and woman senior citizens regarding possessing own income. Financial dependency is more on the spouses and less on children and relatives. Financial independence is not solely based on the existence of source of income for a person, but it also includes the freedom to spend as per one's decision. All those who had income did not have the freedom to always spend their income as per wish. Therefore financial independence of the senior citizens is a combination of empowerment and means of income. Almost half of the respondent senior citizens in Goa who did not have own income, were availing of welfare schemes, mostly Dayanand Social Security of the Government of Goa. However, Welfare schemes of the government are not known to most of the senior citizens, hence there is a need to extend awareness to hundred percent of the population. Medical insurance policies are held by only less than a third of the senior citizens. There is a need to popularize the concept of medical insurance as well as make available policies which are affordable and open to senior citizens.

Living arrangements including access to food, clothing and bedding were appropriately met for most of the senior citizens. However healthcare needs tremendous improvement. Entertainment factor in Kerala is mostly good, but in Goa it is not given much importance. Single women with no income and dependent on relatives were found to be least satisfied with the living arrangements.

A considerable proportion of senior citizens are living alone in their houses, thereby calling for security vigil on such cases to ensure safety to life and property of Senior Citizens. In Kerala a marked change from joint family concept towards nuclear family is seen among senior citizens who prefer to stay alone instead of with children. Most of the senior citizens are involved in household activity, but expressed great difficulty regarding payment of bills, and shopping for essentials, because of climbing steps, waiting for long in the queue and inappropriate transport. About one half of them feel that they do such work out of obligation and since there is no option. This points out towards the need to design support systems for senior citizens. Separate queue and seating facility for senior citizens is scarce at public utility counters. Facilities in connection with public transport, both road and rail was analyzed and found to be grossly dissatisfactory and unsuitable for use by older persons.

Regarding participation in society, an interesting finding is that senior citizens who are members of any organization, association or group do have a greater self-worth and feeling of self-fulfillment. They also feel less lonely when compared to others. However the percentage of persons so involved with associations/groups is less. There is also a lesser percentage of senior citizens who are almost marginalized from societal life as well

as at home. Independence of senior citizens shows a decline because of the feeling of unable to do routine things without help and particularly go out of home unaccompanied.

Self-assessment of health shows higher grades, but there is lesser number of older persons going for routine health check-ups. Healthcare is seen confused with sickness and visit to health centres is only when persons fall sick.

Protection of dignity of the senior citizens was analyzed as a component of mental well-being, which is found to be a very perspective-based variable. The percentage of persons who feel that they are not treated with respect and that their dignity gets compromised at home is greater than those who feel they are not subjected to any torture or inhuman treatment. Dignity and freedom from abuse being non-derogable and basic human rights, individual perceptions should not be allowed to waive it. Sensitization programs and strict liability for abuse is the need of the hour. Elder abuse and discrimination of older persons do take place is evident from the analysis.

This goes to prove that the legislation as well as the governmental programmes for senior citizens do not satisfactorily address the challenges to the full enjoyment of human rights by older persons namely poverty; violence and abuse; discrimination and lack of specific measures and services. Thus Hypothesis 3 of the researcher stands proved.

Opportunity for income generation activity is heavily desirable as a good percentage is willing to take up employments if opportunity be. Interest for computer literacy also needs to be sapped and training in online transactions is required. Awareness of the MWPSA Act 2007 do exist, but limited to the provision of maintenance from children. Awareness of other entitlements needs to be effectively reached out to the masses.



Old Age Homes are rejected or seen as a last resort only if there is nobody to take care of the senior citizen. In the case of Old Age Homes for one's own parents, a blanket refusal is shown in Kerala and there is an amount of uncertainty regarding it in Goa. At the same time there is a small percentage that prefers to live in a paid old age home with good facilities. A similar disapproval is expressed for Day Care Centres as well, depicting a probable social stigma associated with it, as it is for Old Age Homes. The concept of Day Care Centres and its positive effect on participation of elderly in creative activities as well as the centres being antidote to loneliness quotient and inspiring self-worth need be popularized with clarity.

It was found that children leave their parental homes mainly for job prospects and as a post marriage arrangement. This is especially so in the case of daughters as they move to their matrimonial homes. All this is inevitable and joint family system is withering away with such migration. However caring for parents continue to play a lead role because of the communication technology making it possible to contact parents on a daily basis and more effectively. The use of this technology requires the basic user know-how which sometimes is not available to the older persons. In the case of children who reside with their parents, mostly they say that they spend good amount of quality time with their parents. There are however also lesser instances of dislike in living with parents, lack of emotional bonding and non-enquiring into the happiness of the parents or senior citizens. Maintenance of parents is mostly provided by children but not entirely.

Public perception on Old Age revealed that mostly it is seen as an age to be spent in leisure, however there is a considerable section who believes that even in old age, parents should be discharging supportive duties to children. Mostly the general public views

older persons as capable of making positive contribution to society and at homes. There is unanimous agreement on the statement that special protection and benefits are required for senior citizens. Even though the younger generation agree that investment to meet old age needs is mandatory to all, a great proportion of the middle age group have not started any such savings or preparation.

Responsibility of taking care of the elderly is primarily on the family. However in the event of migration of children as well as personal choices of parents as well as children to stay separately and independently has resulted in a large number of senior citizens living alone. Irrespective of whether the older persons live with others or not, it is incumbent on the governmental machinery to design facilities and infrastructure adaptable to all persons, thereby ensuring a society for all ages. The legal system does not satisfactorily cater to the facilitation of independence, participation, care, self-fulfillment and dignity of the older persons. The existing government programs and the legislation do not satisfactorily address the challenges faced by the older persons. Role of State in building a society suitable for all persons would require a great amount of public-private participation, family and community care blended in reasonable proportions and the lead be effectively taken by the government.

With the analysis and findings, the research furthers to the conclusion and suggestions, which are contained in the next chapter.

## 6. CONCLUSION AND SUGGESTIONS

“Age, with his stealing steps,  
Hath clawed me in his clutch.”

- Shakespeare, *Hamlet* (5.1.73-74)

Old age is not a ‘disaster’ that affects only people on the other side of the globe. It is rather an inevitable facet of everyone’s life. As a person advances in age, due to physiological and psychological incapacities that may develop with old age, he/she may need support from family and community for a dignified sustenance. The weakening of the traditional family support systems has resulted in older persons being left alone to fend for themselves. To the natural weakening of the body and sometimes of the mind which occurs with old age, are the added disadvantages like stereotyping, discrimination, abuse and deprivation of opportunities by the society that put them in an even more incongruous position, often leading to marginalization<sup>1</sup> of the older persons. This results in violation of the invaluable human rights, of the older persons including rights to security, participation, health care, adequate standard of living, freedom from torture or cruel, inhuman or degrading treatment and dignity.

The conceptual basis of the human rights of older persons and the international efforts for ensuring the same was studied, the crux of which is detailed below.

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<sup>1</sup> The term “Marginalise’ means to relegate to an unimportant or powerless position within a society or group. People are considered to be socially excluded if they ‘are prevented from participating fully in economic, social and civil life and/or when their access to income and other resources (personal, family and cultural) is so inadequate as to exclude them from enjoying a standard of living that is regarded as acceptable by the society in which they live. See GALLIE D AND PAUGAM S, *Social Precarity and Social integration*, REPORT TO THE EUROPEAN COMMISSION (Directorate-General, Employment, Brussels 2002), available at [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_162\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_162_en.pdf) [accessed 14 March 2015].

## 6.1 INTERNATIONAL EFFORTS TOWARDS PROTECTING THE RIGHTS OF OLDER PERSONS

Human rights that are spelt out in the Universal Declaration of Human Rights, 1948 are inherent, inalienable and universal, and do not wither away with the age of a person. On the contrary as persons advance in age, they require additional supportive backdrop against which alone their human rights become meaningful. The international human rights instruments<sup>2</sup> make scanty mention about the specific rights of older persons.<sup>3</sup> However the obligations set out in the core human rights documents are available equally to older persons as well. From a perusal of the international human rights instruments, the study found that the rights relating to the older persons stem from the twin principles namely, (a) Principle of inherent human dignity<sup>4</sup> and (b) Principle of non-discrimination.<sup>5</sup>

The impact of population ageing<sup>6</sup> raised the apprehension of the United Nations as well as of Member States. General Assembly passed numerous resolutions on the subject with

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<sup>2</sup> See UNITED NATIONS CHARTER, 1945; UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948; INTERNATIONAL CONVENTION ON CIVIL AND POLITICAL RIGHTS, 1966; INTERNATIONAL CONVENTION ON ECONOMIC SOCIAL AND POLITICAL RIGHTS, 1966; CONVENTION ON ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN, 1979; CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES, 2008; *But see* INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF MIGRANT WORKERS AND THE MEMBERS OF THEIR FAMILIES, 1990; CAIRO PROGRAM OF ACTION, 1994; COPENHAGEN DECLARATION ON SOCIAL DEVELOPMENT, 1995; COPENHAGEN PROGRAM OF ACTION, 1995; SECOND UNITED NATIONS CONFERENCE ON HUMAN SETTLEMENTS- HABITAT II, 1996.

<sup>3</sup> The United Nations General Assembly itself acknowledged that there are numerous obligations vis-à-vis older persons implicit in most core human rights treaties but that explicit references to age in core international human rights treaties are scarce and that there is no such instrument for older persons and that only a few instruments contain explicit references to age. *See* UN General Assembly Resolution No. A/RES/67/139 of 13 February 2013.

<sup>4</sup> Principle of inherent human dignity is the basic premise on which all human rights stands. All the core human rights instruments affirm the inherent dignity and worth of the human person.

