



ADMINISTRATIVE REFORMS COMMISSION
GOVERNMENT OF KERALA

THIRD REPORT

Welfare to Rights

IMPLEMENTATION OF SELECT LEGISLATIONS
A REVIEW

.....
Children, Women, Senior Citizens
Persons with Disabilities, Mental Healthcare
Migrant Labourers
.....

OCTOBER 2018

In Partnership With
Center for Socio-economic and Environmental Studies (CSES), Kochi

Foreword

Kerala caught attention of the world through higher human development indices on comparatively low per capita income. The state has a long history of enacting progressive legislations across social sectors. Opening up of avenues of education to all and provision of affordable health care across all sections of society transformed Kerala to a highly literate state with highest life expectancy, for both men and women, among all states in India. The State's achievements in human development and inclusive development is widely recognised and appreciated. The first elected Government of unified Kerala built on the existing achievements in the social sectors/structure and started several new initiatives to meet the rising aspirations of the people and welfare of marginalised sections of society. Affirmative action and positive discrimination ensuring equal opportunity to all was the guiding motto of these initiatives. This progressive growth path was continued by successive governments and built the social fabric witnessed today.

In all these legislations/initiatives the basic structure was of welfare. But the nation and the state has moved away from welfare to rights-based legislations. This forces us to relook at legislations from the perspective of the person for whom the rules are made.

Reports on crimes against children, crimes involving children, abuse of children and denial of their basic rights and the number of cases registered show an increasing trend. Effective implementation of rights of children and rehabilitation of child victims remain a huge challenge.

Kerala is greying faster than other states in India. This may be a direct result of welfare measures implemented by the state in education and health. Better awareness and availability of affordable and quality health care have increased life expectancy and brought state's fertility rate to below replacement levels. This situation has led to an increase in dependency ratio in the state and reiterates the need for government to step in and protect the rights of senior citizens and provide them the environment to live with dignity.

Many of the laws enacted to ensure rights of women has not led to any positive change in their lives. Atrocities against women in the name of dowry, harassment at work places, exploitation of women for commercial purposes, denial of equal

wages for equal work etc., continue unabated despite the enactment of all the well intentioned legislations. Safety and security of women is still a mirage. In fact, reports of atrocities against women are on the increase.

Disability whether mental or physical is experienced by a person when society is not able to provide a conducive atmosphere where a person with physical/mental impairment can live on an equal footing as a person without any impairment. In implementing the laws ensuring the rights of Persons with Disability primacy is to be given to creation of an environment where their participation in all activities the society undertake can be ensured..

The new Mental Health Act aims at a paradigm shift from the way society perceives a person affected by mental illness and aims to uphold their right and dignity. Proper implementation of the Act will help in eliminating the stigma attached to mental illness and enable them to live as productive members of the society realizing their full potential.

Reforms in the social sectors in the state and availability of equal opportunities have created a situation which requires induction of labourers from other states in India in almost all sectors in the state. Interstate migration is the reaction to a need of the state and the availability of better economic/social conditions in the state. Extending to the migrant labourers all rights that a citizen of India is entitled to is a responsibility which the state should discharge.

In this context Commission has taken up analysis /review of selected legislations for senior citizens, persons affected by mental/physical disability, laws for rights of children and women, legislation concerning mental health and migrant labour, issues in implementation, and have suggested measures that may enable the State Government to extend better governance to the persons for whom these legislations are framed. The report is prepared after wide consultations with government officials and experts in the selected areas.

I reiterate that implementation of these recommendations will lead to improving the lives of marginalised and vulnerable sections of our society.



V.S. Achuthanandan

04.10.2018

Thiruvananthapuram

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Abbreviations

CCI	Child Care Institution
CEDAW	Convention on the Elimination of all forms of Discrimination against Women
CHC	Community Health Centre
CMID.....	Centre for Migration and Inclusive Development
Cr PC.....	Criminal Procedure Code
CRPD	Convention on the Rights of Persons with Disabilities
CSES.....	Centre for Socio-economic & Environmental Studies
CWC	Child Welfare Committee
DCPU	District Child Protection Unit
DIR	Domestic Incident Report
ECT.....	Electro Convulsive Therapy
FIR.....	First Information Report
IC	Internal Committee
ICDS	Integrated Child Development Scheme
ICP	Individual Childcare Plan
ICPS.....	Integrated Child Protection Scheme
ILO.....	International Labour Organisation
IPC	Indian Penal Code
IT.....	Information Technology
JJ.....	Juvenile Justice
KBOCWB	Kerala Building and Other Construction Workers Welfare Board
KELSA	Kerala State Legal Services Authority
KILA.....	Kerala Institute of Local Administration
KIMWWS.....	Kerala Inter-state Migrant Workers Welfare Scheme
KSCPCR	Kerala State Commission for Protection of Child Rights
LC	Local Committee
MDG.....	Millennium Development Goals
NCW.....	National Commission for Women
NFHS	National family Health Survey
NGO	Non Governmental Organisation
NIMHANS.....	National Institute of Mental Health and Neuro-Sciences
NSSO.....	National Sample Survey Organisation
PHC	Primary Health Centre
PO	Protection Officer
POCSO.....	Protection of Children from Sexual Offences
PSC	Public Service Commission
PwD	Person with Disabilities
PWDVA.....	Protection of Women from Domestic Violence Act
RDPO	Regional Dowry Prohibition Officer

RPWD..... Rights of Persons with Disabilities
RTE..... Right to Education
SCPCR.....State Commission for the Protection of Child Rights
SCPU State Child Protection Unit
SHOStation House Officer
SJPU Special Juvenile Police Unit
SOPStandard Operating Procedure
UNCRC United Nations Convention on the Rights of Children
UNCRPD..... United Nations Convention on the Rights of Persons with Disabilities

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Introduction

About the Report

Kerala's achievements in human development have received national and international attention in the past. Kerala society is often regarded as a relatively egalitarian society where skewness of income and assets is not extreme. Abject poverty and destitution are less visible. Minimum social security, food security and access to social consumption are provided to most of the population. Existence of subsidised education has provided a fair degree of social mobility. Rural- urban and gender differences are also low when compared to many other Indian states. While the State is placed on top among the states in India in the performance of almost all conventional indicators of human development and social development, there are several issues of the vulnerable groups which remain unaddressed or partially addressed. Delivery of government services, particularly to vulnerable sections of the population, is often found wanting in its "efficiency and effectiveness". This deficiency assumes importance as the nation has moved away from Welfare legislations to Rights based legislations in its endeavour to ensure inclusive development. In the above context the Administrative Reforms Commission (ARC) decided to look into issues relating to operationalisation of selected legislations, addressing key concerns of children, women, senior citizens, persons with mental and physical disabilities and inter-state migrant labourers. It is hoped that ARC presents this report as a step towards a more caring and equitable Kerala.

Given the constraints under which the Commission is functioning, it was practically impossible to examine all the legislations to protect the rights of the groups mentioned above. Therefore, based on consultations, within and outside the Commission, a set of legislations were selected for detailed review of implementation. The report presents review of implementation of following legislations and recommendations of the Commission emerging from the review.

1. Children :

- Juvenile Justice (Care and Protection of Children) Act 2015
- Protection of Children from Sexual Offences Act 2012
- The Commission for Protection of Children Act 2009

2. Women :

- The Immoral Traffic (Prevention) Act 1956
- The Dowry Prohibition Act 1961
- The indecent Representation of Women (Prohibition) Act 1986
- The Protection of Women from Domestic Violence Act 2005
- Sexual Harassment at Workplace (Prevention Prohibition and Redressal) Act 2013
- Equal Remuneration Act 1976

3. Senior Citizens

- The Maintenance and Welfare of Parents and Senior Citizens Act 2007

4. Persons with Disabilities

- The Rights of Person with Disabilities Act 2016

5. Mental Healthcare

- The Mental Healthcare Act, 2017

6. Migrant Labourers

- Kerala Inter-State Migrant Workmen (Regulation of Employment and Conditions of Services) Rules 1983
- Kerala Migrant Workers Welfare Fund Scheme 2010.

Methodology

Administrative Reforms Commission (ARC) adopted different forms of engagement for preparation of the report. The Commission was clear that a sound understanding can be obtained only through an open dialogue with the people of Kerala. To reach out to as many stakeholders as possible, to provide an opportunity for people to speak to the Commission and to collect a broad range of perspectives, ARC held a series of Public hearings in different parts of Kerala. Public Hearings were held at Thiruvananthapuram, Ernakulam, Palakkad and Kannur to elicit opinion and suggestions from the public. Workshops were also organised at different time points to identify issues and to obtain views of different stakeholders. An open call for written evidence and suggestions was made through the media and website of the Commission. ARC also had the opportunity to call upon the experience of experts in different fields in developing the report. The Commission prepared a set of questionnaires for seeking information from concerned government departments. Data and information provided by the departments were useful in understanding current status of implementation of the legislations reviewed by the Commission. The Commission also made own reviews with the support of the Centre for Socio-economic & Environmental Studies (CSES). Our

approach included detailed consideration of data, research and analysis that had been published on the variety of topics in our remit. In addition to the public call for evidence, ARC was offered specific evidence from different organisations. The Commission gratefully acknowledges those who generously gave their time to assist ARC with their evidence and views.

The Commission identified different issues in the implementation of the legislations examined by it based on the evidence collected through the methods discussed above. In the Commission's view, the issues identified have to be addressed to ensure that the State is able to confront the challenges ahead successfully. While Commission's analysis may be seen by some as a criticism of the State government, the departments and agencies within it and of their staff, ARC recognises the commitment and passion of many of those in the government to deliver social services to the people of Kerala.

Report Format

Chapters in the report deal with the situation related to a target group of the legislation viz., Children (Chapter 1), Women (Chapter 2), Senior Citizens (Chapter 3), Persons with Disabilities (Chapter 4), Mental Healthcare (Chapter 5) and Inter-State Migrant Labourers (Chapter 6). Each chapter provides description of the legislations under consideration, issues in implementation and recommendations of the Commission.



Children

CHAPTER 1

1.1 Introduction

India is a signatory to the United Nations Convention on the Rights of Children (UNCRC) which provides a broad framework for all government plans and programmes related to children. At the UN General Assembly Special Session on Children in 2002, India ratified the agenda titled World Fit for Children. The Millennium Development Goals (MDGs) too have been accepted by the Government of India, in which, as many as five out of eight goals have a bearing on children. At the national level, India's commitment towards its children is clearly manifested in the Indian Constitution. The country has also enacted various legislations to ensure children a suitable and enabling environment to develop.

The National Policy for Children 2013 reaffirms the country's commitment to the rights based approach in addressing the continuing and emerging challenges in the situation of children. The Policy recognises that "children are not a homogenous group and their different needs need different responses, especially the multi-dimensional vulnerabilities experienced by children in different circumstances". It also recognises that a long term, sustainable, multi-sectoral, integrated and inclusive approach is necessary for the overall and harmonious development and protection of children. The State Policy for Child 2016 aims to "provide quality services to ensure a just and secure environment for all children, opportunities for development, prevention and protection from all forms of violence, and forums for appropriate participation".

Kerala is ahead of most other states in the country in most of the conventional indicators of child development. The state's achievements are also comparable with that of some of the developed countries. While the country is grappling with the problem of fulfilling some of the international obligations related to children, Kerala has achieved these targets much before the target dates. Even while the state can legitimately be proud of its successes, there are certain issues in child survival, development, protection and participation, particularly related to the vulnerable sections of the population which needs immediate attention. It is in this context that the Commission examined the implementation of three legislations pertaining to the welfare of children viz., Juvenile Justice (Care and Protection of Children) Act 2015, Protection of Children from Sexual Offences Act 2012 and the Commission for Protection of Children Act 2009.

Discussion on each legislation includes an overview of the Act, brief assessment of the implementation of the Act in the state based on inputs from different stakeholders and recommendations of the Commission. While many of the recommendations are linked to a particular legislation, certain recommendations may relate to more than one legislation. Such recommendations have been reported at the end of the chapter after the discussion on individual legislations under the heading 'General Recommendations'.

1.2 Juvenile Justice (Care and Protection of Children) Act 2015

1.2.1 Overview of the Act

The Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act, 2015) was enacted by repealing the Juvenile Justice (Care and Protection of Children) Act, 2000. The preamble of the Act states that it is an Act “to consolidate and amend the law relating to children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established under the Act”.

Some of the important provisions of the Act are:

- The Act is applicable to two categories of children viz., children in conflict with law and children in need of care and protection. The term ‘child in conflict with the law’ refers to any person below the age of 18 years who has come in contact with the justice system as a result of committing a crime or being suspected of committing a crime. Child in need of care and protection includes a child i) without a home or without means for subsistence ii) working in contravention of labour laws or begging or living on street iii) residing with a person who has a history of abusing/neglecting children and hence the child is in reasonable danger of being a victim of similar behavior iv) mentally ill, physically challenged or child suffering from terminal or incurable disease having no one to care or support v) child who does not have parents/guardian or whose parent/guardian is incapable of looking after the child vi) abandoned, missing child whose parents could not be found vii) child affected by armed conflict, civil unrest or natural calamity viii) child who is at imminent risk of marriage.
- The competent authority to deal with children in need of care and protection is the Child Welfare Committee (CWC). Juvenile Justice Board (JJ Board) is the competent authority to deal with children in conflict with law.

- A major difference in the JJ Act, 2015 from the previous Act is the special provisions to deal with children in the age group of 16-18 years who commit heinous offences. The law permits children between 16-18 years of age to be tried as adults for heinous offences¹.
- If the JJ Board, after preliminary assessment finds that there is a need for trial of the child as an adult, it may order transfer of the trial of the case to the Children's Court, a special court set up under the Commission for Protection of Child Rights Act, 2005, or a special court under the Protection of Children from Sexual Offences Act, 2012. In absence of such courts, a juvenile can be tried in a Sessions Court that has jurisdiction to try offences under the JJ Act.
- The State Government may create a fund for the welfare and rehabilitation of the children dealt with under this Act.
- The Act provides for the establishment of various kinds of Institutions such as
 - Children's Home for child in need of care and protection
 - Special Homes for child in conflict with law
 - Observation Homes for the temporary reception of children during pendency of any inquiry.
 - Shelter Homes, Place of Safety and Specialised Adoption Agencies
- Adoption, foster care and sponsorship are the major non-institutional methods of rehabilitation. The Central Adoption Resource Agency frames rules and regulations for adoption of orphaned children.
- Institutions for child-care must be registered.
- The Act mandates non-disclosure of the identity of a child in conflict with law or in need of care and protection or a child victim or witness of a crime. The Act also provides for punishment to persons who are in charge of or control over the child for acts of cruelty and neglect. Employing a child for begging and giving a child intoxicating liquor, narcotic drug etc. are punishable offences under the Act. Corporal punishment of children in child-care institutions is also punishable.

1.2.2 Implementation of the Act

- As per the statistics of the Crime Records Bureau, 629 cases of children in conflict with law under IPC and Special and Local Laws have been reported in Kerala in 2016. The share of the state in the total number of such crimes committed in the

¹JJ Act 2015 allows for children 16 years or older to be tried as adults for heinous offences like rape and murder. This major change was the fall out of the public outrage caused due to the gang rape of a student (Nirbhaya) in Delhi in 2012 and the involvement of a juvenile in the attack. The decision to try a child 16 year or older as an adult is to be taken by the Juvenile Justice Board. The amendment has been criticised for violation of UN Convention on the Rights of the Child, to which India is a signatory. The Convention mandates that all children under the age of 18 years be treated equal.

country is 1.8 percent which is much lower than the state's share in the country's population. The rate of cognizable crimes committed by children in Kerala is 6.7 per lakh population as against 8.0 at the national level. Majority of the crimes come under burglary, theft, riots and hurt under the IPC.

- State Government is yet to notify the Rules for implementation of the JJ Act 2015. Juvenile Justice Board headed by the First Class Judicial Magistrate is functioning in all districts. It is reported by various stakeholders that there is delay in disposal of cases by the JJ Board. The Child Welfare Committees (CWC) are now available only in 12 out of the 14 districts. Constitution of the CWC in Wayanad and Alappuzha could not be done due to cases before the High Court of Kerala. The term of office of the existing CWCs has expired long back and they are continuing on an ad hoc basis. Lack of professional staff to support the functioning of CWCs is yet another problem.
- The facilities available in the child care institutions are found to be inadequate to ensure satisfactory quality of life for the inmates of these institutions. Management committees have been constituted in all child care institutions as per the provisions of the model rules formulated by the central government for implementation of JJ Act. State Child Protection Society was constituted in 2014 and District Child Protection Unit (DCPU) was constituted in all districts subsequently. State and District Inspection Committees have also been constituted.
- All institutions for providing care and protection to children are expected to have child friendly infrastructure and follow child friendly procedures. However, this seldom happens in the state. Most of the institutions such as police stations, children's court and JJ Board do not have a child friendly environment and do not follow procedures.
- With the enactment of JJ Act 2015, all institutions housing children in need of care and protection have to mandatorily obtain registration under the Act. As on 31-12-2017, the deadline set by the Supreme Court of India for the registration of child care and protection agencies (including orphanages), 531 institutions have been registered. The number of orphanages under the Orphanage Control Board alone is about 1200. Of them, only 100 have been registered under JJ Act before the deadline. Some have changed their status from orphanage to hostels for children. However, the State government do not have specific regulations for registration and monitoring of hostels for children and women.
- The increasing intake of migrant children in child care institutions and orphanages have been reported. Language barriers are creating problems for the children as well as caregivers.

- In order to conform to legal requirements, Special Juvenile Police Unit has been constituted in all the districts. Deputy Superintendent of Police/Assistant Commissioner (Crime Records Bureau) has additional charge of the unit. Circle Inspector (Women's cell) is designated as the Assisting officer. There are three civil police officers in the unit, of which, two are women. In the police stations, the Station House Officer (SHO) functions as the Child Welfare Police Officer. However, responses of the public and the functionaries indicate that functioning of the Juvenile Police Unit is not effective at present. Many of the police officers in the Juvenile Police Unit are not given proper training.
- *Balanidhi*, (ബാലനിധി) Juvenile Justice Fund, formed as per provision of the Act was inaugurated in the state in January 2018. The fund is mobilised through contributions from individuals, organisations, and corporate bodies using their Corporate Social Responsibility funds. Contribution to *Balanidhi* is eligible for income tax exemption. Beneficiaries of the fund include different categories of children- inmates of children homes; children without safe houses; children rescued from begging, labour and the streets; orphaned children; rescued children who went missing; victims of abuse, exploitation, natural calamities and other tensions; financially backward children; potential victims of child marriage; mentally deranged children; children addicted to drugs or exploited for drug trade; victims of child trafficking; children suffering from terminal diseases; children belonging to transgender section; children of terminally-ill parents; children from downtrodden families belonging to scheduled castes/tribes or fishermen community; and children under the care of Child Welfare Committee and Juvenile Justice Board. However, Government does not have data on the number of children belonging to the above mentioned categories in the state.
- According to the response of the Director of Women and Child Development, the department is organising awareness programmes on the JJ Act for officials of different departments concerned with children as well as for the public and school children. Awareness programmes are also held for Juvenile police units.
- It is widely accepted that accommodation can be provided to children in difficult circumstances in child care institutions only to a very limited extent. To address the issues faced by majority of such children community level interventions and non-institutional care is required. However, the state has not made much progress in this direction.
- Foster care programme is implemented through the District Child Protection Units. Government has also initiated a Vacation Foster Care programme to provide family experience to children who are unable to visit their homes. Rehabilitation of children in child care institutions continues to be a major challenge.

- As per ICPS guidelines, an amount of Rs 10 lakhs per district is allocated annually towards sponsorship for children from poor families. The amount is fixed as Rs 2000 per month per child. The amount is sufficient to provide sponsorship to only 40 children in a district. Thus, only less than 600 students in the state can avail benefits of the scheme. In view of this, state government has initiated another scheme viz., *Vijnana Deepthi* (വിജ്ഞാനദീപ്തി) to provide financial assistance to about 1000 children. However, this is also not sufficient considering the large number of children in difficult circumstances.
- Interaction with different government functionaries indicates the inadequacy of training received by them to handle issues related to children. Even when these functionaries are professionally qualified, in the absence of regular training inputs, the system fails to ensure a child friendly environment in the institutions functioning for the welfare of children.
- Delay in the release of required funds to the district level offices of the ICPS is affecting its functioning. Along with this, failure to delegate financial powers to the implementing officers at the district level is reported to be leading to inefficiency in implementation.
- Lack of coordination between ICPS functionaries and the Local governments.
- Problems of children with disabilities do not receive the required attention. Problems related to the education of such children in regular schools and Special Schools are not addressed. Due to shortage of professional staff like speech therapist, psychotherapist and occupational therapist, early detection and intervention are adversely affected. Occupational therapy courses are not sufficiently available in Kerala.

1.2.3 Recommendations

- The JJ Act came into force in January 2015. But the State Rules to implement the Act is yet to be notified in Kerala. The State Government shall, without delay, notify Rules under JJ Act 2015.
- As per JJ Act, CWCs and JJ Boards should be reconstituted every three years. This has not materialised in the state. The CWCs and JJ Boards, important mechanisms for implementation of legislations for the welfare of children, shall be reconstituted at the earliest. The State Rules shall specify that the process of reconstituting the CWCs and JJ Boards should start six months before the term of a committee/board ends.
- To identify children in difficult circumstances, Vulnerability Mapping Survey is proposed to be undertaken under ICPS. State-wide vulnerability mapping survey

should be undertaken by the Women and Child Development Department. The mapping exercise should cover aspects such as history and chances of violence against children, malnutrition, access to toilets, access to improved sources of water, living environment, immunisation, school drop outs, access to media, information and communication facilities, child health and access to early childhood education. After identification of the vulnerable children, they shall be included in various schemes of the state government to help them come out of deprivation. Support from the JJ Fund shall be extended to them. The mapping will not only help to identify the vulnerable children but also be useful for policy making at the local as well as state level.

- The *Kaval* (കാവൽ) project for the rehabilitation of children in conflict with law is an innovative programme of the Government of Kerala. The project extends psycho social care to children with the support of NGOs. NIMHANS provides technical support to the project. The project addresses not just the child but also her/his family. In most cases, children who have committed crimes are given bail, and then completely forgotten. Only in rare cases, especially if considered dangerous to the society, they are sent to Observation Homes. Many of the children who are sent back are virtually abandoned by their families and are likely to fall back into crime. The project provides a sense of direction to the children and their families. The project is now implemented only in nine districts. It shall be extended to all districts in Kerala.
- As per the JJ Act, inquiry relating to a child in conflict with law has to be completed within a period of four months from the date of first production of the child before the JJ Board. The period can be extended for a maximum of two more months by the Board. Preliminary assessment in case of heinous offences under section 15 shall be disposed of by the Board within a period of three months from the date of first production of the child before the Board. However, the time limit prescribed in the Act is rarely followed. The delay in completing the proceedings is causing mental agony to the child and also disrupts her/his studies. In view of the above, JJ Boards shall be revamped and enabled to provide speedy justice to children who are accused of criminal offences.
- Individual Care Plans (ICPs) are required for each child in need of care and protection and child in conflict with law. However, according to a report of the SCPCR, this is yet to be fully implemented in the state as envisaged in the JJ Act. Specific guidelines for preparing ICPs shall be issued by the Women and Child Development Department. Both short-term and long-term plans for the child should be available. Women and Child Development Department shall ensure that ICPs are prepared realistically and are implemented for each child in CCI. This shall be done in a time bound manner. Counsellors shall be involved in the

preparation of ICP. Management committee meeting shall be held every month and should take necessary decisions on the ICP.

- Facilities for institutional care for children in need of care and protection and children in conflict with law need to be improved considerably. Based on a consultation with different stakeholders, specific standards shall be developed for the functioning of institutions for children. Current standards need to be revised. A Charter on the rights of children who are inmates of institutions for the welfare of children shall be developed. However, the more important challenge is to ensure that the standards are followed in each institution. Action plan to upgrade child care institutions should be prepared at the state level. This, along with a charter of the rights of children in such institutions can improve their lives in such Homes. It shall be mandatory for all Homes to be open to visitors, social workers etc. to maintain transparency in functioning. Social auditing shall be done in CCIs registered under the JJ Act. Specific guidelines for conducting social audit shall be prepared at the state level. There should also be a provision for addressing issues identified in Social Audit within a specified period.
- A flexi fund should be provided to government run CCIs to meet contingencies. Revision of allocation for food, clothing etc. for children in CCIs should be done at the beginning of each academic year considering changes in prices of various items.
- Children entering CCIs are a vulnerable group and most of them continue to experience problems whilst in care and after they exit, though the reasons for this are complex. Environment in the Children's Home shall be made conducive to enable the children to continue studies. Absence of necessary support from the family and the inadequate attention they receive in the school necessitate additional support for children in CCIs in their studies. Therefore, the government shall consider the option of engaging Education Volunteer/Facilitator/Mentor in the CCIs who will not only support the children in their studies but will also act as a person to whom they can talk on matters concerning their welfare.
- UNCRC recognises the right to participation of children, along with survival, development and protection rights. As per rule 40 of the JJ Model Rules 2016, person-in-charge of every institution for children shall facilitate the setting up of children's committees for different age groups of children and these committees shall be constituted solely with children. Such children's committee shall be encouraged to participate in following activities: i) improvement of the condition of the institution; ii) reviewing the standards of care being followed; iii) preparing daily routine and diet scale; iv) developing educational, vocational and recreation plans; v) respecting each other and supporting each other in managing

crisis; vi) reporting abuse and exploitation by peers and caregivers; vii) creative expression of their views through wall papers or newsletters or paintings or music or theatre; viii) management of the institution through the Management Committee. The Person-in-charge shall ensure that the children's committees meet every month and maintain a register for recording their activities and proceedings and place it before the Management Committee in their monthly meetings. The Person-in-charge shall ensure that the children's committees are provided with essential support and materials including stationary, space and guidance for effective functioning².

- Children's homes in the state have many destitute children from other states as inmates. There is delay in transferring them to their home state. In view of this, the Commission recommends that such children should be transferred to the state of origin within a time limit fixed by the Women and Child Development Department.
- Police department should ensure timely availability of police escorts for transferring rescued migrant children to their place of origin.
- Detailed study of the functioning of institutions for the care and protection of children (including *Nirbhaya Homes* - നിർഭയ ഹോംസ്) shall be undertaken to understand whether these homes are able to effectively meet the objectives for which they have been formed. Assessment of the needs of the children shall also be an objective of such a study.
- The Commission recommends that the Women and Child Development Department should ensure that all orphanages functioning in the state are brought under JJ Act. The department should broaden its purview for inspection to assess the functioning of orphanages. System for monitoring the functioning of orphanages shall be developed by the state government.
- There is also a need to conduct a study on the welfare of children who come out of orphanages. Such a study is essential since the mainstreaming of these children poses several issues. ARC recommends that such a study shall be initiated without delay.
- In the absence of a systematic assessment of the functioning of the child care institutions, it is difficult for the state government to understand how effectively these institutions function. It is important to have a state level monitoring mechanism incorporating data and information from different departments/agencies/institutions. Such a monitoring system could be based at the State Commission for the Protection of Child Rights.

²Living Conditions in Institutions for Children in Conflict with Law, Manual, Ministry of Women and Child Development, Government of India, 2017.

- Some police stations in the state have been declared as child friendly police stations. However, apart from providing child friendly ambience in the police stations, focus should be given to improving capability of the police personnel to deal with cases involving children. More importantly, the objective should be to make every police station child friendly. To achieve this, a state scheme should be newly designed. Moreover, the training programmes for police personnel shall include sensitisation on child friendly environment, systems and procedures required in police stations. The state needs to develop a set of minimum standards relating to child friendliness of police stations. The police stations have to be more sensitive to the needs of the children and be sensitive to the fear and trauma that they may experience while interacting with police personnel or visit a police station. The opinion of children should also be considered while preparing the norms.
- The School Protection Groups are seldom convened. Station House Officer of the Police Station is the convener. With numerous other duties, the SHO is not able to convene the meeting. The Head Teacher shall be made the Convener of the School Protection Group and it shall be ensured that at least one Police Officer attends the Group meeting.
- There is an urgent need to appoint councilors in CWCs. Government should act within a specified period and appoint counsellors in all CWCs.
- Children in CCIs shall be rehabilitated once they complete 18 years. There is a need for formulating an after care policy by the state for proper monitoring of rehabilitation of the children.
- To promote foster care, the Women and Child Development Department should form a state cell to coordinate the activities. Functionaries of ICDS should be involved in activities for promoting foster care.
- Till such time as the system for providing foster care stabilise and become robust Government shall ensure that CCIs for girls and boys are available in all districts
- Availability of Observation Homes in all districts may also be ensured.

1.3 Protection of Children from Sexual Offences Act (POCSO Act) 2012

1.3.1 Overview of the Act

The Protection of Children from Sexual Offences Act (POCSO Act) 2012 was enacted to protect children from sexual offences and to provide a child-friendly system for the trial of such offences. The Act regards the best of interests of the child as being of paramount

importance at every stage, to ensure healthy physical, emotional, intellectual and social development of the child. Some of the important provisions of the Act are:

- Classifies sexual offences against children into six – penetrative sexual assault, aggravated penetrative sexual assault, sexual assault, aggravated sexual assault, sexual harassment, and using a child for pornographic purposes. The Act further states that a sexual assault is to be considered “aggravated” under certain specific circumstances, such as when the abused child is mentally ill or when the abuse is committed by a member of the armed forces or security forces or a public servant or a person in a position of trust or authority of the child, like a family member, police officer, teacher, or doctor or a person-management or staff of a hospital -- whether Government or Private.
- The Act provides for the establishment of Special Courts for trial of offences under the Act, to provide quick justice to such children.
- It makes it the legal duty of a person who has knowledge that a child has been sexually abused to report the offence.
- The statement of the child should be recorded within a period of thirty days of the Special Court taking cognizance of the offence and the Court shall complete the trial, as far as possible, within a period of one year from the date of taking cognizance of the offence. It also provides that the Court shall try cases ‘in camera’ and in the presence of the parents of the child or any other person in whom the child has trust or confidence.
- The Act lays down child friendly procedures for reporting, recording of evidence, investigation as well as the trial of offences covered under the act. Statement of the child should be taken at the residence of the child or at the place of her/his choice, by police officials not in uniform, preferably by a woman police officer. Medical examination of the child to be conducted in the presence of the parent of the child or any other person in whom the child has trust or confidence.

In October 2017, the Supreme Court held that a man will be punished for rape if he is found to be guilty of having sexual intercourse with his wife if she is less than 18 years old. With this verdict, the Supreme Court has ended the conflict between the exception to Section 375 of IPC which allows a husband to have sexual relationship with his 15-year-old wife, and the definition of ‘child’ in the POCSO Act.

1.3.2 Implementation of the Act

The number of POCSO cases in the state is showing an increasing trend during the last five years. From 1016 cases in 2013, it increased to 2611 cases in 2017. The increase

could be partly because of the increase in awareness level and improvement in reporting of crimes. However, the human resources, infrastructure and facilities required to handle the emerging scenario is yet to be put in place. As a result, there has been undue delay in the disposal of such cases. Annual report of the Kerala State Commission for the Protection of Child Rights indicates high pendency of POCSO cases in the children's courts and special courts in the state (Table 1.1). It also indicates that in just 15 per cent of the cases, accused are convicted indicating inefficiencies in the system. It is also found that compensation is awarded in very few cases.

Figure 1.1: Number POCSO Cases Registered Yearly in Kerala (2013-2017)

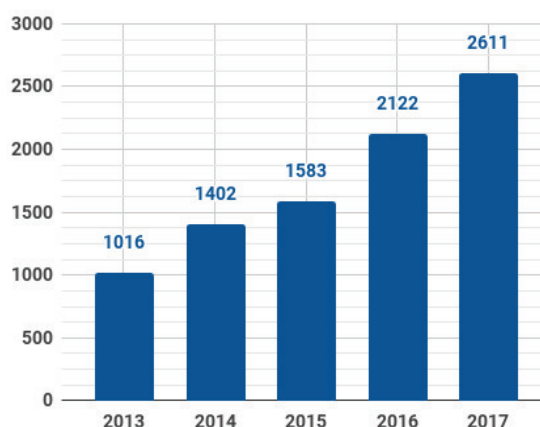


Table 1.1: Details of POCSO cases in various Special Courts in Kerala in 2017

Children's Court/ Special Court	No. of cases	Com- pleted cases	% of com- pleted cases	Details of completed cases			Com- pen- sation given	Pend- ing Trial
				Convicted	Acquitted	Others		
Thiruvananthapuram	803	62	8	8	42	12	1	741
Kollam	478	120	25.1	9	105	6	0	358
Pathanamthitta	254	50	19.6	10	37	3	0	204
Alappuzha	250	6	2.4	1	2	3	0	244
Kottayam	397	10	2.5	1	6	3	0	387
Idukki	411	55	13.3	2	45	3	0	356
Ernakulam	409	189	46.2	41	136	12	6	220
Thrissur	612	19	3.1	7	5	7	4	593
Palakkad	414	48	11.5	15	29	4	0	366
Malappuram	561	39	6.9	16	13	10	18	522
Kozhikode	433	109	25.1	10	88	11	1	324
Wayanad	255	51	20	8	40	3	6	204
Kannur	296	12	4.05	2	3	7	2	284
Kasargod	309	58	18.7	5	49	4	0	251
Kerala	5882	828	14.74	135	600	88	38	5054

Source: Kerala State Commission for Protection of Child Rights

- Section 43 of the Act mandates the State Government to give wide publicity to the provisions of the Act. Such activities have to be undertaken on a continuing basis. State government's efforts in this direction needs to be strengthened.
- The POCSO Act suggests that the trial, as far as possible, be completed within one year of the court taking cognizance of the offence. But cases which took eight years (registered before implementation of the Act) for completion of proceedings have been reported.
- Under the POCSO Act, the court environment and proceedings should be child friendly. However, situation in the children's courts in Kerala leaves much to be desired. Necessary privacy, confidentiality and child friendliness are not ensured.
- There are complaints that reports of POCSO cases are not provided by the police to the CWC in some POCSO cases.
- Many of the *Nirbhaya homes*, which provide shelter to sexually abused children, are overcrowded. It is also pointed out that some of the *Nirbhaya Homes* are becoming a house for confinement of children.

1.3.3 Recommendations

- The number of cases of child sexual abuse is showing an increasing trend over the years which is a cause of alarm. The State has to give serious attention to preventive measures which has not yet gathered momentum in the State. At present, state machinery is focused on prosecution of the accused, though the conviction rate is low. The duty to protect children from sexual violence shall be given importance along with measures to ensure that the guilty are punished. State's child rights protection mechanism shall develop a comprehensive strategy to reach out to different sections of the population, especially the most vulnerable. Creating awareness in the society about ill effects of child sexual abuse and about the strong penal provisions of POCSO Act is a step in this direction. Section 43 of the Act mandates the State Government to give wide publicity to the provisions of the Act. This has to be carried out consistently and continuously. State Governments efforts in this direction need to be strengthened.
- The POCSO Act suggests that the trial, as far as possible, be completed within one year of the court taking cognizance of the offence. But cases originated in 2012 (the year in which the Act came into force) or before are still pending even in courts handling only cases relating to women and children. Cases related to sexual abuse of children which took even eight years for the completion of proceedings have been reported. The absence of exclusive courts to try the cases and delay in getting forensic reports are factors that delay justice to the child victims. Currently, the special courts for trying offences against women and children double up as

POCSO courts in the State. In view of the above, the Commission recommends that more Children's Courts which deal exclusively with cases relating to children should be established to ensure that the cases are completed within one year, as envisaged in the POCSO Act. The state government should ensure that Special prosecutors appearing in POCSO cases have sufficient experience in dealing with child related cases. If such prosecutors are not available, private lawyers with relevant experience should be engaged. The government in consultation with High Court shall develop a system to ensure that the cases are disposed in a time bound manner.

- It is reported that in 68 per cent of the child sexual abuse cases reported in the State, the accused(s) are close relative(s) of the child. Rehabilitation of these children is a big challenge. At present the State is giving alternative rehabilitation mechanisms like foster care to these children. Concrete efforts should be made to chalk out plans to rehabilitate such children.
- Under the POCSO Act, the court environment and proceedings should be child friendly. However, the situation in children's courts in Kerala leaves much to be desired. Apart from speedy trial, appropriate procedures to cater to the special needs of children of different age groups are required. The victims have the right to privacy and confidentiality which has to be honoured by providing separate waiting space for the victim and the family with basic facilities such as comfortable seating, a fan, and a toilet. To reduce waiting time for children outside the court, examination of children should be scheduled at a specific time. If the hearing is postponed, the victims and their families should be informed beforehand of the postponement. Ambience of the court and the seating facilities should be informal. Such measures will ensure the mental and physical comfort of the child so that she/he can testify calmly and with peace of mind. Regular monitoring by the High Court is necessary to ensure that child friendly procedures are followed in cases relating to children. Examples of child friendly courts established in Bangalore and Hyderabad may provide some direction to the way in which the children's court in Kerala should change.
- Presently, a child who is sexually abused has to be produced before a Child Welfare Committee (CWC) which will then offer a support person to the victim. The system does not offer support to the child victims and their family at the point where the offence gets registered- police stations. To reduce the trauma experienced by children, the services of a counsellor or social worker should be made available at the point of registration of the crime.
- It should be made mandatory for the Investigating Officer (IO) to meet with the child before they frame charge. This will help the IO to assess impact of the violence on the child

- Incidents of children facing hostile situations when they are taken for medical examination and children having to wait for hours together for examination, which is against the best interest of the abused child, are reported widely. In-depth and repeated sensitisation programmes shall be given to medical professionals to ensure that the environment in the hospitals are made conducive to the child.
- Government shall authorise women doctors of PHCs/CHCs/Taluk Hospitals to examine child victims of sexual violence.
- Delay in getting compensation for child victims of sexual abuse has been widely reported. This, at times, forces the victim / family to accept money from the accused leading to acquittal of the accused. Many cases are dismissed by Hon. High Court on account of compromise reached by the parties to the exclusion of the interests of the child. There is a need for sensitisation of various stakeholders on this aspect including judicial officers.
- Special attention and support are required in handling cases relating to sexual abuse of mentally challenged children. Such support should be extended to the victim and her/his family while interacting with Police and during trial in courts. Priority should be given to such cases. Separate guidelines are required for the trial of intellectually challenged children.
- Government should review reasons for the low rate of conviction in POCSO case, which is below twenty per cent, in the State.
- A scheme like *Kaval* should be initiated at the community level for extending psycho social support to sexually abused children who are outside the *Nirbhaya Homes*, at the Taluk/Village level. Involvement of Child Protection Committee shall be ensured in its functioning.
- Currently, 11 *Nirbhaya Homes* are set up in the State to provide shelter to the children who are sexually abused. Most of these homes are facing acute space crunch. 40-45 children are made to live in a 1000 sq. ft building. Though the Juvenile Justice Act lays down certain standards for homes that are meant for children, these provisions are not followed in *Nirbhaya Homes*. Urgent steps shall be taken to improve the living conditions of children in *Nirbhaya Homes*. It is also important to note that majority of sexually abused children are living outside these institutions. Therefore, community based psychosocial support needs to be extended to such children.
- Children, in many cases, are forced to give repeated testimony which is against provisions of the POCSO Act, The Act specifies importance of videography while taking testimony. But this is mostly not done. Government should ensure that testimony given by the child to the police and court is video graphed.

- Prevention of sexual abuse/violence should be given priority. Government shall take steps for impart training in life skills in schools. Awareness programmes for the public should form part of ongoing programmes.

1.4 Commission for Protection of Child Rights Act 2005

1.4.1 Overview of the Act

As per the Act, a National Commission and State Commissions should be constituted for the protection of child rights. The State Commission consists of chairperson and six members who are well versed in child welfare. At least two members should be women. The state commission is required to submit an annual report to the state government as well as special reports when an issue needs immediate attention. Functions of the Commission are:

- Examine any law or constitutional provisions to ensure that safeguards of the law protect child rights
- Provide the state government with recommendations to improve the safeguards
- Inquire into child rights violations
- Examine the risk factors for children affected by terrorism, communal violence, riots, natural disasters, domestic violence, HIV/ AIDS, trafficking, maltreatment, torture and exploitation, pornography, and prostitution and recommend appropriate remedial measures
- Look into the special care and protection of children from distressed, marginalised and disadvantaged backgrounds
- Study and ensure implementation of child rights treaties
- Conduct research in the field of child rights
- Create awareness through various mediums
- Inspect any children's home or observations homes where children have been detained

The Supreme Court held that the powers made available to the national and state Commissions for Protection of Child Rights are only for the limited purpose of 'facilitating an investigation or enquiry' but 'do not convert it into a Civil Court'. Power of a Civil Court of granting injunctions, temporary or permanent, is not inherent to the national and state Commissions. Such powers can only be exercised by a Court, duly vested with such powers. However, analogous to the powers of a Civil Court, Commissions for the Protection of Child Rights have been empowered to summon and enforce the attendance of any person.

1.4.2 Implementation of the Act

- The State Commission for the Protection of Child Rights (SCPCR) has disposed 3997 cases since it was constituted in 2013. As per the data provided by SCPCR,

2183 cases were pending before the Commission as on 15-08-2017. SCPCR has submitted several reports and recommendations on various issues related to child rights to the State government. Annual report of the functioning of the Commission is also submitted to government regularly. Follow-up actions are also undertaken.

- SCPCR has the responsibility to monitor implementation of RTE Act, POCSO Act and JJ Act. The SCPCR also has the responsibility to ensure that children enjoy other rights conferred by the Constitution and different legislations of the central and state governments. A judgment of the Supreme Court in 2017 entrusted SCPCR the responsibility to organise social audit in all institutions covered by the JJ Act. The Supreme Court in another judgment in 2017 also entrusted it to monitor implementation of the Standard Operating Procedure (SOP) on Missing Children. However, the current staff strength in the Commission is grossly inadequate to undertake these tasks effectively.
- The staffs of the Commission are appointed on deputation from other government departments, often for a period of one year. Once the deputation period ends, there is considerable delay in filling up the vacancies.
- According to SCPCR, there is no timely response to issues identified by the Commission and measures suggested by it to resolve the issues from other government functionaries.
- Even though SCPCR is vested with the responsibility of monitoring three important statutes, no platform is available for presenting its findings to stakeholders. Time bound compliance is also not ensured.
- The database currently available in the Commission is not sufficient to undertake proper monitoring of implementation of the legislations. At present, the information received by SCPCR from different agencies does not collectively form a database. However, inadequacy of the database is not an issue related to the SCPCR alone. The absence of an integrated database on the implementation of the legislations to protect the rights of children is affecting the monitoring by different agencies at the state and district levels.

1.4.3 Recommendations

Recommendations emerging from the review of the implementation of the Act are presented below:

- Service Standards should be fixed for different actions of the SCPCR in relation to the complaints of child rights violations. Norms on time taken to initiate action on receipt of complaints/grievances and time taken to resolve the grievances are

required. Citizen's Charter of the State Commission for Protection of Child Rights should be published in the website of the Commission.

- The database currently available in the SCPCR is not sufficient to undertake proper monitoring of implementation of the legislations. There is a need to strengthen the database of not only the SCPCR but also all agencies and institutions engaged in the welfare of children.
- SCPCR has the responsibility to monitor implementation of RTE Act, POCSO Act and JJ Act. The SCPCR also has to monitor the Standard Operating procedure on Missing Children and handle the increasing number of complaints of child rights violation received by it. The staff strength of the commission is grossly inadequate to effectively manage the functions entrusted to it. Appointment of staff on deputation basis for one year and the delay in filling up vacancies are creating additional problems. In view of the above, staff requirements of the SCPCR shall be properly assessed considering new responsibilities entrusted on it and staff shortage faced by SCPCR shall be addressed at the earliest. SCPCR should be given greater freedom and funds to engage experts in child related matters to assist its functioning.
- JJ Cell in SCPCR shall be started immediately. A Help Desk should also be formed in SCPCR for the benefit of the public. Research and documentation wing should be constituted in SCPCR to support its functioning. SCPCR should undertake studies relating to rights of children in Kerala using in-house resources as well as by outsourcing studies to reputed institutions.
- A major problem faced by SCPCR in making effective intervention is the lack of cooperation from different government departments involved in the implementation of its orders. Since the Commission does not have the powers to enforce implementation of its orders, the system can work effectively only if the concerned departments take serious note of the directives of SCPCR.

1.5 General Recommendations

Discussion in the previous section pertains to each Act reviewed by the Commission. As mentioned earlier, some of the recommendations have implications on the implementation of more than one Act. Such recommendations emerging from the Commission's review are presented in this section.

- Standard Operating Procedures shall be developed for each functionary involved in care, protection and welfare of children in the state.
- A comprehensive plan for capacity development of all government functionaries involved in matters related to children shall be developed within six months and

executed in the current financial year itself. Training of the functionaries should enable them to follow child friendly practices and procedures. Lack of training for gynecologists/doctors, judges, prosecutors, police in dealing with child victims increases the trauma experienced by the child. The police officers are trained mainly in IPC and Cr PC. They shall be sensitised about the trauma the victim undergoes. Training is also necessary for members and staff of the JJ Board, CWC and SCPCR. Such training should include legal aspects and child friendly procedures and practices.

- Several departments and institutions are involved in the implementation of different legislations relating to children. For instance, a dozen institutions/agencies are involved in the implementation of JJ Act at the district level. They include JJ Board, DCPU, Child Welfare Committee, Juvenile Police Unit, Childline, Thanal Helpline of the Kerala State Council for Child Welfare, Nirbhaya Shelter Homes, District Child Protection Monitoring Committee, District Level Monitoring Committee of Nirbhaya, District Jagratha Samithy, CCIs in the government and the non-Government sector. At the state level also, there are several agencies/committees involved in the implementation of the Act. For effective implementation of the Act, roles and functions of different agencies/institutions/committees at different levels have to be clearly defined to avoid duplication of work. Necessary convergence of activities of these stakeholders shall also be brought in. Convergence is required at the state, district and local levels.
- Different schemes/projects with overlapping objectives and functions are found to be working in the state. For instance, Child line (1098) service is a 24 hour free emergency phone outreach service for children in need of care and protection sponsored by the Ministry for Women & Child Development, Government of India. It is implemented by the Child line India Foundation with the support of NGOs. A Child helpline (1517) was launched by the Kerala State Child Welfare Council in 2017. Government of Kerala also started another project *Saranabalyam* (ശരണബാല്യം) to free children engaged in child labour and child begging. These three projects have overlapping objectives and functions. Hence, there is a need for convergence of activities under these three projects to avoid duplication of work, wastage of resources and to enhance effectiveness. Similarly, some of the objectives of the *Jagratha Samithy*, Monitoring Committee of Nirbhaya and DCPU are similar. There is a need for convergence of the functioning of these committees. Women and Child Development department offers three scholarship schemes for students, with similar objectives. It is clear that different schemes/projects with similar objectives can lead to lack of focus and duplication of work. In view of the above, the Commission recommends that the Women and Child Development Department shall review the schemes/projects and identify those with overlapping objectives. To the extent possible, such schemes/projects shall be integrated. Multitude of schemes with similar objectives

can severely affect administrative efficiency, effectiveness and lead to inefficient use of scarce resources.

- *Jagratha Samithies* (ജാഗ്രതാസമിതികൾ) are constituted in local bodies to ensure the safety of women and children, prevent atrocities and infringement of rights against women and children and to uplift their status and dignity. However, many of the samithis are not working properly. There is a need to strengthen activities of *Jagratha Samithis* in many of the local bodies. Awareness about role and functions of the *Jagratha Samithy* needs to be improved. Activities of well functioning Jagratha Samithis shall be documented and made available to others to learn from and/or replicate.
- Women and Child Development Department shall develop a manual on child friendliness of institutions involved in the care and protection of children in the state. The Manual should clearly spell out the procedures, facilities, support systems and training required for ensuring child friendliness of these points of interface with children. The manual should cover Institutions/committees/units such as CCIs, *Nirbhaya Homes*, JJ Boards, Police Stations, Children' court and the SCPCR. Time bound strategy to change the environment, facilities and practices shall be developed without delay. Manual for non-institutional care services other than adoption is also required.
- According to a report of SCPCR³, facilities for counselling exist only in a limited number of schools, mainly in the government sector and to a limited extent in the aided sector. This facility is almost wholly absent in the unaided sector. There are approximately 11,000 schools in the state which do not have any counselling facilities. Even where they are available, the counsellors often act as substitute teachers when regular teachers are on leave. It is also pointed out that some of the counsellors do not have necessary qualifications. No facilities or support is extended to them to carry out their responsibilities effectively. The State Government should ensure that counselling facilities are available in all schools in the state irrespective of the type of management or the syllabus followed. Role and functions of the counsellors should be clearly defined. Qualification of the Counsellors shall be defined clearly and only persons with the required qualifications shall be appointed as Counsellors. Periodic training should be provided to the Counsellors and their activities shall be monitored regularly.
- Performance of the Counsellors should be monitored on a regular basis to improve quality of their services. Issues identified in the review done at the state level should be communicated to the lower levels. Action taken on the basis of review shall also be monitored. All Counsellors have qualifications in Social Work/Sociology/

³LKSCPCR, (2016). A Report on Strengthening Counselling in Schools and Child Care Homes.

Psychology. However, their exposures to practical situations are limited. SCPCR report on counselling in schools and child care homes suggested that the Counsellors may be attached to institutions and clinical centres to get firsthand experience of how to handle various situations. Possibility of making them part of a mentoring system comprising experienced psychiatrists and psychologists at the district level who can handhold the Counsellors may be explored. Regular mentoring by such a team of experts would help the Counsellors to improve their skills and quality of their services. The 686 Counsellors whose services are currently distributed among Schools, Anganwadis and nearby Childcare Institutions face many practical difficulties in their functioning. Considering the emotional, behavioural and social problems of the children who they are required to attend to, specialised counselling modules shall be developed. Standard Operating Procedure (SOP) needs to be developed for Counsellors for dealing with children.

- Video conferencing facility shall be made use of to hold review meetings on the implementation of the Acts by the state offices of concerned departments and agencies including SCPCR. Resorting to video-conferencing helps to get immediate response on action taken by district or lower level functionaries and helps to reduce the cost and time required for travel. Moreover, this will also help in holding meetings at short notice.
- Document best practices relating to child care and protection adopted in different places by different agencies in Kerala and make it available in the website of the Women and Child Development Department for others replicate /learn from the best practices.
- Staff requirements of all types of children's homes need to be re-assessed. The issues are related not only to adequacy of staff but also with professional qualifications and experience of the staff. Officials of the department who have no prior training or experience as care givers to children are appointed as superintendent and staff of childcare institutions on promotion/transfer. Separate staff cadre shall be created in the Women and Child Development Department and sufficient training should be imparted to them. Recruitment policy shall be changed to ensure that persons who are professionally qualified to provide care and protection for children are appointed in such Homes.
- Functionaries of local governments (elected representatives and officials) are likely to have more information about the problems faced by children in their locality. They also have a major role in extending support to the children in difficult circumstances and their families. Therefore, training programmes organised by KILA shall include modules covering child rights and legal provisions to ensure care and protection of children.

- Involvement of civil society in the implementation of different legislations for children is low. Better linkages with the civil society may help in bringing in more accountability. Women and Child Development Department may bring out an approach paper on the areas in which civil society cooperation can be solicited.
- Government may consider enacting an Act similar to the Act of Tamil Nadu Government to monitor residential facilities for children.
- A detailed review of the functioning of the following institutions/committees is recommended:
 - Juvenile Justice Board
 - Child Welfare Committee
 - *Nirbhaya Homes*
 - *Nirbhaya* Committee
 - State Child Protection Society
 - Childline
 - Special Juvenile Police Unit



Women

CHAPTER 2

2.1 Introduction

The UN General Assembly, in 1979 adopted the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) as an international treaty for women's rights. By ratifying the CEDAW in 1994, India has committed to undertake measures to end discrimination against women. Much before CEDAW, the Indian Constitution, in its various articles envisages protection of women from discrimination on the basis of gender. Equality before law is a fundamental right as guaranteed in Article 14. While Article 15 (1) states equality and non-discrimination on the grounds of gender, Article 15(3) empowers the constitution to make special provisions for women and children; i.e. affirmative action. Article 39 directs the State towards a policy for securing and maintaining the livelihood for both men and women. Article 42 emphasises on humane conditions of work for both men and women. Article 51 (A) says it is the duty of the citizens to abstain from practices that are derogatory to the dignity of women. In addition, various legislations related to women have been introduced in the country since independence. However, doubts have been raised from several quarters about effectiveness in the implementation of legislations to protect the rights and welfare of women. It is in this context that the Administrative Reforms Commission (ARC) is reviewing select legislations meant to protect the rights of women and ensure their welfare. ARC has reviewed implementation of the following six legislations:

- The Dowry Prohibition Act 1961
- The Protection of Women from Domestic Violence Act 2005
- Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act 2013
- Equal Remuneration Act 1976
- The Immoral Traffic (Prevention) Act 1956
- The Indecent Representation of Women (Prohibition) Act 1986

CEDAW had pointed out spheres where women face discrimination and laid out 30 articles related to these spheres, structured into six parts. Gender stereotyping and prostitution are addressed in Articles 5 (Parties to take all appropriate measures to ensure that family education includes a proper understanding of maternity as a social function and the common

responsibility of men and women in bringing up their children, as well as of society) and 6 of Part I respectively, which speaks of discrimination, policy measures, guarantee of rights, and special measures. Second part of the declaration relates to rights in the public sphere. Third part discusses economic and social rights of women, under which Article 11 stresses that the State should take measures to eliminate discrimination against women in the field of employment, be it in freedom to work, freedom of choice, right to equal opportunity and remuneration, social security, etc. The fourth part speaks of rights of women in relation to marriage and family in which Article 16 says that appropriate measures should be taken to eliminate discrimination against women in all matters relating to marriage and family. Last two parts relate to setting up of a committee and the procedures to be undertaken, respectively. The Acts being reviewed by the Commission relates to Part I, III and IV of the treaty.

Kerala is often hailed for its achievements in gender equality and gender empowerment as seen in indicators such as sex ratio favourable to women, high life expectancy for women, high female literacy and high participation rate of women in most levels of education. The state is at the top among the states in India in the gender development index. However, the state is not without its share of problems. Despite high levels of education, labour participation of women remains lower than the all India figures, except in recent years (NSSO 68th Round 2011-12) when a certain leveling up of the rates with the all-India figures is visible. Female unemployment is on the rise. Atrocities against women also show a rising trend. As per the statistics of State Crime Records Bureau, crimes against women have increased by more than 50 percent over the last one decade. The surge is seen most explicit in the reported cases of rape which has more than tripled from 500 in 2008 to 1987 in 2017. Incidents of domestic violence, dowry deaths, suicides, etc. are also not uncommon.

Discussion on the Acts is presented in three sections, each part dealing with one domain. The first section that follows the introductory section discusses the legislations for protection of women in the domestic domain. Section II discusses the legislations for protection of women at work. The third section reviews implementation of legislations related to gender stereotyping and immoral trafficking of women.

Section I

2.2 Acts for Protection of Women in the Domestic Domain

The two Acts reviewed by ARC, which pertain to ensuring safety and protection to women in the domestic domain are: (i) the Dowry Prohibition Act 1961 (amended in 1986), and (ii) The Protection of Women from Domestic Violence Act 2005. Both these acts aim to ensure that women are not harassed within their homes, be it in the name of dowry as in the former Act, or for any reason (including dowry), in the case of the latter Act.

As per the data available with the State Crime Records Bureau, only 49 cases were registered in the state under the Dowry Prohibition Act in the 10-year period from 2008 to 2017 (Table 2.1). It was only in 2014 that the National Crime Records Bureau started collecting data on violation of PWDV Act 2005. In 2016, 5820 cases were recorded in the state under the Act. However, these cases mostly relate to violation of orders passed under the Act. Cases relating to actual incidents of domestic violence are recorded under Section 498 A for cruelty by husband and his relatives and section 304 B for dowry deaths. As can be seen, the number of dowry deaths registered was nearly four times the number of cases registered under the Dowry Prohibition Act, 203 i.e. an average of 20 dowry deaths are registered annually in the state. The number of cases registered for cruelty by husband/relatives is very high, an average of 4227 cases annually. The nuances of the Acts as well as their implementation are being reviewed in this premise.

Table 2.1: Number of Registered Crimes against Women under Different Acts (2008-2017)

Year	Number of Cases Registered under		
	Dowry Prohibition Act	Dowry Deaths	Cruelty by husband/relatives
2008	5	22	3976
2009	8	25	4135
2010	7	21	3976
2011	5	21	4788
2012	3	15	5377
2013	3	32	5216
2014	3	21	4820
2015	4	8	3668
2016	3	25	3455
2017	8	13	2863
Total	49	203	42274

Source: State Crime Records Bureau, Kerala

2.2.1 The Dowry Prohibition Act, 1961

2.2.1.1 Overview of the Act

The Dowry Prohibition Act prohibits the practice of giving or taking of dowry by either party to a marriage. Under the Act, 'dowry' is defined as any property or valuable security given or agreed to be given either directly or indirectly by one party to a marriage to the other party to the marriage; or by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person; at or before or any time after the marriage in connection with the marriage of said parties. This however, does not include dowry or mahr in the case of persons to

whom the Muslim Personal Law (Shariat) applies. However, presents which are given to the bride or the bridegroom at the time of marriage without any demand being made are not considered as dowry. But the parties getting married are required by Rules under this Act to make and maintain a list of gifts and presents received.

If any person gives or takes or abets the giving or taking of dowry, she/he shall be punishable with imprisonment for a term which shall not be less than five years, and fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more. However, the Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than five years. Any person who demands dowry is punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees with a proviso for special reasons to lower the penalty. Anyone who advertises and offers to give money or property in return for marrying her/his son, daughter or relative as well as anyone who publishes these advertisements shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to five years, or with fine which may extend to fifteen thousand rupees. If dowry has been exchanged at a wedding anyway, it imposes a duty on the person who is given dowry to give it to the bride within three months. Anyone who does not hand over the dowry to the bride within the specified time shall be punishable.

There is no time limit as to when a complaint can be filed under this law. Crimes under this Act are cognizable (except for the purpose of arrest), non-bailable and non-compoundable. The trial can be held only in a Metropolitan Magistrate Court, a Judicial Magistrate Court or any higher court. The burden of proving that the offence was not committed shall be on the person who is accused of receiving dowry.

As per the Act, the Dowry Prohibition Officer is to take measures to prevent the practice of dowry exchange and collect evidence for prosecution in dowry related cases. For the purpose of advising and assisting Dowry Prohibition Officers, State Government can appoint an Advisory Board consisting of not more than five social welfare workers (out of whom at least two shall be women) from the area of jurisdiction of the officer.

2.2.1.2 Implementation of the Act

Social acceptance of dowry is conspicuously on the rise. Despite attempts to tighten the law by inserting/substituting certain sections/subsections, in particular the 1986 amendment (for e.g. including the words “any time after marriage”; making the offence non-bailable; burden of proof being on the person who takes the dowry; ensuring that the dowry goes to children or the woman’s parents if she dies within 7 years of marriage, etc.) dowry continues to grow unabated. As noted earlier, the

number of cases registered under the Act in the state is relatively low, even when there are relatively more deaths reported on account of dowry. One major reason for the failure of the Act in curbing the menace is the provision that the giver of the dowry is also equally punishable as the taker. The giver is also expected to give complaint. Most of the cases that have been received till now are those that are redirected from the Family Courts after the parties involved go in for divorce and have to settle disputes about possession.

The National Commission for Women (NCW) had suggested amendments which included amendment to definition of dowry, provision for separate penalties for giving and taking dowry and penalties for non-maintenance of the list of gifts received at the time of marriage, insertion of a new clause providing an opportunity to the woman to file a case at the place where offence is committed or where she permanently/ temporarily resides, protection officers under PWDV Act to carry out the duties of the Dowry Prohibition Officers (Press Information Bureau, 23rd July 2015).

Government of Kerala notified Kerala Dowry Prohibition Rules 2004, superseding the 1992 Rules, to make implementation of the Act more effective. There are now three Regional Dowry Prohibition Officers (RDPOs); Trivandrum zone, Ernakulam zone and Kozhikode zone are the respective jurisdictions. The DPOs are given a number of additional duties, inter alia (a) act as member secretary/convener of the Advisory Board; (b) create awareness of the extremely discriminatory nature of this practice among the public by organising camps, panchayat samitis, through media and involve local people for prevention of dowry, maintain a register to record all complaints and separate files for each individual case. Most importantly the Rules specify that the DPO's approach should be primarily preventive and remedial and prosecution will be recommended and resorted to if other measures are found ineffective or when parties fail to comply with the orders within the stipulated time. However, no additional infrastructural support has been given to them. They function in the offices of the Regional Assistant Director, Social Welfare with existing facilities and staff. Advisory Board is also not set up in the state till now.

The 2004 Rules necessitates that every government servant shall after his marriage furnish a declaration to the Head of Department after it has been duly signed by the wife, father and father-in-law, stating that he has not taken any dowry.

While efforts of the Government are to curb the menace of dowry, some actions of the State seem to passively accept the practice, if not encourage it. For instance, the practice of accepting that 'gifts' may be given during marriage, but not as dowry is an acceptance of the practice, though under another name. Similarly maintenance of list of gifts, though is in accordance with the Rules, again stands as a testimony to the practice of dowry rather than for curbing it. So is the mandatory presentation of affidavit by government employees during marriage. It is felt that such lists and

affidavits may become disadvantageous to the woman as they can be taken as proof for not exchanging dowry while in reality it may be far from truth. Finally, the burden of proving otherwise will rest on the complainant instead of the accused.

2.2.1.3 Recommendations

Keeping the issues that emerged in the review of the Act and its implementation, the Commission makes the following recommendations for improving implementation of the Act:

- A major problem in the proper implementation of the Act is the provision of punishing the giver and the taker of dowry on similar lines. Considering the fact that in most cases, giver of the dowry does so under pressure from the other side as well as under the pressures of social norms, an empathetic approach needs to be taken towards the giver. The giver should be treated as a victim rather than a perpetrator, and the punishment for the giver should be removed or at least reduced.
- It also needs to be understood that dowry is a deep entrenched social evil, the eradication of which is a very difficult task. Awareness programmes about the ills of the system, the Act as well as gender sensitisation needs to be consistently and continuously undertaken. Grass-root level programmes such as at the school level need to be organised with the involvement of community organisations. Initiatives of some local governments (such as Panancheri and Nilambur panchayats) to reduce the menace may be documented and replicated, if found effective.
- At present, Government has appointed three regional Dowry Prohibition Officers in Thiruvananthapuram, Kochi and Kozhikode. Each of these officers' handle around four to five districts each, but is not provided with necessary infrastructure including vehicles, or travel allowance. They should be provided necessary facilities and required office staff, considering the scope of activities that can be organised and the coverage of areas with respect to activities and jurisdiction.
- Feasibility of appointing a DPO for each district may be looked into. However, functioning of current DPOs should be made more effective through proper training and gender sensitisation. They must be empowered to carry out all their duties as envisaged in the Rules.
- Though police have been given a role under the Act, their help is availed rarely as details of the services to be provided by them are not specified. It would be helpful if the police officers are assigned the duty to do initial investigation and furnish FIR on the Notice given by the Regional Dowry Prohibition Officer.
- The Advisory Board as mandated by the Act shall be set up so that proper direction can be given to the anti-dowry movement and activities to be undertaken at

various levels; state, region, district and local level.

- Welfare institutions have not provided any assistance to complainants. Resources in these institutions such as Counsellors shall be used to help and counselling services to the complainants.
- Finally, it is felt that the Act in its current form has not been very beneficial to women as its provisions seem to accept the practice and suggest measures to manage the practice of dowry exchange, for e.g. the provision of maintaining a list of gifts. If the system of maintaining the list of gifts is to be followed, scope for integrating it in the marriage registration system may be looked into.
- The practice of the State government giving financial assistance to inmates of shelter homes mainly for purchasing gold or other articles when they get married also point to the acceptance by the State of this practice. Such passive acceptance also needs to be relooked. It would be advisable that the inmates of shelter homes are provided training and livelihood measures and made capable to stand on their own.

2.2.2 The Protection of Women from Domestic Violence Act 2005

2.2.2.1 Overview of the Act

The Protection of Women from Domestic Violence (PWDV) Act, enacted in 2005, is a legislation aimed at protecting women from violence in domestic relationships. It is a civil law for providing easier access and relief to women including wives, mothers, daughters and sisters affected by violence in their homes. It includes actual or threatened abuse against women in their homes, including those of a physical, sexual, verbal, emotional or economic nature. Apart from the victim herself, the complaint regarding an act of domestic violence can be lodged by any person who has reason to believe that “such an act has been committed”.

- The PWDV Act, 2005 provides a comprehensive definition of domestic violence. It covers all forms of physical, sexual, verbal, emotional and economic abuse that can harm, cause injury to, endanger the health, safety, life, limb or well-being, either mental or physical of the aggrieved person including harassment of the aggrieved person or any other person related to her for dowry. It covers both actual acts and threats of such violence.
- Any woman, who is in a domestic relationship with the respondent and has allegedly been subjected to violence, can seek protection under this act. Daughter, mother, sister, child (male or female), widowed relative, in fact, any woman residing in the household who is related in some way with the respondent is covered by the Act. The Act also recognises live-in relationships wherein the woman is a sexual partner of the male despite not being his wife.

- The person against whom the victim seeks relief from, means any adult male person who is, or has been, in a domestic relationship with the woman and who has allegedly indulged in violence against her. The victim may also file a complaint against the relative of a husband or the male partner. Though the Act did allow prosecution of women for subjecting wife or female partner to violence through this provision, there was considerable confusion on whether a woman relative could be prosecuted under this Act. A landmark verdict of the Supreme Court in 2013, clarified Section 2(q) which paved the way for prosecution of women and even non-adults (that is irrespective of age or gender) by ordering the deletion of the term “adult male” before the word person from the statute book. This ensures that the respondent’s mother, sister and other relatives do not go scot free if guilty of the offence.
- On occurrence of an incident, the woman or somebody on her behalf can file a Domestic Incident Report (DIR). Offence under the Act is considered cognizable and non-bailable and states that based on the sole testimony of the aggrieved person the court may conclude that an offence has been committed by the accused. Under the Act, an alternate system (consisting of Protection officer, Service Provider and the magistrate) is provided for easier access and relief to women affected by violence in their homes.
- Protection Officer (PO) has a pivotal role in the implementation of the Act. PO is expected to register the DIR, present it before the Magistrate and forward copies to the police station and the service providers. PO has to ensure legal aid and medical attention to the aggrieved person, if required. Service Providers empanelled under the Act are expected to assist the aggrieved person in filing DIR with the PO, provide her with legal aid, medical care, counselling or any other support. Police is to file a criminal complaint under Section 498A of the IPC. On request, the police have to record DIR under the PWDV Act at the same time and forward the same to the magistrate. Alternately, a woman can directly approach the Magistrate’s court to file a DIR under the PWDV Act. If the woman already has a pending case, she can fill in an application under the PWDV Act and file it as an “Interim Application” in the pending proceedings.
- Through the PWDV Act, affected women are entitled to get order for: protection, right to stay in the household, monetary relief and maintenance and compensation. The court can also grant her temporary custody of children.
- The Act aims to ensure speedy justice as the court has to start proceedings and have the first hearing within three days of the complaint being filed in the court and every case must be disposed of within a period of 60 days of the first hearing. The magistrate is allowed to have in camera proceedings if either party to the proceedings so desires.

- Punishment for such acts includes a jail sentence of up to one year and fine of Rs. 20,000.

2.2.2.2 Implementation of the Act

According to the fourth round of the National Family Health Survey (NFHS-4) held in 2015-16, i.e. around a decade since the PWDV Act was implemented, the proportion of women who experienced spousal violence within the 12 months preceding the survey is 12 percent in Kerala. Proportion of women aged 15-49 years who had experienced physical, sexual or emotional violence ever from the spouse is 17 per cent. Among women aged 15-49 in Kerala, 13 percent have experienced physical violence, nine percent have experienced emotional violence and five percent have experienced sexual violence in their lifetime. Among those who experienced physical violence since age 15, the most common perpetrator of violence was the husband (90%). It is highly likely that there is underreporting of such incidence in these surveys. A factor that is seen to be influencing domestic violence is alcoholism among husbands. Domestic violence was reported more by women whose husbands drank often; this was especially the case with sexual violence.

NFHS also shows that despite being subjected to violence and even sustaining injuries, women usually do not seek help from others. Around one-quarter of women (23%) who have ever experienced spousal physical or sexual violence has suffered injuries as a result of the violence. Only 22 percent of the married women who experienced physical or sexual violence sought help. Around six in ten of them never told anyone about the violence. Abused women who have sought help most often seek help from their own families (68%). Only 12 percent of the victims sought help from the police, 15 percent approached a lawyer and 6 percent social service organisations. It is also found that majority of the women, in fact more than the men (69% vis-à-vis 58%) feel that the husband is justified in beating the wife for various reasons such as refusal for sex, disrespect of the in-laws, neglecting household chores, etc. (IIPS, 2017). All this is reflective of the attitude of the society towards domestic violence, which is accepted as being part of marriage and to be kept within the family. Magnitude of unreported domestic violence can be gauged from all these findings. The same attitude is seen in the case of authorities related to judiciary, police etc. when it comes to dealing with cases of domestic violence wherein there is always a tendency to settle the cases within the household as it is a domestic affair and does not merit judicial intervention.

The state government is required to appoint sufficient number of protection officers, which is fixed as one officer for each district. But it is seen that in five districts, the vacancy of protection officer is yet to be filled. Women who have a postgraduate degree and have at least three years of service in areas such as social work, counselling, etc. are considered eligible. The department is also appointing POs on deputation. However, their experience and orientation towards social work, counselling, etc. is

observed to be low and proper orientation and training is also not provided. Despite the POs being pivotal in the effective implementation of the Act, they are not provided with necessary office infrastructure.

It is mandated that once the DIR is filed, the application should be disposed within 60 days. However, the envisaged speedy trials are still not a reality. As per a review of the Act undertaken by Lawyer's Collective, a public interest NGO, only around one-tenth of the cases in Kerala are settled in the same year. DIR was filed in less than one-tenth of the cases (Table 2.2). The submission of the DIR in the prescribed format is mandatory so as to avoid fabricated version of family matters. However, it has been reported that many magistrates are not giving evidentiary value of acceptance to DIR filed by POs. The cases, despite being civil ones, are undertaken in criminal courts as in many cases Section 498 A is also charged. Because of this women, often accompanied by children, have to spend long hours in court premises. It is also reported that MC cases are always called towards the end of the day, and sometimes not even called due to lack of time. This causes great inconvenience to the women victims.

Table 2.2: Details of Domestic Violence Cases Registered and Measures Taken (2015-16)

Domestic violence cases (2015-16)	
Number of cases registered	5820
Type of abuse*	
Physical abuse	4820 (82.8%)
Sexual abuse	995 (17.1%)
Verbal and emotional abuse	5326 (91.5%)
Economic abuse	3984 (68.5%)
Cases in which DIR is filed	351 (6.0%)
Referred for medical examination	813 (13.9%)
Referred to shelter homes and police station	500 (8.6%)
Clinical psychologist's assistance provided	1053 (18.1%)
Legal counsellor appeared personally in the court	2953 (50.7%)
Referred to KELSA	492 (8.5%)
Remedies obtained	
Protection order	605 (10.4%)
Residence order	272 (4.7%)
Monetary relief	287 (4.9%)
Temporary custody of children	67 (1.2%)
Compensation order	53 (0.9%)
Interim and ex-parte order	493 (8.5%)

*Note: more than one type of abuse will be reported in a case.

Source: www.swb.kerala.gov.in accessed on 1st March, 2018.

There needs to be effective coordination between services provided by concerned departments i.e. social justice, home, law, health, etc. for which protocols need to be developed specifying as to how cases and victims of domestic violence are to be handled. Only the medico-legal protocol has been framed, while the protocol for other departments are yet to come into place. Court orders, reportedly, are not properly communicated to the POs. Complaints that violation petitions are not properly entertained by the judiciary, and police not being supportive of the victims in case of violation of the orders are reported. What needs to be mentioned is that women victims who opt for remedy under PWDV Act belong mostly to vulnerable sections of the society. Women from better socio-economic sections, route the case directly through advocates. Thus, the delays in procedures affect women who are vulnerable and, in most cases, they do not have any other support.

There are 101 recognised service providers in the state, from three in Pathanamthitta to 13 in Thiruvananthapuram (Table 2.3). High variation in the district wise number of domestic violence cases is also observed. There is a concentration of service providers in urban areas, thus making access difficult for rural women.

Table 2.3: District-wise Number of Service Providers and Domestic Violence Cases (2015-16)

District	No. of Service Providers	No. of cases
Thiruvananthapuram	13	1223
Kollam	6	232
Pathanamthitta	3	181
Alappuzha	5	221
Kottayam	8	309
Idukki	7	574
Ernakulam	8	517
Thrissur	10	403
Palakkad	8	334
Malappuram	5	168
Kozhikode	10	616
Wayanad	7	415
Kannur	7	420
Kasargod	4	207
Total	101	5820

Source: www.swb.kerala.gov.in accessed on 1st March, 2018.

The state government runs short stay homes to provide temporary shelter to the victims of domestic violence. Maximum capacity fixed for these homes is 25. However, it is often seen that victims of domestic violence stay longer than expected as they have nowhere else to go. Hence, some of these homes are forced to admit women above their capacity. Women are also provided shelter in *Mahila Mandiram* (മഹിലാ മന്ദിരം). Most of these homes have unsatisfactory living conditions. The number of cases registered under the PWDV Act is increasing, with increasing awareness about the Act. So, the current strength of POs and Service Providers may not be sufficient. A major part of available funds is spent on providing legal support.

Government is required to give wide publicity about the Act through television, radio, print media etc. at regular intervals. Though the State government has taken measures such as publishing posters, pamphlets, notices and is holding public awareness classes, the reach and effectiveness of the same needs to be looked into. It is also mandatory that the Government notifies and publishes the list and details of protection officers and Service Providers. It is available in the website of the Kerala State Social Welfare Board. However, this may not be accessed by public who are not technology savvy. Thus, the general public is not aware officials concerned and location of the service providers. For effective implementation of the Act, stakeholders such as government officers, including police and judiciary, are to be given periodic sensitisation and awareness training. However, this is not being done currently.

In 2014, the Supreme Court observed that section 498A had “dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives”. However, the High Level Committee on the Status of Women in India⁴ argued that misuse of Section 498A has gained unjust notoriety since reports⁵ on these cases showed that this belief is unfounded. Of the cases registered under this section over 90 percent are charge sheeted due to prima facie evidence. As a charge sheet is filed after investigation, and a magistrate and not the complainant frames charges, the scope for abuse/misuse is limited. Earlier in July 2014, the Supreme Court ordered state governments to instruct police “not to automatically arrest when a case under Section 498A of IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down flowing from Section 41 of Criminal Procedure Code.”⁶

⁴This Committee was constituted by the Ministry of Women and Child Development, GoI in 2013, up to 2015 with Dr. Pam Rajput as Chairperson.

⁵The Studies were undertaken by Majlis (Mumbai) and Swayam (Kolkatta) commissioned by the NCW, 2011

⁶Sec 41 states: Any police officer may without an order from a Magistrate and without a warrant, arrest any person, - 1.who commits, in the presence of a police officer; a cognizable offence; 2.against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:- the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence; 2. the police officer is satisfied that such arrest is necessary

2.2.2.3 Recommendations

- The present norm of deputing officers from other departments as POs is not advisable. The only recommended qualification for PO is that the person should be a woman with post-graduation and three years of experience. Qualifications for POs should be prescribed under the rules. It is advisable that candidates with post-graduation in Sociology or Social Work and those with training in counselling, legal affairs, etc. be appointed as POs. Proper norms need to be developed for their appointment.
- The appointed POs should be given gender training. Training and orientation programmes focusing on gender sensitisation should be organised for service providers, legal counsellors, police officers and judicial officers. Gender sensitisation of the officers and all the stakeholders who exercise powers under the Act should be done at regular intervals. This should be ensured by the Nodal Agency.
- Presently POs are located only at the district headquarters. To improve access to their services POs should be appointed at the Taluk level. Provision of transportation facilities for POs to visit the victims of domestic violence should also be ensured. Provision of office with consulting/counselling room, resting room and toilet facilities and staff has to be ensured considering the increasing incidence of domestic violence. A panel of counsellors may also be prepared and their services sought by the POs, whenever required.
- Monitoring of implementation of the Act needs to be made more effective. There must be regional level meetings of protection officers, police officers, service providers and voluntary organisations working for the welfare of women on a regular basis for better coordination of their activities.
- Provision of free legal aid must be ensured. It is reported that some legal advisors demand money, mostly on account of the time they have to spend on a single case, given the inordinate delay. Proper monitoring of the Service Providers by protection officers is needed to avoid financial exploitation of the victims by the legal Counsellors attached to the service providers. Quality of facilities as well as services provided by the Service Providers must be ensured.
- A number of complaints have been raised about the unsafe and unhygienic environment in Shelter homes. This needs to be addressed immediately. Programmes for rehabilitation including skill building and employment generation programmes must be conducted for the victims so that they can become economically independent.
- There is urgent need to have a more decentralized approach to protect women from domestic violence since one or even more protection officers and staff

would not be able to handle all the occurring cases; jagrata samitis at the local level need to be strengthened. It is seen that alcoholism is a major reason for domestic violence. Such instances can also be checked if local level involvement and monitoring is improved through jagrata samithis, grama sabhas, etc.

- Gender sensitisation programmes must also address men's groups rather than only women. The same must also be undertaken from school level.
- Given the delay taken in the disposal of cases related to domestic violence as well as the increase in number of cases, it is suggested that special courts be set up to deal with such cases or specific days of the week/time should be set apart for hearing such cases. This would save the women victims, often accompanied by children, from the trauma of waiting throughout the day in the court premises in the intimidating presence of criminals.

Section II

2.3 Legislations for Protection of Women at Work

This section reviews implementation of two legislations to protect the rights of women in relation to their work. The Acts reviewed are Equal Remuneration Act 1976 and Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act 2013.

As per the 68th round of the National Sample Survey, men in Kerala are getting higher incomes than women, across industries as well as qualifications. The work participation of women is also much lower than that of men. A study by the Centre for Strategic and International Studies in 2016, on the breakthrough made by the Indian states for women in workplace, Kerala got a score of 22.2 (maximum score 40) and was ranked 7th. The states were ranked according to four main factors: legal restrictions on women's working hours in factories, retail, and the IT industry; the responsiveness of the state's criminal justice system to crimes affecting working women, such as sexual harassment; the number of women workers in the state as a percentage of total workers; and the number of incentives the state's startup and industrial policies offer women entrepreneurs. With respect to the responsiveness of the state's justice system to crimes against working women, Kerala scored only 4.5 on a 10-point scale.