<sup>5</sup> All human rights instruments contain a non-discrimination clause which provides that a person shall not be discriminated on certain grounds, where age though not specifically included, can be drawn by implication.

<sup>6</sup> “Population Ageing” is a term used to refer to the process, which results in rising proportions of older persons in the total population. *See* UNITED NATIONS ECONOMIC AND SOCIAL COUNCIL, WORLD POPULATION AGEING 2013 1 (United Nations, New York, 2013).

increasing number year after year, which illustrates the concern shown by it.<sup>7</sup> It was the First World Assembly on Ageing held at Vienna in 1982 that effectively brought the world community together for the cause of the ageing population. The Vienna Assembly adopted the Vienna International Plan of Action on Ageing, 1982 which laid down the recommendations to be taken up by the member states in their domestic policy formulation and law making.

As a follow up action, UN General Assembly adopted the UN Principles for Older Persons, 1991 under the title of *“To add life to the years that have been added to life”*, calling upon the member states to incorporate into their national agenda the achievement of Independence, Participation, Care, Self Fulfillment and Dignity of the Older Persons.<sup>8</sup> The General Assembly also adopted the Proclamation of Ageing, 1992 wherein the year 1999 was designated as the International Year of Older Persons with the motto of *“Towards a Society for All Ages”*. The International year helped to enhance awareness, research and policy formulation worldwide in furtherance of the entitlements of the Older Persons.

The next major event in this connection was the Second World Assembly on Ageing in 2002 at Madrid and the adoption of the Madrid International Plan of Action on Ageing, 2002. This plan was an improvement to the first plan and addressed the problem of elder abuse, which was not duly considered previously. The Plan of Action pointed towards three areas namely, (i) Older Persons and Development, (ii) Advancing health and well-being into old age and (iii) Enabling and supportive environments. Both Vienna and

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<sup>7</sup> See Annexure 5 for the list of resolutions passed by the General Assembly on the subject of older persons during 1948 – 2015.

<sup>8</sup> See UN General Assembly Resolution No. A/RES/46/91 of 16 December 1991.

Madrid Plans of Action on Ageing suggested Regional and International cooperation as the effective modes of addressing the cause. Accordingly there have been a number of subsequent declarations and plans of action on ageing across the world.<sup>9</sup>

Even though the international human rights instruments lack in specification of the rights of older persons, , it was better considered in regional human rights Charters in America, Europe and Africa.

There has been commendable initiative at the international level in identifying the entitlements of older persons and instilling a sense of responsibility on the member states to design their programs to cater to the needs of an ageing population. However an International Convention has not yet been drawn up on the subject.

Having studied the international regime on the rights of older persons, the study progressed to analyze the government programs in India with respect to the same and arrived at the following findings.

## **6.2 GOVERNMENT PROGRAMS FOR THE OLDER PERSONS IN INDIA**

The Government of India had acknowledged the cause of older persons right from early 1950s as can be seen from the First Five Year Plan (1951-1956) which mentions about the need to provide insurance against old age. Either none or meager passing remarks on the issue is seen in the subsequent plans also. It was the Ninth Five Year Plan (1997-2002) onwards that importance was given to the elderly and the importance has been growing thenceforth. The Tenth Plan (2002-2007) acknowledged that care for the aged

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<sup>9</sup> MACAO DECLARATION ON AGEING FOR ASIA AND THE PACIFIC 1999; MONTREAL DECLARATION 1993; BRASILIA DECLARATION 2007; 2011; SHANGHAI REGIONAL IMPLEMENTATION STRATEGY 2011; YOGYAKARTA DECLARATION ON AGEING AND HEALTH 2012; DUBLIN DECLARATION ON AGE-FRIENDLY CITIES AND COMMUNITIES IN EUROPE 2013; KUALA LUMPUR DECLARATION OF AGEING 2015.

which was formerly an exclusive family duty is emerging into a state duty. The Eleventh Plan (2007-2012) for the first time emphasized on the health care for older persons and allocation was made for geriatric care. The Twelfth Five Year Plan (2012-17) has included senior citizens under the heading “Other Marginalized and Vulnerable Groups” and calls for the setting up of a National Commission for Senior Citizens.

The Government of India declared a National Policy on Older Persons in 1999, drawing inspiration from UN Principles and Resolutions, as well as to meet the UN demand for a Policy Statement. Consequent to the further international commitments<sup>10</sup> and the national legislation<sup>11</sup>, the Ministry of Social Justice and Empowerment of the Government of India set up the Mohini Giri Committee to review the 1999 Policy and draft a new policy. The new draft National policy on Senior Citizens, 2011 was submitted to the Government in March 2011. However Government is yet to declare it or adopt any other policy on the matter.

The Government of India also came up with various welfare schemes for senior citizens, namely Indira Gandhi National Old Age Pension Scheme, Integrated Programme for Older Persons (revised in April 2015), Scheme of National Award for Senior Citizens (*Vayoshreshtha Samman*) and National Program for the Health Care of the Elderly. In addition to this, various ministries have provided concessions to senior citizens. The Ministry of Law and Justice has issued letters to the Chief Ministers of the State regarding prioritization of court cases involving older persons. The same has gone

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<sup>10</sup> India had been a signatory to the Madrid Plan of Action 2002, the Shanghai Plan of Action 2002 and the Macau Outcome Document 2007.

<sup>11</sup> The Parliament of India enacted the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (Central Act No.56 of 2007).

through proper channel and directions are now issued to the District Judges regarding early disposal of such cases.

The study further examined the government initiatives towards the cause of senior citizens in the State of Goa and State of Kerala, the findings of which are enumerated below.

### **6.2.1 INITIATIVES OF THE STATE GOVERNMENTS IN GOA AND KERALA**

The initiatives of the State of Goa include the ‘*Ummid Scheme*’, which provides financial aid to NGOs for starting day care centres and the Dayanand Social Security Scheme which provides old age pension to senior citizens. State of Goa’s senior citizens’ pension amount is the highest of all old age pensions given by the various State Governments.

Kerala State had its first Policy for Older Persons in 2006 by the name “*Vayojana*” Policy which was replaced by the Kerala State Policy for Older Persons 2013. The 2013 Policy focuses on awareness of MWPSA Act, 2007 and sensitization of government officers on the cause. The policy takes a holistic perspective and aims to develop inter-generational equity, employment opportunities for older persons, health insurance, ‘Village for Older Persons’ and Senior Citizens Association.

In Kerala, one of the major initiatives of the Social Justice Department was the setting up of the Kerala Social Security Mission (KSSM), which is the first of its kind in the country. It hosts a forum to make contributions which will be used for specified welfare activities. The Social Justice Department runs 14 old age homes, one in each district and one care home.



The significant “best practice” from the State of Kerala is the Community Policing Project, ‘*Janamaithri* Police’, for which sensitization programs are regularly held at the Police Training College. The implementation of the MWPSA Act, 2007 and Rule 20 of the Kerala MWPSA Rules, 2009 are strictly taken up by the police under instructions issued by the Director General of Police. Commendable work is done by the Kerala Police through home visits. An innovative step is the establishment of ‘Senior Citizens Help Desk’ attached to the main police stations.

The researcher visited the Help Desk at Fort Police Station, Thiruvananthapuram and observed the vigour and involvement of the senior citizens in conducting awareness programs and taking up the issues of the senior citizens generally. The problem they face is of finance as there is no direct funding that they receive from the government. The finances are met by contribution by members and partly from *Janamaithri* fund.

In a country governed by constitutionalism and rule of law, the approach of the judiciary is important is ascertaining the efficacy of any government program. Various judgments of the Supreme Court and the High Courts, generally relating to the approach of the judiciary in cases involving senior citizens, and matters falling under the MWPSA Act, 2007 in particular, were analyzed. The findings are in concise hereunder.

### **6.2.2 JUDICIAL APPROACH**

Judiciary in the country is also playing a creative role in ushering justice to senior citizens. Supreme Court of India has set up a Social Justice Bench which would sit once a week to hear cases of specified categories of persons including senior citizens. Official memorandum has been issued from the Supreme Court to the High Court to the

Subordinate Judicial Officers to take necessary steps to dispose of matters in which senior citizens are involved. The study of case laws reveals that there are cases where such priority is given. However sensitization of the lower judiciary seems to be lacking in some instances.

In spite of the remedy available before the Maintenance Tribunal and Appellate Tribunal constituted under the MWPSA Act, 2007, it is seen that several writ petitions have been filed in the High Courts with respect to the matters falling within the purview of the Act. This is primarily due to two reasons.

Firstly the right to appeal from the Maintenance Tribunal to the Appellate Tribunal is given only to the Claimant – Senior Citizen/Parent. Therefore the persons against whom the original application is filed approaches the higher judiciary invoking its writ jurisdiction.

Secondly, in places where the machinery for enforcement of the rights is not in place, the senior citizens themselves have approached the High Court by way of writ petition. Also for remedies not provided in the Act, parents have approached the High Court, like for traumatization of parents by children, as in the case of *Justice Shanti Swarup Dewan v. Union Territory, Chandigarh*.<sup>12</sup>

The reach of the international obligations as well as the national initiatives of the Government of India can be well-discerned through a study and analysis of the legislative framework pertaining to the subject matter. Accordingly the various legislations dealing

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<sup>12</sup> Justice Shanti Sarup Dewan, Chief Justice (Retired) and another v. Union Territory, Chandigarh and others 2014 (5) RCR (Civil).

with rights of older persons and the corresponding obligations in India were analyzed. The findings of the study are summarized below.