2.3.1 Equal Remuneration Act 1976

3.3.1.1 Overview of the Act

Article 39 of the Constitution envisages that the State shall direct its policy, among other things, towards securing equal pay for equal work for both men and women. The ILO Convention No.100 of 1951 relating to equal remuneration for men and women was ratified by Government of India in the year 1958. To give effect to the Constitutional provisions and also to ensure enforcement of ILO Convention No.100, the Act was promulgated in 1976. The Act provides for payment of equal remuneration

to men and women workers for the same work or work of similar nature and for the prevention of discrimination on grounds of sex. This legislation provides women with a right to demand equal pay and to challenge any inequality with respect to recruitment processes, job training, promotions, and transfers.

In order to comply with the Act, the rate of remuneration of any worker should not be reduced. “Remuneration” means the basic wage or salary, and any additional emoluments payable, either in cash or in kind, to a person employed in respect of work done. “Same work or work of a similar nature” means work in respect of which the skill, effort and responsibility required are the same when performed under similar working conditions by a man or a woman. The employer has to maintain registers and other documents with details of workers employed such as (a) category of workers; (b) description of work; (c) number of men employed; (d) number of women employed; and (e) rate of remuneration.

If any employer makes any recruitment in contravention of the provisions of this Act or makes any payment or remuneration at unequal rates to male and female worker, for the same work or work of a similar nature, she/he shall be punishable. If the employer fails to maintain registers/other documents or refuses to give evidence asked for or prevents others from doing so, she/he shall be punishable. Where an offence under this Act has been committed by a company, every person who was in charge of and was responsible to the company for the conduct of the business of the company at the time the offence was committed, shall be deemed to be guilty of the offence, unless she/he proves that the offence was committed without her/his knowledge or that she/he had exercised all due diligence to prevent the commission of such offence. The complaint can be made by the aggrieved person/group or an authorised representative.

2.3.1.2 Implementation of the Act

Implementation of the Act is done at two levels. It is implemented by the Central Government when the employment is carried on by any organisation which is under the authority of the Central Government. In respect of all employments other than those where the Central Government is the appropriate Government, the implementation rests with the State Governments. Enforcement of the provisions of the Act is done by officials of the State Labour Department. The Central Government, however, monitors implementation of Act by the State Governments.

Labour Enforcement Officers have been appointed as Inspectors for the purpose of conducting investigation by causing production of relevant registers/records as to whether the provisions of the Act are being complied with by the employers. Assistant Labour Commissioners have been appointed as authorities for the purpose of hearing and deciding complaints with regard to contravention of any provision

of the Act and claims arising out of non-payment of wages at equal rate to men and women workers. The Regional Labour Commissioners are appointed as appellate authorities to hear complaints in respect of cases decided by the Assistant Labour Commissioners.

A Central Advisory Committee has been set up at the Centre under the Act to advise Government on providing increasing employment opportunities for women and for reviewing the steps taken for effective implementation of the Act. The Act requires that a State Advisory Committee also be set up to promote employment opportunities for women. However, this is yet to be done.

Under the Act, discrimination on the basis of gender arises only when men and women perform the same work or work of a similar nature. There are many evidences for wage disparities between men and women in India. For e.g. according to the 2016 Monster Salary Index women earn 25 percent less than what men earn. Across sectors the gap was prevalent: manufacturing sector (30%), IT sector (26%), banking, financial services and insurance sector (22%) and the education and research sector (15%). As per the latest NSSO data (2011-12) while the gender wage disparity was lower with respect to earnings in regular employment (women earning almost 80 percent of the male wage in urban areas), they earned less than half the casual wage of a male worker in rural areas and about half in urban areas. Occupational Labour Surveys conducted by Labour Bureau revealed that none of the establishments surveyed violated provisions of Equal Remuneration Act, 1976. The difference in the earning of male and female workers at the industry and occupational level was mainly due to seniority/length of service, difference in output etc. (Press Information Bureau 2012). However, there can also be other restrictive factors related to female employment such as change in location post marriage, lack of child support services at home/office, inability to stay late and/or travel for work, etc. which are reflective of the gender norms in the society and which determine factors such as performance and seniority which are important in recruitment, promotions, remuneration, bonus, etc.

However, in the case of employment in the unorganised sector where a larger proportion of the workers are women, it is difficult to delineate categories of work by level of education and experience or ability and hence is yet to be identified and notified by the government. In agriculture sector, women outnumber men in employment. In the service sector, men outnumber women. There is significant difference in the wage rates for agricultural labour. In industry, though the shares are not very different, there is concentration of female employees in traditional industries such as handloom, khadi, coir and cashew, where the wages are lower. Women employment in the service sector is mostly in occupations such as saleswomen, anganwadi workers, nurses etc. Wage rates are low in these occupations also.

Though such disparities exist in the state, it is reported by the Department of Labour and Skills that no complaints were received on violation of the provisions of the Equal Remuneration Act. Though inspectors are expected to make surprise inspections to check the registers and documents for violation of the Act, the same is not done avowedly due to severe staff shortage in the department. It is also reported that inspection under the Act is of low priority to the labour inspectors, as they are already overburdened with other work. Inspections are mostly done only when a complaint is raised. Only around one-fourth of the inspectors are women.

The need to bring about changes in the entrenched attitudes and values in society, that continue to regard women as supplementary or secondary earners, cannot be overemphasised. Law helps to an extent but is not sufficient to bring about these changes.

2.3.1.3 Recommendations

- A major problem with implementation of the Act is the difficulty to assess whether “similar” work is being done by men and women. Given the occupational segregation by gender in the labour market, equal remuneration for equal work or work of similar nature can be easily bypassed since some difference in work exists whether or not warranted on the basis of skill or effort when performed under similar working conditions by a man or a woman. Greater clarity is needed in defining work of similar nature; perhaps a more objective valuation of work is essential irrespective of the worker’s gender.
- As pointed out by the Supreme Court, a flexible approach is needed while deciding which kinds of work may be similar by considering the duties actually performed as a part of the job, and not the duties potentially capable of being performed. Standard parameters need to be developed to categorise work as well as functions.

The new Labour Code on Wages Bill 2017, consolidating the Minimum Wages Act 1948, The Payment of Wages Act 1936, the Payment of Bonus Act 1965 and the Equal Remuneration Act 1976, has been introduced and once it gets enacted Equal Remuneration Act 1976 will be repealed. It is opined by Labour experts that the Code dilutes the Equal Remuneration Act 1976 as it has been limited to one section in the Code, referring to “prohibition of discrimination on ground of gender”. This removes all penalties and violations contained in the Equal Remuneration Act. The same needs to be looked into.

- There is an urgent need to regularly monitor implementation of the Act. Steps are required to ensure effective enforcement of the provisions of the Act.
- Advisory Committee at the State level has not yet been constituted. The same shall be constituted and measures for increasing female employment and efforts to check discrimination needs to be undertaken.

- It is necessary to identify a non-agricultural category of work employing both men and women and understand how gender pay inequality is introduced by gendering the sub categories of work within this sector.
- It is seen that most of the sectors or industries where women form majority, they are gravely underpaid and exploited, such as in the case of nurses, saleswomen, Anganwadi workers, workers in traditional sectors, etc. Efforts to fix wages commensurate with their efforts shall be undertaken and payment of the same be ensured across sectors and employers.
- To strengthen the labour machinery, labour officers responsible for hearing and deciding equal remuneration complaints should preferably be women.
- Staff inadequacies in the labour department need to be looked into by assessing job profile as well as time required for conduct of various duties. Staff pattern may be restructured based on the assessment.

2.3.2 Sexual Harassment at Workplace (Prevention, Protection and Redressal) Act, 2013

Right to work with dignity is a basic human right. Article 19 (1) (g) of the Constitution of India grants every Indian the right “to practice any profession or to carry out any occupation, trade or business”. However, these rights of women workers are often infringed upon when they have to face gender specific unpleasant experiences at work place, namely sexual harassment. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was enacted to ensure safe working spaces for women and to build enabling work environments for them, based on the Vishaka guidelines formulated in 1997.⁷

2.3.2.1 Overview of the Act

As per the Act, “sexual harassment” is defined as any unwelcome sexually determined behaviour which may be direct or implied and includes physical contact or advances, demand or request for sexual favours, sexually coloured remarks, showing pornography and any other unwelcome physical, verbal or non-verbal conduct of sexual nature. Sexual harassment at workplace comprises two forms of “Quid Pro Quo” viz. ‘this for that’ form of inappropriate behaviour. It could be implied or explicit promise of preferential/detrimental treatment in employment or/and implied or expressed threat about the person’s present or future employment status.

⁷In 1992, Bhanwari Devi a saathin with the Rajasthan Women and Child Development Department was gang raped in rebuttal of her attempts to stop the marriage of a one year old girl, by the irate relatives of the girl. On the denial of justice to Bhanwari Devi by the police and local court, an NGO named Vishaka filed a Public Interest Litigation (PIL) in the Supreme Court on behalf of Bhanwari Devi pointing out that the State had failed to ensure safety to Bhanwari in the dispensation of her duties (Vishaka vs. Govt. of Rajasthan, 1997). The guidelines framed as an outcome of the PIL accepted the existence of sexual harassment at workplace and also pointed out the responsibilities of the employer to prevent the same.

The Act covers all organisations irrespective of the sector and type of ownership i.e. the Act also applies to organisations engaged in the unorganised sector, even when the number of employees is less than 10. The Act stipulates protection for all employed women, irrespective of the nature of employment, type of remuneration or tenure of employment, including domestic workers. Head of the organisation who is entrusted with the responsibility of management, supervision and control of the workplace is the employer. In the case of domestic workers, it refers to the person or household who employs the woman. Workplace refers not only to the office premises but also any place visited by the employee, arising out of or during the course of employment, including transportation provided by the employer.

Redress mechanism mandated by the Act is the constitution of the Internal Complaints Committee/ Internal Committee (IC) and the Local Complaints Committee/ Local Committee (LC), to enquire into the complaint and to prosecute the offender appropriately. The IC, a four-member committee with at least two women, has to be constituted in every office with a maximum duration of three years. The IC is to be chaired by a senior woman member of the organisation and must also have a member from an NGO or an activist engaged in fighting for women's causes. LC is to be constituted at the district level to attend to complaints from the unorganised sector. Chairperson of the LC is nominated from among eminent women engaged in social work and activities for women. Three members are to be nominated from among women working at any level in the district, NGOs/associations who have knowledge about the legislation. District level official responsible for welfare of women and children is ex-officio member.

On occurrence of an incident of sexual harassment, complaint can be lodged with the IC by the victim, a friend or relative or a person authorised by the victim to do so. The complaint is to be filed within three months of the incident and redress is to be given within three months from receipt of the complaint. The committee is to function on the principles of natural justice which include two legal maxims; rule against bias, wherein people who may be witnesses, friends, or others interested in the outcome cannot be part of the complaints committee, and that a fair opportunity must be given to be heard to any person who would be affected by the decision of the committee. Identity of the complainant as well as the respondent is to be kept confidential throughout the process. The Committee can undertake any action such as disciplinary action, including a written apology, reprimand, warning, censure, withholding promotion/pay raise/ increment, termination, counselling, community service, unless otherwise specified in the service rules. If the complaint is found to be malicious or false, the action to be taken as punishment can be undertaken against the complainant.

The onus of providing a safe working environment is on the employer who is mandated to constitute the IC, display the penal consequences of sexual harassment

at a conspicuous place in the workplace, organise skill building programmes for the members of the IC and organise awareness programmes for employees. If the employer fails to do the same, they can be penalised.

In Kerala, the Nodal Officer for implementation of the Act is the Social Justice Officer and the Annual reports are to be submitted by the Internal Committees to the District officer which is the District Collector.

Women's Collectives in Cinema and in Other Domains of Work in Kerala

While discussing sexual harassment at work, it needs to be pointed out that some industries are still outside the purview of the Act because of lack of clarity in definition. Film industry is one such example. It is difficult to implement provisions of the Act such as constitution of IC by the employer, pertaining to a particular workplace as the employees keep moving from one film set to another as well as from location to location. Similarly, the industry belongs to neither the public nor the private sector and is not registered under the Establishments or Industries Act. In February 2017, sexual assault on an actor allegedly at the behest of another actor from the Malayalam film industry raised serious concerns about the safety of women working in the film industry. This led to the coming together of many women actors and technicians in the Malayalam film industry as a collective and formation of a platform to address the existing gender related issues in the industry. There was also a felt need for the same in the context of poor representation of women in industry related organisations despite increasing participation of women in all aspects of film making. Women in Cinema Collective (WCC) was registered as a society in November, 2017. Though the immediate concern of WCC is to ensure justice to the assaulted actor, the Collective has other broader objectives. It envisages increasing awareness in society about misogyny and gendering stereotyping. Ending gender biased discrimination in pay and ensuring parity (issue pertaining to the Equal Remuneration Act, 1976) and improving workplace conditions to encourage more women participation in the industry are other important objectives of the Collective. In the Malayalam Film Industry itself, the Film Employees Federation of Kerala (FEFKA) rolled out a women's wing as a platform for women technicians to voice their concerns and to arbitrate with film producers on issues related to remuneration and working conditions.

While Cinema is a male-dominated industry, there have been many recent efforts to improve pay and working conditions in women-dominated industries in which high levels of exploitation was observed. The strike by female workers in the plantation sector of the state, under the aegis of Pembilai Orumai citing poor remuneration, working conditions and occupational hazards, is one such example. Similarly, the agitation by nurses in the private sector (again dominated by women) led to the fixing of minimum wages in the sector. The iruppu samaram by saleswomen in the retail sector was an agitation for their right to sit, which was recognised and included in the State Labour Policy 2018. As can be understood, there still remain many gender related concerns in the work domain, within and outside the purview of these two Acts, which need to be addressed. Such success stories also throw light on the importance of a more active participation of women's groups and labour groups in identifying and addressing the challenges faced by women workers.

2.3.2.2 Implementation of the Act

State government directed all organisations in the state to constitute IC soon after enactment of the Act. However, a study conducted in 2017 on the functioning of IC in government offices in Kerala found that there are serious lacunae in the implementation of the Act.⁸ It was seen that most organisations failed to constitute IC. Though the Act is relatively new, it needs to be emphasised that the setting up of IC is suggested in the Vishakha guidelines in 1997. Awareness of the Act is seen to be more among organisations affiliated to Multinational Companies (MNC) that have younger and more technology savvy workforce, when compared to the more traditional and patriarchal organisations in the public sector.

- Major issue with implementation of the Act is that most of the organisations are yet to constitute the IC. As per the Kerala State Women's Development Corporation (KSWDC), of the 1096 organisations to which official communication for constituting IC had been sent, the same is constituted only in 213 organisations.
- Non-availability of a woman employee at the senior level is reportedly a major deterrent in constituting IC in office, as the presiding officer needs to be a senior woman employee. In most cases, woman employee gains seniority while nearing retirement and thus is not able to function as the Presiding officer for the entire stipulated period of an IC, viz. three years. This affects continuity of the committee. Where middle or lower level female members are the chairpersons they often consult with senior male employees of the organisation, thus undermining confidentiality as well as purpose of the IC.
- It is also seen that male members are less receptive to the Act, while female members though welcome such a provision, are hesitant to support such initiatives and to come forward and report incidents, reflective of the deep entrenched patriarchal mindset of the society.
- Even where IC has been constituted, it is mostly only on paper as there is little awareness among the employees about its functioning, members and provisions of the Act. IC is constituted only to avoid penalisation of the employers and not for effective implementation of the Act.
- Though the Committee is expected to meet at regular intervals, the same does not happen in many organisations. Lack of time for the members to meet regularly is often cited as a reason and wherever it is done it is mostly to meet the requirement to send annual reports.
- It is seen that the number of cases reported officially to the IC is quite low, while

⁸ Bhavila L and Bushra Beegum. (2017). "Functioning of Internal Complaint Committees in Government Offices of Kerala". Economic and Political Weekly. Vol. 52. Issue No. 2.

more cases are reported through anonymous calls and letters. The recent #metoo campaign in the social media points to the enormity of the issue while actual reporting is very low.

- It is seen that it is very difficult to maintain confidentiality, especially in smaller organisations, where everyone is known to each other. Members of the committee will be personally known to the complainant as well as the respondent, which can affect the decision. Reports of women being ostracised in their offices in the case of confidentiality being breached have also surfaced. Such incidents further reduce the confidence of women to come forward and report incidents of harassment.
- Involvement of political employee unions, especially to which the harasser is affiliated to, is also reported to affect smooth functioning of the IC.
- Power relations in the organisation is a major determinant as it is difficult to collect evidence and have witnesses depose against senior members of the organisation in front of the IC.
- Ministry of Women and Child Development, Government of India has developed a Handbook on the Act, which has been accepted as the SoP by the State for all departments and offices. KSWDC has undertaken gender sensitisation programmes and published and distributed a handbook on legislations for women. Despite all this, awareness about various dimensions of sexual harassment as well as provisions of the Act is low among the employers as well as employees.
- Involvement of the employers in the implementation of the Act is limited to the constitution of IC. Though it is mandatory for details of the IC as well as penal consequences of sexual harassment to be displayed conspicuously at the office premises, this is not done in most organisations. It is also mandatory that the employer organises regular workshops and programmes to sensitise the employees about provisions of the Act as well as about sexual harassment. This is also not happening as envisaged. Lack of time and funds are often cited as reasons for non conducting of these programmes.
- The IC receives complaints for improving basic infrastructure in the office such as providing separate restrooms for women, the absence of which is seen as facilitating sexual harassment.
- Sexual harassment need not be only by employees of the organisation but can also happen in other work-related relationships such as clients, suppliers, etc. which may be beyond the purview of the employer.⁹

⁹ Punam Sahgal, Aastha Dang. (2017). "Sexual Harassment at Work Place: Experiences of Women Managers and Organisations". Economic and Political Weekly. Vol. 52. Issue No. 22.

- There is also criticism that the Act is not gender neutral. There are also cases wherein male employees are harassed, but they do not have such a provision for lodging complaints. Similarly, transgender persons and employees with different sexual orientation, who are known to be harassed, do not have provision for filing complaints.
- Non-availability of an option to anonymously file a complaint often keeps back women as they fear isolation and backlash at the office. Reports in the media of female employees approaching alternate mechanisms such as the Human Rights Commission point to the inadequacy of the redressal mechanism under this Act.
- The provision to penalise the woman in case of a faulty or malicious complaint often acts as a barrier to women, even with authentic complaints, to come forward and report the incident as they are afraid they would be penalised if they are unable to prove the complaint.
- To mitigate risks to reputation of the organisation, IC may take advantage of the reconciliation provisions in the Act before initiating inquiries at the request of aggrieved women employees and take effective steps to settle the matter between them and their employers.

2.3.2.3 Recommendations

- The fact that in many organisations IC members themselves are not aware about what actions constitute sexual harassment is an indicator of low awareness about the Act. Though orientation programmes on what constitutes sexual harassment has been conducted and awareness materials such as pamphlets are brought out by Ministry for Women and Child Development and the KSWDC, reach as well as reception of these activities do not seem effective. This also points to the ineffectiveness of the current SoP. A new SoP needs to be formulated and issued at the state level. More publicity measures also need to be adopted to make everyone aware of the Act.
- There must be routine inspections at various work premises by concerned departments of the state government. The organisations must be penalised for non compliance of standards set in the Act, viz. setting up of IC, exhibiting details of IC and the Act at conspicuous places, non conduct of orientation and awareness programmes for the employees. Constitution of IC in the private sector must be ensured. Regular review of the functioning of the IC as well as LC shall be undertaken.
- The Act mandates provision of adequate training to the IC members so that they are equipped to listen to the complainant empathetically and also to investigate sensitively and ensure authenticity of the complaint. But in most organisations

the IC members are not given proper training. Employees need to be sensitised about sexual harassment as well as about provisions of the Act. Online training and orientation programmes can be conducted when there is lack of time and funds to conduct on-site programmes.

- The Act as well as its provisions such as the IC is yet to win confidence of the women employees as there is no provision for giving anonymous complaints and confidentiality is not always ensured. There must be a provision of accepting anonymous complaints, and once the authenticity of the complaint is established, formal procedure could be undertaken.
- The Act leaves much to the subjectivity of the Committee as it does not state clearly as to how the procedures need to be undertaken except that it should be done in line with principles of natural justice. Even ensuring that persons in the committee do not contact the accused might be difficult, especially if the organisation size is small or if the accused as well as the committee members are senior level personnel. The subjectivity with which action can be taken against the accused also should be removed and clear procedures spelt out according to gravity of the offence. Wherever the same has not been included in the service laws, it must be included. Though there is a provision to compensate financial damages of the victim, decision on the amount to be given is taken by the IC depending on the financial status of the respondent. Such arbitrariness also needs to be removed and monetary compensation could be predetermined.
- The clause that organisations with multiple branches and offices, needs to have an IC in each office shall be re-examined as there are considerable logistic issues in constituting an IC for small organisations. The internal committee structure shall be revisited to have a central appellate authority with IC functioning for a set of offices, for entities with multiple offices.
- The provision to penalise malicious complainants is a major deterrent to even genuine complainants as they fear that they might be penalised if the charges could not be proven. The same may be revised.
- The employer may undertake measures to ensure safe working environment through upgrading safety features at the office premises, ensuring availability of reliable transport services, providing orientation to employees on do's and don'ts of behaviour in office as well as programmes for self-defense. Lack of funds is reported as a major issue in this regard. Proper budgetary provisions need to be made across organisations for carrying out these activities.
- The IC is now constituted as a four member committee. It is advisable that the members be in odd number to enable taking majority opinion if the need arise.

- Though it is envisaged that the external member be a person or an organisation actively engaged in fighting for women's rights and also well versed in law, it is often seen that representatives of NGOs may not be knowledgeable about legal procedures. While constituting the IC, the employer must ensure that the external member is well versed in legal matters. Lack of legal experience in the overall composition of the committee undermines its effectiveness. Mismatch of powers and qualifications is further accentuated as the committee is a quasi-judicial entity with powers of a civil court to punish, if found guilty.
- Though the LC is envisaged to act as the platform for women from unorganised sectors as well as smaller firms to raise their complaints, it is unlikely that they would approach a higher level authority at the district level with such a complaint. Constitution of LC at local government level shall be considered.
- There are lacunae in monitoring. As of now there is only the collection of annual reports routed from IC to LC and the nodal department. Action is taken rarely on the basis of these reports. Monitoring needs to be held at the local level. Involvement of entities such as the Jagratha samithis and gender cell in the monitoring at local level needs to be encouraged.
- Though the Social Justice department is the nodal agency in the state, training is provided by respective departments from their own funds. Conduct of the training programmes shall be ensured by the Nodal agency.
- Employer is to pay a penalty of Rs.50000 for non-compliance with the regulations of the Act, but its not specified who should collect the penalty. A separate head for collection of penalty needs to be made and the funds collected could be utilised for conduct of orientation programmes.
- Provisions to address harassment faced by employees other than female employees, i.e. male, transgender as well as employees with same sex orientation may be considered.
- Access to evidence is crucial in the delivery of justice. Interaction between employer and employee is not restricted to physical locations but is increasingly being conducted in digital premises such as e-mail, WhatsApp, etc. The organisational structure and arrangement must be such that evidences such as emails, chat transcripts, CCTV footage, SMS messages, access logs and computer records, etc. should be made available, if so required.
- To conduct unbiased and confidential enquiry is difficult, especially when the harasser is from higher echelons of the organisation. It would be more effective if report of the Committee is given for enquiry to an external authority and decision regarding the punishment is also vested with the external agency.

Section III

2.4 Legislations on Gender Stereotyping and Immoral Trafficking

Universal Declaration of Human Rights, International Covenant on Civil and Political Rights has recognised that human beings have dignity inseparable from them. Right to life includes right to human dignity as is enshrined in Article 21, Right to live with dignity. However, many a times women are not treated with dignity when their body is used for commercial purposes as a means of advertisement or for sexual exploitation. The two legislations reviewed in this section discuss how the Acts keep a check on such activities. They are (i) The Indecent Representation of Women (Prohibition) Act 1986, and (ii) The Immoral Trafficking (Prevention) Act 1956.

2.4.1 Indecent Representation of Women (Prohibition) Act 1986

2.4.1.1 Overview of the Act

This is an Act to prohibit indecent representation of women through advertisements or in publications, writings, paintings, figures or in any other manner. Indecent representation of women refers to the depiction in any manner of the figure of a woman, her form or body or any part in any manner which is indecent or derogatory to women and is likely to corrupt public morality. The Act came in the wake of a number of protests by women's' activists against commercially oriented fashion parades, films, and advertisements which are considered as exploiting the body of women for commercial purpose, Kamasutra Ad being the most well known.

As per the Act, any person who is found guilty of violating provisions of the Act is punishable on first conviction with imprisonment for a term up to two years, and with fine up to two thousand rupees, and in the event of a subsequent conviction, with imprisonment for term of not less than six months extendable to five years and also with fine not less than ten thousand rupees extendable to one lakh rupees. The offence is bailable and cognizable. The power for making surprise checks in the premises of the accused for evidence of violation of the act vests with a gazetted officer, usually the police.

2.4.1.2 Implementation of the Act

During the ten year period from 2008 to 2017, 135 cases were registered in the state under the Act. However, there is a dip in the number in the last three years (Table 2.4). An average of three cases was registered in the last three years compared to an average of 18 cases during the seven year period before that. The Kerala Women's Commission constituted a Media Monitoring Cell in 2008-09, and got many objectionable advertisements removed from the public domain.

The spread of internet has resulted in unrestricted access to all kinds of visual material, many of which depict women's body in an indecent manner. Such content is beyond the purview of the Act. There has also been an influx of films and other visual media from all over the world as a result of changes in trade agreements. The Act has been rendered redundant, under these circumstances.

This Act is only one of the many Acts that discuss the issue of misrepresentation of women. For e.g. in the Code under the Press Council of India Act S.14 (1) which gives the right of censorship to the News Editor it is elaborated that, "newspapers

should not publish an advertisement containing anything which is unlawful or illegal or is contrary to good taste or to journalistic ethics or propriety". Inclusion of the term, "good taste" is to be noted. It also states that "the editors should insist on their right to have the final say in the acceptance or rejection of advertisements, especially those which borders on or cross the line between decency and obscenity. An editor shall be responsible for all matters, including advertisements published in the newspaper. If responsibility is disclaimed, this shall be explicitly stated beforehand." Other Acts such as the Young Persons Harmful Publication Act, 1956, IPC 292 on (Sale of Obscene books), Press and Registration of Book Act 1867, The Information Technology Act 2000 (Section 67 on Pornography), Cable Television Networks Regulation Act 1995 (code 7 on Advertisement code and 7(2) on depiction of women) also have bearing on indecent representation of women. Despite all these Acts, commercial exploitation of women in the visual media still continues. This is also because of the vagueness with which "indecent" has been defined. It is felt that terms such as "indecent", "immoral" etc. are highly subjective terms as all of these relate differently to different people. On the basis of the observations made by a Parliamentary Standing Committee and the National Commission for women, the Indecent Representation of Women (Prohibition) Amendment Bill, 2012 was introduced in the Rajya Sabha in December, 2012, especially to widen the scope of the Act in the context of technological advancements. However, the amendments have not yet taken place.

Table 2.4: Number of Cases Registered under the Indecent Representation of Women Act

Year	Number of Cases
2008	19
2009	24
2010	37
2011	12
2012	3
2013	20
2014	11
2015	4
2016	2
2017	3

Source: State Crime Records Bureau

2.4.1.3 Recommendations

- The vagueness and subjectivity involved in defining "indecent" is a major issue involved in the implementation of the Act. The Act needs to be amended to give a

more functional definition of “indecent” and must include vulgarity/obscenity as the parameter.

- The influx of internet has increased reach of visual media. Steps must be taken to check dissemination of derogatory visual content with the help of cyber police and intelligence wing. The recent phenomenon of threatening and shaming through the social media also needs to be brought under purview of the Act. Online abuse of women is one of the most reported cybercrimes in the state. Misuse of personal visual content such as selfies, photographs and videos must be checked. This requires strengthening of cyber cell in the state. There must be awareness campaigns on the dangers of cyber world and social media. Local governments and the Public Relations Department shall organise such activities.
- Department of Women and Child Development /Social Justice can engage in discussion with media personalities and others in the advertisement industry to evolve a consensus regarding socially accepted norms on the “Decent Representation” of women.
- A widely heard opinion is that TV programmes and films often represent women in an indecent way. State government may consider tracking video shows, chat shows, comedy shows as well as film and serial clippings that verbally or symbolically, physically or through gestures abuse the gender of any person.
 - Implementation of other related Acts also need to be strengthened such as:
 - Young Persons Harmful Publication Act, 1956
 - IPC 292 on (Sale of Obscene books etc.)
 - Press and Registration of Book Act 1867
 - The Information Technology Act 2000 (Section 67 on Pornography)
 - Cable Television Networks Regulation Act 1995 (code 7 on Advertisement code and 7(2) on depiction of women)

All these will have to be linked to the implementation of the Indecent Representation of Women (Prohibition) Act. Careful legal procedures can be worked out with a combined sitting of Departments of Law, Cultural Affairs, Social Justice, Women and Child and Education, at the state level.

- School curriculum shall include lessons on “Human Dignity” and proper healthy depiction of women in the media. Gender sensitisation from an early age would help in building future generations who would respect the other gender and would not indulge in activities that are derogatory to the dignity of the opposite gender.
- Gender conscientisation shall be a module in all media related courses such as journalism, filmmaking, cinematography, scripting, etc. Women and Child

Development department should take the initiative to promote inclusion of such aspects in the curriculum of these courses.

- Government policies can influence effective implementation of safeguards to uphold dignity in representation of women. State Policy for Women as well as the Media Policy, should include definition of proper and dignified depiction of women in media so that implementation becomes effective.
- Government of Kerala should make use of the provisions of the Act and the main aim should be to widen the scope of the Act and its applicability so that depiction of women as sexual objects or in humiliating servility to men in any kind of written, verbal or visual form can be challenged /questioned.
- The State may formulate a Kerala Film Act so that the exploitation of women in the industry in terms of harassment as well as indecent representation in the portrayal of characters can be addressed. As of now, there is a lack of clarity with respect to the film industry as to which Acts address the industry.

2.4.2 Immoral Traffic (Prevention) Act, 1956

2.4.2.1 Overview of the Act

The Immoral Traffic (Prevention) Act, 1956 is an Act that intends to combat trafficking and sexual exploitation for commercial purposes. The Act is concerned with at least six different categories of people who are in some way linked to prostitution. Each category is treated differently, subjected to different legal processes and punishments. The six categories addressed by the law include:

- Procurer/ Seducer.
- Brothel keeper/manager or his/her assistant.
- Any person who allows or lets premises to be used for prostitution.
- Any person who lives on the earnings of a prostitute.
- The prostitute.
- Children of prostitutes.

It also provides for some welfare measures towards rehabilitation of victims in the form of protective homes to be set up and managed by the state government.

2.4.2.2 Implementation of the Act

Though the Act has been amended many times, it is felt that that a thorough overhauling of the Act is required to integrate changes that have occurred to the concepts of morality and immorality over the years since enactment of the Act. It can also be seen that though the Act is meant for preventing women from being

used for immoral trafficking, instead of looking at the woman as a victim, she is treated as the perpetrator.

According to data available from the State Crime Records Bureau, there has been a decline in the number of cases registered in Kerala under the Act in the recent years (Table 2.5).

It is observed that no specific protocol is followed when a woman is arrested for trafficking. Rescue homes are maintained to provide care and protection to women who are guilty of immoral traffic and women prone to moral danger. Earlier two rescue homes were functioning in the state. Now there is only one and this houses mostly only migrant women, who may not have necessarily been engaged in sex work. The major issue with repatriating migrant women is the language barrier in conversing with them and finding their native destination.

Penalties stipulated for the person who is engaged in trafficking ranges from seven years imprisonment to life imprisonment, on repeated conviction. Similar is the penalty for the person who abets trafficking. A person who visits such a premise and uses the services of the trafficker has a lighter punishment of maximum of six months. The difference in the gravity of punishment is blind to the fact that it is because of demand that the industry thrives. It also overlooks the fact that in most cases, the girl/woman has been pushed or forced into prostitution and even in the first instance she is given the severest punishment.

It is well known that apart from direct recruitment for sex-work done by middlemen and agencies, there are numerous indirect forms of facilitation for sex-work. Recruitment for modelling, serial and film acting etc. are conducted by numerous unauthorised agencies. It should be noted that some of the sex-scandals that rocked Kerala were generated by this form of trafficking. This shows a necessity to introduce new methods by which this kind of trafficking can be prevented.

Despite the state being the first to have a policy for transgender persons, the police have always taken a condescending approach towards them as seen in the recent reports of atrocities against them. They are often detained and charged under this Act. It seems that there is a pressing need to sensitise the police department as well as the general public about issues of the third gender and also design rehabilitation packages for them, including remunerative occupations and shelter.

Table 2.5: Number of Cases Registered under the Immoral Traffic (Prevention) Act

Year	Number of Cases
2008	187
2009	314
2010	309
2011	197
2012	210
2013	180
2014	140
2015	138
2016	121
2017	54

Source: State Crime Records Bureau

Government of India has introduced a bill 'Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018' which addresses the issue of trafficking from the point of view of prevention, rescue and rehabilitation. Aggravated forms of trafficking, which includes trafficking for the purpose of forced labour, begging, trafficking by administering chemical substance or hormones on a person for the purpose of early sexual maturity, trafficking of a woman or child for the purpose of marriage or under the pretext of marriage or after marriage etc. are covered under in the Bill which got the approval of the Union Cabinet in February 2018. Time bound trial and repatriation of the victims - within a period of one year from taking cognizance is also included in the Bill. The Victims are entitled to interim relief within 30 days to address their physical, mental trauma etc. and further appropriate relief within 60 days from the date of filing of charge sheet. Rehabilitation of the victim is given importance and a Rehabilitation Fund to be used for the physical, psychological and social well-being of the victim including education, skill development, health care/psychological support, legal aid, safe accommodation is proposed. Designated courts in each district for the speedy trial of the cases are another feature of the Bill. The Bill proposes 10 year punishment for those engaging in "aggravated forms of trafficking" while seeking life imprisonment for repeat offenders. The Bill also provides for the attachment & forfeiture of property and proceeds from the crime.

2.4.2.3 Recommendations

The Commission hopes that new Bill proposed by the Central government will address some of the issues in the current version of the Act. The new law to be enacted should not be blind to the changes that have taken place in the society. Meaning of the term "immoral" has undergone major shift. Terminology of the Act also needs revision.

- Agencies providing services such as domestic help, home nurses, etc. should undergo thorough verification and function only with license. If they are found to engage in immoral trafficking they must be penalised and the business closed down with immediate effect.
- Local governments can take more proactive role by ensuring that public properties in their jurisdiction such as bus stands, railway stations, schools, isolated areas and unused buildings are not put to use by those engaged in the trade, as is often seen. Community groups such as Jagratha Samithis may also be involved.
- Specific protocol which describes as to who should handle women arrested for trafficking and which agencies must be involved at what stages viz. the police, medical department, the legal department, social justice department, etc., needs to be developed.

- Shelter homes for women engaged in trafficking are in deplorable condition. This needs to be changed. Individual rehabilitation plans need to be drawn for each woman by assessing their history, background, counselling needs, interests etc. It is often seen that women who are released from the homes return to trafficking as they have no access to other livelihood options. The idea of rehabilitation should change from mere food and shelter to skill development of the inmates that would help them find alternate occupations when released from the homes.
- Management of the shelter homes need to be improved with better involvement of the LSGI as well as women's' groups. Inmates need to be categorised in terms of their age and needs and attended to accordingly. Medical check-ups need to be done when arrested. Convergence of services under other government programmes such as 'Bhoomika' project by Health department and 'Seethalayam' project by Ayush department shall be considered.
- Many posts in the institutions are lying vacant and some are filled on deputation or on contract. Staffs posted through deputation or on contract are seldom provided training necessary to handle inmates of the institution. Such practices need to be changed. Qualified and trained staffs need to be appointed at all the homes and training should be provided to the staff.
- Exploitation of women in the media who are lured into acting in advertisements, serials and films is also not uncommon. The recruitment into these industries must also undergo a verification process and must be done only by agencies that are licensed to do so.
- Adequate training regarding how to handle issues related to trafficking has to be given to the Police Department, including gender sensitisation. Attitude of the police towards women who are arrested for immoral trafficking is reportedly very bad. This needs to change. Moral policing of couples also needs to be kept in check. The state should act on its commitment made towards inclusion and rehabilitation of trafficked persons.
- Implementation of the Kerala Women's Commission Act in the state needs to be reviewed. The intervention of the State Women's Commission in ensuring justice to victims of dowry and domestic violence, sexual harassment, indecent representation of women in the media, etc. is often reported. Effectiveness in the functioning of the Commission as well as the bottlenecks faced by them needs to be studied and addressed so that aggrieved women can make use of the alternate mechanism to get justice.



Senior Citizens

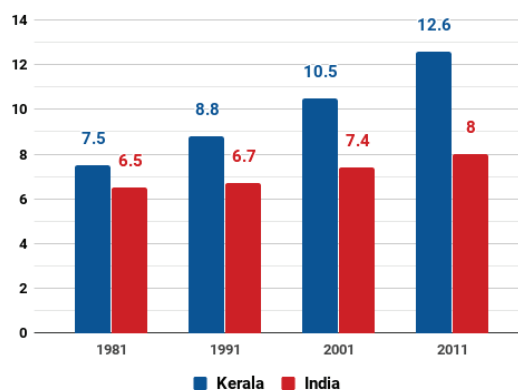
CHAPTER 3

3.1 Introduction

Kerala has the highest share of elderly in total population among the states in India. In 2011, 13 percent of the Kerala's population was aged 60 and above as against 8 percent at the national level. It is projected to reach 23 per cent by 2026¹⁰. The number of senior citizens in Kerala stood at 41.93 lakhs in 2011. Due to better public health, health care and socioeconomic changes, life expectancy of both men and women are going up in Kerala. Life expectancy at birth of women increased from 63 years during 1971-75 to 78 years during 2009-13 in Kerala. Corresponding figures for men are 61 years and 75 years respectively. As against this, the life expectancy at birth of women and men at the national level during 2009-13 is 69 years and 66 years respectively. Along with increase in life expectancy, migration of the state's working population to other countries and other states is leading to a fall in old age support ratio of the state. Old-age support ratio of the working-age population (15-59) to the elderly population (60-plus) dropped from 9 in 1961 to 5 in 2011 in Kerala. Thus, like in developed countries, senior citizens in Kerala have small families to care and support them. They have lesser number of children on an average than in the past to provide physical, emotional and financial support. Population ageing demands increasing attention on several sectors such as social security, health care and institutional arrangements for elderly care.

In this section on Senior Citizens, ARC reviews implementation of an important legislation for the welfare of senior citizens viz. Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (MWPSA Act). Before enactment of this Act, the parents could claim maintenance under the Code of Criminal Procedure, 1973 which was time consuming and expensive.

Figure 3.1: Trend in Elderly (60+) Population in Kerala and India (1981-2011)



Source: Compiled from various Censuses

¹⁰Government of Kerala, 2015, Economic Review 2014, State Planning Board, Thiruvananthapuram.

3.2 Overview of the Legislation

Some of the important provisions of the Act are:

- As per the Act, children and legal heirs are legally obliged to provide maintenance to senior citizens. The Act grants the senior citizens right to get maintenance by moving the Tribunal constituted under the Act. Maintenance includes provision for food, clothing, residence, medical attendance and treatment.
- To get benefits under the Act, a senior citizen or parent unable to maintain herself/himself may make an application for maintenance to the Maintenance Tribunal. The application can be made by the senior citizen or the parent, if she/he is incapable by any other person or organisation authorised by her/him or the Tribunal may take suo moto cognizance.
- The Act defines 'children' as sons, daughters, grandsons and granddaughters. Cases in which more than one relative will inherit the property of a senior citizen, each relative will be responsible to pay maintenance allowance in proportion to the property they will inherit. The maximum maintenance allowance is to be specified by the state government which should not exceed Rs. 10,000 per month. The amount has to be paid within 30 days from the date of order of the Maintenance Tribunal. In the case of childless senior citizens, the application has to be filed against the relative who under law would inherit her/his property.
- Maintenance Tribunal has the power to order children or relatives to make a monthly allowance as interim maintenance while the application is pending before the Tribunal.
- The Act states that the "application for maintenance shall, as far as possible, be disposed of within 90 days" by the Maintenance Tribunal and the Appellate Tribunal shall "try to pronounce its order in writing within one month of the appeal".
- Any person having the care or protection of a senior citizen leaves the senior citizen in any place with the intention of abandoning her/him, would be punishable with imprisonment for a term that may extend to three months or fine that may extend to Rs 5,000 or get both.
- On failure to comply with the order, the Tribunal may issue a warrant for collection within three months of the due date. If the amount remains unpaid, the accused may be imprisoned for up to one month or until payment, whichever is earlier. Punishment for not paying the required monthly allowance shall be Rs 5,000 or up to three months imprisonment or both. However, no warrant will be issued for recovery of amount unless application is made to the Tribunal to levy such amount within a

period of three months from the date from which it became due. The Tribunal also has the power to order payment of interest ranging between 5 per cent and 18 per cent on the monthly allowance from the date of the application.

- Maintenance Tribunal has the power to declare transfer of property (as gift or otherwise) from a senior citizen to a transferee as void if the transfer (made after the Act came into force) was made on condition of maintenance, and the transferee neglects the agreement.
- As per the Act, the state government may establish such number of old age homes as it may deem necessary in a phased manner, beginning with at least one in each district with a capacity to shelter 150 senior citizens. The State Government should prescribe a scheme for management of old age homes, including standards and various types of services to be provided by them such as medical care and entertainment.
- The Act stipulates that the State Government should ensure that Government hospitals or hospitals funded fully or partially by the Government should provide beds for all senior citizens as far as possible. It also states that there should be earmarked facilities for geriatric patients in every district hospital headed by a medical officer with experience in geriatric care.
- No civil court shall have jurisdiction in respect of any matter dealt with by the Act.
- The provision to provide interim relief in long drawn out maintenance cases is seldom made use of. As a result, senior citizens who are unable to live on their own have to wait several months to get relief.

3.3 Implementation of the Legislation

In exercise of the powers conferred on by the Act, Government of Kerala promulgated the Kerala Maintenance and Welfare of Parents and Senior Citizens Rules in 2009 (hereinafter Rules). Based on the Act and the Rules, Government has constituted Maintenance Tribunals at the revenue division level and Appellate Tribunals at the district level. Revenue Divisional Officers (RDO)/sub-Collectors are the Presiding Officers of the Tribunal and District Collectors are the presiding officers of the Appellate Tribunals. District Social Welfare Officer is designated as the Maintenance Officer under the Act at the district level. As per the Act, the Maintenance Officer shall represent a parent if she/he so desires during the proceedings of the tribunal or the Appellate Tribunal. Conciliation Officers have also been appointed by the tribunals.

Implementation of the Act has helped the senior citizens in a major way to establish their right to proper maintenance. A study on the effectiveness of implementation of Act in five states by HelpAge India¹¹ found that Kerala was better in terms of the system of filing of

¹¹HelpAge India (2017). "Preliminary Study on Effectiveness of the Maintenance and Welfare of Senior Citizens Act, 2007". New Delhi.

petitions and disposal of cases in Maintenance Tribunals constituted under the Act. However, representations from organisations of senior citizens, officials and individuals received by the Commission indicate that there is scope for improvement in the implementation of the Act in the state. The V.K. Beeran Committee appointed by Government of Kerala observed that there is a need to improve effectiveness of implementation of different provisions of the Act. The Committee also observed that many of the tribunals set up for adjudicating and deciding the issue of maintenance to senior citizens are not functioning properly, causing long delays even in taking up petitions. Detailed study on the functioning of the Maintenance Tribunals and Appellate Tribunals by the Centre for Socio-economic & Environmental Studies (CSES) for the Social Justice Department of the state government also brought out several issues (CSES 2015). The following issues have been identified in the implementation of the Act and Rules.

Case of Inordinate Delay

The applications of two senior citizens (husband aged 88 and wife aged 75) were received on 16-1-2014 by the Tribunal at Thiruvalla. As per records, notice for hearing was sent after eleven months (on 12-12-2014). The first hearing was held on 19-12-2014. After hearing both parties, the Tribunal ordered the respondent to pay maintenance of Rs 1500 per month in the first hearing date itself. Thus, in spite of giving orders on the first hearing date, the applicants had to wait eleven months to get the order for maintenance passed by the Tribunal.

Source : CSES 2015

- There is limited awareness among the public about the Act.
- The Act necessitates the Police to keep up to date records of the senior citizens. Periodic visits by police personnel to the households of senior citizens especially those living alone or only with other senior citizens is envisaged. But at present, records are not updated and visits by Police personnel seldom happen.
- Section 5(4) of the Act states that an application filed for maintenance “shall be disposed of within ninety days from the date of service of notice of the application”. While it is not mandatory to complete the cases within 90 days, it is clear that the motive of the Legislature to include such a clause in the Act was to ensure speedy justice from the Tribunal. But in practice, it is far from what’s the reality. CSES study showed that only one-fourth of the applications were disposed of within 90 days. In the sample of cases examined in the study, on an average, the first hearing was taken up 78 days after the date of receipt of application by the Tribunal. In one-fifth of the cases, the first hearing was taken up after three months.
- Hearings of the tribunals are postponed at short notice causing hardships to senior citizens. In the absence of proper mechanism to inform the senior citizens about rescheduling of hearing, the senior citizens often come to know about it only after reaching the Revenue Divisional Office.

- The Tribunal sends notice to the parties to appear before it on a fixed day at a fixed time. When the number of cases is higher, senior citizens who come to the tribunal in the morning may have to wait till evening for the hearing. Many of them are physically incapable of waiting for such a long time due to poor health.
- There is no monitoring system to assess compliance of the orders of the Tribunal. The senior citizen has to approach the Tribunal again to get the order implemented. Even for such applications, Tribunal follows procedure similar to that for a new case and may postpone the hearing if the respondent is not available.
- Lack of proper monitoring of the functioning of the Tribunals and progress related to other provisions of the Act at the district as well as at the state level.

Postponement of Hearing at Short Notice

Hearing of 15 cases was fixed for the date. Most of the applicants and respondents were present. They were informed about the postponement of the hearing date in view of the absence of the Presiding Officer. The Presiding Officer had taken leave for a week and the decision to postpone the hearing could have been communicated to the concerned parties in the previous days. Absence of contact phone numbers was the reason cited by the staff for not informing them about the postponement of hearing in advance.

Source : CSES 2015

Long Wait at the Tribunal for Hearing

The time fixed for hearing my case was 11 AM. But my case was taken up at 4.00 PM. Since the opposite party did not turn up, the hearing was postponed to another date. I was waiting on the veranda of the Revenue Divisional Office for several hours just to know that my case is being postponed. It is a frustrating experience for me. The only solace is that some others who were waiting with me also had the same fate.

Source : CSES 2015

- The number of applications in the maintenance tribunals shows an increasing trend. In view of this, the present facilities, skeleton staff support and the time spent for tribunal activities by the presiding officers have become inadequate. With increasing awareness about the Maintenance Tribunal among the senior citizens, the situation is likely to worsen further unless efficiency of the system is improved.
- Inadequate understanding by the presiding officers of the Tribunals regarding different provisions of the Act and the Rules is a problem related to functioning of the tribunal. The Tribunal functions are different from most other duties of the Presiding Officer as well as staff. Knowledge and expertise required for performing the role of Presiding Officer is also different. But the system is yet to respond to the training needs of the Presiding Officers, staff and conciliation Officers. This, in turn, has led to delay in the delivery of justice and problems in case management.

- As per the Act, the Tribunal, before hearing an application, may refer the same to a Conciliation Officer who shall submit the findings within one month. If an amicable settlement is arrived at, the Tribunal shall pass order to that effect. But in practice, conciliation process is rarely initiated. CSES study points out that conciliation process was initiated only in about 5 per cent of the cases filed in 2014. On an average, conciliation was successful only in one case per Tribunal. The job of the Conciliation Officer includes sending letters to parties for conciliation, arrange space for conciliation, and interact with the parties to reach an agreement, prepare report of the conciliation process and submit it to the Tribunal. The process also demands travel to the RDO office and to venue of the conciliation meeting. All these functions have to be done without any support from the Tribunal. Physical space necessary for conducting conciliation meetings is not available in most of the Tribunals. The conciliation Officers are also forced to bear stationery expenses on their own.
- Only in a very small proportion of the cases filed in the Maintenance Tribunal, appeal is filed before the Appellate Tribunal. An appellate tribunal receives less than a dozen appeals in a year. In spite of this, only one-third of the appeals filed before the Appellate Tribunals are disposed of within one month, the time limit prescribed in the Act (CSES 2015).
- As per the Act, a party before a Maintenance or Appellate Tribunal shall not be represented by a legal practitioner. But as per an order of the High Court of Kerala, legal representation is allowed in the Maintenance Tribunals and Appellate Tribunals.¹² As a result, the process is becoming increasingly legalistic and time consuming. At present the legal representation is mainly for the respondents. The applicant senior citizens may not have the necessary financial resources to engage a legal practitioner. This brings in imbalance in the process and becomes disadvantageous for the senior citizens. There should be provision for legal aid for the applicants.
- The Act has fixed an upper limit of Rs. 10,000 as maintenance amount. The limit remains the same even after ten years. There is no provision in the Act to periodically revise maintenance amount that can be granted under the Act.
- The Committee on Subordinate legislation (2014-2016) in its 21st report dated 15-7-2014 recommended that there should be at least one old age home in every District which can accommodate 150 inmates as per section 19(1) of the Act. But even after ten years, this has not been achieved by the state. Even though there are old age homes in all the districts in the state, old age homes in four districts (Alappuzha, Idukki, Palakkad and Wayand) are exclusively for physically handicapped persons. In Ernakulum district, there are two old age homes of which one is named as Old age Home & Fulltime Dementia care Centre. Capacity of the government old age homes in most districts is not sufficient to meet the demand.

¹²HLatha Sumam A vs. District Collector, Alappuzha and others ILR (2013 (2) Ker.44.

- Existing old age homes under Government in the state are overcrowded. A study of the Old Age Homes in Kerala undertaken by the Centre for Gerontological Studies for the Department of Social Justice¹³ brought out several inadequacies of old age homes in the state run by the Government. According to the study, infrastructure designs of old age homes are not sensitive to the needs of the elderly. Absence of a sick room with necessary facilities, absence of necessary facilities for bedridden inmates, lack of ramps, inadequate toilet and bathroom facilities, absence of staff trained in geriatric care management, etc. are few of the problems identified by the study. It was also found that staffs of the old age homes do not receive adequate training in old age care.
- Norms of physical facilities and operational standards for Old Age Homes for indigent senior citizens established under Section 19 of the Act is provided in the Schedule of the Rules. The schedule provides details of land, living space, facilities and operational standards. However, many of the norms included in the Schedule are vaguely defined. For instance, it is mentioned that “supply of nutritious and wholesome diet as per scale to be fixed by the state government” should be ensured. It is also mentioned that “adequate clothing and linen for inmates” and “adequate arrangements for sanitation” also has to be ensured. However, what is “adequate” is not discussed. The Schedule is silent on many aspects of wellbeing of the inmates. Aspects such as availability of hot water, care for the bedridden, availability of storage facilities for inmates, qualifications, experience and training for care givers, provision for emergency health care and arrangements for the health care of the inmates are some of the aspects which are not mentioned in the Schedule. As a result, it has become easy for the authorities to continue with poor environment and facilities in the Old Age Homes.

3.4 Recommendations

- Social Justice department shall organise a mass campaign to improve awareness among the people about the Act. Apart from creating awareness through visual and print media, elected representatives, particularly at the local level should be made partners in this effort. Training programmes organised by the Kerala Institute of Local Administration (KILA) for elected representatives should include roles and functions of the Maintenance Tribunal. There is also a need for increasing awareness through the Kudumbasree network, Jagratha Samithy, Gramasabha, Police force and among grass root level functionaries such as Anganwadi and ASHA workers.
- As per Rules, “each Police Station shall maintain an up-to-date list of Senior Citizens living within its jurisdiction, especially those who are living by themselves”. It also necessitates that “a representative of the police station, as far as possible, together

¹³Jacob John Kattakkayam (2015). “Study of Old Age Homes in Kerala”, Centre for Gerontological Studies. The Manual on Old Age Homes prepared by Centre for Gerontological Studies also provides details of desirable facilities and practices for the Old Age Homes in Kerala.

with a social worker or volunteer shall visit such senior citizens at least once in a month". The State Government should take all measures to sensitise and orient the police and judiciary regarding protection of life and property of the elderly and to ensure compliance of the provisions of the Act and Rules. Expanding the scope of the Rules to specifically visit the senior citizens benefitted by orders of the Maintenance Tribunal can help in better execution of the orders. Such visits can also be useful to prevent any harassment of the repatriated senior citizen. It can also reduce the incidence of approaching the Tribunal again for execution of its orders.

- Effective coordination of the functions of different government departments and agencies is a necessity. Presiding Officer of the Tribunal and Appellate Tribunal are from the Revenue Department and usually the staff involved in the functioning of the Tribunal are also from the Revenue Department. Maintenance Officer is from the Social Justice department. Old Age homes are run by the Social Justice department. Health department is responsible for health care of the elderly while the Police department is responsible for the security of the senior citizens. Thus, many departments are involved in implementation of different provisions of the Act. While it is important to have department specific information in the respective departments, there is a need for coordination of activities of different departments. Regular monitoring of the activities of the departments concerned is essential.
- The Commission recommends that the Rules should specify that applications related to non-compliance of tribunal orders will be dealt with separately and that it will be disposed of within 30 days. The Tribunal may assess the situation based on bank statements of the applicant or through village office or police station instead of posting it for hearing. Only if the assessment report of the concerned officials demands clarification from the respondent, should it be posted for hearing. The Rules shall clearly state the procedure to be adopted by the Tribunal in case the order of the tribunal is not complied with.
- Postponement and adjournment of cases in the tribunals should be based on a set of criteria developed at the state level. Reasons for postponement/adjournment should be recorded to enable consistent tracking.
- Appellate Tribunals should hold sittings at least once in a month to ensure that appeals are disposed within the time limit of one month prescribed in the Act.
- Tribunals may make use of the provision in the Act that "the children or relative who is required to pay any amount in terms of such order shall, within thirty days of the date of announcing the order by the Tribunal, deposit the entire amount ordered in such manner as the Tribunal may direct". As far as possible, the order should state that the amount should be deposited in the bank account of the applicant, if the applicant agrees to it. This will provide necessary evidence in case of breach of the order.

- Considering the delay in decision making by the tribunal and non-compliance of orders of the tribunals, a fund should be formed for providing interim relief to the senior citizens. This is important as the senior citizen usually approach the tribunal only when they are no more able to look after themselves and all other options have exhausted. Amount released from the fund can be recouped from the children/relatives at the earliest possible time.
- At present the conciliation Officers are empanelled by the Tribunals without providing any training. Profile of the present conciliation members indicate that majority of them do not have exposure to conciliation as well as legal aspects. Therefore, they should be trained in legal aspects as well as in conciliation/mediation/counseling before they start performing their roles as Conciliation Officers. Conciliation Officers may visit the homes of the parties or organise conciliation meetings in a place closer to their homes. Conciliation meetings may be organised at the Grama Panchayat or Municipal level so that the parties do not have to travel for long distances. Facilities available in Grama Panchayat/Block Panchayat/Municipal Offices should be made available for the conciliation meetings. There is a need to provide travel allowance and honorarium for the conciliation Officers for their effective involvement in the conciliation process. Rule 3 Sub Rule 1 states that the Tribunal shall publish the panel of conciliation members for general information at least twice a year, on 1st January and 1st July, respectively, and at every time any change is effected therein." It is felt that the panel of conciliation officers needs to be revised only annually. The Rules should also suggest that as far as possible, conciliation officers are selected from different taluks in the revenue division. Fair representation should be given to women in the selection of conciliation officers.
- Case flow management and regular follow up of cases in the tribunal can be done only if there is sufficient staff support for the Tribunal. But only a skeleton staff spared by the Revenue Department is available for administrative support. This has affected functioning of the Tribunal. As of now, no additional funds are available for the functioning of Tribunals. The government should provide staff support and required funds for the functioning of tribunals constituted under the Act.
- To streamline case management and to improve the process of decision making in the Tribunals, training is necessary for the Presiding Officers and staff. The training should include legal aspects, case management and procedural aspects. Training for Presiding Officers should cover judge-craft, provisions of the Act and Rules and case management. The staff should get training inputs on legal procedures, early case assessment and case management.
- Given the fact that the Tribunals are meant for elderly persons, the state government should make sure that Tribunal hearings are held in a place convenient to them on

the ground floor itself or the building should have access through lifts to other floors. It is also important to ensure that the elderly should have seating facilities, access to drinking water and sanitation facilities.

- The senior citizen may have to face negative consequences if she/he goes back to the children after legal proceedings. Hence there is a need for counseling both the claimant and the children. Necessary provision should be made for the same.
- Rules have to be amended to make provisions to record the statement by an authorised officer by visiting the applicant's house if she/he is unable to travel. Possibility of providing video conferencing facility for hearings may also be considered.
- The Rules do not provide for any monitoring of the functioning of the Tribunals at the state level. As per the Rules (Rule 19 Sub Rule 2 (ii)), the District Magistrate "shall oversee and monitor the work of Maintenance Tribunals and Maintenance Officers of the district with a view to ensuring timely and fair disposal of applications for maintenance, and execution of tribunal orders". A standard format for monitoring should be appended to the Rules. At present it is more or less absent. Formats for monthly reporting by tribunals/appellate tribunals should include aspects such as:
 - Number of new applications/appeals filed in the month
 - Number of pending cases (including those filed in the month)
 - Number of applications pending for more than 90 days (30 days in Appellate Tribunals)
 - Number of cases in which final orders were issued in the month
 - Number of cases in which conciliation process was initiated in the month
 - Number of cases settled through conciliation in the month
 - Number of cases related to the non-execution of earlier orders of the Tribunal
 - Number of cases scheduled for hearing in the month
 - Number of cases in which hearing was adjourned
 - Number of cases in which oral hearings were held in the month
 - Number of sittings in the month
 - Number of sittings postponed in the month
- Manual/Handbook for use by the presiding officers, Tribunal staff and Conciliation officers shall be prepared at the state level and circulated among them for bringing uniformity in case management and in decision making process.
- Older adults have unique health care needs. Due to their economic dependency, senior citizens often depend on government hospitals for health care. In view of the rising proportion of the elderly, services of PHCs, CHCs, Taluk hospitals and District

hospitals should become elderly friendly. Being close to their homes, PHCs have a prominent role in the health care of the elderly. A deficit of health care workers with expertise and experience in the care of the elderly jeopardises successful care delivery for older persons. To address the issue the Commission recommends that all the government health care institutions including the PHCs in the state should become elderly friendly within a period of two years. Necessary standards may be developed after due consultation among different stakeholders. The PHCs should also have pain and palliative care unit and availability of medicines and lab facility should be ensured.

- During public interactions, it was pointed out that pakal veedu (പകൽവീട്) started in many places are not functioning now though considerable public funds from local governments have gone in to the construction of such homes. The Commission, however, was not able to ascertain the functional status of such homes in different parts of Kerala. ARC considers such homes as a major intervention for the elderly though the way it is functioning now in many places needs considerable improvement. Scope of activities of pakal veedu should be widened to develop it as a community/cultural centre for the elderly in the village/towns. The Commission, therefore, recommends that a detailed study on the functioning of pakal veedu should be undertaken by the Social Justice Department to identify success and failure factors. The study should also provide inputs for developing a model pakal veedu which has much wider scope so that participation is not restricted to the senior citizens visiting the pakal veedu on a regular basis.
- Capacity of government old age homes is insufficient and is below that mandated by the Act. Government shall consider increasing the capacity of government old age homes in different districts.
- It has been noted that the norms related to Old Age Homes laid out in the Schedule of the Rules is vague and therefore difficult to enforce. Many relevant aspects related to elderly care do not find mention. There is an urgent need to develop a realistic and unambiguously defined set of norms for Old Age Homes functioning as per the provisions of the Act. The Social Justice department should bring out Annual Reports of the functioning with clear mention about the status of the Old Age Homes against the norms. Social audit shall be conducted on the functioning of old age homes.
- All Old Age Homes shall be made disabled friendly. The practice of providing accommodation to husband and wife in different old age home shall be reviewed.
- Care givers in the existing old age homes should be given sufficient training in old age care. They should be able to handle not only the physical problems but also the mental and emotional problems faced by the elderly in care homes.

- The graying of population demands attention from policy makers and planners in different sectors at different levels. However, very few studies are available on ageing in Kerala. Considering this, detailed studies on different aspects such as health and health care, physical and social security, functioning of old age homes etc. are necessary to make Kerala an elderly friendly state. Studies on the allocation and utilisation of funds for elderly by Local Governments, functioning of pakal veedu, role of elderly in local governance etc. would be useful in evolving more effective interventions at the local level.
- Possibility of starting new elderly homes by the District Panchayats should be thought of. Additional funds have to be earmarked for the same. Possibility of running the homes by Kudumbasree may be explored.
- State government should ensure that all public buildings and public transport facilities are senior citizen friendly.
- In order to reduce the waiting time for elderly, the Health department should make sure that separate queues are available for elder persons in government healthcare institutions. The possibility of providing separate timings for elderly may also be considered.



Persons with Disabilities

CHAPTER 4

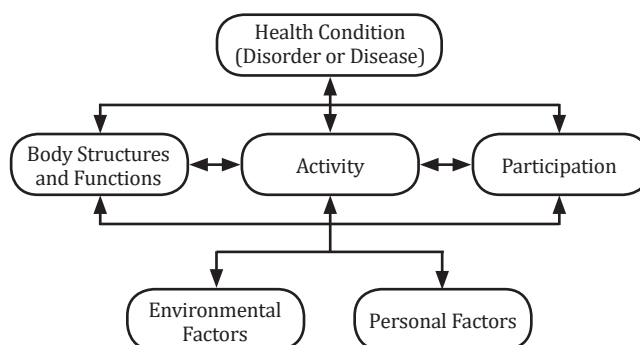
4.1 Introduction

In the last fifty years several efforts have been taken to understand disability and its impact on society. An early milestone in this regard is the publication of the International Classification of Impairment, Disability and Handicap (ICIDH, 1981) by the World Health Organisation (WHO) which helped to understand terminologies and concepts behind personal and social experience of disability.

Disability can be conceptualised in three tiers:

- Impairment - organ level deviation(s) from what is considered normal
- Disability - personal experience of such deviation/s
- Handicap - occurs when the society is designed in a way that makes it difficult for a PwD to negotiate with it

Though impairment can be understood as an illness or a deviation from normal, handicap is a much more complex concept. It consists of society's value systems, understanding of abilities and inabilities, concepts of inclusion, attitudes and stigmatisation. These are powerful, abstract and invisible social structures which have no biological or medical underpinnings. The new understanding is to move out of the biomedical model of disability to a more equity based biosocial model. Accordingly, the WHO came up with a revised policy document in 200, 'The International Classification of Functioning, Disability and Health' (WHO publication, ICF, 2003). The idea is that though a medical condition might be at the origin of the spectrum of disability experience, a person's disability stems from the interplay of multiple factors over which she/he has no control.



These factors influence each other in a bidirectional manner resulting in numerous layers of interplay that is more than the number of nodal points. Instead of disability and handicap, concepts used are Activity and Participation. Though personal factors do influence a person's capacity to participate in social activity, participation can be severely restricted by environmental and other factors. Since the environment designed by the society for itself through a process of social consent makes it difficult for the PWDs to participate in it, it also restricts and marginalises them.

The Convention on the Rights of Persons with Disabilities (CRPD), adopted by the United Nations in 2007, aims to protect the rights and dignity of Persons with Disabilities (PwD). The purpose of CRPD "is to promote, protect and ensure full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities". India, a signatory to CRPD, has introduced the Rights of Person with Disabilities (RPWD) Act 2016 which came into force on April 19, 2017.

According to the Census of PwDs undertaken by the state government in 2015, 7.94 lakh persons in Kerala suffer from various disabilities (Table 4.1). This is equivalent to 2.3 per cent of the state's population. The survey, first of its kind in India, covered 22 types of disabilities. Females constitute 44.6 percent of the PwDs. The Census also found that 8.7 per cent of the houses in Kerala have PwDs.

Regarding type of disability, locomotor disability tops with 32.9 percent and multiple disabilities stand second with 17.3 per cent. Other disabilities which constitute more than 5 percent of the PwDs are persons who have mental illness, mental retardation, low vision and hearing impairment.

Table 4.1:
Number of Persons with Disabilities in Kerala in 2015

Type of Disability	No. of Persons	Share (%)
Loco motor	261087	32.89
Multiple Disability	137446	17.31
Mental illness	100983	12.72
Mental Retardation	68934	8.68
Low Vision	61900	7.80
Hearing Impairment	60925	7.67
Speech and Language Disability	22648	2.85
Blindness	20477	2.58
Epilepsy	19512	2.46
Learning Disability	8074	1.02
Cerebral Palsy	6385	0.80
Dwarf	6079	0.77
Kyphosis	4887	0.62
Chronic Neurological Disorder	3633	0.46
Autism	3135	0.39
Muscular Dystrophy	2280	0.29
Haemophilia	1445	0.18
Leprosy cured	1175	0.15
Sickle Cell Anaemia	1006	0.13
Deaf and Blindness	842	0.11
Multiple Sclerosis	515	0.06
Thalassemia	569	0.07
Total	793937	100

Source: : Disability Census 2015, Government of Kerala

These statistics may be too conservative. The real volume of PwDs is likely to be much higher considering expansion in population and life expectancy. Many disabling conditions that would not come under the definition of disability are a matter of grave concern for the persons who have them. For example, colour blindness can be a social hazard, but not considered a disability, yet the person with colour blindness will have to negotiate traffic with utmost care. A senior citizen with bilateral knee pain walking with a deformity is a common sight in many places yet never gets classified as a PwD. Hence state initiative on disability planning ought to consider bridging the gap between felt disability experiences and disability as notified.

4.2 Overview of the Act

The Rights of Person with Disabilities (RPWD) Act, 2016 replaces the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995. Central Government rules have come into force with effect from 15 June 2017.

Guiding principles of the Act include:

- Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons,
- Non-discrimination,
- Full and effective participation and inclusion in society,
- Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity,
- Equality of opportunity,
- Accessibility,
- Equality between men and women, and
- Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

Salient features of the Act are:

- The list of disabilities has been expanded from 7 in the previous Act to 21 and it now includes cerebral palsy, dwarfism, muscular dystrophy, acid attack victims, hard of hearing, speech and language disability, specific learning disabilities, autism spectrum disorders, chronic neurological disorders such as multiple sclerosis and Parkinson's disease, blood disorders such as haemophilia, thalassemia, and sickle cell anaemia, and multiple disabilities.
- Persons with benchmark disabilities are defined as those with at least 40% disability.
- The Act provides for access to inclusive education, vocational training, and self-employment of PwDs without discrimination. It also envisages buildings, campuses, and various facilities be made accessible to the PwDs and their special needs are to

be addressed. Standards of accessibility in physical environment, different modes of transports, public building and areas are to be laid down which are to be observed mandatorily and a 5-year time limit is provided to make existing public building accessible. While existing establishments must comply with the prescribed standards of accessibility within 5 years, new establishments must comply with them from formation. Appropriate healthcare measures, insurance schemes, and rehabilitation programmes for the PwDs are also to be undertaken by the Government.

- All Government institutions of higher education and those getting aid from the Government are required to reserve at least 5% of seats for persons with benchmark disabilities.
- Four percent reservation for persons with benchmark disabilities is to be provided in posts of all Government establishments. One percent each shall be reserved for persons with benchmark disabilities in the following categories a) blindness and low vision b) deaf and hard of hearing c) locomotor disability d) intellectual and learning disability and mental illness and multiple disabilities. The 4% reservation is not against the total number of vacancies but in positions identified by an expert committee as stipulated in Section 33 of the Act. The committee should have representation of persons with benchmark disabilities. The Act mandates the government to undertake periodic review of the identified posts at an interval not exceeding three years.
- Incentives to employers in private sector are to be given to those who provide 5% reservation for persons with benchmark disability.
- The Central and State Advisory Boards on disability are to be constituted to perform various functions assigned under the Act. District level Committees are also to be constituted by the State Government.
- State Commissioners for PwD are to be appointed by the State Governments. National Funds for PwD and State Funds for PwD have to be constituted.
- The Act mandates to “induct disability as a component for all education courses for schools, colleges and University teachers, doctors, nurses, paramedical personnel, social welfare officers, rural development officers, asha workers, anganwadi workers, engineers, architects, other professionals and community workers.”
- Designated special Courts have been proposed to handle cases concerning violation of rights of PwDs.
- The State Government may, by notification, make rules for carrying out provisions of the Act, not later than six months from the date of commencement of the Act

4.3 Implementation of the Reviewed Legislation

Government of Kerala enacted a policy for PwDs in the year 2014 recognising the necessity and inevitability of including disability dimensions in the development agenda, programmes, and action plans of the State. The policy document lays out some of the evolving philosophy of disability management. Participation of PwDs in the developmental process, viewing disability as a human rights issue, protection from abuse and creating a positive environment and attitude for inclusive development and empowerment of PwDs are the key dimensions of the policy. New systems are being put in place to make the state more inclusive to PwDs. This includes prevention initiatives, early screening, early intervention, special Anganawadis, Buds Schools, Model Child Rehabilitation Centres, special schools, inclusive education, vocational training, Sheltered Workshops, Community Based Rehabilitation and assisted living projects, among others. But the situation remains far from satisfactory even now. PwDs continue to face serious challenges in accessing health care, education, employment and transport services. Apart from physical inaccessibility, communication barriers, inaccessible information and financial barriers, lack of awareness about the rights of PwDs at various levels act against the PwDs. Stigma and attitudinal as well as cultural barriers cause additional constraints.

The state government has initiated a project named 'Anuyatra' for disability prevention and management following rights-based life cycle approach. Aim of the project is to make Kerala a disabled friendly state.

Among the different legislations reviewed by the Commission, the RPWD Act is one of the most recent. Even though one year has passed since the Act came into force, not much has happened in the state to implement the new provisions of the RPWD Act. The state is yet to frame Rules for implementation of the Act.

The new Act mandates the government and other actors to play a more proactive role in addressing some of the major issues faced by the PwDs. It is essential that implementation of the provisions of the Act match the modern philosophy of disability concepts.

Some of the issues that came up in the course of this review are:

- Education is a powerful resource that acts as a great leveller. Education of children with disabilities is burdened by issues related to poor efficacy, infrastructure and implementation. The idea of inclusive education has become popular since 2000. But its success in terms of retention of students and educational outcome measures seems wanting. Casual studies have shown that illiteracy and social backwardness co-exist. This context puts pressure on access to education for children with disability and this can be inferred from the fact that 33.1% of PwDs remain illiterate even in a high literacy setting like Kerala.

- While regular schools are admitting students with disabilities, the quality of education imparted to them needs to be improved. Teachers need to be sensitised about the needs of children with disabilities. It has been pointed out that majority of schools in the state are not barrier free. Barrier free access to classrooms, laboratory, library, toilet and playground is necessary.
- There is shortage of special educators in schools. The resource teachers are working at Block level and a teacher is in charge of about ten schools. Many of the schools do not have resource rooms/resource centres. As per the response of the Director of Public Instruction, therapeutic centres are not functioning since 2016-17 due to shortage of funds, absence of therapists, and shortage of necessary equipments. Sufficient number of braille books is also not available. The State Commissioner for Persons with Disabilities has brought to the notice of the Commission that many schools, both government and private, are engaging teachers without required qualification to teach children with special needs. Inadequacy of teacher training institutes in the sector was also pointed out.
- There is no system in place to monitor whether the private schools in the state are extending inclusive education.
- There are 46 Special schools for hearing impaired and blind children in the state which are in the government and aided sector. In addition, 315 special schools, managed by NGOs or individuals, for the mentally challenged children are registered with the Director of Public Instruction. There is urgent need to improve the quality of education imparted in the special schools.

NISH-CHINTA

A 'Supported Village for Intellectually Impaired' located at Choozhikkad in Lakkidi-Perur Panchayat, Ottapalam, Palakkad District aims to provide lifetime support to children with intellectual impairment, autism and cerebral palsy. It's founded by parents of children with disabilities and is registered as a society. It's being established in 13 acres of land and is expected to start functioning by 2020. Investment in the project at present is from the parents. The project proposes to provide accommodation for 100 families in the initial stage. On completion of the project the society proposes to 'impart vocational and skill training to the children and provide employment avenues for the parents. The project includes provision for special school, rehabilitation centre, health unit, vocational training centre and other facilities including facilities for recreation, and land for farming. Special courses for teachers and trainers will also be imparted in NISH-CHINTA. Dormitory facilities will be provided for children from economically backward families. NISH-CHINTA is an effort at establishment of a self-sustaining village for children with mental disability where they can live with their family lifelong. Government may study effectiveness and sustainability of the proposed model.

- The RPWD Act mandates that all higher education institutions should reserve 5 percent of the seats for persons with benchmark disabilities. Reports of not following this reservation have been received by the Commission.
- Local governments are made responsible for the implementation of scholarship scheme for children with disabilities. Responses received in the public hearings as well as representations from various organisations indicate that many of the children with disabilities are not getting the amount fixed by the state government as scholarship due to inadequacy of funds earmarked for the purpose by the local governments.
- There are few opportunities in the State for skill development of PwDs and for assuring their livelihood. As per the data provided by the National Employment Service (Kerala), 12398 PwDs are registered in Special employment exchanges and 53976 PwDs are registered in other employment exchanges. Department of National Employment Service is implementing a scheme *Kaivalya* (Truth) which offers vocational education and career guidance, capacity building, training for competitive examinations, and interest-free self-employment loan for PwDs who have registered their names in the employment exchanges. However, the reach of this programme is quite low.

***National Institute of
Physical Medicine and Rehabilitation
(NIPMR)***

Kallettumkara, Irinjalakkuda

NIPMR does diagnosis treatment and therapy for hearing and speech impairment and physical, psychological and behavioral problems in children and elderly. A major objective of the Institute is therapy and rehabilitation of children with Cerebral Palsy. 'Rehab on wheels' is an outreach program by the institute conducted in nearby Panchayats. Monthly camps providing diagnosis, therapy and referral facility are held under this programme. Early intervention and training for rehabilitation professionals, field workers, social workers, representative of Local Self Governments, Anganwadi and ASHA workers and infant screening in association with Taluk hospital is also done by the Institute. NIPMR is the only institution in the state providing service exclusively to mentally and physically disabled persons. This institute, established in the land and buildings donated by a private trust, has the potential to develop as a National Institute with research facilities and equipped to provide therapy and rehabilitation to mentally and physically disabled children and adults.

- Government of Kerala has decided to increase the reservation for PwDs to 4 percent as per the new Act. It is pointed out that there is inordinate delay in implementation of 3 per cent reservation in government jobs mandated by the Persons with Disabilities

Act, 1995. The PwDs and their organisations expect that the increase in reservation from 3 per cent to 4 percent will be reflected in the recruitment to government jobs without delay. In the absence of any statistics It is difficult to determine if the 3 per cent reservation for persons with disabilities in Government and Public Sector Undertakings mandated by the Persons with Disabilities Act, 1995 has been met. According to the response of the Public Service Commission, if vacancies in posts reserved for PwDs cannot be filled up due to non-availability of such persons, the vacancies are “set apart and later filled as per rules. However, PSC reported its inability to provide the number of such vacancies as the data is not currently consolidated by PSC.

- It is mandatory to provide disability certificate to all PwDs. Difficulties faced in getting disability certificate have been widely reported. Social Security Mission distributed nearly 3 lakh certificates in 2015, which is about 40 per cent of the total number of PwDs enumerated by the Disability Census 2015, by organising disability certification camps in different parts of Kerala. The camps were helpful to the PwDs as they could avoid travelling to distant places for getting medical certificates. In spite of such efforts, there are complaints of delay in getting disability certificates. It is also reported that PwDs are sometimes asked to produce a new disability certificate each time they submit any application.
- Many of the government offices and institutions as well as other public places in the state are not accessible to PwDs. At present roads and traffic signals are also not PwD friendly.
- There is lack of awareness about the rights of PwDs as per the new Act, especially among those belonging to newly added categories of disabilities.
- There are 16 welfare institutions for PwDs under the Social Justice Department. Economic Review 2017 of the State Planning Board points out that a major concern of the State is the absence of care institutions/assisted living homes for children with intellectual disabilities.
- Social Justice Department has implemented Ashwasakiranam scheme which provides monthly assistance to caregivers of different categories of persons with disabilities, such as 100 per cent blind, bedridden patients suffering from cancer, cerebral palsy, autism, mental illness, mental retardation and bedridden due to old age. Number of beneficiaries during the financial year 2016-17 was 90,251. Another programme ‘Insight’ provides support (including basic skill and academics-related training) for more than 60 children with cognitive challenges. It harnesses a blend of new technologies and traditional systems to train the children.

- Early identification of children with developmental disabilities and mental health problems is crucial for early intervention. Some of the initiatives for prevention of various disabilities include:
 - Rubella & MMR Vaccination to prevent various disabilities including mental retardation, deafness and visual impairment.
 - Hearing screening to all newborn babies by providing Otoacoustic Emission (OAE) Screeners to all maternity hospitals in the government sector.
 - Early Intervention Centres at the district level to detect and intervene in development delay/disabilities at early stage. The Centres provide all assessments and therapies required for the children with development delay/disabilities.
 - Training for Anganwadi Workers for early detection of development delay/disabilities.
- State Commissionerate for Persons with Disabilities is a statutory body constituted to coordinate and monitor implementation of the Act in the state. Other functions of the Commissionerate include conducting awareness camps, redressal of the complaints of PwDs, inspection of institutions for PwDs etc. The Commissionerate is a quasi judicial body that can exercise the powers of a civil court for the redressal of grievances of PwDs. It functions in a single tier mode, i.e. only at the State level. No offices are available at the regional/district level.
- It is brought to the notice of the Commission that in government offices, public transport, government notifications etc., the PwDs are referred often as ‘handicapped (Vikalangar)’ and not as ‘persons with disabilities’, as is referred in the RPWD Act. Notifications of the Public Service Commission refer PwDs as handicapped. Similarly, names such as ‘Handicapped Persons Welfare Corporation’ are often used by the government even now.