### **6.3 LEGISLATIVE FRAMEWORK TO PROTECT THE RIGHTS OF OLDER PERSONS**

The Constitution of India does not specifically include ‘age’ in the list of grounds based on which a person “shall not be discriminated” against<sup>13</sup>. This non-inclusion is only indicative of the fact that the purposes for which specific non-discrimination clause apply includes public employment and admission to educational institutions, where age bar pertains. By purposive interpretation, the principles of Justice, Liberty, Equality and Fraternity set out in the Preamble meaningfully apply to older persons. The same is the case of fundamental rights, particularly right to equality and right to life. Many aspects of right to life, as expanded by judicial interpretation aptly apply to older persons, as a class. The only provision which directly mentions about the issue of older persons is Article 41 which calls upon the State to provide public assistance in old age.

The legislations pertaining to the maintenance of older persons in India focused only on the obligation of the family to take care of the elderly. The claims for maintenance were addressed by the ordinary courts and no specialized machinery was constituted for the same. The Portuguese Civil Code, 1867 which is the law relating to marriage and inheritance in Goa, contains provisions for disinheritance of the children who do not maintain their parents or commits crime against their parents.

The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 is the first attempt to entitle senior citizens and parents of rights other than maintenance. The Act, in

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<sup>13</sup>See CONSTITUTION OF INDIA, Articles 15 (1) and Article 16(2).

addition to vesting obligation on children and relatives to maintain parents and childless senior citizens respectively, establishes Maintenance Tribunals and Appellate Tribunals to enforce the claims under the Act, the procedure for which is also prescribed under the Act. The Act also vests various responsibilities on the State to provide for the welfare of senior citizens. This includes establishment of old age homes and geriatric healthcare. There are several ambiguities with respect to the Act, including provision for appeal and bar of legal representation. The Act does not comprehensively safeguard the interests of senior citizens and their basic human rights, especially right against torture and abuse. Section 23 of the Act vests enormous powers on the Maintenance Tribunal without regard to the judicial competency of the Tribunal in such complex property matters.

Thus after a study of the legislations in India relating to protection of senior citizens, it was found that though the provisions in the Constitution of India has the potential to give effect to the rights of the older persons in a meaningful manner, it has not been used to that extent. The enactments are dealing only with the right to claim maintenance. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 followed suit by confining the law largely to right to claim maintenance from family members. The State responsibility is limited to establishment of old age homes, providing basic healthcare services and protection of life and property of senior citizens. The law *in toto* deals only with the economic aspect of old age leaving out the UN Principles for Older Persons 1991, namely care, independence, self-fulfillment and dignity of senior citizens

unattended and their participation in the mainstream of national life ignored. Thus Hypothesis 2<sup>14</sup> of the researcher stands proved.

When any legislation is critically studied for the purpose of suggesting amendments for improvement, borrowing best practices from other jurisdiction amplifies the efficacy. With this objective in mind, the laws promoting elderly rights in U.K, U.S.A and Republic of South Africa was studied. The best practices which can be adopted into the Indian law are included in the suggestions in para 6.5 below.

#### **6.4 FINDINGS DERIVED FROM EMPIRICAL STUDY IN THE STATES OF GOA AND KERALA**

To study about the efficacy of the government programs and legislations in removing the challenges to full enjoyment of human rights by the older persons, information was gathered through structured questionnaires, case studies and interactions with stake holders. A total of 400 responses were collected on the questionnaires covering the State of Goa and State of Kerala. The study aimed at gauging the reach of the entitlements contained in the UN Principles for Older Persons by assessing the removal of challenges by the government. The findings are enumerated as follows:

##### **(a) Challenge 1: Poverty and Living Conditions**

None of the respondents recorded lack of food and other basic living arrangements including shelter. Therefore absolute poverty was not seen among the respondents. However absence of income, financial independence and healthcare was recorded.

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<sup>14</sup> Hypothesis 2: The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 does not satisfactorily incorporate the United Nations Principles for Older Persons, 1991 namely independence, participation, care, self-fulfillment and dignity.

Among the respondent senior citizens, only 27% in Goa and 24% in Kerala were not having income of their own. In Goa, almost one half and in Kerala, less than one third of the respondents who did not have any income of their own were availing of old age pension schemes. However in both the States a vast proportion of the Senior Citizens are not aware of the Welfare Schemes of the Government. Only a meager 13% in Goa and 6% in Kerala are aware of the schemes. This shows the need to spread awareness on the same. Considering the immense expense involved in medical treatment in case of ailments, it is important to hold medical insurance policies for meaningful financial security. Only one third of the senior citizens in both the states hold such policies. This shows the need to popularize medical insurance policies.

Generally, financial independence among senior citizens is more for men than for women. In Kerala the disparity is remarkably less when compared to Goa. Financial independence of a person is not just his ability to meet his needs from his own income; rather it includes freedom to spend as per one's decision. The study revealed that all those who had income did not always have the freedom to spend as per their choice. Thus financial independence among senior citizens is a combination of income and empowerment.

Lack of shelter was not seen among any of the respondents. Regarding the basic living conditions, a vast proportion of the senior citizens in both the states have adequate access to food, clothing and bedding. Self-assessment of health shows higher grades, but there is lesser number of older persons going for routine health checkups. Healthcare is seen confused with sickness; and visit to health centres happen only when persons fall sick. Entertainment factor in Kerala is mostly good, but in Goa it is not given much

importance. Single women with no income and dependent on relatives were found to be least satisfied with the living arrangements. Most of the senior citizens are involved in household activity. About one half of them feel that they do such work out of obligation and since there is no option. This points out towards the need to design support systems for senior citizens.

The lack of awareness regarding welfare schemes is a threat to reaching out of state aid to the deserving. Healthcare needs tremendous improvement.

(b) Challenge 2: Violence and abuse

Regarding detection of violence and abuse, personal perceptions and convictions play a crucial role. The percentage of persons who feel that they are not treated with respect and that their dignity gets compromised at home is greater than those who feel they are not subjected to any torture or inhuman treatment. Elder abuse does take place is evident from the analysis. A significant percentage of senior citizens are living alone in their houses, thereby calling for the need for security watch over the life and property of Senior Citizens.

(c) Challenge 3: Discrimination

Less than a quarter percentage of respondents in all age groups feels that older persons are never discriminated or given a second class treatment in society. From this response it is inferred that discrimination does exist in society but with varying intensity and proportion. All senior citizens may not be treated in the same manner, but on the ground that a person is advanced in age does make him or her vulnerable to a second class treatment in society.

(d) Challenge 4: Specific measures and Services

Most of the senior citizens expressed great difficulty regarding payment of bills, and shopping for essentials, because of climbing steps, waiting for long time in the queue and inappropriate transport. Separate queue and seating facility for senior citizens is scarce at public utility counters. Facilities in connection with public transport, both road and rail was analyzed and found to be grossly dissatisfactory and unsuitable for use by older persons.

Thus it is found from the data analysis coupled with the doctrinal study that neither the government programs nor the legislation address the challenge of violence and abuse against senior citizens which makes it impossible for them to enjoy their human rights to the fullest. The existing government programs and the legislation do not satisfactorily address the challenges faced by the older persons. Hypothesis 3<sup>15</sup> stands proved thereby.

The entire study reveals that the human rights of the older persons including rights to security, participation, health care, adequate standard of living, freedom from torture or cruel, inhuman or degrading treatment and dignity are not adequately promoted and protected in India. Thus Hypothesis 1<sup>16</sup> stands proved.

Case studies reveal that there is a great need for efficient advice and assistance to care givers, so as to relieve them of their trauma as well as to take better care of the fragile older persons.

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<sup>15</sup> Hypothesis 3 :The legislation as well as the governmental programmes for senior citizens do not satisfactorily address the challenges to the full enjoyment of human rights by older persons namely poverty; violence and abuse; discrimination and lack of specific measures and services.

<sup>16</sup> Hypothesis 1: The rights of the older persons including rights to security, participation, health care, adequate standard of living, freedom from torture or cruel, inhuman or degrading treatment and dignity are not adequately promoted and protected in India.



## 6.5 SUGGESTIONS

Based on the study and analysis, both doctrinal and empirical, the researcher puts forth the following suggestions:

1. In spite of the UN initiatives as well as regional follow up actions to the Madrid International Plan of Action on Ageing 2002, the fact remains that there is no hard law in the nature of an ‘International Convention on the Rights of Older Persons’ reinforcing and more authoritatively protecting the rights of the Older Persons. It appears that older persons remain the only vulnerable group that is left out in the international human rights documents devoid of categorical coverage. An ‘International Convention on the Rights of Older Persons’ is the need of the hour. India should moot this point before the UN General Assembly.
2. The rights of the older persons are implicit in all the fundamental rights, and especially in the Directive Principles of State Policy. However the meaning and importance of the fundamental rights which are of special importance to the older persons cannot continue to have an implicit nature. It needs to be spelt out and the Constitution of India need to be suitably amended to include three aspects –
  - (i) Article 15(1) is not merely about non-discrimination in matters of admission to educational institutions but worded widely to include all aspects of public life. Article 15(1) and Article 15(2) should be amended to include “age” as one of the grounds on which a citizen shall not be discriminated against by the State or by private individuals as far as access to public spaces, amenities and reasonable opportunities are concerned.

- (ii) Article 39 in Part IV should be amended to add clause (g) stating “that Senior Citizens are given opportunities to develop their full potential in a healthy manner in conditions of freedom and dignity and participate effectively in the mainstream of national life and that old age should be protected against abuse, discrimination, exploitation and moral and material abandonment.”
  - (iii) A new clause (l) should be added after Article 51 A (k) in Part IV A, ‘Fundamental Duties’, worded, “to respect his parents and elders; to provide for the physical and mental well-being of his parents and other elder members in the family; and to have compassion for all senior citizens.”
3. Government of India should adopt a new Policy for Senior Citizens in consonance with the Madrid International Plan of Action on Ageing and the UN Principles for Older Persons. The Policy should take an integrated approach to ageing and should ensure meaningful coordination between the different departments of the government dealing with various aspects relating to senior citizens. Moreover the Policy should consider the fact that ‘senior citizens’ is not a homogenous group and all persons in the age group of 60 years and above do not have similar requirements and faculties. Therefore there has to be a further classification of the senior citizens into 70+ and 80+ and their challenges ought to be addressed according to their specific needs.
4. A National Commission for Older Persons, having power to conduct *suo moto* enquiry and investigation into violation of human rights of older persons should be constituted to protect the Senior Citizens from discrimination, abuse, harassment, torture, cruel or inhuman treatment both by individuals and public authorities. Similar Commissions are to be established for each of the States also.

5. The Maintenance and Welfare of Parents and Senior Citizens Act should be thoroughly revamped to cure it of the many ambiguities, including the following-
- (i) The obligation of persons to maintain their parents-in-law is not specified in the Act. Therefore in instances where a person who is under an obligation to maintain his/her parents dies, the obligation would end there and would not pass on to his/her spouse even if such spouse happens to inherit the property of such deceased person or even obtain employment on compassionate grounds. Therefore the obligation of persons to maintain their parents-in-law should be specified, with conditions. The obligation on a person to take care of his/her parents shall be extended to the surviving spouse of such person, in proportion to which such spouse would inherit the property including employment benefits of such deceased person.
  - (ii) The Maintenance Tribunal has the power to order monthly maintenance to be paid by the opposite party. The rules provide for the mode of fixing the maintenance amount based on the earnings of the opposite party, subject to a statutory outer limit of ten thousand rupees per month. The difficulty with respect to the ceiling amount is that Section 12 of the Act gives an option to the applicant to take either one of the remedies available under the MWPSA Act or Section 125 of Cr.P.C. If a person decides to adopt the less expensive remedy of approaching the Tribunal, he has to compromise with a lesser claim amount and cannot thereafter avail of the remedy under Cr.P.C where no such ceiling exists. Therefore it is suggested that the outer limit of ten thousand rupees per month should be removed. Such an amendment would also be in

tune with the Section 4 (2) and (3) of the Act which prescribes that the obligation to maintain the senior citizen or parent extends to the needs of such senior citizen or parent so that such person may lead a normal life.

- (iii) A grave inconvenience which the senior citizens may face with respect to enforcement of the order of the Tribunal is that in case of lapse of payment of monthly maintenance, the recovery of amount due can be made only on an application made by the applicant within three months from the date on which it became due.<sup>17</sup> It is therefore necessary to evolve a system to monitor compliance with the orders of the Tribunal. This may be by providing for deposit of the amount in a bank account which is to be transferred to the account of the recipient, with a 'system generated default-in- payment alert' being intimated to the Maintenance Officer or such other person designated for this purpose.
- (iv) Under the Act, appeals from the order of the Tribunal may be preferred to the Appellate Tribunal. However there exists an ambiguity regarding the provision for appeal, as Section 16 of the MWPSA Act confers right to appeal only to the parent/senior citizen<sup>18</sup>. This has resulted in the opposite parties invoking the writ jurisdiction of the High Courts for relief against the order of the Tribunal. It puts the senior citizens themselves to undue hardship by being forced to appear before the High Courts, so as to respond to the appeal. Right

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<sup>17</sup> See MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS ACT, 2007, Section 5(8).

<sup>18</sup> The constitutionality of Section 16 was challenged before the High Court of Punjab and Haryana wherein the Court adopted purposive interpretation and held that the absence of explicit mention of the opposite party's right to appeal is an omission and therefore both the parties have right to appeal to the Appellate Tribunal. See *Paramjit Kumar Saroya v. Union of India and another* AIR 2014 P&H 121.

to appeal under Section 16 therefore needs to be extended to the opposite party also.

- (v) Legal Representation is barred before the Maintenance Tribunal and Appellate Tribunal. This gives rise to a dilemma, with the bringing into force of S.30 of Advocates Act, 1961 by notification in 2011. The ambiguity need to be removed by way of a specific non-obstante clause in the MWPSA Act, covering Section 30 of the Advocates Act, 1961. The right to legal representation, though can be barred in matters of claim for maintenance; the same cannot be barred in matters under Section 23 of the Act, whereby the transfer of property made by a senior citizen can be declared to be void in certain circumstances, by the Maintenance Tribunal. This is a very complicated legal matter affecting rights of third parties as well, and therefore requires legal representation for effective legal justice.
- (vi) A glaring deficiency in the MWPSA Act is the vesting of immense judicial powers on the Maintenance Tribunal, an authority which is neither judicially competent nor acquainted with the judicial standards. The reference in this connection is made to S.23 of the Act which gives power to the Tribunal to declare a transfer of property made by senior citizen as void, subject to fulfillment of certain conditions. It is to be noted that such a power is vested in a Tribunal, which is often a single member body comprising of a person with no requisite legal know-how. Moreover right to appeal is not provided to the opposite party. The incompetency of the Tribunal is evident in the haphazard manner in which orders are passed without even following the principles of

natural justice.<sup>19</sup> The enforcement of Section 23 through Maintenance Tribunals needs re-consideration. A declaration under Section 23 ought to be made by a competent civil court on the recommendation of the Tribunal, on a priority and time-bound basis.

- (vii) Accommodation or shelter is a basic need of the older persons. Right to residence should be conferred under the Act. The parents should be conferred the right to reside in the residence of their children, in case they do not have their own residence.
- (viii) The Tribunal's jurisdiction should be extended to cases in which senior citizens are evicted from their own residences by relatives and children.<sup>20</sup> Section 23 of the Act, as it stands now does not afford protection to the senior citizens in such cases.
- (ix) Criminal liability is imposed under the Act for whoever having the care or protection of a senior citizen, in case he abandons such senior citizen. It is to be noted that liability is only for exposure or abandonment of the senior citizens and not for abuse, harassment, torture or inhuman treatment. Such acts are not made punishable under the MWPC Act. Elder abuse should be

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<sup>19</sup>See *P.SreedeviAmmu v. State of Kerala* (High Court of Kerala, WP(C).No. 17357 of 2015 (T), Judgment dated 21<sup>st</sup> April 2015), available at [http://judis.nic.in/judis\\_kerala/qrydisp.aspx?filename=421038](http://judis.nic.in/judis_kerala/qrydisp.aspx?filename=421038) [accessed on 10<sup>th</sup> November 2015] . See also *Johnson M. Paul v. State of Kerala* (High Court of Kerala, WP(C).No. 26925(M) of 2011, Judgment dated 15<sup>th</sup> July 2011), available at [http://judis.nic.in/judis\\_kerala/qrydisp.aspx?filename=278611](http://judis.nic.in/judis_kerala/qrydisp.aspx?filename=278611) [accessed on 10<sup>th</sup> November 2015].

<sup>20</sup> *Rajubhai v. Manubhai* (High Court of Gujarat, Special Civil Application No. 10852 of 2010, Judgment dated 9<sup>th</sup> December 2010), available at <http://voice4india.org/rajubhai-vs-manubhai-gujarat-high-court/5185/> [accessed 2<sup>nd</sup> November 2015]; *Johnson v. The District Collector* (High Court of Kerala, WP(C).No. 9004 of 2012 (A) Judgment dated 12<sup>th</sup> April 2012), available at [http://judis.nic.in/judis\\_kerala/qrydisp.aspx?filename=248919](http://judis.nic.in/judis_kerala/qrydisp.aspx?filename=248919) [accessed on 10<sup>th</sup> November 2015].

defined and made punishable under the Act. As it is in South Africa, omission to report elder abuse should also be made a punishable offence.

- (x) A Special Cell need to be constituted at the District Level to address complaints on all forms of elder abuse, including traumatizing of parents by children. There should be provision to make telephonic and online complaints and report information about elder abuse. The Cell may refer appropriate cases to the Senior Citizens Commission or Maintenance Tribunal for necessary action. Regarding desertion and abandonment of senior citizens, the Special Cell should take up reports made by anyone and shall not insist on first hand report.
  - (xi) A rescue team should be constituted within the police department, who would, with the assistance of social workers, remove the abandoned or homeless senior citizens and admit them in old age homes or rescue shelters.
  - (xii) A comprehensive legislation incorporating all aspects of ageing should be deliberated and worked upon. Such a law should take into account the social, psychological and humanitarian approaches to ageing. Discrimination on the basis of age at all walks should be eliminated. Obligations towards old age-friendly service should be put on all service providers and exploitation of consumer-senior citizens must be avoided.
6. Effective awareness need to be created among senior citizens regarding the provisions of the Act. The awareness program should cover not only the provision for maintenance but also all entitlements and obligations under the Act. For this purpose, informative short advertisements through audio visual and print media need to be

- used by the Department of Social Welfare. Bill Boards containing such information in public transport vehicles and at public places need to be put up. Social workers should be deputed for door-to-door campaign for this purpose. One significant venue for awareness programmes is the government treasury where pensioners assemble every month for collecting their monthly pension.
7. Students of schools and colleges should be used for propagation of the Act through the National Service Scheme, Scout and such other activities. The Legal Aid Cells of the Law Colleges shall be instructed to take up such awareness programs as part of their compulsory legal aid activity. A remarkable feature about the State of Goa with respect to the reach of welfare schemes is that the students of the law colleges take up the task of spreading awareness on the various welfare schemes. Moreover the students themselves assist the senior citizens in filling the forms and submitting the requisites for obtaining senior citizens cards and other schemes. This model should be extended to the law colleges in other parts of the country. Required guidelines for this purpose are to be issued by the Government of India and Bar Council of India to incorporate such para-legal services and legal literacy ventures as a necessary component of legal education. The added advantage in involving students is that they would themselves imbibe the values and would add to a generation that would take care of their own parents and grandparents.
  8. With respect to meaningful awareness about Section 23 of the Act, in addition to the regular informative programs, there should be information display boards at a conspicuous place in the Sub Registrar Offices where transfer deeds are registered. The Registrars should be instructed to inform the senior citizens-transferors about the