Poly Garden - Integrated Village for Differently Abled, Palakkad

Poly Garden is a privately-run residential school cum vocational training centre that cater mainly to persons with disabilities aged above 35 years. The institution provides residential facilities to them and is one of the few institutions that provide rehabilitation services to adult persons with disabilities whose families are not able to take care of them. The institute is run on a self-sustaining model. Government may study such models and explore the possibility of providing necessary assistance to such initiatives.

4.4 Recommendations

- As per the Act the State Government may, by notification, make rules for implementing provisions of the Act not later than six months from the date of commencement of the Act. Comprehensive rules shall be framed for implementation of the Rights of Persons with Disabilities Act of 2016 without further delay.
- Kerala State Policy for Persons with Disabilities - 2014 was formulated before the Rights of Persons with Disabilities Act 2016 came into force. Data from the Census of Persons with Disabilities was brought out after the policy was formulated. State government has since taken several steps to ensure the rights of persons with disabilities. In view of the above, Commission recommends that the state government shall develop a new State Policy for Persons with Disabilities.
- As per the Act, State Government should constitute a State Advisory Board on disability. It is yet to be constituted. State Government should take steps to immediately constitute the State Advisory Board on Disability as per the Act.
- Government of Kerala should develop an action plan, with adequate resources, that establishes clear responsibility and mechanisms for implementation, monitoring and reporting of implementation of the Act. Schemes for the welfare of persons with disabilities are implemented in the state mainly through the Departments of Social Justice, Health, Education and Labour and Skills. Coordinated approach across these departments is essential. Besides these departments other departments such as the Public Works, Transport, Local Self Government, Disaster Management Authority and institutions like Public Service Commission have a role in protecting the rights of PwDs. An integrated approach involving all these departments/institutions is essential to ensure the rights of PwDs.

National Institute of Speech & Hearing (NISH)

NISH, started in 1997, is an autonomous organisation registered as a society by the Social Justice Department, Government of Kerala. It has been certified as "Excellent" institute by the Rehabilitation Council of India and 'Grade A' institute by NAAC. NISH focus on identification, intervention, rehabilitation and education of people with disabilities. Early Intervention Program (EIP) for children with disabilities is a core activity of the Institute. NISH offers assessment and therapeutic programs for children with neurodevelopmental disorders such as Autism Spectrum Disorder, Attention Deficit Hyperactivity Disorder, Cerebral Palsy, and Learning Disability. The academic programs include degree programs for the hearing-impaired (Degree-HI) in Computer Science, Fine Arts and Commerce and UG/PG programs in audiology and speech-language pathology. Other programmes include 6-month course in Graphic Design for deaf and the hearing impaired and one-year Diploma in Indian Sign Language and Interpretation.

- The RPWD Act covers 21 types of disabilities. Fourteen of them are new. State government should ensure that persons under the categories newly added to the list of PwDs are also able to access their rights. Necessary guidelines for their inclusion should be developed by the state government. Guidelines are required not only for assessment and certification of disabilities but also for ensuring that they get all eligible benefits.
- Persons affected with sickle cell anemia is one of the categories newly added to the list of disabled persons. Given the high rate of prevalence of sickle cell anemia among the scheduled tribes, the state government may focus attention on this group who often face difficulties in accessing benefits of government programmes.
- There is inadequacy in the availability of resource teachers for students with disabilities. Government should reassess the number of schools a resource teacher can manage. Based on such assessment, the number of resource teachers should be increased. Government should also consider the possibility of involving parents of students with disabilities in the activities of the school in an effective way. It is observed that parents of many students with disabilities stay in the school during the school hours to take the child back to home. If such parents, after providing them relevant training, assist the children, it may bring in better educational outcomes for students with disabilities. However, the system of involving parents needs to be studied and details worked out.
- Many of the teachers in the higher secondary section of special schools are not trained to impart education to the PwDs. This happens as trained teachers in special schools are transferred to other schools during general transfer of teachers. Government must ensure that only trained teachers are employed in the special schools. Moreover, the training is reported to be inadequate. Government may assess whether the current training imparted to higher secondary teachers in special schools is sufficient and if found inadequate, necessary modifications may be made in the training programme.
- Department of Education should conduct a detailed study on the education of children with disabilities in mainstream schools, special schools and BUDS schools. The study shall cover availability of resource teachers, training received by the teachers and staff, facilities available in the schools and the support system available for such children. The study should also aim at developing a system for effectively monitoring education of children with disabilities.
- The Act mandates that all educational institutions funded or recognised by the government shall provide inclusive education to children with disabilities. At present there is no monitoring system to assess whether the recognised schools in the private sector are following this provision of the Act. A monitoring system should

be devised by the state government to ensure that education in private schools is also accessible to children with disabilities. No new schools should be permitted (government owned, funded, aided, recognized or otherwise) without certificate of compliance to PwD norms. Department of Social Justice/ State Commissioner for Persons with Disabilities may be authorised to issue the certificate. Essential features of accessibility include open admission policy that does not discriminate children who are PwDs, access to classrooms, recreational spaces, toilets, dining areas, parking, garden, transport services, stairs/ramps/lifts, teaching facility to children with special needs like visual / hearing impairment.

- Users of school are not only students but include parents, teachers and officials. Access to buildings and to parking facilities should be available to them as well.
- Government Special Schools in the state are for the students who are deaf or blind. As all government schools were to be transferred to the local governments, the special schools should also have been transferred long back. However, they continue under the financial and administrative control of the General Education Department. A study conducted by Centre for Socio-economic & Environmental Studies (CSES) for the State Child Rights Commission indicates that there is confusion on the part of the local governments as well as the school administration concerning financial support to such schools by local governments. At present, funding and other support from local governments to special schools is dependent on the interest and priorities of the elected representatives and local government administration in the area. The situation demands that the state government should issue specific guidelines on how the local governments can support special schools without affecting fund flow from the General Education Department. The role of local governments in the management of such schools should also be clearly defined.
- Existing schools must follow a time-bound programme of disability-positive design and access. The programme can be undertaken in a phased manner extending over a specified period of time, maybe 3 years. Changes in structure like disability friendly and accessible classrooms are important. Equally important is the quality assurance of educational outcomes, student enrolment and dropout prevention.
- Each year every educational institution shall add at least one disability accessible learning resource e.g., accessible classroom, Braille system, technology supported classroom, examination reforms for visual and hearing-impaired persons. All new plans shall follow inclusive designs wherever possible.
- The state authorities for curriculum planning should from time to time update educational goals for PwDs. They shall also prepare scales for auditing educational outcomes of students with disability.

- State Government and the universities should prepare educational modules for inclusion in the syllabi and curriculums of all teaching programmes. Only a robust initiative will have the potential to eventually eliminate the stigma attached to disability.
- The Commission received several complaints about the difficulties to get permission for engaging scribes for writing public examinations. The decision to allow scribes is taken on the basis of government orders/circulars issued from time to time. ARC recommends that the state rules to be formulated for implementation of the RPWD Act should unambiguously state the criteria for giving permission to engage scribes in writing public examinations.
- The government should promote sports and games among children with disabilities in regular schools. A state level event similar to the Special School Festival should be organised.
- Local governments are responsible for the implementation of scholarship scheme for PwDs. As noted earlier, many children with disabilities are not getting the amount fixed by the state government as scholarship due to inadequate fund allocation by the local governments. Delay in getting scholarship is also reported. Local governments are reported to demand too many details/documents necessitating multiple visits by PwDs to the offices of local governments. The question whether the scholarship scheme for persons with disability has to be routed through the local governments becomes relevant in this context. In view of the above, ARC recommends that the government should either implement the scholarship scheme directly or formulate clear guidelines for proper implementation of the scheme by local governments.
- The State government may constitute a Committee of experts to assess the possibilities of using information technology for education, vocational training, skill development and employment of PwDs.
- Government of Kerala has revised the reservation of state government jobs from 3 per cent to 4 per cent as per the provisions of the Act. The increased reservation should come into effect immediately. PSC, which is entrusted with the recruitment of government employees, should undertake an assessment on how inclusive the recruitment procedures are for persons with different types of disability. The application procedure, recruitment norms, procedure of recruitment, allocation of examination centres and the test instruments should be assessed and should ensure that they are sensitive to differential needs of the disabled.
- A frequently heard complaint from the PwDs is that they have to write the examination of the Public Service Commission (PSC) in centres far away from their houses. The Commission recommends that the PSC may allocate examination centres closer to their homes in view of their difficulties related to mobility.

- No individual should be subjected to discrimination on ground of her/his disability. To realise this equal opportunity has to be ensured to PWDs in skill training and employment. In all skill training programmes, mainstream or otherwise, PwDs should be included.
- Every office shall have a file/ register giving information about PWDs employed by it, the facilities provided, and other relevant details.
- Government shall formulate policies on recruitment of PwDs for all Government organisations as per law, and schemes to promote startups / self-employment, and institutional finance arrangement to help them secure employment
- Employment rates for people with disabilities remain far lower than for people without disabilities. They face challenges due to difficulties in sourcing necessary skills and information, absence of conducive work environment, lack of acceptance among the employers, negative perceptions about their capability to take up jobs or run enterprises effectively, etc. Lack of motivation of the PwDs is yet another problem. Offering support system for enhancing the livelihood opportunities of PwDs becomes relevant in this context. State government is running few vocational training programmes for PwDs with limited scope and magnitude.
- Government should consider establishment of a Resource Centre for rehabilitation of PwDs designed as a single contact point for sharing ideas, research, training, design and capacity building, technology up-gradation enabling functional independence, IT enabled communications, transport and instrumental activities, and start-ups. This is also essential as per section 29 & 30 of the Act which provides for more action plans in the fields of culture, arts and sports. These are areas where more immersive studies need to be initiated for redesigning of cultural, athletic and artistic pursuits. A major institute for rehabilitation & research will help focusing on these disciplines which have not received the attention they deserve. This institute can be established in the National Institute of Rehabilitation at Kallettumkara, Irinjalakkuda, Thrissur District in the premises already available.
- ARC recommends that, in addition to this Resource Centre, the state government should consider establishment of Regional Training Centres for Disability management similar to the Livelihood Resource Centres formed under the Access to Livelihoods Programme of the Leonard Cheshire Disability.¹⁴ These centres can be started at the district level or in one or two centres on a pilot basis. Following activities can be undertaken by the Resource Centre.

¹⁴Leonard Cheshire Disability's Access to Livelihoods programme aims at improving the livelihoods of persons with disabilities. The programme is implemented through Livelihoods Resource Centres (LRCs). Working in partnership with community agencies, the LRCs are 'one-stop-shops' for persons with disabilities seeking employment. They provide a wide range of support services for the development of marketable skills, access to wage employment and how to engage in business. They also act as a focal point on disability for local communities.

- Initial counselling and training of PwDs who are registered with the Centre: The PwDs, in many cases, have very low self-esteem and low confidence levels. Hence motivating the candidates as well as their family members is an important element of support. During career counselling, orientation about job opportunities and requirements of the job market can be given.
 - Identify good training institutions and empanel them to provide training to the PwDs. The success of the programme lies in enhancing the skills (life skills and soft skills) of the PwDs.
 - Take up advocacy for the PwDs among employers and put in place mechanisms to identify employers who are willing to employ PwDs. Develop tie ups with industry associations/ employer organisations to sensitise the employer community.
 - Organise job fairs for PwDs and arrange interviews for them with employers.
 - Administer a portal where necessary information required for PwDs to access livelihood opportunities in the government and private sector as well as for self-employment are provided.
 - Organise peer interaction meetings between PwDs who are already employed/self-employed and those who are seeking jobs.
 - Establish linkages with the existing vocational training programmes of PwDs
 - Extend services of sign language experts.
- Whilst targeted interventions are required for persons with disabilities, simultaneous effort is required to ensure their inclusion in all mainstream development programmes. The RPWD Act has enhanced reservation in all poverty alleviation and developmental programmes from 3 per cent to 5 per cent and women with benchmark disabilities are prioritised to ensure their inclusion. All efforts need to be made to ensure that the benefits of this enhanced reservation as well as the priority accorded to women with benchmark disabilities reach them.
 - Social security, health and rehabilitation are core areas vital for any realistic disability governance. Agencies and departments under the government and the local bodies must design plans that will include and enable PwDs in all fields of activity.

These should include:

Elimination /reduction of bottlenecks in housing and employment schemes; special insurance schemes for PwDs; facilitating access to appliances and assistive devices for better

quality of life; ensuring separate budget for PwDs who participate in productive activities; providing barrier-free access, universal designs, and special counters at all hospitals, PHCs, CHCs, and mobile health units; implementing IT enabled health/medical consultations and referrals on a progressive scale; providing sexual and reproductive services to PwDs in all healthcare institutions; documentation of all activities at the institutional level; inclusion of at least one PwD in every committee and group even though a specialist or subject expert may not be available. This will help in accepting the disability-positive position, 'Nothing about us without Us'.

- All existing buildings under government and private ownership should be made disability accessible in a phased manner and within a stipulated time frame. The recommended timeframe for this should be two years.
- Plans and projects for cultural activities, sports and recreation should focus PwDs as well and attempts for mainstreaming these initiatives should receive support from government agencies. Accessibility designs should be followed for parks, cinemas, public places, recreational and religious places. This principle should also apply to roads, bridges and all transport services.
- Accessibility standards should be adopted in new buildings, transport, information and communication tools and compliance should be ensured. Local bodies should plan implementing barrier-free design for all their buildings as well as for public buildings and places that PwDs are likely to frequent. Necessary modifications shall be made in the Rules/Manuals of the Public Works Department. In all places where unrestricted access to public is offered disability positive design should be made compulsory. In all these situations, design for hearing and vision impaired persons should be enforced. Signage, alarm systems, emergency alerts, evacuation plans etc must also consider PwDs. According to the response of the Director of Social Justice, all public buildings in Kannur district were made barrier free in 2016-17. The initiative was extended to Wayanad and Malappuram district in 2017-18. A feedback on the changes made in the buildings may be sought from the PwDs to make sure that the approach followed in the three districts are acceptable to the PwDs. Disabled-friendly practices in other parts of the country and the world need to be studied and adopted in the state, ensuring adaptation to the local scenario.
- All common facilities to which people have unrestricted entry should be inclusive. Conduits, driveways, passages, toilets and such facilities need not be designed for different categories, but common accessible designs can be implemented. Sensors and IT enabled functions would help subgroups of PwDs.
- IT enabled services should be function-driven wherever possible. Quite often, PwDs would be helped by small addition or enhancement of technology, like sensor operated lights and/or door openings.

- Reliable data on disability and persons with disabilities in the state is necessary to facilitate the formulation of evidence-informed and relevant policy interventions. Kerala has been able to complete a Disability Census in 2015. The present need is to develop a comprehensive database for monitoring implementation of various programmes/schemes for PwDs. It is also important to understand how far the rights of PwDs are protected and to identify groups which are denied their rights envisaged in the RPWD Act.
- The Disability Census 2015 conducted by the state was the first of its kind in the country. The survey covered 22 types of disabilities while the RPWD Act of 2016 covers 21 types of disabilities. There is also some difference in the types of disabilities covered by the Disability Census and the Act. The government may consider re-categorising data from the Disability Census in line with the classification adopted in the RPWD Act. If necessary, supplementary information may be collected to fill information gaps for reclassification. The rich database currently available from the Census can be considered as a baseline for implementation of the RPWD Act.
- PwDs form a heterogeneous group with different types of disabilities as well as different degrees of disability. Support systems available for them also vary. Developing Individual Care Plan along with a regular follow up is essential. Current availability of support persons is grossly inadequate to undertake such tasks effectively. Concerned departments should undertake an assessment of staff requirements considering the systems that are required to ensure that all PwDs enjoy the rights conferred on them by the RPWD Act. The fact that new types of disabilities have been brought under the purview of the RPWD Act should be considered while assessing the required staff strength.
- Attitudinal barriers are strong and silent impediments to disability governance. This can change only with continued training of officers, volunteers, political representatives and all who establishes social contact with PwDs. Communication campaigns to increase public awareness and understanding of the rights of PwDs should be conducted at periodic intervals.
- People dealing with rights and entitlements of PwDs like officers of government agencies, enforcement, police, judiciary and legal services, education, youth, sports and culture and similar entities should receive formal instruction on RPWD 2016 Act, its interpretation, rules and practices, so that there could be a change in the way society looks at disability issues. They should also receive continual training on other laws and rules that may have impact upon the RPWD Act, for example how the Legal Service Authority or the Disaster Management Authority ought to function within the goals of RPWD provisions.

- Every office should have at least one designated person who understands disability governance and can empathetically deal with PWDs so that their rights secured under several laws are protected. Over a period of time, as disability rights awareness penetrates deeper into office processes, the system can be suitably amended. The officer designated to function as grievance redressal officer of the department/ institution can function as the designated officer as provided in section 23 to oversee functions stipulated in section 19 to 23 of the Act.
- Training programmes for government functionaries working in the sector should address intersecting forms of discrimination and disadvantage faced by the PwDs in accessing services and employment. They should also be made aware of the provisions of the new Act and relevant schemes and programmes for PwDs.
- A major complaint brought to the notice of the Commission is that different authorities insist on production of fresh disability certificate each time a PwD submit any application or have to avail a service from an Authority. This happens even when the certificate of permanent disability is available with them and causes considerable hardship to them. While the status of disability may change in some cases the possibility of issuing disability certificate with life time validity or for a fixed period may be considered. The State Government should ensure that the certificate issued by the medical Board is the single document for all purposes such as education, employment, transport concession and other benefits
- Complaints about the delay or non-receipt of eligible grants have been received from some organisations working for the welfare of PwDs. Social Justice Department may look into the matter and make sure that grants are received by all eligible beneficiaries on time.
- Office of the State Commissioner for Persons with Disabilities is currently functioning in a location not easily accessible to persons with disabilities. The office may be relocated to a more accessible location.
- Social Justice Department shall undertake a detailed study on the functioning of different schemes, support systems and institutions available in the state to protect the rights and welfare of persons with disabilities.
- State government shall develop common guidelines for providing various assistance/ concessions such as grace mark and additional time for writing examination for students with disabilities. This varies from institution to institution. The guidelines should ensure that all students with disabilities are able to avail concessions uniformly.

- It is brought to the notice of the Commission that persons with disabilities are facing difficulties in availing concession for travel in KSRTC buses. Some of the Assistant Transport Officers are denying concession to persons with 40% disability. KSRTC shall issue clear guidelines for extending concession to persons with disabilities.
- As mandated by the Act, the State Government shall designate a Court of Sessions to be a Special Court to try offences under the Act in each district. The state government should also constitute a State Fund for persons with disabilities as per the Act.
- Government has the obligation to conduct periodic social audit of programmes for the PwDs, and the schemes for welfare of PwDs. Periodic review of gains made in the fields of education, skill development, employment, research & innovations, healthcare, social & community life, police and judiciary are essential to keep disability governance on track.
- Government at all levels shall take the initiative to convert at least one panchayath in each district and two wards in each municipality into a barrier-free region showcasing implementation of inclusive design and access. This activity must be completed in two years. This can be a model for other regions in the state and outside the state.
- Government may consider establishment of regional centers of the office of State Commissioner of Persons with Disabilities with adequate staff support. A nodal officer may be appointed at the district level for receiving complaints from Persons with Disabilities. Services of sign language interpreter should also be made available. Necessary staff and financial support should be extended to the State Commissioner of Persons with Disabilities.



5.1 Introduction

The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) adopted in 2006 came into force on the 3rd May, 2008. India, a signatory to UNCRPD, enacted the Mental Healthcare Act 2017 to align and harmonise the existing laws with it. The Mental Healthcare Act 2017 repeals and replaces the Mental Health Act, 1987. The Act came into force from May 29, 2018. The Mental Health Care (Rights of Persons with Mental Illness) Rules 2018 was also notified on the same date. Effectiveness of implementation of the Act is of paramount importance

to Kerala, a state which has witnessed high incidence of mental morbidity and mental disorders. As per the data of the National Crime Record Bureau, Kerala has reported high suicidal rates among states in India. Though the state brought out a Policy on Mental Health in 2013, it is widely acknowledged that mental health care requires much better attention in Kerala and that the mental health programmes and services need significant strengthening to deliver appropriate and comprehensive services for those who need care.

According to the National Mental Health Survey¹⁵ 2015-16 (NMHS 2015-16) undertaken by NIMHANS and commissioned by the Ministry of Health & Family Welfare, Government

Table 5.1: Crude Prevalence Rates of Mental Disorders and Suicidal Risk

State	Lifetime Mental Morbidity	Current Mental Morbidity	Suicidal Risk
Kerala	14.4	11.6	12.5
Tamil Nadu	19.3	11.8	6.7
Gujarat	9.3	7.8	4.1
Rajasthan	15.4	11.6	7.9
Punjab	18.1	13.4	5.2
Uttar Pradesh	8.7	6.6	7.1
Chhattisgarh	13.5	11.6	2.2
Madhya Pradesh	15.6	12.7	7.2
Jharkhand	11.1	8.6	3.4
West Bengal	15.1	11.8	5.3
Assam	8.1	6	5.5
Manipur	19.9	13.9	10.3
Total	13.9	10.5	6.4

Source: National Mental Health Survey of India, 2015-16

¹⁵ The NMHS was undertaken in 12 states across 6 regions of India. In Kerala, the survey was conducted with the support of IMHANS, Kozhikode.

of India, about 14.4 percent of Kerala's population aged 18 and above has suffered psychic disorder once in their lifetime. The report also states that 11.6 percent of the total population is currently affected by mental disorders. This relates only to the number of total cases of the set of disorders which are included in the study. There are many other types of psychiatric illnesses which are not included in the study that require treatment. According to the report, the prevalence of severe mental disorders in the state is 0.44 percent. About 4.8 percent of the population is subjected to various mental disorders due to use of alcohol. Percentage of population affected due to use of tobacco is 7.22 percent. An alarming finding is the high suicide risk of the state, which is at 12.6 percent. It is almost double that at the national level.

5.2 Overview of the Act

The Mental Health Care Act 2017 is an Act to provide mental healthcare and services for persons with mental illness and to protect, promote and fulfill the rights of such persons during delivery of mental healthcare and services. Salient features of the Act are:

- The Act guarantees every person the right to access mental health care and treatment. This right includes affordable good quality care and easy access to facilities such as minimum mental health services in every district. Persons with mental illness have the right to equality of treatment, and protection from inhuman and degrading treatment. Person with mental illness admitted in a mental health establishment shall have a right to safe and hygienic living environment, proper sanitation and facilities for leisure, recreation, education, religious practices and privacy. The Act also requires that every insurance company shall provide medical insurance for mentally ill patients on the same basis as is available for those with physical illnesses.
- The Act casts duty on the Government to plan, design and implement programmes for the promotion of mental health and prevention of mental illness. It also casts duty on the Central and State Governments to establish Central and State Mental Authority as well as Mental Health Review Board.
- The Act has additionally vouched to tackle stigma of mental illness and has outlined some measures on how to achieve the same. Responsibilities of other agencies such as police with respect to people with mental illness have been outlined in the Act.
- The Act includes provisions for the registration of mental health related institutions and regulation of the sector.
- A person with mental illness shall have the right to live in the community and be part of it and not segregated from society. Where it is not possible for a mentally ill person to live with his family or relatives, or where a mentally ill person has been abandoned by his family or relatives, the Act casts duty on the Government to provide support

including legal aid and to facilitate exercising the right to family home and living in the family home.

- The Act empowers the individual to make decisions concerning her/his mental healthcare or treatment. The Act provides every person, except a minor, with a right to make an 'Advance Directive' specifying the way the person wishes to be cared for and treated for mental illness and also to appoint a nominated representative, who is entrusted with the task of protecting the interests of the person suffering from mental illness.
- The Act aims at decriminalising the attempt to commit suicide. It states that whoever attempts suicide will be presumed to be under severe stress and shall not be punished for it. Individuals who have attempted suicide should be offered opportunities for rehabilitation by the government as opposed to being tried or punished for the attempt.
- Government shall notify a list of essential drugs and all medicines in the list shall be made available free of cost to all persons with mental illness at all times at health establishments from Community Health Centres and upwards in the public health system.
- The Act has restricted the usage of Electroconvulsive therapy (ECT). It should be used only in cases of emergency, and only along with muscle relaxants and anaesthesia. ECT should not be performed on minors. In exceptional cases, it may be done after getting informed consent of the guardian and prior permission of the Board.
- The Act prohibits chaining a person with mental illness, in any manner or form. Seclusion and solitary confinement are banned. Physical restraints shall be used sparingly, only when absolutely needed, and are deemed as the least restrictive method.
- The act has provisions to ensure treatment of Prisoners with mental illness

5.3 Mental Healthcare in Kerala- Present Scenario

The Mental Healthcare Act 2017 came into force on May 29, 2018. The new Act has some major differences from the Mental Health Act of 1987 which necessitates a major change in mental healthcare system of the state. The state government has formulated a Mental Health Policy in 2013. The State Mental Health Authority constituted under the Mental Health Act 1987 is functioning in the state. The Authority is responsible for the regulation, development and coordination of Mental Health Services. It also must supervise the psychiatric hospitals and psychiatric nursing homes and other Mental Health Service Agencies.

Mental health care facilities in the public sector in the state include three Mental Hospitals, Psychiatry departments of Government Medical Colleges and psychiatry units in General Hospitals. The intake capacity or number of beds in all these institutions/units taken together is less than 2000 indicating the inadequacy of such facilities in the public sector. In addition, there are 104 Psychiatric hospitals or hospitals with Psychiatry units in the private sector which are registered with the State Mental Health Authority. Availability of courses offering training in Psychiatry is also very low in the state.

- The Kerala report of the National Mental Health Survey 2015-16 points out the low availability of psychiatrists in the state. According to the report, there are only 1.2 psychiatrists for one lakh patients in the state. Availability of clinical psychologists is 0.62 and psychiatric social worker is 0.04, for one lakh patients. There is also shortage of other staff in these establishments.
- Resources to provide mental healthcare services to children and adolescents in terms of infrastructure and trained human resource are meager in the state. As a result, the families have to depend on institutions outside the state.
- Absence of standards for the functioning of Mental Healthcare establishments; Mental Healthcare establishments in the government and private sector are functioning without required facilities.
- Continuing social stigma of mental illness and the decline in family support is affecting the healthcare of persons with mental illness.
- Inadequate funding for mental healthcare in the state

ASHWASAM

The scheme 'Ashwasam' (Comfort) was launched by Government of Kerala on 7th April, World Health Day, 2017 for identification of depression at the primary Health Care level itself. The scheme is intended give treatment, reduce difficulties faced by people who are affected by depression and minimise incidents of suicide triggered by depression. The scheme is implemented in 170 PHCs that are being converted to Family Health Centers. Doctors, Nurses and Pharmacists in these centres were given training at the state level, and district level training was imparted to health workers in the centers. 21585 persons were screened for depression till now and of these 3525 persons were identified as positive. These include 1945 examined by doctors and advised medication and 2942 persons for whom psychosocial intervention was done by nurses. 860 persons were referred to District Mental Health Programme for specialised treatment. A training programme of 2 hours duration for all health officials has been started by Government. It is expected that this scheme will help to extent the service of 'Ashwasam' to more people.

- Absence of regular inspection of the mental healthcare establishments and nursing homes. Board of visitors is not appointed for private psychiatric hospitals and nursing homes.
- Shortage of care homes and rehabilitation centres for persons with mental illness and those who have been cured of mental disorders/illness.
- Difficulties in discharging patients who no longer require inpatient care due to the no-cooperation of the family.

6.4 Recommendations

Given that hardly four months have passed, (Mental Healthcare Act 2017 has come into force on May 28, 2018) the process of implementing the Act has only started. The state government will have to initiate extensive consultations with different stakeholders before implementing provisions of the new Act. Infrastructure, facilities and human resources currently available is grossly inadequate to ensure the rights of persons with mental illness as conferred on them by the Act. Recommendations emerging from review of current situation in mental health care (rather than the 2017 Act which has just come into force) in the state are presented below.

- The State Mental Health Authority should be reconstituted at the earliest as the composition of the Authority under MHCA 2017 is different from what was required under the previous Act. Apart from psychiatric social worker, psychiatrist and clinical psychologist included earlier, ex-officio members of the Authority as per the new Act should include, mental health nurse, two persons representing persons who have or have had mental illness, two persons representing caregivers of persons with mental illness or organisations representing care-givers and two persons representing non-governmental organisations which provide services to persons with mental illness. District Review Boards also needs to be constituted at the earliest.
- Central rules for the implementation of the Act have been framed. State government should, within three months from the date on which the Act came into force, frame rules for implementation of the Mental Healthcare Act. Guidelines and rules for implementation, which have not yet been provided, will determine effectiveness of the implementation of the Act.
- In view of the limited availability of mental health care facilities in the state for children, particularly adolescents, there is a need for increasing such facilities. As per the new act, Children and Adolescents cannot be admitted in wards along with adults, but only in Child Psychiatry Wards. A project of the Thiruvananthapuram Medical College to start a Child and Adolescent Psychiatry Centre at the tertiary level is worth considering in this context. Similar Centres may be started in all government medical

colleges and mental health centres in Kerala. The proposed Centre aims to address the issues of alcohol and drug abuse, and problems like hyperactivity, conduct disorder and depression. It also aims to strengthen the school health programme and Rashtriya Bala Swasthya Karyakram (RBSK). The Centre can also impart training to psychiatrists, pediatricians, general practitioners, psychologists and other professionals in the sector on child and adolescent mental healthcare.

- As per the Act, the state government must provide for or support the establishment of less restrictive community-based establishments including half-way homes, group homes and similar institutions for persons who no longer require treatment in more restrictive mental health establishments and long stay mental hospitals. While the Act states that it should be established within a reasonable period, the state government should commit to establish such homes in every district within a period of three years from the date of commencement of the Act.
- As per the act, no Prisoner with Mental illness can be kept in prison. They should be admitted to the mental health care facility (or Health care facility) attached to the prisons or may be transferred to appropriate Mental Health care institutions. All Medical officers in Jails, should receive basic training in treatment of Mental illness. All the jail staff should receive a training on mental health problems in prisoners
- According to the MHCA- 2017, "Government need to set up mental health establishment in the medical-wing of at least one prison in each State and Union territory and prisoners with mental illness". Government should take steps to implement this provision of the Act.
- Seclusion or solitary confinement is banned in the new act. Outdated cell-rooms in all psychiatric hospitals shall be demolished and replaced by modern facilities (medium-secure and high-secure facilities) which ensure humane treatment for severely mentally ill persons in a safe environment.
- Uninterrupted supply of medicines for mental illness shall be ensured in government hospitals as even a single day of missing medication can cause disease exacerbation. As per the Act, it should be made available from Community Health Centres upwards. But the state may consider the provision of medicines for mental illness at the PHC level especially in the case of tribal areas where access to CHC is difficult.
- Government should ensure that all psychiatric institutions function with facilities required under the Act. Government should also ensure that mental health establishments are regulated by periodic auditing by State Mental Health Authority
- Norms should be developed for facilities and human resources necessary for counselling centres. Qualifications of the Counsellors and the type of clientele they can manage should also be fixed.

- Psycho education to family members is necessary as the role of family is important in improving the outcome and reducing stigma attached to mental illness. At present, it is inadequate. The state should develop systems as well as content for the same.
- To create more manpower in the field of mental health, there is an urgent need to train more mental health professionals and augment the number of psychiatrists, clinical psychologists and trained psychiatric nurses. More courses related to psychiatry need to be started in the medical and paramedical institutions in the state.
- Being a new act with provisions very different from the previous Act, there is need to create awareness among administrators, police, judicial officers, medical and para medical staff of hospitals and the public in general. Necessary training shall be provided to the officials on a regular basis. The training programmes for elected representatives of local bodies should include a module on the rights of persons with mental illness.
- Statutory collection of statistics about individuals receiving treatment, types of treatments received, etc. should be considered.
- Massive investment is required for improvement of facilities and human resources for mental health care considering the increasing burden of mental health related diseases in the state. The facilities and human resources currently available in the state is grossly inadequate to ensure quality mental healthcare for its citizens.
- Depression is identified as a major cause of suicide. Apart from increasing the risk of suicide, depression worsens non-communicable diseases like hypertension, diabetes, heart diseases, stroke and cancers, and impairs quality of life. World Health Organisation (WHO) projects depressive disorder as the most common preventable and modifiable factor for suicides. There is evidence in favour of primary care-based interventions, to identify and manage depression. WHO advocates that up to 80 per cent cases of depressive disorder can be managed in primary care. 'Ashwasam', a scheme for identification of depression at Primary Health Care level is a laudable initiative of the state government. Government shall ensure that the scheme is accessible throughout the state and that all health care professionals who are associated with primary level care are trained within a fixed time frame.



6.1 Introduction

With Kerala's advancement in social development and the resultant transformation in the age structure of native labour force, there evolved in the state, a shortage of workers to take up low-skilled low-value jobs that require heavy physical labour. Large scale out migration of Keralites to other states and to other countries increased the demand for labour from other states. With demand growing over time, Kerala has become one of the prime destinations for internal migrants from other states, given the high wage rates in the state compared to rest of India. This migration to Kerala is likely to grow as it is more a need of the state given the demographic scenario. As a responsible receiving government, the state has come up with welfare measures for the workers from the rest of India.

The in-migration of labourers, particularly from the neighbouring states such as Tamil Nadu and Karnataka has a long history. Initially these workers were engaged in specific sectors such as construction, plantations, mining, etc. Now migrant workers are found in almost all sectors. From the nineties onwards, there has been a spurt in the growth of migration and workers from beyond southern India have come to occupy an indispensable role in the state's economy. Apart from Tamil Nadu and Karnataka, major states of origin are Jharkhand, Odisha, West Bengal, Bihar, Uttar Pradesh and Assam. A study commissioned by the Department of Labour and Skills, Government of Kerala, estimated that nearly 25 lakhs migrant workers from other states are working in Kerala in 2013¹⁶. According to CMID, a sizeable proportion of these workers belong to socially and economically disadvantaged communities such as Scheduled Tribes, Scheduled Castes and minority communities from rural areas of regions in India that lag behind in development¹⁷. While majority of them are young single men, there are also a lot of families, single women as well as senior citizens among them.

¹⁶ Narayana D, Venkiteswaran C.S. and Joseph M.P. 2013. Domestic Migrant Labour in Kerala, Gulati Institute of Finance and Taxation, Thiruvananthapuram.

¹⁷ Peter, Benoy and Vishnu Narendran. 2017, God's Own Workforce: Unravelling Labour Migration to Kerala, Centre for Migration and Inclusive Development, Perumbavoor, Kerala.

The migrant workers in Kerala face stigma and discrimination even though it may not be as strong as in many other states. Most of them receive lower wages compared to natives and work for longer hours in settings where usually work safety is considerably compromised. Protective gears such as helmets, gloves, masks, chest guards, etc. are usually not provided to them. Awareness of migrants about the need to use such protective wears is also poor. The workers live in crowded conditions in rooms with limited light and ventilation. Rooms generally do not have separate kitchens. The working and living arrangements put the migrant workers at high risk of exposure to accidents, injuries, diseases and death. At the same time, their access to quality healthcare is limited increasing further their vulnerability. Exploitation by the employers and contractors are also noted. Paying lesser than agreed wages, part payments and non-payments are frequent. In the absence of evidence of employment and wage slips, the workers find it very difficult to claim their dues when it is denied. They are unable to leverage the collective bargaining power of the trade unions since most of them are not part of any trade union. Their access to legal aid is also poor in the absence of such interventions and language barriers.

Such precarious situation of migrants calls for migrant sensitive policies and welfare measures. To ensure the welfare of these migrant workers and their families, Government of Kerala rolled out the Kerala Inter-State Migrant Workers Welfare Scheme in 2010. In 1983 Kerala formulated rules for the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Services) Act 1979. Implementation of both these legislations was reviewed by the Commission.

6.2 Kerala Inter-State Migrant Workers Welfare Scheme, 2010

6.2.1 Overview of the Scheme

The Kerala Inter-State Migrant Workers Welfare Scheme established a welfare fund for migrant workers from other states in Kerala under the Kerala Building and Other Construction Workers Welfare Board (KBOCWB). Membership fee of ₹30 is charged from the enrolled workers, contribution by Government of Kerala equivalent to three times the annual registration income from the enrollment of workers and contribution by the KBOCWB equivalent to three times the annual registration income was expected. Inter-state migrant workers in the age group 18-60 years can enroll in the scheme paying the fee. Membership needs to be renewed annually. Membership automatically expires when the age of the worker crosses 60 years. Those who are under the ESI/PF, those who have settled in Kerala and those who have monthly income over ₹7,500 are not eligible for membership. It is the responsibility of the employer/contractor to enroll eligible workers under the scheme. The scheme provides financial support to the enrolled workers as given in Table 6.1.

**Table 6.1: Benefits for Members
from the Kerala Inter-State Migrant Workers Welfare Scheme**

No	Benefit	Description
1	Benefit to family upon death	₹50,000 compensation for family upon death of the worker.
2	Relief Benefit	₹10,000 compensation for temporary disability of not less than six months.
3	Treatment Benefit	₹25,000 for treatment of fatal diseases to a maximum of 2,000 per hospitalisation, ₹50 rupees per day.
4	Terminal Benefit	₹10,000 to ₹25,000 for those who exit from labour market after a minimum of five years' enrolment under the scheme.
5	Body Repatriation	Up to ₹5,000 to ₹15,000 to the family for body repatriation. The amount differs by native state.
6	Education Grant	₹ 1,000 to ₹3,000 for education of children of migrant workers, provided for courses above matriculation.
7	Maternity	₹ 15,000 for maternity related expenses

6.2.2 Implementation of the Scheme

The scheme, launched on the May Day of 2010, was hailed as a pioneering scheme for the welfare of migrant workers. Based on data provided by the Department of Labour and Skills, implementation of the scheme during the last five years (2012-13 to 2016-17) is assessed. It is found that the KBOCWB failed to attract majority of the inter-state migrant workers in the state to join the scheme or renew registration. Only 10,141 new registrations occurred during 2012-13. It declined to just 1,978 registrations in 2016-17. In a state with an estimated migrant population of 25 lakhs, the enrolment is abysmally small. More importantly, most of those who got registered in the initial years did not renew their registration in the subsequent years (Table 6.2). Since large majority of the migrant workers do not renew their registration, benefits of the scheme are rarely disbursed. Over the past five years, only about Rs 12 lakhs was spent towards

Table 6.2: Registration under KIMWWS during 2012-2017

Year	New registrations	Renewals	Total Registration
2012-13	10141	717	10858
2013-14	3408	1549	4957
2014-15	12125	1386	13511
2015-16	3472	1582	5054
2016-17	1978	763	2741

Source: Department of Labour and Skills, Govt of Kerala

Table 6.3: Expenditure of KIMWWS during 2012-2017

Year	Category of Expenditure		Total
	Benefits	Other	
2012-13	400	6018355	6018755
2013-14	294100	835887	1129987
2014-15	391200	420991	812191
2015-16	154100	34643	503743
2016-17	392633	31925	424558
Total	1232433	7341801	8889234

Source: Department of Labour and Skills, Govt of Kerala

expenditure on benefits to the members (Table 6.3). This is only 14 per cent of the total expenditure under the scheme during the last five years. The scheme did not have any financial constraints as is evident from (Table 6.4). As noted earlier, major sources of finance for running the welfare scheme include registration fees from the migrant workers, contribution from the KBOCW and contribution from the state government. Bulk of the money came from the state government. Registration fees and KBOCW contribution constituted just 1 per cent each.