- content of Section 23, before the transfer deeds are registered. Such dissemination of information is important because Section 23 will apply only if the transfer deed contains a clause stating that the transfer is made on condition that the transferee will provide the basic amenities and basic physical needs of the transferor-senior citizen.
9. Effective implementation of any welfare legislation requires a duly sensitized personnel at all levels of the Government. This is especially so in the case of the MWPC Act, as the senior citizens come in contact with all departments of the government and its officers for various purposes. Therefore the entire state machinery should be sensitized about the cause of senior citizens and the need to promote their well-being. Sensitization programs for the police and judicial officers need be given due importance.
  10. Any disregard or disrespect towards the claim or assistance sought by senior citizens before any government officer or employee should be considered as a misconduct for which disciplinary proceedings may lie against such erring personnel. For this purpose, a mechanism for reporting such lapses should be established at all public offices and service centres.
  11. Healthcare for the senior citizens is made a state responsibility under the MWPC Act. Research and expertise in geriatric care is mandated under the Act. However as of now, Medical Council approved Post Graduation Program (MD) in Geriatrics is offered only by three Colleges in the whole of India with a total of five seats.<sup>21</sup> Super specialty course in Geriatric Mental Health (DM) is offered only in one College in

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<sup>21</sup> Amrita School of Medicine, Kochi, Kerala; Christian Medical College, Vellore, Tamil Nadu and Madras Medical College, Chennai, Tamil Nadu. For a list of PG Courses, subjects and Colleges recognised by the Medical Council of India, see <http://www.mciindia.org/InformationDesk/ForStudents/ListofCollegesTeachingPGCourses.aspx>. [accessed 18 April 2014]

- India with a single seat.<sup>22</sup> These numbers are grossly insufficient to meet the goals of healthy ageing and equality in health care to all. In order to expand research and facilities in geriatric care, specialization in geriatrics need be provided for PG Courses in all medical colleges. Necessary directives shall be given to the Medical Council to ensure such specialization in all medical colleges in the country.
12. The Delhi Model of Sunday Clinics<sup>23</sup> should be opened at the Hospitals for attending to the senior citizens specially as this would enable the care givers to accompany the older persons to the Clinics without having to avail of leave from job. OPD facilities should be made available to senior citizens on every Sunday at specified hours in designated hospitals.
13. Under the MWPC Act, State Government is vested with the responsibility of establishing old age homes in all districts. In Goa the statutory obligation has not been fulfilled in the true sense. '*Provedoria*', the Institute of Public Assistance in Goa runs ten Old Age Homes in the State for destitute senior citizens. All of these except the one in Saligao was established during the erstwhile Portuguese regime in the property contributed by the people. The Saligao Old Age Home which was established in 2014 is also run in an ancestral house donated by a citizen couple. Therefore the actual responsibility of the State Government to establish old age homes, at least one in each district has not been carried out by the Government in Goa. In Kerala the statutory obligation has been fulfilled, but only literally. One old age home per district has been established. But more old age homes are required to be

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<sup>22</sup> Chhatrapati Shahuji Maharaj Medical University, Lucknow, Uttar Pradesh

<sup>23</sup> Sunday Clinics is a scheme of the Health Department of Delhi Government wherein OPD facilities are provided to senior citizens every Sunday between specified hours. This way the caregiver who accompanies the elderly is not required to take leave from work.

- established considering the number of destitute senior citizens on the roads and bus stands, begging for basic necessity of food. There should be a specific budgetary allocation for the establishment of old age homes.
14. Steps should be taken to see that no senior citizen is forced by his circumstances to beg for food or sleeps on the roads. Night shelters are to be established for senior citizens. In Goa although the Old Age Home at Altinho is also notified to be a night shelter, hardly anyone frequents there. This could probably be due to the location of the shelter which is inaccessible to homeless senior citizens. It is therefore suggested that appropriate night shelters are to be established for the homeless senior citizens and the same should be informed to the beneficiaries. Care should be taken in particular to ensure that such night shelters are appropriately located, near bus stands, railways stations, market places and the like where the potential beneficiaries normally frequent and therefore would be accessible to them.
  15. In the model of the 'Operation Sulaimani' Project initiated and executed by the Collector of Kozhikode District of Kerala, a freedom from hunger program in all the districts will help the indigent senior citizens' to meet their need for atleast a meal a day. As per the said project, the Collector coordinated with the restaurants in the city of Kozhikode who agreed for distribution of free food in the specified restaurants. Properly channeled private participation is necessary for such projects. The Social Welfare Departments have to take the initiative for such innovative programs.
  16. The concept of day care centres for older persons need to be popularized and the benefits therefrom, should be propagated appropriately, so as to remove the stigma that exists presently regarding day care centres.

17. The *Ummid* Scheme in Goa is allowed only in Municipal areas and in Panchayats having 11 members, that is Panchayats having a population of 8000 and above. Establishment of day care centres is aimed at meeting the health and entertainment needs of senior citizens. There seems to be no rational nexus between the total population of the Panchayat and the scheme. What is important as an eligibility to start *Ummid* Centres is the minimum number of beneficiaries and not the total population of the Panchayat. Therefore it is suggested that the scheme be extended throughout the state subject to eligibility conditions.
18. Eligibility for the Indira Gandhi National Pension Scheme is not based on the income level of the senior citizen, rather of the household. This will make the benefit unavailable to many. The eligibility criteria need to be reassessed and reformulated, making it available to all deserving senior citizens.
19. Food security should be ensured to the needy senior citizens unconditionally. The *Annapurna* Scheme of the Government of India under which free ration of 10 kg rice is given to destitute senior citizens, is presently available only to those senior citizens who are left out of the old age pension scheme. This condition needs to be changed and the scheme should be made available to all destitute senior citizens, including those who are receiving Old Age Pension from the government, which is after all a meager amount considering the living cost, medical and other expenses.
20. Under the Integrated Programme for Senior Citizens, assistance is sanctioned to local bodies, NGOs, autonomous institutions, recognized educational institutions and charitable hospitals for the purpose of providing services and facilities for senior citizens. However the funds are either totally unused or not appropriately used by the

- States of Goa and Kerala. Government of India and Government of the States should take steps to disseminate information on the Integrated Programme to the NGOs and other stake holders.
21. When senior citizens are parties to cases in Courts, undue hardship is to be avoided by limiting the number of adjournments, so that cases are decided without inordinate delay. Personal appearance of the senior citizens in the court should be insisted only when in the opinion of the judge it is required, and representation by proxy should be allowed. Wherever required, inquisitorial method through officers of the court shall be adopted. There could be instances where the plaintiff senior citizen may not be in a position to appear before the Court due to age related incapacity or inability, wherein the plaint should not be dismissed without such inquisitorial reports. Moulding of procedure is necessary in order to make access to justice a reality for senior citizens. For this purpose suitable changes are to be made to the procedural law.
  22. The Legal Services Authorities Act, 1987 should be amended and a clause be added in Section 12 to include senior citizens in the list of persons entitled to legal services under the Act.
  23. The Police Department in the State of Goa should effectively implement the Action Plan which is contained in Rule 20 of Goa Maintenance and Welfare of Parents and Senior Citizens Rules, 2009. The *Janamaithri* Model of the Kerala Police may be adopted for the same.
  24. With the withering away of the joint family system, a large number of older persons are living alone in their houses. In addition to the home visits by the police, other groups like social workers, self-help groups, neighbourhood groups and other

volunteers may be encouraged to coordinate with the police in making home visits and seeing to the safety and needs of such older persons.

25. Government of India should notify and bring into effect parental care leave, for employees, which would enable them to take care of their aged or sick parents in specified medical conditions.

26. Convenient transport facilities for senior citizens need to be set in place. The following measures need to be taken for this purpose:

(i) Presently in the State of Goa, transport buses ply only in limited routes. This would mean that the senior citizens cards, which afford 50% discount in government buses only, prove to be of no use to the senior citizens in the vast majority of routes in which government buses do not ply. Therefore, to make the discount meaningfully available to the beneficiaries, either government transport buses should operate in all bus routes in Goa, or in the alternative, necessary directives should be given to the private bus operators to allow 50% concession for senior citizens in all buses.

(ii) The steps in the public transport buses are to be made convenient for use by senior citizens. The bus personnel need to be strictly instructed to give sufficient time for the senior citizens to enter and get seated. A helpline number to report such lapses should be conspicuously displayed in the buses. The number of seats reserved for senior citizens need to be increased to 15% considering the percentage of senior citizens in the total population.

- (iii) At all bus stops there should be a waiting shelter with seats. There should be separate seating arrangement and appropriate toilet facility for senior citizens at the railway stations and major bus stands.
- (iv) The steps to enter the trains are causing grave inconvenience to many senior citizens by curtailing their travel options as such. This difficulty need to addressed by the Railway by re-designing the steps in the new bogies which are being built and also providing makeshift steps which are suitable for senior citizens in the existing bogies.
- (v) To access the various platforms at the railway stations, elevator facility should be installed at all railways stations and wheel chair facility should be available in larger numbers.
- (vi) In the State of Goa, steps should be taken to make auto rickshaws an accessible and affordable public transport to the common man. This would be of immense use to senior citizens who find it difficult to avail of buses. As of now there is absolute deficiency of auto rickshaw service in the State and the available ones are not affordable to common man. By giving loans for buying auto rickshaws and increasing their numbers on roads would make it a popular means of transport and the fare should be as per government guidelines on meter charge.
- (vii) All transport service providers should be granted licenses subject to the condition that they shall assist the senior citizens and other disabled persons to enter and exit the vehicle. In case of taxi and auto rickshaw services, the assistance should extent to helping the senior citizens out of their homes and back.

27. Buildings where senior citizens frequent, for availing of public utilities, bill payment and entertainment, lift facility with operators should be compulsorily installed. Separate queue for senior citizens should be insisted on at all such places and sufficient seating arrangement needs to be provided.
28. Home delivery of goods and services should be encouraged and incentives in the form of low interest loan should be given to service providers who render special services for the older persons.
29. Home nursing and care services need to be encouraged. Tax incentives and other monetary aid should be granted for running such services.
30. Education, awareness and value building regarding positive ageing as well as preparation for old age, should be imparted right from childhood. The school curriculum needs to be appropriately revised to include such value education right from tender age.
31. The Social Welfare Department of the State Governments should design e-literacy programs for the senior citizens. This would enable the senior citizens to conveniently avail of services and facilities through online transactions. Moreover e-learning would go a long way to empowerment of senior citizens and enhance their connectivity with children, other family members and friends. This will also help in providing a forum for sharing the rich knowledge base of older persons in the public domain and may advance intergenerational bonding.
32. Income generation activities and employments suitable for senior citizens need to be developed and a 'Senior Citizens Employment Exchange' for this purpose needs to be created by the government. The interested persons, both senior citizens as well as



- prospective employers may register at such exchange which can act as an intermediary between them. The exchange should also monitor the employments and terms so as to prevent any form of exploitation of senior citizens. This will go a long way not only to secure financial independence of the older persons without significant government expenditure, but would also help in building a sense of self-worth and self-fulfillment in senior citizens.
33. Saving for old age should be made a centre theme of all banks and savings schemes and people at a very early age should be encouraged to save for their old age. Tax incentives should be given for such investments.
  34. Medical insurance and annuity plans must be popularized among persons from a younger age. Insurance policies suitable for senior citizens need to be designed and made available to them.
  35. An important aspect of right to shelter is that the available accommodation must be suitable to the age-based special needs of the elderly. For example the multi-storied buildings without elevator facility would mean that the older person who is not in a physical position to climb the stairs, will be home-locked for the rest of his life. It is not the elderly who are handicapped to use the facilities effectively; rather the facilities are handicapped to meet the special needs of the aged. Therefore in order to make right to shelter under Article 21 meaningful, the State should mandate the fulfillment of minimum standards for getting approval of the concerned authority for a new construction. It is to be remembered that elders is not a generation which will become extinct with the existing older persons, but that the infrastructure should be so designed to meet the needs of the older generations to come in future.

36. There should be mainstreaming<sup>24</sup> of older persons to national development plans and policies across all sectors. To ensure participation of senior citizens in the mainstream, senior citizens forums will play a significant role and therefore such associations should be encouraged and funding given for the same.
37. Social exclusion is in fact about the inability of our society to keep all groups and individuals within reach of what we expect as a society to realize their full potential. Considering the special needs of older persons, the facilities including infrastructure and transportation are to be made conveniently accessible to the older persons. That our society shall be ‘A Society for All Ages’ ought to be a mandatory goal for our governments.

A modern welfare state which abides by higher constitutional principles of good governance and rule of law is expected to perform its role as a protector and provider<sup>25</sup> to all sections of the people, irrespective of any discriminative factor, which includes ‘age’ as well. Equality is a cardinal principle ensuring justice and fraternity to the citizenry. The general equality principle is wide enough to encompass non-discrimination on any grounds whatsoever in areas where all persons are at par, like use of public-utility services and health-care. Formal equality<sup>26</sup> becomes meaningless when the services made available become non-accessible or inappropriate to the target group. Therefore there is a

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<sup>24</sup> As formally defined by the ECOSOC, mainstreaming is: “...the process of assessing the implications [for older persons] of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making older persons’ concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres...” See ECOSOC AGREED CONCLUSIONS 1997/2, Chapter 4, *available at <http://www.un.org/womenwatch/osagi/pdf/ECOSOCAC1997.2.PDF>* [accessed 19 June 2016].

<sup>25</sup> See W. FRIEDMANN, *LAW IN A CHANGING SOCIETY* 506 (Second edition, Universal Law Publishing Co. Pvt. Ltd, Third Indian Reprint, 2003). Friedmann lists out the role of a welfare state as being that of the protector, provider, entrepreneur, economic controller and arbiter.

<sup>26</sup> “Formal equality is the principle of equal treatment. Individuals who are alike should be treated alike rather than being treated differently”, RUSSEL L. WEAVER ET AL, *INSIDE CONSTITUTIONAL LAW : WHAT MATTERS AND WHY* 247 (Apsen Publishers, 2009).

need to ensure substantive equality<sup>27</sup> by making special provisions to meet the special needs of the special groups.

Though old age brings with it a lot many physical and mental ailments or inabilities; law does not seem to have fully acknowledged the special needs of the older persons. Setting priorities in society, being the legal frontier, it is much warranted that the States take adequate steps towards ensuring a “Society for All Ages”,<sup>28</sup> considering the fact that the world population is rapidly ageing.<sup>29</sup>

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<sup>27</sup> “Substantive equality is a principle that concerns the effect or outcome of a law. It underlines affirmative action... Substantive equality theory also focuses on biological differences between men and women...”  
*Id.* at 248.

<sup>28</sup> “Towards a society for all ages” was the title of the UN General Assembly resolution that declared the International Year of the Older Persons, *See* UN General Assembly Resolution No. A/RES/52/80 of 30 February 1998.

<sup>29</sup> Between 2000 and 2050, the proportion of the world's population over 60 years will double from about 11% to 22%. *See* DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS POPULATION DIVISION, WORLD POPULATION AGEING 2013 75 (United Nations, New York, 2013).

## ANNEXURE – 1

### QUESTIONNAIRE - I (To be filled by senior citizens)

Please tick mark the appropriate options

#### PRELIMINARY INFORMATION

Age :

Sex : Male  Female

Marital Status : Married  divorcee  widow/er  Single

Parental Status : Children below 18 years  Children above 18 years   
childless

Education : 10<sup>th</sup> std  12<sup>th</sup> std  graduate  post graduate

Monthly Income : no income  less than Rs.5000

Rs.5000 – 10000  above Rs.10000

Source of income: Pension  Property  Deposit  Salary

Self-employment

1. From your income do you have to maintain any of the following persons  
 Husband/wife  Minor children  Unmarried daughter   
 major children  relatives
2. Do you have the freedom to spend your income the way you want?  
 Always  Sometimes  Never
3. If you don't have income, who provides for your needs?  
 Husband/wife  Son  Daughter  relatives  others   
 If others, Please specify - \_\_\_\_\_
4. Do you get any pension or benefit under any welfare schemes of the government?  
 Yes  No   
 If Yes, please specify the scheme - \_\_\_\_\_
5. Do you have any medical insurance policy?  
 Yes  No
6. Do you get your needs met as per your satisfaction with respect to the following aspects

	Yes	Just ok	Not at all
Food			
Clothing			
Bedding			
Medicine and healthcare			
Entertainment			

7. Whom do you live with?  
 children  relatives  domestic help  alone
8. Where do you live?  
 own house  children's house  relative's house  old age home
9. At home, which of the following work do you do  
 taking care of grandchildren  Payment of Bills   
 Buying provisions and groceries  Cooking  Cleaning   
 any other  (please specify) –  
 I do not do any of these work
10. While doing any of these works, what do you feel?  
 I feel obliged to do as I am living with my children or relatives   
 I do not have an option not to do these works   
 I like to do these works
11. Are you a member of any association, Group, club etc. ?  
 Yes  No   
 If Yes, Please specify –
12. How often do you meet friends and relatives?  
 Whenever I want to  Rarely  Never
13. At home when decisions are taken regarding home matters, is your opinion taken?  
 Always  Sometimes  rarely  Never
14. For your day to day activities do you require help?  
 Always  Sometimes  never
15. Do you feel you need someone with you when you go out?  
 Yes  No  Sometimes
16. How often do you go for health checkup?  
 At least once a year  Whenever I don't feel well   
 Do not go unless severely sick  Do not go at all
17. Do you feel you are doing any creative or fruitful work at home or in society?  
 Very much  Somewhat  Not much  Never
18. How often do you travel out of home?  
 Atleast Once a Week  Once a month  Rarely

19. Do you travel by public transport?

Yes  No

20. Do you travel by any of these?

Bus  Train  Auto rickshaw  Taxi  Flight

21. Is the public transport suitable for you in terms of the following aspects

	Yes	No
Buses are available near my residence		
Steps to enter the bus is convenient		
Steps to enter the train is convenient		
Seats are reserved in the bus for senior citizens		
Number of seats reserved for senior citizens in the bus is sufficient		
Others occupy the reserved seats and do not give to senior citizens		
Even unreserved seats are offered to senior citizens		
Waiting room/ seating facility in the bus station is appropriate for senior citizens		
Toilet facility in the bus station is appropriate for senior citizens		
Waiting room/ seating facility in the railway station is appropriate for senior citizens		
Toilet facility in the railway station is appropriate to senior citizens		
The different platforms at the railway station is easily accessible to senior citizens		

22. Do others treat you with respect at home?

Yes  No

23. Are you aware that a parent can claim maintenance from children?

Yes  No

24. Are you aware that a childless senior citizen can claim maintenance from relatives who will inherit their property?

Yes  No

25. Are you aware of the schemes for senior citizens provided by the government?

Yes  No

26. Do you think it is better for senior citizens to stay in old age homes?

Agree  Disagree

Agree, if there is nobody to take care of the senior citizen  Do not know

27. Do you think day care centres for senior citizens is good?

Very good  good only in some cases  Not good

28. Do you know about any senior citizen being neglected, ill-treated, tortured physically or mentally?

Yes  No

29. Do you think that senior citizens are discriminated or given a second class treatment in society generally?

Always  Sometimes  Rarely  Not at all

30. Do you think senior citizens require special protection and benefits?

Yes  No

31. Who does payment of bills, shopping etc?

Myself  my spouse  children  ask someone else

32. Do you find it difficult to pay bills, buy provisions etc on your own? (You may tick more than one options)

Yes  No

If Yes, what is the reason?