Table 6.4: Sources of Finance of KIMWWS during 2012-2017 (₹)

Year	Source of Finance			Total
	Registration	KBOCW	Others	
2012-13	240960	0	8990296	9231256
2013-14	113970	724500	10561660	11400130
2014-15	366560	337860	12146420	12850840
2015-16	106470	0	12146420	12252890
2016-17	50370	0	50524748	50575118
Total	878330	1062360	94369544	96310234

Source: Department of Labour and Skills, Govt of Kerala

Some of the inherent weaknesses of the scheme are:

- It is clear that the scheme has not attracted majority of migrant workers in the state. Even if they registered for one year, the registration was not renewed in the subsequent years. As a result, the scheme has become more or less defunct with just 2741 registrations in the financial year 2016-17. The low amount of benefit disbursement may also be indicative of the fact that even the registered workers may not have availed the benefits under the scheme. It is also clear that lack of financial resources was not a major problem in the implementation of the scheme at the current level of enrolment.
- Low awareness about the scheme among migrant workers. Poor communication strategy to reach out to the migrant workers.
- The scheme is administered by the Kerala Building and Other Construction Workers Welfare Board which operates the welfare scheme for construction workers. Therefore, the Board primarily targeted builders for enrolling workers. Effort to enroll migrant workers in other sectors was minimal. The Board was not provided additional staff for implementing the scheme.
- A migrant worker will be registered under the scheme only if the employer certifies that the worker is working with her/him, which many of the employers are unwilling to do. A study undertaken by CSES¹⁶ on vulnerability of migrant workers points out that the above requirements also prevent the casual migrant

¹⁶ Ajith Kumar N (2011). Vulnerability of Migrants and Responsiveness of the State: The Case of Unskilled Migrant Workers in Kerala, India, working Paper No. 26, Centre for Socio-economic & Environmental Studies (CSES), Kochi.

labourers, domestic workers and seasonal workers employed in plantations, agricultural farms and other migrant workers who do not have a permanent employer from availing benefits of the scheme. The study also points out that the contribution of the employers comes only in the form of building cess collected from the construction companies. Since construction industry is only one of the sectors in which migrant labourers are employed, in effect, there is no contribution from employers in other sectors.

- The migrants who are often not aware of their rights get very limited support from the trade unions. In the case of other labour welfare schemes in the state, trade unions play a major role in enrollment.
- The introduction of a new insurance scheme 'Aawaz' for migrant workers duplicates some of the benefits under the KIMWWS.

6.2.3 Recommendations

- Review of the performance of the scheme reveals that the scheme has not yielded the intended result of 'welfare of migrant workers'. Benefits under the scheme are well conceived and cover most of the thematic areas where migrant workers need support. However, the amount of benefit under different components is insufficient and therefore is not attractive to the migrant workers. The consultation workshop organised by the Commission on 13-12-2017 at Thiruvananthapuram suggested that the benefits of the scheme should be revised as follows and has to be subsequently updated once in every three years.
- A major reason for the poor performance of the scheme is the absence of an effective independent institutional mechanism for its implementation. Currently the scheme is under Kerala Building and Other Construction Workers Welfare Board (KBOCWB). A separate CEO and adequate staff may be appointed exclusively for KIMWWS. An advisory board may also be constituted to provide strategic direction to the proposed Board/authority.
- One of the major issues that the migrant workers face is the inability to access entitlements such as access to Public Distribution System. Interactions with migrant workers indicated that they attach much value to it, it is necessary to include such entitlements into the scheme. Measures should be taken to provide temporary ration card (Food Security Act) for inter-state migrant workers.
- Remove the income bracket defined for eligibility to enroll under the scheme or revise it considering the current wage rates in the state. Since there is also significant number of footloose workers, the requirement to produce a certificate of employment may be removed from the application procedure. Instead, government approved identity cards endorsing nativity and proof of age may be accepted.

**Table 6.5: Proposed Benefits for Members
from the Kerala Inter-State Migrant Workers Welfare Scheme**

No	Benefit	Existing	Proposed
1	Benefit to family upon death	₹50,000 compensation for family upon death of the worker.	Increase to ₹ 3,00,000
2	Relief Benefit	₹10,000 compensation for temporary disability of not less than six months.	Reduce the duration of 6 months to 30 days. Bring clarity on the membership period. Compensation to be revised to ₹15,000 at the rate of ₹4,000 per month.
3	Treatment Benefit	₹25,000 for treatment of fatal diseases to a maximum of 2,000 per hospitalisation, ₹50 rupees per day.	Cashless facility should be provided and the amount provided per hospitalisation should be revised to a maximum of ₹6,000 per hospitalisation.
4	Terminal Benefit	₹10,000 to ₹25,000 for those who exit from labour market after a minimum of five years' enrolment under the scheme.	No change
5	Body Repatriation	Up to ₹5,000 to ₹15,000 to the family for body repatriation. The amount differs by native state.	Revise the limit to ₹30,000. Amount may be fixed based on the native state of the worker. Government hospitals should not charge for embalming the body.
6	Education Grant	₹ 1,000 to ₹3,000 for education of children of migrant workers, provided for courses above matriculation.	Education grant should be provided from grade VIII (high school) onwards. The amount may be comparable to that given by the Social Security Mission.
7	Maternity	₹ 15,000 for maternity related expenses	No change

- Migrant workers remain unaware about the scheme and its various benefits as revealed in the public hearing. This is also evident from the small number of registrations. Necessary measures have to be undertaken for demand creation, taking into consideration the low level of education of the migrant workers and the barriers of language.
- The strengths of civil society organisations, local governments, network of Akshaya centres and the migrant facilitation centres of the Department of Labour and Skills may be leveraged for enrollment, availing the benefits and addressing their grievances. There has to be staff who understand and speak the languages of the workers and the application forms and other documents should also be available in different languages.
- Launching schemes such as the recently introduced 'Aawaz' insurance scheme that duplicate a subset of benefits that are offered by KIMWWS can weaken implementation of both the schemes. These schemes may be merged and brought under a single authority. In fact, KIMWWS is designed to provide a better package of welfare services compared to Aawaz.

- All welfare schemes including KIMWWS need to be brought under a transparent performance review through social audit once in two years. Studies also may be undertaken to evaluate the performance and understand requirements of various segments of migrant workers.
- Special emphasis shall be given to promote registration of women workers in the scheme.
- Some of the programmes for creating awareness about the rights in destination state can be organised in the states of origin. It is also possible that the states of origin can be approached for contributing to the welfare scheme to make it more attractive.

6.3 Kerala Inter-State Migrant Workmen (Regulation of Employment and Conditions of Services) Act

6.3.1 Overview of the Act

Rules for the implementation of the central act named Inter-State Migrant Workmen (Regulation of Employment and Conditions of Services) Act, 1979 was rolled out by the state government in 1983. The law is enacted to regulate the employment of inter-state migrant workmen and to prescribe conditions of their service and other related issues.

The act defines inter-state migrant worker as any person who is recruited by or through a contractor in one state under an agreement or other arrangement for employment in an establishment in another state, whether with or without the knowledge of the principal employer in relation to such establishment. Those who are employed in managerial/supervisory capacity and draws wages exceeding ₹500 per month is excluded from the definition of workers under this act.

The Act mandates registration of establishments employing inter-state migrant workers and appointment of registration officers by the government to register establishments that employ inter-state migrant workers. The act makes it compulsory to have licence for contractors to recruit inter-state migrant workers and defines duties of such contractors. It also prescribes the wages and other conditions of service, including allowances for workers. As per the act, inter-state migrant workers should not be discriminated on wages compared to other workers. The Minimum Wages Act 1948 should also be complied with in the case of such workers. The contractor is liable for payment of a Journey Allowance (onward and return) equal to the actual fare of the trip and wages have to be paid considering the travel days also. Displacement Allowance equal to 50 per cent of the monthly wages or ₹75, whichever is higher shall be paid by the contractor. The act also warrants suitable residential accommodation, free medical facilities and protective clothing.

The Kerala Inter-State Migrant Workmen (Regulation of Employment and Conditions of Services) Rules, 1983 laid out by the Government of Kerala to implement the act necessitates the contractor to provide second class return train/actual bus fare to each inter-state migrant worker from place of residence in native state to place of employment. Each worker should be provided with a passbook with date of recruitment, wage period, etc. The holidays, work hours and wages for working extra time for the inter-state workers have to be similar to the other workers at the establishment or similar employment in the area in which the establishment is located. The contractor is liable for provision of free medical care as well as protective clothes. Drinking water, latrines, urinals and washing facilities are to be provided at the workplace. Rest rooms are to be provided if the workers are required to halt at night. Canteen facilities are to be provided at the establishments where a group of 100 or more workers are likely to work for six months or more. Crèche facilities are to be provided at establishments where 20 or more migrant women are likely to work for three months or more. Residential accommodation has to be provided to workers and families as prescribed under the rules. Each establishment that employs inter-state migrant workers is expected to maintain certain registers and records. The act also has provisions for free legal aid to family to claim dues, in the event of death of a migrant worker.

6.3.2 Implementation of the Act

In 2012-13, nearly 7000 inter-state migrants were registered under the Act (Table 6.6). It increased to about 10000 in the next two years. Registration declined to 5560 by 2016-17. Thus, only a very small proportion of the migrant workers are registered under the scheme. The number of licenses issued to contractors increased over the last five years from 343 in 2012-13 to 563 in 2016-17 (Table 6.7). A similar trend is observed in the registration of labour contractors and establishments engaging inter-state migrant workers. Number of licences issued to labour contractors increased from 343 in 2012-13 to 563 in 2016-17. During the same period, the number of establishments registered under the Act increased from 306 to 616. It is clear that majority of workers and establishments employing them are outside the purview of the Act.

Under the scheme, legal aid was provided to 1517 workers during the past five years, as reported by the Department. The number of workers who received legal aid increased from 112 in 2012-13 to 240 in 2015-16 and then jumped up to 692 in 2016-17 (Table 6.8).

Table 6.6: Registration of Inter-state Migrant Workers under the Act during 2012-2017

Year	Gender		Total
	Male	Female	
2012-13	6462	371	6833
2013-14	9854	247	10101
2014-15	10662	349	11011
2015-16	4157	224	4381
2016-17	5560	287	5847

Source: Department of Labour and Skills, Govt of Kerala

Table 6.7: Licences Issued to Labour Contractors and Registration of Establishments under the Inter-State Migrant Workmen Act during 2012-2017

Year	License to contractors			Registration of Establishments		
	New	Existed	Total	New	Existed	Total
2012-13	146	197	343	187	119	306
2013-14	158	208	366	157	188	345
2014-15	205	262	467	267	254	521
2015-16	216	266	482	227	335	562
2016-17	209	354	563	249	367	616

Source: Department of Labour and Skills, Govt of Kerala

According to the data made available by the Department of Labour and Skills, 25 complaints were received for violation of the provisions of the Act during the last five years (2012-13 to 2016-17). Of them, 23 were resolved.

A major complaint in relation to the Act is that the state government often fails to identify violations of different provisions of the Act. One mechanism adopted by the government is to conduct inspections in worksites and place of stay of migrant workers. In 2012-13 and 2013-14, more than 1200 inspections were conducted (Table 6.9). The number of inspections came down significantly to about 600 in 2016-17. It is also found that only 17 cases have been charged and only seven employers/contractors were convicted for violating the provisions of the Act during the five year period under review.

Table 6.8: Free Legal Aid Extended to Migrant Workers under the Act during 2012-2017

Year	No of beneficiaries
2012-13	112
2013-14	250
2014-15	223
2015-16	240
2016-17	692

Source: Department of Labour and Skills, Govt of Kerala

Some of the issues with respect to the Inter-state Migrant Workmen Act and Rules are:

- As noted earlier, registration of inter-state migrant workers under the scheme is very low compared to the estimated number of such workers. Definition of a migrant worker under the Act is different from the definition usually adopted while estimating their number. The Act covers only migrant workers who have come to Kerala through contractors and therefore other workers are outside the purview of the Act. In spite of this, it is clear that the employers and contractors are avoiding the registration of a large number of inter-state migrant workers in Kerala under the Act.
- Registration of establishments and licences issued to contractors appear to be fewer compared to the actual situation.

- Over the past five years, there appears to be laxity in conducting inspections under the Act and rules.

Table 6.9: Registration of Inter-state Migrant Workers under the Act during 2012-2017

Year	Number of Inspections	N. of Cases charged	No. of persons Convicted
2012-13	1233	0	4
2013-14	1244	1	0
2014-15	1724	0	0
2015-16	842	8	2
2016-17	588	8	1

Source: Department of Labour and Skills, Govt of Kerala

- Often the contractors and employers do not keep proper records of the migrant workers engaged by them to prevent any scrutiny by law enforcers.

- Absence of a comprehensive enforcement mechanism is helping the labour contractors and employers to violate different provisions of the Act and Rules.
- Limited cooperation between different departments/agencies that have mandate to enforce the legal rights of the migrant workers.
- Weak presence of trade unions among migrant workers also leads to violation of their rights.

6.3.3 Recommendations

- The Consultation workshop organised by the Commission on 13-12-2017 at Thiruvananthapuram observed that since the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Services) Act, 1979 itself is dated in the context of the evolving Labour Codes, making changes in the Kerala Inter-State Migrant Workmen (Regulation of Employment and Conditions of Services) Rules, 1983 may not have much relevance. In the context of amalgamation of labour laws into labour codes, the future of the act and rules may be reviewed before making any revision in the Rules.
- The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Services) Act, 1979 is one of the labour legislations which remained mostly on paper. Department of Labour and Skills has reported that it lacks necessary human resources to implement the Act and Rules. A study may be commissioned to better understand the volume of inter-state migrant workers who qualify as per the definition of 'migrant workmen' under the Act.
- Only migrant workers who are recruited through contractors come under purview of the Act. This has provided loopholes for the contractors and employers to avoid registering the migrant workers working under them. The state should recommend to the Centre to amend definition of the interstate migrant worker

(section 2(e)) from the current definition of “any person who is recruited by or through a contractor” to “any person who migrate to another state for employment in an establishment in that state”. Workers who draw wages exceeding ₹500 per month are excluded from the definition of workers under this Act. This needs to be revised considering the prevailing wage rates in Kerala.

- Enforcement mechanism for implementing the Act needs to be strengthened considerably. Convergence of the activities of different departments/agencies shall be brought in. Sharing of information available with different departments and agencies should also be facilitated.



Epilogue

This report, based on a detailed review, makes specific recommendations for a more effective implementation of legislations to protect the rights of children, women, senior citizens, persons with disabilities and mental illness and migrant workers in Kerala. Commission is of the view that the implementation of its recommendations will help to develop a more efficient system in the state to protect the rights of its citizens particularly the vulnerable sections of the Kerala society. Commission is aware that some of the issues discussed in the report may not be new to different stakeholders but are important to reiterate them as they persist even now.

The discussion on different legislations reveals some common elements. They include the need for improving awareness about different provisions of the Acts/Rules, development of a new information management system, setting up new performance indicators and improving effectiveness of the monitoring system. Better coordination among agencies/departments is also essential. There is also a need for eliminating duplication of work by different agencies/departments and functionaries. The Commission also notes that there is some delay in formulating State Rules relating to Central Acts. The importance of formulating State Rules without delay lies in the fact that in many respects, Kerala presents a different scenario in comparison with the rest of India. The absence of Standard Operating Procedures (SOP) for different agencies and functionaries is yet another problem affecting the implementation of some of the legislations reviewed by the Commission. The report has made some specific recommendations to this effect in different chapters. However, a review by the concerned departments will bring out the need for more SOPs. Some issues related to human resources, training requirements, funding and logistics have also been identified by the Commission. Delayed justice is another aspect which the Commission would like to highlight. Whether it is the case of women, children or senior citizens, the justice delivery system has not been able to follow the norms laid down by the legislations. The Commission is of the view that more efforts to implement the legislations in its letter and spirit could reduce the incidence of violation of rights. The report presents few good implementation practices and the Commission is aware that many others are available in the State. There is a need to document such practices to make it available for replication.

Review by the Commission was focused on the implementation of different legislations. But the Commission has noted that some of the provisions in the reviewed Acts have become obsolete and, in some cases, it has become detrimental to the interests of the target groups. Some of the provisions need to be revised to reflect contemporary reality. Such aspects are highlighted in the respective chapters. Commission is aware that the State has only a limited role of acting as a pressure group in making amendments to central acts. But it is possible that the State government can make amendments to the State Rules to make it more relevant for present day Kerala.

The Commission submits this report at a time when a separate department is formed exclusively for Women and Children. Being a new department, there is scope for new ways of implementing the legislations. The Department of Social Justice, which was overburdened in the past, has become more manageable and therefore better attention can be given to vulnerable groups such as senior citizens and persons with disabilities. Commission views the present scenario as favourable for effective implementation of Commission's recommendations. Yet another favourable factor is the possibility of using technology, particularly information technology which is available at previously unimaginable levels. Service in the social sector, though important to all, is of particular significance to vulnerable and disadvantaged sections of our society. They are central to achieving a fair and just society which the Commission aspires. Commission believes that there has been a strong sense of social justice in Kerala. However, to build a more equal society, the State should deliver better social outcomes for its people. This report is a modest attempt in this direction.



Annexures and Appendices

Annexure I

NEED FOR TRAINING IN DISABILITY COMMUNICATION

Disability communication is based on the idea of treating people with disabilities with rightful courtesy and respect. Some of the basic ideas of communication with PWDs are:

- » Treat adults like adults, and treat people with disabilities like one would treat anyone else.
- » Don't make assumptions about people with disabilities. If there is a doubt about what to do, just ask. People with disabilities will appreciate honesty and would rather have one ask about their needs and wishes instead of making assumptions.
- » Understand that two people with the same disability may have very different access needs. People with disabilities should be viewed as individuals, and their needs should be addressed accordingly.
- » Not all disabilities are immediately apparent. "Hidden" disabilities such as hearing impairment, colour blindness, or a medical condition like diabetes may cause a person to not respond when you speak to him or her, or act in a way that may seem odd. If someone behaves in a way that seems unusual at first, wait to find out more.
- » Treating staff members or volunteers with disabilities the same way one would treat people without disabilities also means that we should evaluate them the same way as anyone else. People without disabilities can sometimes be too reticent to be honest with PWDs about their shortcomings on the job. This may be from good intentions, but is a disservice to the PWD. One must be open with all of staff (who happen to be PWD) about areas in which they can improve their performance.
- » The language we use when talking about, or with people with disabilities is closely linked to disability etiquette. Some basic things to consider about how we communicate:
- » Use "people first" language. This means referring to the person first before referring to the disability: "a woman who is deaf" rather than "a deaf woman". People might think this makes conversation too wordy, nevertheless we should not just refer to the person as her/his disability. Emphasis should be on the person and her/his disability is one of many things about her/him; a person's disability does not define him or her as a human being.
- » Don't point out disabilities, but don't ignore them either. If disability isn't pertinent to the conversation, don't discuss it unless the person with the disability brings it up. If it is relevant, though, it isn't impolite to bring it up. Hesitating to address a person's disability can imply that the disability is something wrong or bad—that it's an uncomfortable or unpleasant topic. It shouldn't be. Disability is something that person has and deals with every day, and it's fine to acknowledge that.

Many words associated with disabilities in the past are now recognised as biased and should no longer be used because of their negative connotations. For example, the word “handicap” comes from the British image of a beggar with his “cap-in-hand” held out for money. Even the word ‘disability’ connotes ‘dis-ability’ and PWD is naturally compared with an imaginary ‘normal’. People with disabilities were long portrayed as needing charity and pity. Other words to avoid include referring to people with disabilities as “crippled” or as a “victim” of her/his disability, saying someone “suffers from” her/his (say she / he “lives with” it instead), and referring to nondisabled folks as “normal.”

- » Find out how the person with disability communicates best. For example, while many people who are blind can use Braille, majority of people who are blind do not. Similarly, not all people with deafness can lip-read, and even when they do, it is only 30 % to 50 % effective, as many words look similar (for example, “Friday” and “fried eggs” look almost identical to a lip-reader). Lip-reading has to be supplemented with gestures, facial expressions, and written notes. Some people who are deaf are able to speak, others are not. When in doubt, just ask, “What way is best for us to talk with each other?”

Annexure II

FROM ACCESSIBILITY TO EMPATHY-BASED DESIGN

Introduction

It is deemed necessary to define a new understanding of accessibility, so that we truly reach inclusive built environments. The aim is to build a new theory of architecture able to increase the overall quality of accessible design solutions. There are existing theories developed from accessibility as departing point, under different names such as ‘design for all’, ‘universal design’ or ‘inclusive design’. However, the assumption is that these are not properly approached and/or poorly linked to architectural practice, since the main claim is that the overall quality of prevailing accessible designs are poor.

In summary, accessibility in architecture seems to be rejected by default, often being secondary solutions, not integrated into the built environment as a whole some design. It seems that it is not an aesthetic concern within the project, but merely a technical issue that has to be accomplished just as plumbing, construction details or the evacuation plan of the building. In general, accessibility requirements are not understood as a priority/ synonym of an easier and more comfortable life for everyone. On the contrary, accessibility standards are mainly seen as something dull to be accomplished mainly because regulations demand it, and/or as something too complex that external specialists will solve later on. As a result, many accessible environments often have poor quality, a clear lack of integration with the design of its surroundings, frequently in a segregated manner; e.g. rear entrance as the accessible route ‘for the disabled’ in contraposition to the main non-accessible entrance, isolated toilet ‘for the disabled’ separated from the rest of public restrooms, etc.

Indeed, accessibility entails much beyond a mere barrier-free approach. Many current accessible designs are mere ‘designs for the disabled’ or even ‘designs for the wheelchair users’. Often introduced in a fractured and limited manner into the project, they are not good enough, and a proof of this is that the non-disabled people rarely use them, even when its more practical to use it. When everyone is persuaded and keen to use an accessible environment, only then we are on the right tracks towards genuine architecture for all. The hypothesis is that we need to empower our empathic capacities, so that we do not approach the matter of accessible design as ‘us’ and ‘them’; i.e., architects must not design for the whole community (us), and then add solutions for the disabled minority (them).

Accessibility in current thinking

An accessibility-thinking has been developed over the years, as a result of the strong disability rights movement that emerged in the 60s, and all the laws and regulations derived afterwards. Many terms concerning accessibility are often confused and used as synonyms.

The concept of ‘barrier-free design’ emerged around the 60s worldwide, and it was specially thought up to ‘reduce the barriers to the disabled’. Soon, the term ‘accessibility’ became more widely used than barrier-free design, coinciding with the introduction of International Symbol of Access, which is the official sign for accessibility used worldwide since the 70s. It is also commonly known as the ‘wheelchair symbol’, since it is represented by a person sitting on a wheelchair drawn in white over blue.

The barrier-free concept, initially aimed exclusively for people with disabilities (hereafter PwD) and more particularly for wheelchair users, progressively evolved to the idea of ‘universal design’ (hereafter UD) for everyone, especially in the USA. Ronald L. Mace coined the term for the first time in the 80s, describing it as ‘the design of products and environments to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design’. [Connell et al., 1997] However, the term ‘universal design’ has been considered controversial in recent times, because it suggests the idea of a single ‘universal solution’ to meet the needs of all people, the thought of ‘one size fits all’, which can be misleading. Thus, a new terminology has appeared to palliate this ambiguity, ‘design for all’ (hereafter DfA) or ‘inclusive design’ (hereafter ID). DfA is more used in Europe and Scandinavia, while ID prevails in the UK, and even in the USA—main land of UD—inclusive and universal design are used interchangeably. In addition, to note that while in the USA, accessibility is still linked to a barrier-free thought exclusively for the disabled; in the EU, accessibility has a broader understanding, more linked to universal design comprehension, culminating in design for all.

The fact is that the different terms concerning accessibility are mostly used as synonyms albeit they hold somewhat divergent historical and cultural meanings. For instance, in Japan, one of the fastest ageing country in the world, the dominant terminology concerning accessibility is universal design, but mainly in response to their massive ageing demographic. Thus, Japanese understanding of UD is much closer to the occidental lifespan design, age-friendly design, or ageing in place terminology, referring to design features that support people over their lifespan.

There is a visible conflict of coexistent terminology worldwide, which is not abnormal for a relatively new field. Each varying term aims at defining more precisely, discriminating certain undesired connotations, which mainly evolve on geographic basis. Still today we can find institutions aiming at specifying more accurately their understanding of accessibility, which expands into its broadest sense increasingly. For instance, human centered design has been the term chosen by the Institute for Human Centered Design in Boston (USA), who claim:

‘We are invested in the international universal design/design-for-all/inclusive design movement but we believe that it is important to be open to complementary ideas that make sense within the simple and open framework of human centered design. Important parallel trends today include green design and design for health and healing. We see value in finding the common ground between movements and in working collaboratively.’ [IHCD, online]

Thus, to sum up, we could say that the early concept of barrier-free design has developed gradually and progressively to more embracing terms, focusing attention not only to PwD but on the needs that are common to us ALL. Inclusiveness, user-centered design, design for all, and many other, are terms used to refer to similar concepts: designing with everyone in mind, regardless of their age, ability, or status in life, by means of including the needs of the widest number of consumers under various circumstances, so that nobody feels excluded. If this is

achieved, we are looking at long-term designs, able to support healthfully lifespan needs; thus, sustainable designs providing quality of life.

Nevertheless, accessibility standards for the built environment are, precisely, the ones misleading and generating the problem: they are still exclusively focused on barrier-free design for the disabled, giving instructions on how to design the built environment to be 'wheelchair friendly'—lately also introducing tools for being 'blind friendly'—but they are not approached in a way to be holistically inclusive. Probably for this reason, different universities and institutions specialised in the subject have been created to promote, complement, assist, and clarify the needs and wills of accessibility. Indeed, several academics have approached the matter of accessibility to broaden its understanding towards designing for all, and several lists of principles for good design / universal design / inclusive design / design for all, have been described along the years. To acknowledge the fact that the most renowned is The Seven Principles of Universal Design, defined by Center for Universal Design (CUD), based at the College of Design at NCSU in the USA.

Accessibility in real practice:

Accessibility requirements are often hard to understand: its complexity can be seen from the excessive number of existing regulations and good practice manuals, constant updates of these, or how differing are the demands when comparing them among diverse countries, or even regions within the country. Thus, despite all the interest and growing development on accessibility thinking described above, two main issues can be identified as failures of accessible design in real practice:

» Lack of equality in accessible solutions:

Accessible designs are mostly conceived exclusively for disabled users; this can be understood from the high presence of signage for alternative routes and rooms for the wheelchair user. This lack of integral approach often results in higher expenses, segregated spaces, most of them with poor aesthetic quality, out of proportion dimensions, and sometimes even clinical looking, full of orthopaedic devices. In fact, one notable reason for the failure of accessible design is that it is often not understood as design. To design, implies an aesthetic care-or it should-if not, it is just a tool, but not design. Hence, if accessibility is considered under a merely functional conception, solely as assistive devices, but not as designed elements integrated within the built environment, then accessibility is excluded from the world of architectural design.

» Lack of multisensory conception:

Besides, due to a misunderstanding of what an accessible environment is - often merely understood as a barrier-free environment for wheelchair-users - there is a notable group of population often left out: the needs of people with differing sensorial impairments are not properly approached and met in architectural design. For instance, for people with low vision it is fundamental to have contrasted colours or materials with different textures in the built environment, to provide them with tools to navigate the space. Or, for people with hearing problems, it is basic the difference between the acoustic harshness of a large and practically empty room, front the softened sound offered by a furnished space with multiple surfaces which absorb the background noise. Therefore, the design of the built environment must go beyond form and function, with special

attention to the perception of the surroundings. In order to do that, all senses must be taken into consideration as they are decisive to fully connect with our built environment; e.g. a rich utilisation of different building materials, with their significant variations on warmth, texture, colour, smell, etc., are essential to provide a holistic perception, which is important to everyone but especially for sensory impaired people.

The fact is that accessibility concerns are often left till the end. Accessibility is rarely approached *a priori*, from the very beginning of the project and conceived as a challenge to solve, but as something the architect has to accomplish at some point. Consequently, if accessibility is solved *aposteriori*, the results often are isolated ‘pieces of accessibility’ detached from its surroundings. Very often, unexpected extra space and/or installation of devices is necessary for solving non-forecasted architectural barriers. Hence, it is not rare to find many back entrances for ‘wheelchair access’ as an alternative way to the one non-accessible main entrance in many buildings. If we leave accessible requirements to the end as mere details to add at some point of the architectural design process, the results are often poor, lacking unity with the whole, and with an incipient sense of discrimination.

In conclusion, accessibility—or UD, ID, DfA...—must be approached with a broader understanding than merely complying with regulations, and must be understood as an integrated part of the architectural design. Further, good accessible design must involve good functionality and aesthetic quality, both equally. The former is indispensable for the very nature of accessibility; it must be usable for the user in whatever task is aimed. The latter is fundamental if we aim to achieve sustainable designs, because it will be the safest way to enhance long-term environment relationships. What is more, the concept of attractiveness is fundamental if we want to ensure that accessible designs are used by the entire population, who will reject to use ugly and clinical looking environments if they do not absolutely need to.

It is a fact that sensory impaired people are almost completely forgotten in the architectural design. The most likely reason for this is that accessibility codes are focused mainly on barrier-free environment aimed at mobility of impaired people, without considering in depth sensory impairments. Also, because accessibility regulations address specific dimensions and technical details, rather than more existential aspects about how human beings perceive and experience architecture. Then, the question that comes up is: Can this be actually specified in regulations? Or are we talking about abstract concepts, such as aesthetics, emotions and wellbeing, which cannot be delimited in building codes? The hypothesis is that an empathic approach is necessary to design accessible built environments that go beyond the regular barrier-free requirements, beyond functionality and usability concerns. Empathy is essential to reach the ‘supra-functional needs’ satisfaction—those social, emotional, spiritual, aspirational and cultural aspects that are equally relevant to us—where lies the real pleasure, the sense of wellbeing and perception of a good life. Empathy is the key to defeat the ‘design for the disabled’ and succeed in an inclusive architecture.

Empathy-based design

Empathic design processes require, to some extent, the direct participation of the research subjects—in the present discussion, the involvement of PwD—even if they are not designers themselves, in order to consider people’s direct experiences rather than basing design in ‘de-personalised descriptions’ [Fulton Suri, 2000]. Also, role-playing exercises such as disabilities simulations where the designer tries to become the user, are highly effective. Furthermore, the

collaboration or activity should be carried out for a sufficient amount of time, so that a genuine awareness of the other is reached, and more importantly, at an affective, emotional level; thus, it becomes harder not to act, and the desire to do something good springs. Therefore, a change of values towards goodness, the drive to improve and perfect the conditions of life through design, is the result of an empathy-based design. What is more, ‘the user is no longer considered the end of the design but the starting point’ [Holt, 2011: 153], which is essential to strive the failure of accessible designs addressed above.

Developing an empathic awareness towards design is of great importance because it allows to ‘capture something which concerns most people even if it is on a subconscious level.’ [Cold, 2001: 20] Similarly, Pallasmaa [2001: 216] compares the task of the architect with the therapist because

‘whereas the therapist deals with a person’s external condition and tries to make his experiences and interpretations of his own life condition more favourable, the architect, working in the same dimension, endeavours to make the spatial-material experiential horizon of life more positive.’

We should be aware at all times that ‘it is perhaps when our lives are at their most problematic that we are likely to be most receptive to beautiful things’ [de Botton, 2006: 150], and this is why it is so important to rethink and redesign certain elements and spaces, because it is necessary to encourage people by making them appealing and beautiful instead. An empathic design is the tool in the architect’s hand to defeat the negative connotations of ageing, becoming dependent, vulnerable; architects must empathise with those feeling powerless if they want to create welcoming, pleasant, long term, sustainable environments.

A great example of empathic design is Alvar Aalto’s Paimio Sanatorium (early 1930s): ‘Whilst designing the sanatorium, Aalto fell ill and had to spend some time in a hospital where he could examine the surroundings from a patient’s point of view’, thus he became a user and not only an external designer of the facility. He empathised with being a patient, how does it feel to be laying down in bed for hours and staring at the ceiling endlessly; so, he designed the patient’s room accordingly. He experienced how it feels to be in a vulnerable situation and what feelings can be aroused due to the built environment; as a result, he searched for the most comfortable and reassuring design through soft lights, warm colours and even noiseless washbasins. ‘On the basis of his hospital experience, Aalto concluded that the subject of the design should always be “man at his weakest”.’ [Pallasmaa, 2001: 217] In short: Why empathy in design? Because it leads us towards healing environments.

To conclude, accessibility, understood as designing for all, has not become a mainstream thinking yet. To reverse the current situation of ‘design for the disabled’ and to increase the rate of adoption of accessibility in its broadest understanding, it is necessary to have an empathic approach towards design, including other indirectly related concepts such as adaptability, personalisation, affordability, sustainability, etc. All of them are necessary to successfully connect with all users.

On the other hand, as previously explained, there is a problem of excessive information concerning accessibility standards and lack of reliable criteria, in general terms. Therefore, all the reviewed literature and lists of principles for accessible design, have been summarised in one unique package of essential steps, aiming at providing a greater understanding of

accessible architecture and to facilitate its implementation. In short, all the ideas concerning accessibility have been grouped in more encompassing terms, where all the needs for high quality accessible architectural design are included. In addition, the different concepts have been hierarchically ordered in a set of aims, according to their level of achievements from the most basic to more existential goals. That is, starting from the most basic requirements for accessibility (barrier-free design, usability, safety), and followed by higher levels of satisfaction and social recognition, which entail concepts of multisensory design, emotional wellness and self-esteem.

To sum up, the principles are classified in a set of 4 steps of goals and achievements, that must be progressively approached, always under an empathic view:

1. First of all, all architectural design must be user-centred

- » That is, spaces have to be usable for any intended user, respecting the diversity of body shapes and mobility capacities. To do that, flexibility is often essential; i.e. provide choice or adaptability options. Likewise, to consider what people say they need and want, the responsive character of design, is basic to succeed. In addition, spaces must be safe and free of risks, they should support a healthy use, minimising physical effort or forced body positions; i.e. providing convenient, autonomous and comfortable use.

If we do that, we are ensuring its **reliability**.

2. Secondly, all architectural design must be multisensory

- » That is, spaces must be easily navigated by any intended user regardless of their cognitive capacities. An intuitive spatial distribution and clear distinction between different types of spaces must be provided, so that everyone can locate themselves and reach their destination. In addition, the 'principle of two senses' should be always followed, i.e. using different modes for communicating the information, so that the perception is ensured in either way: by touching, hearing, smelling or looking at it.

If we do that, we are ensuring its **communicability**.

3. Thirdly, all architectural design must be sustainable

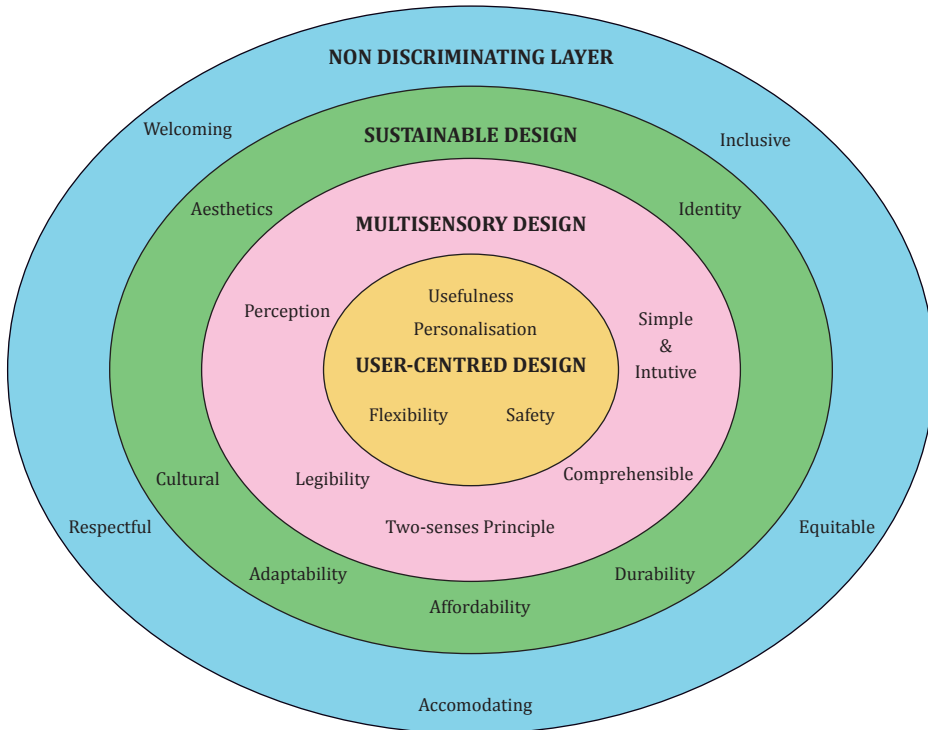
- » That is, spaces must be aesthetically pleasing, so that they are more likely to be accepted by everybody and used long-term. In order to do that, the cultural context must be taken in to account, social characteristics and traditional resources must be respected, so that spaces hold their own identity and are economically viable. In addition, the affordability, durability and maintainability of designs must be ensured, and for that places should easily accommodate changes over time.

If we do that, we are ensuring its **durability (also emotional)**.

4. Finally, all architectural design must be non-discriminating

- » That is, spaces should be designed so that nobody feels marginalised or stunned.

If we follow all these principles in an empathic way, we are ensuring its **equality**.



Appendix I

EXECUTIVE SUMMARY

One Day Workshop, 13 December, 2017, Thiruvananthapuram

1. The Background

The State of Kerala has often been lauded for its impeccable human development indicators, comparable to those in other states. The evidently high literacy rate, better sex ratio, low infant mortality rates and better access to education and medical care may be mentioned as few of the laurels that the State has to its credit. However, despite having high human capital and educational attainment, the pace of development is getting affected by the overall changes occurring throughout the nation in social, economic and demographic dimensions. Women, children and senior citizens often find it difficult to lead a safe and peaceful life as the instances of anti-social elements venting out their frustrations on relatively vulnerable beings are on the rise.

Another concern that has been observed of late is the problems faced by migrant labourers from other parts of the country. Despite various laws that have been framed for the welfare of all strata of citizens, undesirable situations keep surfacing from time to time, evidently, due to lack of effective implementation of the laws and schemes. Taking cue from this, the Administrative Reforms Commission (ARC) have decided to study the issues pertaining to enrichment of the quality of life of various marginalised communities and bring in a constructive review of existing welfare legislations.

2. The Workshop

The Government of Kerala has set up the Administrative Reforms Commission (ARC) to study various issues in governance and to suggest reforms to make the public services more public-centered, efficient, effective, equitable, affordable, accountable, sustainable and accessible to all. The Commission has selected “Reaching the unreached” as an important area of its functioning. In this backdrop, a one-day workshop was organised on 13th December, 2017 at Symphony Hall, Mascot Hotel, Thiruvananthapuram. The workshop was arranged as two sessions, the first, addressing the aspects regarding welfare legislations for marginalised communities, and the second, addressing the problems faced by women and children in society and the possible reforms that could be brought about by effective implementation of existing welfare legislations and introducing new clauses or bills for effecting the same. Representatives from various government bodies and dignitaries from Non-Governmental Organisations working in the sector, turned up at the venue to chip in their views and concerns regarding the welfare legislations that are currently in place and the need to review them. The details of the participants have been included in Annexure I.

Smt. Sheela Thomas (Member Secretary, ARC) welcomed the members of the Commission as well as the participants of the public hearing. She stated that the prime objective of the Commission is to identify the gaps in service delivery and bring about measures to rectify the same. The Commission is responsible for making sure that the Government services are being fruitful in the enrichment of every group of people. She introduced the distinguished guests

who had turned up to enrich the workshop with their thoughts and suggestions, briefed on the objectives of the Commission and the various sectors under study, and called for effective participation by all participants.

Sri. V. S. Achuthanandan (Chairman, ARC) in his presidential address drew a map of the major areas to be focussed on throughout the course of the workshop. He stated that it is the need of the hour to identify the shortcomings in administering welfare legislations. He gave special mention to the public hearing that was organised by the Commission on 5th December, 2017 on the welfare of women and children, and continued that this workshop has been arranged with a prime objective of fetching further suggestions on the topic as well.

The Chairman also opined that a government is considered successful only when the needs of the most marginalised classes of society are also addressed with adequate importance. He added that a State Vigilance Commission shall be formed, similar to the Central Vigilance Commission, in order to keep corruption among staff in political, administrative and service realms in check. He wound up his address emphasizing on the importance of addressing the various issues faced by the six basic groups of people under consideration, namely, women, children, senior citizens, mentally challenged people, physically handicapped people and migrant workers from other parts of the country, and urged the participants for their wholehearted participation.

3. Summary of the Presentations

3.1. Session 1 – Addressing the Possibilities of Welfare/Rights Legislations

Sri C P Nair, commenced the presidential address giving an account of the importance that Administrative Reforms Commission has given to the factors that stand in the way of ameliorating the socio economic conditions of the marginalized and under-privileged sections of the society despite the formulation and implementation of several significant, statutory and administrative measures. He recalled the valuable inputs that had been obtained through the public hearing organised by the Commission participating stakeholders from various strata and stressed on the common opinion that effective measures need to be taken for ensuring not just the formulation, but also effective implementation of laws and schemes designed to ensure personal and social development of the marginalised classes.

The Member of the Commission went on to say that the lauded Kerala-model of development is facing the effects of changes in social, economic and demographic dimensions. He opined that the prominent problems such as issues faced by elderly people, sexual abuse against women and children, lack of support systems for the aged call for immediate state intervention. He also commented on the aspects of ageing population and associated needs that may arise, including medical care and rehabilitation facilities. Another point that was brought to notice is the increasing number of migrant workers from other parts of the country, calling for effective measures to ensure their overall welfare. He concluded with a special mention on the Supreme Court judgement declaring triple talaq as unconstitutional, and the stern stand taken by the Government of India that personal laws should be fully in conformity with the Constitution of India.

Smt. Neela Gangadharan (Member, ARC) commented that Kerala has been successful in serving the citizens regardless of caste or creed; successive governments in Kerala have always made it a point to address the needs of the sidestepped and vulnerable communities through the implementation of relevant Central Acts and State Acts. But, despite all these measures, the intended effect has often not been attained, owing to the flaws in operationalization of the same. She reminded the participants of the workshop that addressing all instances

would be inappropriate and that certain legislations focussing on the welfare of marginalised communities shall be addressed in the forthcoming discussions.

The member also observed that in spite of having various laws and statutes, adequate institutional backup is lacking, and stressed on the need for reinforcing the Social Justice Department so as to cater to the needs of all classes. She pondered the role of Ombudsman Regulatory Commissions in effective implementation of legislations. She also commented that apart from the sensitisation of various instances in media and otherwise, it is important to spread realisation and awareness regarding the social evils.

Sri. Nikhil Dey (Activist, Mazdoor Kisan Shakti Sangathan, National Campaign for People's Right to Information) presented the views on objectives and intentions of the welfare rights and legislations. He pointed out the necessity of the inevitable shift from welfare to rights-based empowerment and elaborated on the importance of Right to Information Act and Right to Service Act and about measures to ensure proper execution of the same. He highlighted the importance of spreading awareness on core areas of information as to whom the citizens should approach when they need to resolve various issues. He commented that forming a citizens' charter and organising social audits would help considerably in administering proper grievance redress. He also stressed on the need for trained, impartial facilitators to bring about proper conduct of social audits. He concluded suggesting that at least 1% of the budget should be assigned for improving the transparency of the administrative system.

Smt. Aparna Bhatt (Senior Lawyer, Supreme Court of India) in her speech, threw light upon the Juvenile Justice Act, and instances where the law was intentionally amended to flout the part on conducting social audits. She drew attention of the audience to various cases where there exist only a policy instead of clear-cut laws; in such cases, ensuring justice lies in the discretion of the executive and hence, the cause stands diluted. She also pointed out that various schemes introduced by the Government are stopped abruptly for no obvious reason. In her views she made it a point that proper mediating bodies such as Ombudsman commissions should be introduced for enhancing the approachability of the judicial system. She also stated that the review process of various schemes introduced by the Government is often found to be inadequate, leading to failure of the same. She opined that clarity has to be brought in regarding the accountability of the judicial system, specifying as to whom the public may approach if a particular scheme is not administered appropriately. Speaking further, she addressed the need for the services of an empowered Ombudsman for meting out services to the differently abled.

Sri. Gouridasan Nair (Senior Journalist, The Hindu) versed on how to acquire right sensitivity rather than sensationalising as he opined that media is a part of the problem rather than a solution. He deplored the degenerating values of media personnel who largely seem to be after news possessing considerable 'glamour quotient'. In this light, he put forth the following suggestions:

- » A reporting protocol shall be brought about in the media institutions.
- » Ensuring the legislations are frames in the central level.
- » The sensitivity level of implementing agencies shall be looked into and effective measures shall be taken to enhance the approachability of the same.

A Governance Charter, similar to the Citizens' Charter, shall be activated with a strong network of local government institutions, where the social security allocations for the local bodies is conditional upon the local government institutions discharging their responsibilities adhering to the rules.

3.2. Session 2 – Addressing the Possibilities of Welfare Legislations for Ensuring the Safety and Welfare of Women and Children in the Society

Smt. Mridul Eapen (Member of the State Planning Board) presented mainly the issues related to gender equality in the employment sector in Kerala. She observed that women outnumber men in the education aspect but representation in the employment sector is rather weak. She also raised her concern that various laws framed for the protection of women are being diluted by introducing amendments that are uncalled for. In her address, she cited a few instances such as the 2013 Criminal Amendment Bill, dowry harassment cases as per Section 498A, where the laws had been diluted so that they become less deterrent to the violators. She drew attention to a few of the major findings that were inferred from the public hearing that was held by the Commission which may be summarised as follows:

- » The enormous delay in administering justice in cases involving violence against women and children, owing to flaws in operationalization of the associated laws needs to be looked into.
- » The urgent need for a massive, concerted, sustained sensitisation programme needs to be catered to.
- » Promote Gender awareness in the public as well as in educational institutions as prescribed by the Justice Verma Commission.
- » Various laws, although framed with utmost attention to detail, become toothless over the years owing to several reasons such as lack of proper institutional structure, and delay in disposal of justice in such cases.
- » The contradictions in the Dowry Prohibition Act have to be cleared.
- » An independent employment tribunal shall be set up for resolving cases regarding sexual harassment at workplace.
- » Equal Remuneration Act has to be effectively implemented and uncertainties should be discussed upon and sorted out.
- » Proper operational institutions shall be setup to address the needs of victims associated with POCSO Act and Juvenile Justice Act.
- » Lack of infrastructural facilities do affect the delaying of the case procedures..
- » Having presented her views and concerns, Smt. Mridul Eapen invited Smt. T.K. Anandhi (General Advisor to the Government of Kerala) to enrich the audience regarding the various aspects on the topic.

Smt. T.K. Anandhi pointed out that significant contributions are needed in developing measures to reduce the atrocities against women. She stressed on the need for proper implementation of the laws framed for protection of women. She expressed her views on six laws related to women and children, viz. Protection of Women against Domestic Violence Act (2005), Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act (2013), Immoral Traffic Prevention Act (1956), Dowry Prohibition Act (1961, amended in 1986), Equal Remuneration Act 1976 (Act 25 of 1976 amended by Act 49 of 1987), Indecent Representation of Women (Prohibition) Act (1986). In this background she put forth a few suggestions:

- » Protection Officers shall be deployed in all districts, and regular meetings shall be held with effective participation of protection officers, NGO representatives and

concerned dignitaries, preferably in association with the Local Self Government Department.

- » Clarity shall be brought in the laws with proper detailing on the areas being addressed and measures to be followed.
- » Effective measures shall be introduced for the prevention of human trafficking, which is seen to be on the high of late.
- » Healthy and potent discussions shall be held on problems faced by women who fall prey to domestic violence and effective means for implementing related laws shall be arrived at.
- » Gender sensitisation shall be properly administered in all Government departments, especially in the Police and Judicial Departments.

Adv. J. Sandhya (Expert Committee Member) presented her views on the measures to be taken to enhance the efficiency of the welfare activities for children. She focussed her findings and concerns around the POCSO Act, Juvenile Justice Act and CPR Act. The major suggestions are:

- » Special care is to be offered to HIV, SC/ ST and differently abled children
- » The POCSO Act 2011 needs to be improved by ensuring child friendly environment and timely disposal of associated cases.
- » The Nodal Department for implementation of the Act is required to conduct mandatory periodic scrutiny of the working of protection officers and service providers.
- » Health Department has to be keen on the training sessions given at the school level on child friendly environment.
- » Appropriate State intervention shall be made in ensuring proper conduct of Juvenile Justice Homes and other rehabilitation facilities.
- » As crime against children is increasing, the crimes by children are also presumably increasing where the child should be taken care of their behavioural and attitude changes, which has to be noted down by different homes.
- » Proactive measures such as awareness programmes, monitoring activities and effective grievance redressal shall be taken effectively.
- » It is important to educate the adults as well about child rights.

Following this the discussion was open to the audience and participants chimed in regarding various aspects of public interest. The major points that were brought to notice have been summarised below:

- » Sri. R. Rajan (Senior Citizens Friends Welfare Association, Thiruvananthapuram) opined that strong and highly deterrent measures need to be taken so that prevention of atrocious acts against children can be kept under check.
- » Sri. Shiju (Higher Secondary School Teacher,) raised concern about the delayed disposal of cases involving the violation of children's rights. He said that children should be given the liberty to choose their stream of education and medium of conversing, rather than being forced to choose one against their will.

- » Sri. Sukumaran, (Parivar, Wayanad) sought clarification regarding the instance of tribals who have been confined in jails against the charge of child marriage.
- » Smt. Praveena Koduth (Centre for Development Studies) drew attention to the illegal recruitment procedures followed by private recruiting agencies despite there being public agencies, often leading to miserable situations especially for women who seek to earn a living overseas. She suggested that the rules shall be fine-tuned so as to prevent the manipulation of recruitment procedures by private agencies leading to uncalled-for situations.
- » Smt. Sindhu Thulaseedharan (Department of Law, University of Kerala) asked the commission to take necessary measures to ensure proper implementation of laws in the departments by mandating the submission of annual reports and ensuring that orphanages are under consistent supervision of the concerned authorities.
- » Smt. V.P. Zuhara (NISA, a progressive Muslim women's forum) raised concern that the Verma Commission has not been completely accepted by the Government. She remarked that various problems that are currently haunting the society can be kept in check if the guidelines of the Commission are abided by properly. She also commented that women who migrate from other parts of the country in search of jobs often fall victims to sexual harassment and rape. She added that inhabitants of orphanages too often fall prey to such atrocities. She suggested the formation of protective units for such migrant labourers and children in all districts. The importance of mandating registration of marriage was also pointed out.
- » Sri. Murukan Theruvoram (Theruvu Velicham, Kakkannad) commented on the Nirbhaya Scheme where the children are confined to locked rooms, subject to mental stress so that many of them end up in the streets again. Moreover funds allotted by the Government for the activities of charitable and developmental schemes are often denied by the concerned disbursing authorities. He requested the Commission to recommend apt action in these regards.
- » Smt. Rejitha G. (Sakhi Women's Resource Center) stressed on the importance of imparting awareness to the perpetrators as well. She suggested that victims of sexual abuse shall be given the liberty to reveal the situation to an amicable agency and that she shall not be tormented by making her repeat the complaint multiple times. She also commented on the deplorable condition of a majority of the children's homes and rehabilitation facilities in the state.
- » Sri. Philip Simon (State President, PARIVAR) pleaded that quality education shall be provided to intellectually challenged children and that sufficient number of teachers and resources shall be provided. He also stressed on the importance of secrecy of details of victims of sexual abuse.
- » Smt. Sheena Bashir (SEWA) presented her views regarding the effective abolishment of child labour in the state; she stated that a fair portion of migrant labourers from other states are children and that effective measures shall be taken to prevent the same. She also stressed on the importance of effective functioning of internal complaints committees.
- » Dr. Sany Varghese (State President, Clinical Psychology Association) remarked that the needs of differently abled children are to be catered to in close conformance

to the guidelines stated in Individuals with Disabilities Education Act (IDEA). She commented that trained and experienced people shall be entrusted with the identification of problems in differently abled children and that services shall be dispensed in strict adherence to Government guidelines.

- » Dr. T.P. Ashraf (Additional Professor, Paediatrics, Kozhikode Medical College) suggested that reproductive health shall be addressed as a topic in educational institutions so as to impart the basic knowledge regarding the same to children.
- » Dr. Peter M. Raj (Associate Professor, KILA) brought to notice that various schemes introduced by the Government are in contradiction with the stipulated services and authority of local self-governments.
- » Sr. Biji Jose (Member, Kerala State Commission for Protection of Child Rights) mused whether the funds allotted by the Government for the upliftment of children are reaching the intended beneficiaries. She pointed out the lack of toilets and adequate infrastructure facilities in several schools and children's institutions.
- » Smt. Kairali M.P. (Programme Officer, Social Security Mission) raised concern about the pitiable condition of children of differently abled mothers. She also pleaded that differently abled children shall also be entitled to proper education and other services just like normal children.
- » Smt. Meena Kuruvilla (Rajagiri College of Social Science) mentioned about the importance of providing medical facilities and quality education to children belonging to the marginalised sections of the society like fisherman community, migrant labourers and tribal folks. She also emphasized on improving the foster care as envisaged in the JJ ACT.

Summary of the Discussions

Following the presenting of individual concerns, the participants were grouped under four heads, viz. Mental Health, Migrant Labourers, Protection of Senior Citizens, and Differently Abled People, the details of which are included in the Annexure II. After conducting active discussions on the assigned topics, representatives from each group presented their collective opinions before the audience.

Sri. Shanmugham A. (Member, All Kerala Association of the Deaf) presented the views and suggestions of the first group. The major points presented in the discussion are listed below:

- » The RPWD Act, although brought to effect on April 19, 2014, is yet to be implemented.
- » A proper policy for differently abled persons is yet to be framed.
- » Children with disabilities shall be provided free, quality education as per Right to Education Act.
- » Problems in issuing disability certificates to the rightful persons shall be resolved effectively. The validity of the certificate shall be extended.
- » Jayaraj Commission shall be considered as a reference guide and associated activities shall be carried out without fail.
- » Early Intervention Programme for children shall be implemented properly so as to guide them from a conveniently young age.

- » Welfare schemes should be capable of rendering the intended beneficiaries self-dependent and should not be diminished to name-sake programmes.
- » A Grievance Redressal Cell shall be introduced for addressing the problems faced by the differently abled.
- » Adequate reservation shall be allotted for the differently abled in all spheres.
- » The Government shall take measures to implement the Rights of Persons with Disabilities Act, 2016.
- » Clarity should be brought in regarding the guardianship of differently abled persons.
- » A proper mission mode of operationalization shall be introduced for implementing various developmental activities for the differently abled.
- » An Additional DPI shall be introduced at directorate level and Deputy Director/DEO level at district level for differently abled persons.
- » Appropriate parking facilities shall be provided for vehicles of the differently abled.
- » A separate department shall be formed for addressing the needs of the differently abled.
- » The differently abled shall enjoy adequate representation in schemes introduced by the Local Self Government Department.
- » Proper guidelines shall be formed regarding the reservation of differently abled persons and further classification among the category.
- » Clinical psychologist shall be consulted for complete clinical assessment.

Dr, Shobha B. Nair (Professor in Sociology, Kerala University) presented the views of the second group. The major points derived from the discussion on the Senior Citizens and Parents Maintenance Act are summarised below:

- » Spread awareness regarding the aforementioned act.
- » Introduce a separate department for the welfare of senior citizens.
- » Deploy a full-time administrative officer to cater to the needs of senior citizens.
- » The service of lawyers shall be avoided in cases related to senior citizens and parents maintenance.
- » Conciliation officers shall be appointed in consultation with the senior citizens associations.
- » Dementia care centers shall be set up in all districts.
- » A welfare fund shall be provided by the concerned tribunal.
- » A specific act should be introduced for prevention of domestic violence against senior citizens.
- » Senior citizens shall be offered discount in fare while using public transport services.
- » Women should be favoured more in the welfare of senior citizens.

Fr. George Joshua (State President, Kerala Rehabilitation Centres Forum, Orphanage Control

Board member) voiced the opinions and concerns of the third group. The major points that were zeroed in on through avid discussions on mental health are listed below:

- » Sufficient number of mental hospitals with necessary infrastructure and faculty shall be set up in the state.
- » Treatment conditions in the forensic ward should be improved with immediate effect.
- » Clarity is to be brought in regarding the dispensing of Lunacy Act.
- » Exclusive wards shall be set up for children, with adequate facilities and care-takers.
- » A state-level helpline shall be set up by the Government.
- » Mandates requiring assent of legal guardian should be liberalised so that migrant labourers and people who are not registered in the state records are able to access their bank accounts without much ado.
- » Schemes for rehabilitation of migrant labourers shall be introduced.
- » Clear-cut rules shall be made for reporting identification of mentally challenged patients and admitting them to appropriate health centres with skilled employees rather than just any nearby hospital.

Smt. Sheena Bashir (Self Employed Women's Association (SEWA)) presented the views of the fourth group, on the existing schemes for migrant labourers and suggested improvements for the same. The major points are as follows:

- » Posthumous allowance provided to the kin of the deceased shall be revised adequately.
- » Relief benefit provided to labourers in case of accidents shall be revised appropriately.
- » The ceiling of medical allowance shall be raised appropriately like a cashless system.
- » Suitable measures shall be taken by the Government for sending the body of the deceased to their native place.
- » Educational allowances shall be offered to children of migrant labourers as part of Right to Education Act.
- » Proper registration of all migrant labourers should be ensured.
- » The existing statute shall be revised such that working classes who do not come under ESI/PF category shall register for this welfare scheme and enjoy the related benefits.
- » Norms for enrolling for welfare schemes shall be liberalised such that the desirous people may enroll for the scheme by producing their ID proof or any valid certificate proving their nativity.
- » Enrollment to welfare schemes shall be facilitated through public service kiosks such as Akshaya centres in association with the Local Self-Governing Department.
- » Even though the scheme was introduced during 2010, it has not reached all the rightful beneficiaries, owing to the poor implementation mechanism and lack of proper staff structure.

- » A functional welfare board shall be formed for migrant labourers so as to ensure effective dispensing of allowances and associated services.
- » Existing welfare schemes shall be revised such that they actually prove beneficial rather than just becoming a financial liability to the Government.
- » Timely social audit of the implemented schemes shall be conducted so as to ensure effective conduct of the same.

Summary of Suggestions

The key recommendations from the workshop may be summarised as follows:

Sufficient number of rehabilitation and skill training centres shall be set up for children.

Old Age Citizen Act has to be educated by introducing it in the local self-government areas creating awareness.

Adequate medical health and welfare centres shall be introduced for ensuring wellness of marginalised communities, especially women.

Benevolent services shall be offered to the marginalised classes, such as offering discounts in bus fare for senior citizens.

Patient Act should be formed in order to ensure there are people to serve. The Man Power in this field have to be increased for the proper functioning.

Child wards shall be introduced and if orphaned, destitute children are hospitalised they should be accepted with the provision of a special caretaker provided by the Government.

State level helplines and functional grievance redressal cells shall be set up for the welfare of marginalised communities.

Enrollment to electoral roll, Aadhar and related aspects shall be facilitated through NGO's.

Home and Health Departments shall function in collaboration for the upliftment of migrant workers.

Quality education shall be provided to all children without taking into account any marginalisation.

Dedicated welfare boards shall be introduced for catering to the needs of marginalised communities.

Timely social audits shall be arranged so as to ensure effective implementation of various schemes and policies.

Smt. Neela Gangadharan, in her concluding remarks lauded the active participation of all those who had turned up. She remarked that the workshop has indeed proved fruitful in bringing up valuable inputs and that the Commission would make the most of the suggestions. She urged the participants to inform any further concerns or queries via email. She also reminded the group representatives to mail in their group conclusions at the earliest.

Smt. Sheela Thomas proposed the vote of thanks and expressed her appreciation for the commitment and enthusiasm which the participants exhibited throughout the programme. She requested the participants to convey their opinions in written or digital format as well.

No	Name	Designation and Department / Institution /Organisation
1	Sri. V. S. Achuthanandan	Chairman, ARC and MLA
2	Sri. Nikhil Dey	Activist, Mazdoor Kisan Shakti Sangathan
3	Smt. Aparna Bhatt	Senior Lawyer, Supreme Court of India
4	Sri. Gouridasan Nair	Senior Journalist, The Hindu
5	Sri. C. P. Nair	Member, ARC
6	Smt. Neela Gangadharan	Member, ARC
7	Smt. Sheela Thomas	Member Secretary, ARC
8	Dr. Mridul Eapen	Member of the State Planning Board (Expert Committee Member)
9	Dr. T.K. Anandi	Gender Advisor to the Government of Kerala (Expert Committee Member)
10	Adv. J. Sandhya	Former Member, KSCPCR (Expert Committee Member)
11	Dr. Jayaprakashan K. P.	Secretary, State Mental Health Authority (Expert Committee Member)
12	Dr. Benoy Peter	Centre for Migration and Inclusive Department (Expert Committee Member)
13	Dr. Shobha B. Nair	Department of Sociology, University of Kerala (Expert Committee Member)
14	Dr. G. Harikumar	State Commissioner for Persons with Disabilities (Expert Committee Member)
15	Dr. M. K. Jayaraj	Former Director, State Institute for the Mentally Challenged (Expert Committee Member)
16	Sri. T. P. Babu	Additional Secretary, ARC
17	Smt. Titty Annie George	Deputy Collector, ARC
18	Sri. C. J. Suresh Kumar	Section Officer, ARC
19	Smt. Sindhu Thulaseedharan	Asst. Professor. Department of Law, Kerala University
20	Smt. Geetha Nazir	Janayugam, Thiruvananthapuram
21	Sri. Sabir Hussain	District- Co-ordinator, Kudumbasree, Collectorate, Pathanamthitta.
22	Dr. Geethakutty P.S.	Professor, Agriculture University, Vellanikkara, Thrissur.
23	Dr. Ajitha	Asst. Professor, Department of Public Administration, University of Kerala
24	Smt. V. P. Zuhra	Malaparambu, Kozhikkode.
25	Sri. Anil Joney	Aids Control Society
26	Sri. Dennis Joseph	Aids Control Society
27	Sr. Regy Augustine	Kottayam
28	Smt. Rejitha G.	Sakhi Women Resource Centre, Convent Road, Vanchiyoor, Thiruvananthapuram.

No	Name	Designation and Department / Institution /Organisation
29	Sri. Prem Shankar	State Programme Officer, Social Justice Department.
30	Smt M.C Josephine	Chairperson, Vanitha Commission
31	Adv. Shahida Kamaal	Member, Vanitha Commission
32	Adv. M. S. Thara	Member, Vanitha Commission
33	Fr. Thomas P. D.	Director, Don Bosco Nivas, Thampanoor.
34	Dr. Peter Raj M.	Asst Prof, KILA, Thrissur.
35	Sri. Shiju R.	HSST, Mayyil, Kannur.
36	Smt. Meena Kuruvila	Project Director, Rajagiri College of Social Sciences
37	Smt. T. Radhamany	Smaraka Samithi, Pattom, Thiruvananthapuram
38	Smt. Devaki Variar	Smaraka Samithi, Pattom , Thiruvananthapuram
39	Adv. Muhamed Anzari	Director, EDGE Skills Academy, Pathanamthitta.
40	Fr. Joy James	
41	Sri. Rajesh P. C.	
42	Dr. K Ashokan	
43	Sri. Nandu C.	
44	Sr. Biji Jose	
45	Smt. V. Sheena	Janmabhumi
46	Dr. Abey George	Director, Social Audit, Swaraj Bhavan, Thiruvananthapuram.
47	Smt. Dhanya Raman	
48	Smt. Unni Amma Ambalam	
49	Smt. Kala Shibu	Counsellor, Mar Ivanios College, Thiruvananthapuram.
50	Sri. Baby Prabhakar	Blue Point Organisation, Vellayambalam, Thiruvananthapuram.
51	Sri. Ajith Venniyoor	Member, Child Welfare Committee, Poojapura, Thiruvananthapuram.
52	Sri. Amaravila Ramakrishnan Nair	Senior Citizens Friends Welfare Association, Ramagiri, Ookodu.
53	Sri. P. Kumaran	General Secretary, Kerala Senior Citizens Forum, Kannur.
54	Dr. Nandiat R. Soman	Senior Citizens Association of Thiruvananthapuram.
55	Dr. P. K. B. Nayar	Chairman, Centre for Gerontological Studies, Kesavadasapuram, Thiruvananthapuram.
56	Sri. E. H. Jones	Secretary, National Senior Citizen's Movement, Kesvadasapuram, Thiruvananthapuram.

No	Name	Designation and Department / Institution /Organisation
57	Sri. C. P. Abraham	Federation of Senior Citizen's Association, Changanoor.
58	Dr. M. A. Karim	President, National Senior Citizen's Movement, Nemom, Thiruvananthapuram.
59	Sri. S. Murukan	Theruvoram Pravarthaka Association
60	Sri. Biju Mathew	Help Age India
61		Superintendent, Care Homes, Pulayanarkotta.
62	Sri. G. Surendran Pillai	Senior Citizens Service Council, Thiruvananthapuram.
63	Sri. P. S. Amalraj	Vice Chairman, Gandhibhavan, Kollam.
64	Smt. Eliamma Thampy	Help Age India
65	Sri. Shubin Antony	Help Age India
66	Sri. Gopala Krishna Das	Secretary, Seniors Citizens's Forum
67	Smt. Amala Mathew	Research Scholar, Dept of Sociology, University of Kerala.
68	Sri. P.V Chandrasekharan	Senior Citizen's Friends Welfare Association
69	Dr. K.P. Thriuvikramji	KURTA, Thiruvananthapuram.
70	Sri. K. Krishna Pillai	National Senior Citizens Movement.
71	Sri. R. Rajan	Secretary, Senior Citizens Friends Welfare Association.
72	Sri. M. Purushothaman Nair	Federation of Senior Citizens Association of Kerala.
73	Smt. P. Vijayamma	Senior Citizen Service Council.
74	Sri. Jose Varghese	Theruvoram, Ernakulam.
75	Dr.Sagar .T	Superintendent, Mental Health Centre, Peroorkada, Thiruvananthapuram.
76	Dr. Rekha T.R.	Superintendent, Mental Health Centre, Thrissur.
77	Dr. Rajendran N.	Superintendent, Mental Health Centre, Kozhikkode
78	Dr. Varghese Punnose	HOD, Department of Psychiatry, Medical College, Kochi.
79	Dr. Vidhu Kumar	HOD, Department of Psychiatry, Medical College, Kochi.
80	Dr. Kiran P S	Psychiatrist, Govt. Mental Health Centre, Thiruvananthapuram.
81	Dr. Radhakrishnan M P	Secretary, Indian Psychiatric Society
82	Fr. Joshua	Sneha Veedu (NGO)
83	Smt. Nanda	Psychiatric Social Worker
84	Dr. Sany Varghese	President, Indian Association of Clinical Psychology, Kerala Chapter.

No	Name	Designation and Department / Institution /Organisation
85	Dr. Geethanjali Natarajan	Asso. Professor & HOD, Clinical Psychology Department.
86	Sri. E Nazeer	Secretary, Chitath, NGO
87	Dr. Sreelal A	Vice President- Tvm Zone – IACP- KR
88	Dr. Satheesh Nair	Former President and Ex-office member, IACP- KR
89	Dr. Vinod	PSW
90	Dr. Renjith R. Raveendran	
91	Smt. Rajasree	Joint Director, Social Justice Department.
92	Dr. Anilkumar T.V	Professor, Psychiatry, Medical College Hospital, Tvm
93	Fr. Roy Vadakkal	Orphanage Association
94	Dr. P. Bhanumathi	AMHA Ashirvad, Thrissur
95	Smt. Thankamany	Principal, Mariyon Play Home
96	Sr. Rani	Holy Cross Special School, Manakkad
97	Sri. Philip Simon	Vallyathu Kalayil, Kottathur PO
98	Smt. Mothi K Habeeb	Rotary Institute for Children in Need for Special Care.
99	Smt. Shobhana P	Principal, Jaycee Special School, Dharmadam, Thalassery.
100	Smt. Maya S	Principal, Santhi Sadanam School for Differently Abled, Kozhikkode.
101	Dr. Malini	U. C College
102	Dr. Mohammed Asheel	Executive Director, KSSM
103	Smt. Kairali M.P.	KSSM
104	Sri. Sunil Dutt	Shri. Sathya Sai Baba Education & Health Care Charitable Trust.
105	Sri. Sukumaran	General Secretary, Parivar Kerala.
106	Sri. Shanmugham A.	President, All Kerala Association of the Deaf (AKAD)
107	Sri. Jayakumaran Nair	Secretary, Parents Association of Disabled Students (PADS)
108	Sri. Baby Mathew	Chairman, All Kerala Federation of the Deaf
109	Sri. Ramachandran Nair	President, Differently Abled Employees Federation of India.
110	Sri. D Rajendran	President, All Kerala Federation of the Deaf
111	Sri. Prasanth P.S.	Treasurer, All Kerala Federation of the Deaf
112	Sri. P. D. Francis	PARIWAAR, Ernakulam.

No	Name	Designation and Department / Institution /Organisation
113	Sri. A.C. Baby	State Welfare Association for the Physically Challenged
114	Sri. Kottamam Vimal Kumar	Differently Abled Peoples Congress(KPCC Bhavan)
115	Prof. K. A. Chandrasekharan	Disability Affair Consultant, Kollam.
116	Sri. R. Venugopalan	Asrya, Kollam
117	Dr. T. P. Ashraf	Addl. Professor, Paediatrics, Medical College, TVM
118	Smt. Rajalekshmi P	Prinicipal, Faith India Special School, SSEU – State Vice President
119	Sri. P.C. Scaria	State Welfare Association for the Physically Challenged
120	Sri. Alexander A.	Assistant Labour Commissioner, Department of Labour, Thiruvananthapuram.
121	Sri. Vishnu Narendran	Director, CMID
122	Sri. George Mathew	Social Activist
123	Fr. Shin K.F.	Director, Jeevika, MWM
124	Sr. Gracy	Jeevika, Kozhikode
125	Sri. Manoj Thomas	Jeevika, Kozhikode
126	Fr. Benny Chiramel S.J.	State Coordinator, Lok Manch Kerala.
127	Sri. Thulaseedharan	Labour Commissioner in Charge
128	Sri. Shiju Sheik	Sub-Judge, Legal Services Authority.
129	Smt. Sheena Bashir	Coordinator, SEWA
130	Sri. Alex Dilip Babu	Research Associate, Centre for Management Development, Thiruvananthapuram
131	Sri. Suradh K. Surendran	Research Associate, Centre for Management Development, Thiruvananthapuram

Appendix II

EXECUTIVE SUMMARY

Public Hearing, 5 December, 2017, Thiruvananthapuram

The Background

The State of Kerala, by all indicators, have been compared favourably with other states of the country with respect to the quality of life of women and children. This is demonstrated by the high literacy rate, better sex ratio, low infant mortality rates and better access to education and medical care. However, despite having high human capital and educational attainment, the atrocities against women and children are on the rise. Unless the social and cultural norms promote egalitarian gender relations, education alone cannot prevent such atrocities against women and children. Taking cue from this, the Administrative Reforms Commission (ARC) have decided to study the issues pertaining to enrichment of the quality of life of women and children.

The Public Hearing

The Government of Kerala has set up the Administrative Reforms Commission (ARC) to study various issues in governance and to suggest reforms to make the public services more public-centered, efficient, effective, equitable, affordable, accountable, sustainable and accessible to all. The Commission has selected “Reaching the unreached” as an important area of its functioning. In this backdrop, the Commission held a public hearing session on December 05, 2017 at Olympia Hall, Chandrasekharan Nair Stadium, Thiruvananthapuram, to study the issues pertaining to the welfare of women and children and to harness valuable suggestions from public engaged in various welfare activities in the sector. Various government functionaries, dignitaries from Non-Governmental Organisations and members from the general public turned up at the venue to voice their opinions and concerns regarding the welfare of women and children in the state.

Smt. Sheela Thomas (Member Secretary, ARC) welcomed the members of the Commission as well as the participants of the public hearing. She said that it is the duty of every government to provide an environment suitable for the enrichment of every group of people and that in order to bridge the gap between the people and the government, the Kerala Government had constituted the Commission. She added that despite forming around 52% of the population of the state, a significant portion of the women in Kerala are still marginalized. She briefed on the objectives of the Commission, the various sectors under study and called for effective participation by all participants.

Sri. V. S. Achuthanandan (Chairman, ARC) in his presidential address opined that a government is considered successful only when it have full commitment to its citizens. He added that the administration system in Kerala had always stood apart from other states, as a result of the coordination between various government departments, the strong opposition of people against corruption and accessibility to education for all children. Amidst these favourable conditions, due to red-tapism, flaws by the authorities, inappropriate use of resources, commercialization of education, etc., the administrative system of the state is subject to criticism. He added that there is a big gap between the service delivery of the current administration system and what is desired of it by the public.

The Commission is studying the issues and hurdles in the welfare of six basic groups of people, namely, women, children, elderly people, mentally challenged people, physically handicapped people and immigrant workers from other parts of the country and is proposed to conduct public hearing sessions at Thiruvananthapuram, Ernakulam and Kozhikode. The current public hearing is intended to study the issues of the women and children, the area of study being very important in the present context, as the women and children are increasingly being denied their rights. He concluded that the Government of Kerala had constituted the Commission to suggest reforms and changes to the existing laws in such aspects of governance and he urged the participants for their wholehearted participation.

Summary of Verbal Comments Received at the Hearing

Sri. M. K. Bibin Raj (Secretary, Balasangham) presented the views of the Balasangham, the largest children organization in India. The major suggestions put forward by the Balasangham are as follows:

- » Bring into action the schemes suggested by the Child Welfare Committee.
- » Implement the recommendations given by the Justice V. R. Krishna Iyer Commission on Women and Children's Rights.
- » Restructuring of the Student Police Cadet system.
- » Appropriate measures shall be adopted to regulate the functioning of pre-primary educational institutions in the State.
- » Course curriculum shall be set for the private schools, so as to avoid overburdening the children.
- » Reform the Orphanage Act.
- » At least 30 percent of the budget shall be earmarked for the child welfare activities.
- » Adopt measures to improve the functioning of watch committees.
- » Establish a separate department for child welfare.
- » Enhance the coordination between the Police Department, Social Justice Department and Labour Department, in the conduct of child development programmes.
- » Adopt suitable measures for the upliftment of SC/ST children.

Sri. Sasikumar Kizhakkedom (Manusha, Idukki) presented the views and hurdles faced by the organisations working in the field of women and child welfare. He stressed on the problems

faced by the children of people with inter-caste marriages. The major suggestions put forward by the organisation are as follows:

- » Proper measures shall be taken to issue caste certificates and reservation for children of parents with inter-caste marriages.
- » Give special consideration for inter-caste marriages taking into account their financial status.
- » The reservation criteria shall be set for the inter-caste marriages of people from SC/ST category, similar to the one followed in the case of inter-caste marriages of OBC people.

Smt. P. E. Usha (State Project Director, Kerala Mahila Samakhya Society) presented mainly the issues related to the victims in Prevention of Children from Sexual Offences (POCSO) Act. The major suggestions are as follows:

- » In many POCSO cases, the children are being hurt by the family members itself. Still these family members are considered to be the guardians of the children and the notice for the victim to attend the court is being sent to the family members when the child is in Nirbhaya Home. This shall be revised.
- » The children born to the victims of such sexual harassments form the second generation victims. Measures shall be devised to protect the rights of such children as well.
- » Although the population of Scheduled Tribes is around 2 % in the state, around 24 % of POCSO cases are from ST settlements.
- » Measures shall be adopted to enhance the confidentiality in the investigation process.
- » The laws shall be suitably amended to punish culprits of sexual exploitation cases as well.
- » Strict measures shall be taken to ensure the proper implementation of laws and regulations regarding the prohibition of sexual offenses at the workplace.
- » The judicial system shall be strengthened so as to ensure timely justice to the victims of sexual offenses.
- » Interventions shall be made for the upliftment of unmarried mothers, who had been victims of sexual offenses.

Smt. Asha Jomis (Governance Innovation Labs) presented mainly the issues related to the sexual offenses against women. The major suggestions put forward are:

- » Setting up a department exclusively for the welfare of women.
- » Appointing persons with similar educational background as the area of operation at the core positions in the government departments and organisations.
- » Maintain a list of sexual offenders at the local level and shall ensure that no person in such a list is appointed at the schools.

- » Instead of separate police stations for women, measures shall be adopted to make all police stations women friendly by ensuring the quality of the basic facilities (such as seating, toilet facility, etc.) at the police station.
- » Conduct gender sensitization programmes in schools.
- » Strict measures shall be developed to prevent vulgar projection of women in the media.
- » The investigation process in the cyber-crime cases is not implemented properly. The process shall be revamped with suitable modifications and strict measures shall be developed to ensure confidentiality and timely completion of investigation.
- » Legal aid agencies shall be constituted for women in all districts.
- » Police verification shall be made compulsory before appointing any person in a school.
- » Strict measures shall be devised to ensure timely justice to the victims of sexual offenses.

Smt. T. Radhamani (President, Kerala Working Women's Association) presented various problems faced by the working women. The major recommendations presented are as follows:

- » Internal complaints committees shall be restructured and proper measures shall be taken to ensure the proper implementation. Also, the committees shall be monitored at regular intervals.
- » Formation of a committee headed by the district collector for sexual harassments against women working in the unorganized sector.
- » Revert the amendment of IPC 498A.
- » To build protection homes (SwadharGrah) for girls as well as boys facing domestic violence.
- » To conduct awareness programmes for people on the legal aspects of domestic violence.
- » To create awareness among people about the rights of transgender community.
- » To make timely judgments in divorce petitions filed by women facing sexual assaults in family.

Smt. V. P. Zuhara (NISA, a progressive Muslim women's forum) concentrated particularly on the hurdles faced by the women in Muslim community. She stressed on various factors that need to be addressed to ensure the rights of women in the community. The major suggestions put forward are:

- » Proper interventions shall be initiated to ensure that the triple talaq is not being practiced in the state.
- » Necessary measures shall be devised to ensure that the separation after marriage for Muslims is being made with due consent of both husband and wife.