Inadequate transport  Climbing steps is difficult

Waiting in the queue is difficult  It is tiring because of my health

33. Have you seen separate queues or seating facility for senior citizens in these places?

	Yes	No	Sometimes
Bill Payment Counters			
Bank			
Hospitals			
Grocery shops			
Fair price shop			
Milk Booth			
Vegetable Shop			
Ticket counters			

34. How do you rate your health?

Very Good  Good  Not so good  Bad

35. Do you feel lonely?

Mostly  Sometimes  Rarely  Never

36. Which of these do you prefer?

living with children  living alone

living in a paid old age home with all facilities

living in a free old age home

37. Do you feel that any inhuman treatment or torture is meted out to you at home?  
Yes                       No                       Can't say
38. Do you feel your dignity is being compromised at home?  
Yes                       No                       Can't say
39. How do you rate your ability to use computer and online transactions?  
Good                       Satisfactory                       Bad
40. In case you do not know to use computers, would you like to learn it?  
Yes                       No                       Not Sure
41. In case you are not employed. Are you willing to take up a job that suits your health and capability?  
Yes                       No                       Not Sure
42. Do you think old age is to be spent in leisure and not in supporting children?  
Yes                       No                       Can't say



## ANNEXURE – 2

## QUESTIONNAIRE - 2

(Respondents: Persons Staying Away From Parents)

Please tick mark the appropriate options

Preliminary information

Age:

Sex : Male Female Educational status : 10<sup>th</sup> Std or below  12<sup>th</sup> std  graduate  post graduate Income per month: Below 5000  5000-10,000 10,000 – 20,000  Above 20,000 Marital status: Single  Married  Separated  Widow/ Widower If married, do you live with your spouse and children, if any – Yes  No 

1. How many family members are dependent on your income – Please specify number

Children below 18 : \_\_\_\_\_

Persons aged 18 – 59 : \_\_\_\_\_

Senior Citizens (above 60 yrs) : \_\_\_\_\_

2. How old is your father and mother? Please specify if they are not living

Father: \_\_\_\_\_ years

Mother: \_\_\_\_\_ years

3. How many years is it since you left your parental home?

Less than 5 years  6-10 years  More than 10 years 

4. What is your reason for leaving parental home?

Got married  Job Prospects  Better living facilities Education for children  Prefer to stay separate 

Any other – please specify: \_\_\_\_\_

5. Who meets the expenses of your parents?

They have their own income  Myself  Icontribute partly I contribute whenever there is a need 

6. Where do your parents live?

In their own house  In my brother-sister's house In a relative's house  in my house  in an old age home

7. Whom do your parents live with?  
 They live alone  with my brother-sister  with Relatives   
 Domestic help stays with them  with my spouse   
 Others – please specify \_\_\_\_\_
8. How is the health of your parents?  
 They can manage on their own  They need help for routine activities   
 They need help only for shopping and bill payments
9. How often do you visit your parents?  
 Atleast once a month  Twice a year  Once a year   
 Once in two years  Once in more than 2 years
10. How often do you contact your parents?  
 Every day  once a week  Once a month   
 Once in few months  Only when there is a need
11. How do you contact them?  
 Phone call  video calls  electronic messaging  post letters
12. In a year approximately how many days do you stay with your parents?  
 Less than 30 days  30 – 60 days  60 – 90 days   
 more than 90 days  Nil
13. Why doesn't your parents live with you?  
 My income is insufficient to support them  Space is insufficient to accommodate them   
 Parents do not like to stay  Because of language problem   
 It is difficult for them to stay here  I feel it is better if we live separate   
 If any other reason please specify \_\_\_\_\_
14. Do you consider a well maintained old age home as a good place for your parents to stay?  
 Yes  No  Can't say
15. Do you think older people are discriminated in society or given a second class treatment in society?  
 Mostly  Never  Sometimes

16. Have you observed any separate queue or seating arrangement in these places for senior citizens

	Yes	No	Sometimes
Bill Counters			
Ticket Counters			
Banks			
Hospitals			
Vegetable shops			
Government Fair Price Shop			
Grocery Shops			
Milk booth			

17. Do you think the existing public transport is suitable for older persons in terms of the following aspects

	Yes	No
Buses are available near my residence		
Steps to enter the bus is convenient		
Steps to enter the train is convenient		
Seats are reserved in the bus for senior citizens		
Number of seats reserved for senior citizens in the bus is sufficient		
Others occupy the reserved seats and do not give to senior citizens		
Even unreserved seats are offered to senior citizens		
Waiting room/ seating facility in the bus station is appropriate for senior citizens		
Toilet facility in the bus station is appropriate for senior citizens		
Waiting room/ seating facility in the railway station is appropriate for senior citizens		
Toilet facility in the railway station is appropriate to senior citizens		
The different platforms at the railway station is easily accessible to senior citizens		

18. Are you aware that a parent can claim maintenance from children?

Yes  No

19. Are you aware that a childless senior citizen can claim maintenance from relatives who will inherit their property?

Yes  No

20. Do you think it is better for older persons to live in old age homes?

Agree  Do not agree  Do not know

Agree if there is nobody to take care of the senior citizen

21. Do you think day care centres for senior citizens is good?  
Yes  No  Good only in some cases
22. If day care centres are available in your locality, would you like to join your parents there?  
Yes  No
23. Do you know about any senior citizen being neglected, ill-treated or tortured physically/ mentally?  
Yes  No
24. Where would you like to stay when you are old?  
Alone (or with my spouse) in my house   
With my children in my house   
With children in their house   
In a paid old age home which is well maintained   
In a government old age home
25. Are you making any provision for your old age in terms of money?  
Yes  No   
If Yes , Please specify \_\_\_\_\_
26. Do you think older persons are able to contribute positively to society and at homes?  
Yes  No  Somewhat
27. Do you think old age is to be spent in leisure and not in supporting children?  
Yes  No  Can't say
28. Do you think senior citizens require special protection and benefits?  
Yes  No

### ANNEXURE – 3

#### QUESTIONNAIRE 3

(Respondents: Persons (Above 25 Years) Living With Parents/ Senior Citizens)

Please tick mark the appropriate options

##### Preliminary information

Age:

Sex : Male

Female

Educational status : 10<sup>th</sup> Std or below  12<sup>th</sup> std  graduate  postgraduate

Income per month: Below 5000  5000-10,000  10,000 – 20,000   
Above 20,000

Marital status: Single  Married  Separated   
Widow/ Widower

Which of these persons live with you : Father  Mother   
Father in law  Mother in law   
Relative who is a senior citizen

If a relative who is a senior citizen resides with you, please specify the relation with such person: \_\_\_\_\_

1. Please specify the age of the following persons, if they reside with you  
Father: \_\_\_\_ Mother: \_\_\_\_ Father in law: \_\_\_\_ Mother in law: \_\_\_\_  
Any other senior citizen: \_\_\_\_\_
2. Where do you reside?  
Parental home  Own house  rented house   
matrimonial home  Other  If other, please specify -
3. Do your parents/ parents in law/ relative (senior citizen) who reside with you, contribute financially for home expenditure?  
Regularly  Sometimes  Never
4. Who meets the personal expenses of your parents/ parents in law/ relative (senior citizen) who reside with you?  
They have their own income  Myself   
I contribute partly   
I contribute whenever there is a need
5. How often do you go out for film/ dinner / other entertainment?  
Mostly  Sometimes  Rarely  Never

6. How often do you go out for film/ dinner / other entertainment with your parents/ parents in law/ relative (senior citizen) who reside with you?  
 Mostly       Sometimes       Rarely       Never
7. Do you find any of these difficulty because of your parents/ parents in law/ relative (senior citizen) staying with you?  
 Lack of Space       Finance problem   
 Attention and care needed for them
8. How is the health of your parents/ parents in law/ relative (senior citizen) who reside with you?  
 They can manage on their own   
 They need help for routine activities   
 They need help only for shopping and bill payments
9. Do you wish that your parents/ parents in law/ relative (senior citizen) live separately?  
 Yes       No
10. Why does your parents/ parents in law/ relative (senior citizen) reside with you?  
 No alternate accommodation       I feel a sense of duty   
 Care-taker for your children       Feeling of guilt to keep them separate   
  
 Wish to live with them
11. Do you think your parents/ parents in law/ relative (senior citizen) are happy living with you?  
 Yes       No       Don't know
12. Do you consider a well maintained old age home as a good place for your parents to stay?  
 Yes       No       Can't say
13. How much of quality time do you spent with your parents?  
 Some time every day       Sometime during weekends   
 Never thought about it       Don't spend time
14. Are your parents consulted in decisions regarding home matters?  
 Yes       No
15. Do you think older people are discriminated in society or given a second class treatment in society?  
 Yes       No       Sometimes

16. Have you observed any separate queue or seating arrangement in these places for senior citizens?

	Yes	No	Sometimes
Ticket Counters			
Bill Counters			
Banks			
Hospitals			
Vegetable shops			
Government Fair Price Shop			
Grocery Shops			
Milk booth			

17. Do you think the existing public transport is suitable for older persons in terms of the following aspects?

	Yes	No
Buses are available near my residence		
Steps to enter the bus is convenient		
Steps to enter the train is convenient		
Seats are reserved in the bus for senior citizens		
Number of seats reserved for senior citizens in the bus is sufficient		
Others occupy the reserved seats and do not give to senior citizens		
Even unreserved seats are offered to senior citizens		
Waiting room/ seating facility in the bus station is appropriate for senior citizens		
Toilet facility in the bus station is appropriate for senior citizens		
Waiting room/ seating facility in the railway station is appropriate for senior citizens		
Toilet facility in the railway station is appropriate to senior citizens		
The different platforms at the railway station is easily accessible to senior citizens		

18. Are you aware that a parent can claim maintenance from children?

Yes  No

19. Are you aware that a childless senior citizen can claim maintenance from relatives who will inherit their property?

Yes  No

20. Do you think it is better for older persons to live in old age homes?

Agree  Do not agree

Agree if there is nobody to take care of the senior citizen  Do not know

21. Do you think day care centres for senior citizens is good?

Yes  No  Good only in some cases

22. If day care centres are available in your locality, would you like to join your parents there?  
 Yes  No
23. Do you know about any senior citizen being neglected, ill-treated or tortured physically/ mentally?  
 Yes  No
24. Where would you like to stay when you are old?  
 Alone (or with my spouse) in my house   
 With my children in my house   
 With children in their house   
 In a paid old age home which is well maintained   
 In a government old age home
25. Are you making any provision for your old age in terms of money?  
 Yes  Not yet  Should make  Need not make   
 If Yes , Please specify \_\_\_\_\_
26. Do you think older persons are able to contribute positively to society and at homes?  
 Yes  No  Sometimes
27. Do you think senior citizens require special protection and benefits?  
 Yes  No
28. Do you think old age is to be spent in leisure and not in supporting children?  
 Yes  No  Can't say



## ANNEXURE 4

### QUESTIONNAIRE 4 (To be filled by persons aged 18 – 25 years)

Please tick mark the appropriate options

#### PRELIMINARY INFORMATION

Age :  
Sex : Male  Female

1. Do you think older people are discriminated in society or given a second class treatment in society?

Yes  No  Sometimes

2. Have you observed any separate queue or seating arrangement in these places for senior citizens?

	Yes	No	Sometimes
Ticket Counters			
Bill Counters			
Banks			
Hospitals			
Vegetable shops			
Government Fair Price Shop			
Grocery Shops			
Milk booth			

3. Are you aware that a parent can claim maintenance from children?

Yes  No

4. Are you aware that a childless senior citizen can claim maintenance from relatives who will inherit his/her property?

Yes  No

5. Do you think the existing public transport is suitable for older persons in terms of the following aspects?

	Yes	No
Buses are available near my residence		
Steps to enter the bus is convenient		
Steps to enter the train is convenient		
Seats are reserved in the bus for senior citizens		
Number of seats reserved for senior citizens in the bus is sufficient		
Others occupy the reserved seats and do not give to senior citizens		
Even unreserved seats are offered to senior citizens		
Waiting room/ seating facility in the bus station is appropriate for senior citizens		
Toilet facility in the bus station is appropriate for senior citizens		
Waiting room/ seating facility in the railway station is appropriate for senior citizens		

	Yes	No
Toilet facility in the railway station is appropriate to senior citizens		
The different platforms at the railway station is easily accessible to senior citizens		

6. Do you think it is better for older persons to live in old age homes?  
 Agree  Do not agree   
 Agree if there is nobody to take care of the senior citizen   
 Do not know
7. Do you think day care centres for senior citizens is good?  
 Yes  No  Good only in some cases  Do not know
8. Do you know about any senior citizen being neglected, ill-treated or tortured physically/ mentally?  
 Yes  No
9. Where would you like to stay when you are old?  
 Alone (or with spouse) in my house   
 With my children in my house   
 With my children in their house   
 In a paid old age home which is well maintained   
 In a government old age home
10. Do you think every person should make any provision for his/her old age in terms of money?  
 Yes  No
11. Do you think older persons are able to contribute positively to society and at homes?  
 Yes  No  Somewhat
12. Do you think old age is to be spent in leisure and not in supporting children?  
 Yes  No
13. Do you think senior citizens require special protection and benefits?  
 Yes  No

## ANNEXURE – 5

UNITED NATIONS GENERAL ASSEMBLY RESOLUTIONS RELEVANT FOR OLDER  
PERSONS

Sl No	Resolution No.	Date	Title
1.	A/RES/213 (III)	4 December 1948	Declaration of old age
2.	A/RES/2542 (XXIV)	11 December 1969	Declaration on Social Progress and Development
3.	A/RES/2599(XXIV)	16 December 1969	Question of the elderly and the aged
4.	A/RES/2842 (XXVI)	18 December 1971	Question of the elderly and the aged
5.	A/RES/3137 (XXVIII)	14 December 1973	Question of the elderly and the aged
6.	A/RES/3138 (XXVIII)	14 December 1973	Social Security for the aged
7.	A/RES/31/113	16 December 1976	Specific measures to meet the need for a decent living environment for the most vulnerable groups of society
8.	A/RES/32/131	16 December 1977	Question of the elderly and the aged
9.	A/RES/32/132	16 December 1977	International Year and World Assembly on Ageing
10.	A/RES/33/52	14 December 1978	World Assembly on the Elderly
11.	A/RES/34/153	17 December 1979	Question of the elderly and the aged
12.	A/RES/35/129	11 December 1980	Problems of the elderly and the aged
13.	A/RES/36/20	9 November 1981	Question of the elderly and the aged
14.	A/RES/36/30	13 November 1981	World Assembly on Aging
15.	A/RES/37/51	3 December 1982	Question of Aging
16.	A/RES/38/27	22 November 1983	Question of Aging
17.	A/RES/39/25	23 November 1984	Question of Aging
18.	A/RES/40/29	29 November 1985	Question of Aging
19.	A/RES/40/30	29 November 1985	Implementation of the International Plan of Action on Aging
20.	A/RES/41/96	4 December 1986	Question of Aging
21.	A/RES/42/51	30 November 1987	Implementation of the International Plan of Action on Aging and related activities
22.	A/RES/43/93	8 December 1988	Implementation of the International Plan of Action on Aging and related activities
23.	A/RES/44/76	8 December 1989	Elderly Women
24.	A/RES/45/106	14 December 1990	Implementation of International Plan of Action on Aging

<b>Sl No</b>	<b>Resolution No.</b>	<b>Date</b>	<b>Title</b>
25.	A/RES/46/94	16 Dec 1991	Implementation of the International Plan of Action on Ageing: integration of the elderly in development
26.	A/RES/47/5	16 October 1992	Proclamation on Ageing
27.	A/RES/47/86	16 December 1992	Implementation of the International Plan of Action on Ageing: integration of older persons in development
28.	A/RES/48/98	20 December 1993	Implementation of the International Plan of Action on Ageing
29.	A/RES/49/162	23 December 1994	Integration of Older Women in development
30.	A/RES/50/141	21 December 1995	International Year of Older Persons towards a society for all ages
31.	A/RES/52/80	30 January 1998	International Year of Older Persons: towards a society for all ages
32.	A/RES/53/109	20 January 1999	International Year of Older Persons, 1999
33.	A/RES/54/24	2 February 2000	Follow-up to the International Year of Older Persons: a society for all ages
34.	A/RES/54/262	25 May 2000	Follow-up to the International Year of Older Persons: Second World Assembly on Ageing
35.	A/RES/55/58	4 December 2000	Follow up to the International Year of Older Persons : Second World Assembly on Ageing
36.	A/RES/55/58	17 January 2001	Follow-up to the International Year of Older Persons: Second World Assembly on Ageing
37.	A/RES/56/118	18 January 2002	United Nations Trust Fund for Ageing
38.	A/RES/56/228	28 February 2002	Follow-up to the International Year of Older Persons: Second World Assembly on Ageing
39.	A/RES/57/167	16 January 2003	Follow-up to the Second World Assembly on Ageing
40.	A/RES/57/177	30 January 2003	Situation of older women in society
41.	A/RES/58/134	26 January 2004	Follow-up to the Second World Assembly on Ageing
42.	A/RES/59/150	1 February 2005	Follow-up to the Second World Assembly on Ageing

<b>Sl No</b>	<b>Resolution No.</b>	<b>Date</b>	<b>Title</b>
43.	A/RES/61/142	30 January 2007	Follow-up to the Second World Assembly on Ageing
44.	A/RES/62/130	29 January 2008	Follow-up to the Second World Assembly on Ageing
45.	A/RES/63/151	18 December 2008	Follow-up to the Second World Assembly on Ageing
46.	A/RES/64/132	18 December 2009	Follow-up to the Second World Assembly on Ageing
47.	A/RES/65/182	21 December 2010	Follow up to the Second World Assembly on Ageing
48.	A/RES/65/182	4 February 2011	Follow-up to the Second World Assembly on Ageing
49.	A/RES/66/127	19 December 2011	Follow-up to the Second World Assembly on Ageing
50.	A/RES/66/127	9 March 2012	Follow-up to the Second World Assembly on Ageing
51.	A/RES/67/143	20 December 2012	Follow-up to the Second World Assembly on Ageing
52.	A/RES/67/ 139	13 February 2013	Towards a comprehensive and integral international legal instrument to promote and protect the rights and dignity of older persons
53.	A/RES/67/143	21 February 2013	Follow-up to the Second World Assembly on Ageing
54.	A/RES/68/134	18 December 2013	Follow-up to the Second World Assembly on Ageing
55.	A/RES69/146	18 December 2014	Follow-up to the Second World Assembly on Ageing
56.	A/RES/70/164	17 December 2015	Measures to enhance the promotion and protection of the human rights and dignity of older persons

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