- » Strict measures shall be developed and awareness programmes shall be conducted to ensure proper registration of marriages among Muslim community.
- » Interventions shall be made to ensure timely justice in the cases of female genital mutilation and child molestation.
- » 'Thandedam Gender Parks' implemented in Kozhikode district are yet to start functioning despite having all the facilities and being inaugurated long back.
- » Stringent guidelines shall be established to prevent functioning of drug dealers in and around educational institutions.

Sri. Arun P. S. (Governance Innovation Labs) pointed out that during the law framing process for the welfare of women and children, all stakeholders must be given participation. He added that men can provide significant contribution in developing measures to reduce the atrocities against women. The major suggestions put forward are:

- » Measures shall be developed for soliciting public opinion in the processes of policy and law making.
- » Men should also be given a chance to express their opinions on implementation of welfare activities for women and children.
- » Awareness programmes for the public on new acts, amendments, other regulations and its implications through effective use of mass media.
- » Proper intervention shall be made to improve the implementation of Internal Complaints committees.
- » A Women's rights charter bill, as drafted by the Government of Delhi in 2015, can be made for the protection of the rights of women.
- » A bill was proposed in 2013 for the protection of privacy and dignity of women, but no further steps had been taken.
- » Stalking shall be made a non-bailable offense.
- » Kerala Women's Collaborative Repository Portal initiated by the state government in 2013 is not updated. Necessary steps shall be taken to update the same.

Smt. Sulochana Ramakrishnan (Women's Voice) presented her views on the measures to be taken to enhance the efficiency of the welfare activities for women and children. The major suggestions are:

- » Internal Complaints committee shall be made mandatory in every organisation in the state.
- » Changes in the education system shall be made for the ST children with due consideration to their culture and lifestyle.
- » More powers shall be delegated the women's police stations for their effective functioning.
- » Women's Commission shall also be given more powers for ensuring timely justice.

- » Majority of the population in old age homes are women. Schemes shall be devised to provide pension and health insurance schemes to them.
- » A proper schedule shall be developed by the courts for handling the cases of domestic violence against women.

Smt. Manju Balu (CheruResmi Centre) highlighted the difficulties faced by the fishermen community of Poonthura. She added that certain families are not in possession of ration cards, and also asked the commission to take necessary measures to issue ration cards for these families.

Dr. Vijayalekshmi (Chairperson, Women Empowerment and Human Resources Development Centre of India) briefed on the measures to be taken to protect the rights of women and children. The major suggestions include:

Awareness programmes shall be used as a tool for reducing the atrocities against women and children.

- » Important laws and acts related to the protection of rights of women and children shall be included in the curriculum from fifth standard onwards so that the future generation remains informed.
- » Efforts shall be directed towards the creation of a stress-free atmosphere for women and children to utilize their potential for the benefit of the society.

Smt. Dharani Suresh (Governance Innovation Labs) pointed out the need to set up feeding rooms in the public places and government offices. Her major suggestions are:

- » Feeding rooms shall be built in public gathering places and shops to help feeding mothers.
- » The maternity laws approved by the central government shall be reinforced by the state government, regarding the provision of daycare facilities, feeding rooms, etc.

Smt. Anju Muraleedharan (Governance Innovation Labs) stressed on the unlawful norms and conditions followed by various service consultancies in the state. She added that strict measures shall be taken against such service consultancies.

Sister Jeseena (Kerala Social Service Forum) presented her views regarding the effectiveness of the current system in protecting the rights of women and children and made some valuable recommendations regarding the same. The major suggestions are:

- » Studies show that there is an increase in the number of women being isolated from the rest of the society, majority of whom are uneducated and unemployed. This happens mostly in the case of unmarried mothers and handicapped women. They are kept away from the social events mostly by their own families. Government shall take necessary steps to ensure that the benefits of various schemes and programmes reach these persons.
- » These isolated persons do not have their name incorporated in the records of the government, such as ration card, aadhaar card, etc. Government shall initiate activities to identify such persons and to provide them such authentic documents.

- » There are a lot of isolated women in the ST settlements. Adequate interventions are to be taken to education, health and insurance services to these people.
- » Protection homes shall be made available for the ST women who are victims of domestic violence.

Smt. Shydhya Beegom, representing Childline Project, Punalur Social Service Society, Kollam, voiced her opinion regarding the state of women and child welfare in the state. The suggestions she put forth may be summarised as follows:

Measures shall be taken to ensure the disbursement of complete scholarship amount to differently abled children from district panchayath, block panchayath and village panchayath divisions.

Government schools shall be set up for differently abled children as they often get sidelined in normal schools.

Dedicated special homes shall be set up for differently abled children who fall victim to POCSO (Protection of Children from Sexual Offences Act) cases.

Special projects shall be introduced by the Government, similar to the Sweekar Project that was in place.

Sri. Binu George, also from Childline Project, Punalur Social Service Society, Kollam, added to the facts stated by his colleague, emphasising more on the need for relevant awareness programmes in all educational institutions, rather than just restricting the scope to Government schools.

Adv. Sister Regy Augustine, representing Medical Mission Sisters Collectorate brought to the notice of the commission various matters of social relevance and put forth a few suggestions which have been summed up as below:

- » Effective measures shall be introduced for the prevention of human trafficking, which is seen to be on the high of late. A regulatory body, under the supervision of an official of not less than DYSP rank shall be formed so as to keep such unfortunate instances in check.
- » Healthy and potent discussions shall be held on problems faced by women who fall prey to domestic violence and effective means for implementing related laws shall be arrived at.
- » Cases involving domestic violence shall be resolved as soon as possible, since delay in administering justice shall affect the victims quite adversely. It may also be noted that such cases are usually summoned towards the end of court sessions so that women are kept waiting, quite often with their infants, in court premises, where even basic facilities such as feeding rooms are absent.
- » Section IPC 498A has been liberalised considerably so that the intended effect of the law often stands defeated. This shall be looked into, and required measures shall be taken to restore the effectiveness of the same.
- » Rehabilitation and skill training centres shall be set up for children coming from juvenile homes after their punishment period.

- » A special magistrate shall be appointed in juvenile justice boards dealing with more than 80 cases to ensure timely disposal of justice to children.
- » According to Juvenile Justice(JJ) Act all orphanages should be registered under JJ ACT. But not all private orphanages are registered properly. These shall be taken into consideration while setting the rules for JJ Act, Kerala.
- » Timely disposal of justice shall be ensured for cases coming under POCSO law (at least within 6 months).
- » Provision for setting up government children's homes and observation homes for girls and boys shall be made for the rehabilitation of dropout children.
- » Amendments liberalising child labour laws shall be reverted so that exploitation of loopholes shall be avoided.

Smt. Meera Mohan, Secretary of Women Empowerment Wing, Costford, Thrissur presented the following recommendations:

- » Provision shall be made to allot special funds for aged people, especially women; public places shall be made more old-age-friendly.
- » Pension amount being provided to aged people shall be increased from 1200 rupees to at least 3000 rupees.
- » Janmaithri Police Stations shall be entrusted with the monitoring activities and eradication of violence against aged people.
- » Free health check-up campaigns shall be arranged for women above 30 years of age
- » Measures shall be made to provide medical allowance for isolated and widowed women.
- » Prevention of sexual assaults against women in workplaces shall be ensured by enacting relevant laws.
- » Women friendly toilets and refreshment rooms shall be set up in all public places.
- » Gender resource centres shall be set up in all panchayats to ensure empowerment of women.
- » To uphold the rights of differently abled people and transgender community, laws should be made more stringent.
- » ShishuVihars shall be setup in organisations having more than 100 women employees.
- » Women working in unorganised sector shall be provided with shelter homes.

Smt. Anitha Joy representing Medical Mission Sisters, Thiruvananthapuram voiced her opinion on the current state of affairs and put forth the following suggestions:

- » Operation of NGOs for the welfare of women working in unorganised sector, especially in rural areas, shall be made more productive.
- » Proper education of children from fisherman community shall be ensured through adequate reforms.

- » It may be observed that domestic violence is faced mainly by women who are unemployed. Adequate funds shall be allotted for self-employment of women belonging to fisherman community and more programmes shall be introduced for their welfare.
- » Relevant schemes shall be introduced as part of Employment Guarantee Programme for women so as to ensure their productivity and resource development.

Smt. Bindu P., a resident of Pallithanam, expressed her grievance regarding the POCSO case as which her child being the victim has been shifted to the protection home and she is not been able to take care of her. She also demanded the timely punishment of the culprit.

Smt. Swapna, a student of the Pre-Primary Teacher Training Institute, located at Thiruvananthapuram Shared her views on the difficulties faced by the students of the centre. She pleaded that they shall be considered while appointing teachers in Anganwadi Functioning under the social security mission.

Summary of Suggestions

- » Bring into action the schemes suggested by the Child Welfare Committee.
- » Implement the recommendations given by the Justice V. R. Krishna Iyer Commission on Women and Children's Rights.
- » Course curriculum shall be set for the private schools, so as to avoid overburdening the children.
- » Establish a separate department for child welfare.
- » The reservation criteria shall be set for the inter-caste marriages of people from SC/ ST category, similar to the one followed in the case of inter-caste marriages of OBC people.
- » The Nirbhaya Home officials shall be considered guardians of the children who are the victims of sexual offenses, and the notices from the courts for the victims shall be sent to the Nirbhaya Home itself.
- » The laws shall be suitably amended to punish culprits of sexual exploitation cases as well.
- » The judicial system shall be strengthened so as to ensure timely justice to the victims of sexual offenses.
- » Interventions shall be made for the upliftment of unmarried mothers, who had been victims of sexual offenses.
- » Setting up a department exclusively for the welfare of women.
- » Appointing persons with similar educational background as the area of operation at the core positions in the government departments and organisations.
- » Maintain a list of sexual offenders at the local level and shall ensure that no person in such a list is appointed at the schools.

- » Strict measures shall be developed to prevent vulgar projection of women in the media.
- » Internal complaints committees shall be restructured and proper measures shall be taken to ensure the proper implementation.
- » Formation of a committee headed by the district collector for sexual harassments against women working in the unorganized sector.
- » Revert the amendment of IPC 498A.
- » Necessary measures shall be devised to ensure that the separation after marriage for Muslims is being made with due consent of both husband and wife.
- » Stringent guidelines shall be established to prevent functioning of drug dealers in and around educational institutions.
- » Men should also be given a chance to express their opinions on implementation of welfare activities for women and children.
- » Kerala Women's Collaborative Repository Portal initiated by the state government in 2013 is not updated. Necessary steps shall be taken to update the same.
- » Important laws and acts related to the protection of rights of women and children shall be included in the curriculum from fifth standard onwards so that the future generation remains informed.
- » Feeding rooms shall be built in public gathering places and shops to help feeding mothers.
- » The isolated women in the society do not have their name incorporated in the records of the government, such as ration card, aadhaar card, etc. Government shall initiate activities to identify such persons and to provide them such authentic documents.
- » A regulatory body, under the supervision of an official of not less than DYSP rank shall be formed so as to prevent human trafficking cases.
- » Rehabilitation and skill training centres shall be set up for children coming from juvenile homes after their punishment period.
- » Gender resource centres shall be set up in all panchayats to ensure empowerment of women.
- » ShishuVihars shall be setup in organisations having more than 100 women employees.

Smt. Sheela Thomas expressed her appreciation and gratitude to all participants and requested them to chime in their opinions in written or digital format as well.

Appendix III

EXECUTIVE SUMMARY

Public Hearing, 4 January 2018, Ernakulam

The Background

The State of Kerala has always made it a point to address the needs of the sidestepped and vulnerable communities through the effective implementation of relevant acts and schemes. The evidently high rate of educational attainment, better sex ratio, low infant mortality rate and better access to education and medical care may be mentioned as a few of the laurels that the State has to its credit. However, despite efforts to address the issues of the marginalized classes of the society, undesirable situations keep surfacing from time to time, evidently, due to the lack of effective implementation of various schemes and acts. A major concern that has been observed of late is the problems faced by the senior citizens and the migrant workers. Taking cue from this, the Administrative Reforms Commission has decided to study the issues pertaining to the quality of life of senior citizens and migrant workers in the State and to harness valuable suggestions regarding the review of existing legislations.

The Public Hearing

The Government of Kerala has set up the Administrative Reforms Commission (ARC) to study various issues in governance and to suggest reforms to make the public services more public-centered, efficient, effective, equitable, affordable, accountable, sustainable and accessible to all. The Commission has selected “Reaching the unreached” as an important area of its functioning. In this backdrop, the Commission held a public hearing session on January 04, 2018 at Town Hall, Ernakulam, to identify the flaws in the implementation of various welfare legislations for the senior citizens and migrant workers, and to harness valuable suggestions from public engaged in various welfare activities in the sector. Various government functionaries, dignitaries from Non-Governmental Organisations and members from the general public turned up at the venue to voice their opinions and concerns regarding the welfare of senior citizens and migrant workers in the state.

Smt. Sheela Thomas (Member Secretary, ARC) welcomed the members of the Commission as well as the participants of the public hearing. She said that it is the duty of every government to provide an environment suitable for the enrichment of every group of people and that in order to bridge the gap between the people and the government, the Kerala Government had constituted the Commission. She added that one of the major aspects selected for study by the Commission is “reaching the unreached”, and that the Commission attempts to identify and propose remedial measures for the shortcomings in ensuring prompt services to the public, irrespective of caste and creed. She highlighted the importance of the various public hearing sessions organized by the Commission, in developing suitable reform measures. She introduced the topic for discussion and pointed out that in Kerala, Ernakulam is the district with highest population of migrant workers.

Shri. V. S. Achuthanandan (Chairman, ARC) in his presidential address opined that it is the duty of the government to ensure proper administering of the services delivered to all classes of people. He added that the problems faced by various marginalized communities need to be addressed and effective measures have to be developed for improving the governance system. He emphasized on the importance of proper service delivery and said that the flaws in the current service delivery mechanism need to be avoided at the earliest. He stated that the Commission in its attempt to bridge the gap between the government and people, had selected six categories of people to study the shortcomings in the current service delivery process and to develop appropriate remedial measures to counter the same. He asserted that the public hearing sessions of Administrative Reforms Commission are an opportunity for the public to voice their concerns and to suggest their suggestions regarding service delivery.

He observed that the legislative council set up for ensuring the welfare of senior citizens needs to be monitored suitably and satisfactorily so that its purpose remains a reality. He affirmed that the suggestions from previous hearing sessions, such as setting up of a separate department for senior citizens, setting up of Senior Citizens Commission, enhancing the medical assistance and the special consideration in public transport means, etc., are under consideration of the Commission. He also said that adequate measures and policies are to be devised to ensure effective transfer of skills and knowledge from the experienced veterans to the younger generations. He also expressed his concern regarding the rise in atrocities against the migrant workers. He urged the participants to participate wholeheartedly in the hearing session and to let the Commission be informed of the shortfalls in the current administrative system.

Shri. C. P. Nair (Member, ARC) stated that the purpose of the Commission is to reduce the gap between the public and the government and that it is imperative to identify the measures that are to be implemented at grass root level to improve the governance. He added that the Commission have a keen ear in hearing the grievances of the marginalized and disadvantaged strata of people, and that the Commission will strive to develop reform measures to address such issues.

Summary of Verbal Comments Received at the Hearing

Shri. P. A. Shanmadhuran (Secretary, Kumbalangi Anti-Corruption People's Movement) highlighted the major issues faced by the senior citizens in the state. His major recommendations are:

- » Adequate measures shall be taken by the government to ensure that the senior citizens are in receipt of the benefits of the various schemes.
- » Proper interventions shall be taken to ensure the services of Community Health
- » Centres and Government Hospitals to the public.

Shri. P. P. Balan (Member, Senior Citizen's Friends Welfare Association) stressed mainly on the necessity of setting up government institutions, such as Pakalveedu and paid holiday homes for the welfare of senior citizens. The recommendations put forward are:

- » Adequate number of Pakalveedu shall be set up across the state.
- » The police stations shall be made more approachable and friendly for the senior citizens.
- » Government shall study the possibility of providing proper ID card to senior citizens which will be acceptable in all government offices and public transport means.

- » Proper medical assistance shall be given in the form of free medical check-ups and diagnostic services.
- » Proper functioning of the maintenance tribunals shall be ensured and it should also be made certain that interference by advocates is not entertained at these tribunals.
- » Pension provided to senior citizens shall be promptly disbursed .
- » Proper functioning of bodies, such as Sayamprabha Homes and Vayojana Gramasabhas shall be ensured.
- » Setting up functional libraries, internet facilities and rest houses for the various communities shall prove fruitful in the upliftment of the same.
- » Government shall study the possibilities of introducing RSBY model insurance for senior citizens, supplying free food through Anganawadis, and setting up of dedicated Vayojana wards in taluk hospitals.
- » Academic syllabi in the schools shall include modules pointing out the importance of caring for the elderly.

Shri. M. Somarajan (Senior Fire Supervisor, DIFR Delhi) stated the importance of ensuring effective security of senior citizens. He opined that proper monitoring and timely review of schemes and programmes is required for ensuring the effective implementation and continuance of schemes.

Shri. Sudhakaran (District Secretary, Senior Citizens Friends Welfare Association, Thrissur) highlighted various issues regarding the welfare of senior citizens. His recommendations include:

- » Adequate number of old age homes shall be set up and maintained by the government.
- » Proper functioning of maintenance tribunals shall be ensured.
- » The possibility of introducing a cess for addressing the needs of the aged shall be studied.
- » Proper utilization of the allotted funds shall be ensured.
- » Proper measures shall be adopted to ensure that the provisions in various regulations for the welfare of senior citizens are abided by.

Shri. T. Velayudhan Nair (State Organising Secretary, Senior Citizens Service Council) suggested the formation of a dedicated department for the welfare of senior citizens. His major recommendations are:

- » A department shall be constituted exclusively for the welfare activities for senior citizens.
- » Senior citizen–friendly residential colonies or Vayojana Souhrida Gramas shall be formed.
- » Instead of family income, individual income shall be used as the criterion for providing pension to senior citizens.
- » Pension for senior citizens shall be raised from Rs. 3,500 to Rs. 5,000.

- » Regulations shall be brought in action to make the entrance of buses and other public transport senior-citizen friendly.

Dr. Radhakrishnan Nair (President, Ayyappan Pakalveedu) concentrated his talk on the need to develop proper norms to ensure that the various services offered by the government are serving their purpose. His major suggestions and recommendations are:

- » Adequate regulations shall be enforced to ensure that the senior citizens are taken care of appropriately.
- » A data bank containing the details of senior citizens in the state shall be developed.
- » A detailed Social Security Act for Senior Citizens shall be developed.
- » Adequate number of Pakalveedus shall be set up across the state.
- » Measures shall be adopted to facilitate senior citizens in knowledge and skill transfer sessions, so that younger generations can benefit from them.
- » The possibility of introducing a cess for the welfare of senior citizens shall be studied.
- » Post-death rites shall be addressed by the government.

Retd. Justice Sukumaran Nair opined that utmost care shall be taken in the drafting of laws as well as in the implementation and timely review of the same. He opined that various schemes, although introduced with good intentions, often fail to bear fruit due to delays in operationalization. He added that the public shall be provided with prompt status updates as to whether their request has been accepted, when it will get resolved, etc. A non-governmental apparatus shall be set up at Panchayat level for addressing the various issues faced.

Shri. M. R. Rajendran Nair (President, Anti-corruption Movement) stressed on improving the conditions of the old age homes in the state. He added that the cases involving senior citizens can be settled without proceeding to court, through discussions and out of court settlements. A government body formed exclusively for this purpose will serve the purpose.

Shri. Saji Baby (Director, MIZPAH, Kayamkulam) remarked that the special schools working for the education of the children with disabilities are finding it difficult to survive owing to the lack of adequate working capital. he further put forward the following recommendations:

- » Provide better salary to special education teachers.
- » Special schools with 100 or more students shall be uplifted into aided schools.
- » Medical facilities should be availed cheaply to such students.

Smt. Soniya (State Secretary, SEWA) shared the views of her organisation regarding the welfare of migrant workers in the state. Her major recommendations are:

- » Schemes should be introduced to ensure welfare of migrants by cooperating with their native states.
- » Ration cards should be given to migrant families and the schemes related to it
- » should be developed for these migrants.
- » Child labour should be checked along with exploitation of women migrant workers.

- » Different agencies engaged in the exploitation and sexual abuse of migrant women and children should be punished accordingly.
- » Ensure full potential of PMAY scheme.
- » Migrant Workers Act should be effectively initiated in state favouring the welfare of all migrant employees.
- » Unorganized Social Security Board should be helped to give membership to all workers.

Shri. T. C. Subramaniyan (Member, All India Migrant Workers Union) expressed his concern over the exploitation of migrant workers by the trade unions. His major suggestions were:

- » Proper monitoring of the Trade Unions should be done so as to avoid exploitation of the migrant workers.
- » Human trafficking should be ceased.
- » Adequate and timely medical assistance should be given to the migrant workers.
- » The corpse of deceased migrant workers should be dispatched to their respective native places in a timely manner.

Shri. Vazhoor Soman (President, Kerala Migrant Workers Union) also highlighted the atrocities against the migrant worker community within the state. His major recommendations was that appropriate mechanism need to be incorporated to check the inefficiency of trade unions in fighting the problems faced by migrant workers.

Shri. Binoy Peter (CMID) expressed his concern regarding the upliftment of the migrant workers and added that the issues regarding this group of people shall be brought under the NORKA department. His major recommendations are:

- » Kerala Migrant Workers welfare association should be made efficient in providing aids to the migrant workers.
- » The migrant workers are mostly from ST caste and their conditions should be improved.
- » NORKA should take charge of the welfare of immigrant workers too. Upliftment of
- » NORKA to external affairs agency.
- » Studies should be conducted to evaluate the conditions of the migrant labourers.

Shri. P. J. Baby (a native of Aruvithura) stressed on general problems faced by the society. His major suggestions are:

- » The government services such as police department shall be made more transparent and measures shall be taken to avoid any partiality towards a particular group.
- » Justice should be served regarding the authorized procurement of land.

Shri. Anwar (A migrant worker from West Bengal) expressed his gratitude to the Trade union for helping him run a small scale fruit business successfully.

Smt. Jayasree Kalakkunnath (Edayar School) detailed on how the conditions of the migrant population can be improved by education. She added that a project to bridge the linguistic

barrier of migrant students has already been initiated. She also presented the hurdles in the way of the same. Her major suggestions were:

- » The students of migrant workers cannot meet the expense required for education from far away high school schools. They are deprived of space to study.
- » A monthly scholarship to help continue the education shall be given to the
- » children of migrant workers.
- » Health awareness should be given featuring general health and hygiene.

Shri. K.K. Kumaran (a social activist) commented that the current measures to ensure the well-being of senior citizens are not effectively implemented, citing real life incidents. He added that such cases shall be attended accordingly in a timely and efficient manner.

Smt. Jisha (Social Worker, Palluruthy Relief Center) remarked that proper rehabilitation and care should be provided to immigrants (including mentally challenged and physically weak).

Shri. V. S. Siyad (Jilla President, AITUC) commented on various issues pertaining to the welfare of the migrant workers. His major suggestions were:

- » Appropriate arrangements shall be made to send the corpse of the deceased migrant worker to his native place.
- » Bus stand and railway station should make announcements in their native language of migrant population also, citing the rules and penalties pertaining to possession of illegal items and drugs.
- » Provision for providing ESI schemes to migrant employees shall be studied.

Shri. P. K. Joshi (Member, Kerala Migrant Workers Union) cited incidents where the migrant workers were sent back to their native place by a trade union, as the migrant group had taken membership in a council for the welfare of the migrant population. He added that the government shall take necessary steps to avoid such circumstances.

Shri. C. K. Joseph (Vice-President, Senior Citizen Welfare Association, Ernakulam) commented that Smt. Adeela Abdulla (RDO) had openly disclosed in a public gathering that she has not taken any measures to investigate the grievance of senior citizens. He made a request that government shall take adequate measures to ensure that the grievances of senior citizens are addressed accordingly.

Shri. Dabster K. C. (a native of Ayyampilly) complained that there has been many instances of delay in sanctioning requests of senior citizens. The major points he made were:

- » Delay in sanctioning requests of senior citizens shall be avoided.
- » Diabetic medicines should be given two days a week instead of one day.
- » Proper usage of funds allotted should be ensured. Collector should introduce a body to inspect any misuse/wastage of the allotted funds.
- » Pension should be allotted via any bank within the constituency.

Shri. Shin K. F. (Director, Jeevika Migrate Workers Union) said that hostels shall be made to accommodate the children of the migrant workers and that the migrant community shall be given job opportunities in government departments.

Summary of Suggestions

- » Adequate number of Pakalveedu shall be set up across the state.
- » The police stations shall be made more approachable and friendly for the senior citizens.
- » Government shall study the possibility of providing proper ID card to senior citizens which will be acceptable in all government offices and public transport means.
- » Proper medical assistance shall be given in the form of free medical check-ups and diagnostic services.
- » Proper functioning of the maintenance tribunals shall be ensured and it should also be made certain that interference by advocates is not entertained at these tribunals.
- » Pension provided to senior citizens shall be promptly disbursed .
- » Proper functioning of bodies, such as Sayamprabha Homes and Vayojana Gramasabhas shall be ensured.
- » Government shall study the possibilities of introducing RSBY model insurance for
- » senior citizens, supplying free food through Anganawadis, and setting up of dedicated Vayojana wards in taluk hospitals.
- » Academic syllabi in the schools shall include modules pointing out the importance of caring for the elderly.
- » Proper monitoring and timely review of schemes and programmes shall be ensured for effective implementation and continuance of schemes.
- » The possibility of introducing a cess for addressing the needs of the aged shall be studied.
- » Proper utilization of the allotted funds shall be ensured.
- » Proper measures shall be adopted to ensure that the provisions in various regulations for the welfare of senior citizens are abided by.
- » A department shall be constituted exclusively for the welfare activities for senior citizens.
- » Senior citizen–friendly residential colonies or Vayojana Souhrida Gramas shall formed.
- » Instead of family income, individual income shall be used as the criterion for providing pension to senior citizens.
- » Pension for senior citizens shall be raised from Rs. 3,500 to Rs. 5,000.
- » Regulations shall be brought in action to make the entrance of buses and other public transport senior-citizen friendly.
- » A data bank containing the details of senior citizens in the state shall be developed.
- » A detailed Social Security Act for Senior Citizens shall be developed.
- » Measures shall be adopted to facilitate senior citizens in knowledge and skill transfer sessions, so that younger generations can benefit from them.

- » Post-death rites shall be addressed by the government.
- » The public shall be provided with prompt status updates as to whether their request has been accepted, when it will get resolved, etc.
- » Provide better salary to special education teachers.
- » Special schools with 100 or more students shall be uplifted into aided schools.
- » Medical facilities should be availed cheaply to children with disability.
- » Schemes should be introduced to ensure welfare of migrants by cooperating with their native states.
- » Ration cards should be given to migrant families and the schemes related to it should be developed for these migrants.
- » Child labour should be checked along with exploitation of women migrant workers.
- » Different agencies engaged in the exploitation and sexual abuse of migrant women and children should be punished accordingly.
- » Migrant Workers Act should be effectively initiated in state favouring the welfare of all migrant employees.
- » Proper monitoring of the Trade Unions should be done so as to avoid exploitation of the migrant workers.
- » Human trafficking should be ceased.
- » Adequate and timely medical assistance should be given to the migrant workers.
- » The corpse of deceased migrant workers should be dispatched to their respective native places in a timely manner.
- » The government services such as police department shall be made more transparent and measures shall be taken to avoid any partiality towards a particular group.
- » A monthly scholarship to help continue the education shall be given to the children of migrant workers.
- » Health awareness should be given to migrant population in the state, featuring general health and hygiene.
- » Bus stand and railway station should make announcements in their native language of migrant population also, citing the rules and penalties pertaining to possession of illegal items and drugs.
- » Diabetic medicines should be given two days a week instead of one day.
- » Proper usage of funds allotted should be ensured. Collector should introduce a body to inspect any misuse/wastage of the allotted funds.
- » Pension should be allotted via any bank within the constituency.

Shri. T. P. Babu (Additional Secretary, ARC) expressed his appreciation and gratitude to all participants and requested them to give in their opinions in written or digital format.

Appendix IV

EXECUTIVE SUMMARY

Public Hearing, 5 January 2018, Palakkad

The Background

The State of Kerala has often been lauded for its impeccable human development indicators, comparable to those in other states. The evidently high literacy rate, better sex ratio, low infant mortality rates and better access to education and medical care may be mentioned as few of the laurels that the State has to its credit. However, despite having high human capital and educational attainment, the pace of development is getting affected by the overall changes in social, economic and demographic dimensions. The various disadvantaged groups among the society often find it difficult to lead a safe and peaceful life as even the instances of anti-social elements venting out their frustrations on relatively vulnerable beings are on the rise.

Another concern that has been observed of late is the problems faced by all strata of citizens due to the lack of timely updating the laws and regulations. Taking cue from this, the Administrative Reforms Commission (ARC) have decided to study the issues pertaining to enrichment of the quality of life of various marginalized communities and bring in a constructive review of existing welfare legislations.

The Public Hearing

The Government of Kerala has set up the Administrative Reforms Commission (ARC) to study various issues in governance and to suggest reforms to make the public services more public-centered, efficient, effective, equitable, affordable, accountable, sustainable and accessible to all. The Commission has selected “Reaching the unreached” as an important area of its functioning. In this backdrop, the Commission held a public hearing session on January 05, 2018 at Town Hall, Palakkad, to identify the flaws in the implementation of various welfare legislations and the schemes for Physically/mentally challenged persons, and to harness valuable suggestions from public engaged in various welfare activities in the sector. Various government functionaries, dignitaries from Non-Governmental Organisations and members from the general public turned up at the venue to voice their opinions and concerns regarding the welfare of senior citizens and migrant workers in the state.

Smt. Sheela Thomas (Member Secretary, ARC) welcomed the members of the Commission as well as the participants of the public hearing. She said that it is the duty of every government to provide an environment suitable for the enrichment of every group of people and that in order to bridge the gap between the people and the government, the Kerala Government had constituted the Commission. She added that one of the major aspects selected for study by the Commission is “reaching the unreached”, and that the Commission attempts to identify and propose remedial measures for the shortcomings in ensuring prompt services to the public, irrespective of caste and creed. She pointed out that there are instances where the government fails to provide effective solutions to the various problems faced by the people.

The Commission therefore attempts to identify the issues faced by the public and the need for updating the welfare legislations.

Shri. V. S. Achuthanandan (Chairman, ARC) in his presidential address opined that it is the duty of the government to ensure proper administering of the services delivered to all classes of people. He added that the problems faced by various marginalized communities need to be addressed and effective measures has to be developed for improving the governance system. He emphasized on the importance of proper service delivery and said that the flaws in the current service delivery mechanism need to be avoided at the earliest. He stated that the Commission in its attempt to bridge the gap between the government and people, had selected six categories of people to study the shortcomings in the current service delivery process and to develop appropriate remedial measures to counter the same. He asserted that the public hearing sessions of Administrative Reforms Commission are an opportunity for the public to voice their concerns and to suggest their suggestions regarding service delivery.

He observed that at times, there is a lack of distribution of legal benefits among the women, children, physically/mentally challenged people, etc. he added that the Commission aims at devising reform measures for ensuring the equal dissemination of legal benefits to all strata of people. He urged the participants to participate wholeheartedly in the hearing session and to let the Commission be informed of the shortfalls in the current administrative system.

Shri. C. P. Nair (Member, ARC) stated that the purpose of the Commission is to reduce the gap between the public and the government and that it is imperative to identify the measures that are to be implemented at grass root level to improve the governance. He added that the Commission have a keen ear in hearing the grievances of the marginalized and disadvantaged strata of people, and that the Commission will strive to develop reform measures to address such issues.

Summary of Verbal Comments Received at the Hearing

Shri. K. A. Mohanan (a retired Head Master from Kanjiparambil) stated that pension for mentally/physically challenged people shall be provided irrespective of their income. He also requested to provide facilities to remove the water clogging on the road leading to the house of an applicant.

Shri. T. R. Joy (PTA President, Special School Thrissur) shared his views regarding the welfare of the mentally challenged people. His major recommendations were:

- » Autism, Cerebral Palsy, Multiple Disorder and Mental Retardation cases should be considered as a separate section for various schemes and allowances.
- » Ensure that the schools accredited as aided schools are getting its perks.
- » After the demise of the parents, the mentally challenged children shall be included in the BPL list, as usually they are not able to earn on their own.
- » Provide a common concession card/ID card with lifelong validity.

Shri. Gopalakrishnan (a patient suffering from Cerebral Palsy) requested to provide him with a government job to earn his living.

Shri. John Moolan (Director, Pullazhy Mental Health Care Home) stated that the institution is finding it difficult to cope up with the rise in the price of food items and requested for adequate ration provisions for the institution.

Smt. Sobhana appealed for a well-built house for her paralysed son.

Shri. R. Viswanaathan (Member, Parivaar) shared his views and concerns regarding the welfare of mentally challenged people. His major recommendations were:

- » Provide special educational facilities to the mentally challenged people.
- » Provide vocational training and job opportunities to the affected people.
- » Provide special consideration at government hospitals to these people.
- » Ensure that all benefits and funds are given to such students.
- » Make sure that the meetings related to such schemes are conducted on a regular basis.

Shri. K. M. Harris (President, Handicapped Welfare Association) stated that Palakkad district do not have the Committee as prescribed in the Right of Persons with Disabilities Act. He called for the timely setting up of the same.

Shri. Madavoor Sasidharan (State Secretary, Kerala Handicap Welfare Association) cited issues faced by the persons with disabilities and made the following recommendations:

- » The teachers who are physically challenged should be given adequate provision for promotions.
- » Make sure that the ID card provided to physically challenged people is accepted in all public utilities and offices.
- » Make sure that the UID cards are availed to the mentally and physically challenged.
- » Provide timely and adequate pension to the physically and mentally challenged people.

Shri. Binoy Jacob (spoke on behalf of Shri. Manikantan, Koduvayoor) suggested the following:

- » Provide wheelchair for the physically challenged people (including Manikantan from Koduvayoor Panchayath) by providing adequate fund to the panchayaths.
- » Increase the limiting income for concession in KSRTC bus passes.
- » Provide pension to HIV affected people by maintaining confidentiality of the records.
- » Provide benefits of BPL scheme to widows.

Shri. K. C. Manikantan (a native of Thrithala) made the following recommendations:

- » Extend the laser treatment facility to Taluk Hospitals also.
- » Cooperative departments should ensure that the jobs reserved for the blind people should be given without fail.

- » Provide KSRTC pass for the partially blind people too.
- » Make sure that the examination centres for PSC exams are near to their locality.

Smt. Jaseera (Kumaranallor) requested for a pension for her mentally challenged son.

Smt. Panchami (a physically challenged person) requested for a job she is physically challenged.

Shri. Ramakrishnan called for speedy appointment, without further delay, as LD clerk and said that all the documents have already been submitted.

Shri. Venkat Iyer (Member, Parivaar & Nishchintha) explained about Nishchintha and the purpose of its existence. He added that the mentally challenged people deserve help from the government and government should consider such proposals and ideas for further betterment of such students.

Shri. Ramakrishnan A. (Thrithala) commented that special flexibility and exemption in BPL system shall be provided for students affected with poor mental health.

Shri. Rejish (District President, AKWRF, Palakkad) remarked that adequate provisions are needed to establish common as well as individual accommodation facilities to unmarried persons with disabilities. He added that the local government bodies should ensure that such people get pathway/road for transportation. He also said that such people shall be given the benefits of BPL scheme.

Shri. A. Chandran (a native of Vandithavalam) stated that adequate number of technicians shall be appointed at the Palakkad District Hospital and sufficient medical facilities also shall be ensured. He added that there shall be provisions should be there to make the support available at the house of persons with disabilities.

Shri. Govindhan (a native of Kannur) said that special provisions shall be provided in PSC tests for students affected with deafness/blindness (partial) by giving options for other means of test. He also remarked that the BPL provisions shall be ensured by making certain regulations flexible for mentally/physically challenged people.

Shri. V. Sudheer (a native of Koduntharapally) recommended that adequate measures shall be taken by the government to provide house for the physically challenged people without any fail.

Smt. Sajaruneesa (a native of Mankara) made the following recommendations before the Commission:

- » Provide house for the mentally challenged people and to the parents of mentally challenged children.
- » Adequate educational facilities and transportation facilities should be enabled for such students.
- » Buds school and scholarships should be introduced in a large scale.

Shri. Gopalakrishnan (a native of Palakkad) stated that many offices, private as well as public, do not have adequate facilities for enabling easy access for the physically challenged people. Adequate measures shall be adopted so as to make such provisions mandatory in all offices.

Shri. Abdulla (a native of Panniyenkara) remarked that the benefits given to the persons with partial disability shall be increased.

Shri. K. V. Thamban (a native of Peringara) stated that the Government shall study the possibility of providing job to the physically/mentally challenged students without undergoing examination tests, provided they have adequate qualification.

Shri. Radhakrishnan K. (FAITH India Special School, Mannarkkadu) suggested the following:

- » Provide basic facilities to special schools without further delay.
- » Provide salary benefits to the teachers in special schools.
- » Immediate solution should be given regarding various issues of the differently abled persons.

Shri. Shanooj (a native of Kolapully) requested a job for him or a person in his family as he is a physically challenged person and unemployed.

Shri. Jintu Sebastian (ACCORD) commented that adequate measures need to be developed to ensure that the N.G.O participation and accreditation are taken care of. He added that adequate number of awareness programmes are introduced. He also stressed on the need for adequate genetic lab facility across the state so as to prevent disability of the expected babies.

Shri. C. Ramachandran (Lakkidi, Perur) asked for provision to construct a shop. He also highlighted the need for revamping of the roads. He also said that adequate medical facilities shall be given to families with differently abled children.

Dr. P. Bhanumati (AMHA) made the following recommendations:

- » A respite home shall be made for the children with disabilities.
- » Increase the reservation percentage.
- » Provide special courts for trials of the special children in cases such as sexual harassment.

Smt. Sheela Jose (Pratheeksha Bhavan, Irinjalakkuda) stated that pension shall be provided to the children with disabilities as per the medical attention required. She also said that proper transportation facilities shall be ensured for the persons with disabilities.

Smt. Jensia P. (Pathiramattom) requested the help of Commission in availing a scooter for her physically challenged son. She also requested for the correct disability certificate for her son based on proper judgement of the same.

Shri. Rajesh Kannan (a native of Palippuram) commented that the KSRTC bus passes should be given without much complication to the physically/mentally challenged people.

Shri. Akhilesh T. A. (a native of Palayalam) said that it should be ensured that the complainant's registration in employment office is taken care of.

Shri. Binoy Jacob (a native of Thathamangalam) remarked that the remuneration given for cooks in special schools shall be increased.

Shri. Basheer (a native of Pattambi) concentrated highly on the issues of mentally challenged persons. He made the following recommendations:

- » Provide adequate job reservation for mentally challenged people.
- » Arrangements shall be made for employment of the mentally challenged people.
- » Scooter must be provided for mentally challenged people.
- » Increase the allowance given for mentally challenged people.
- » Provide facilities for students studying in private schools too.
- » Ensure rehabilitation and insurance facilities for the affected students.

Shri. P. N. Jagadeeshan (a freelance Journalist from Kallekulangara) stated that adequate facilities shall be arranged to provide passes in KSRTC buses for the physically and mentally challenged people.

Smt. Girija K. (Jai Kristhu School, Kannara) asked for adequate funds for teachers in the special school she is working.

Smt. Praseetha A. (a native of Ezhakkad), being orphaned, requested help in getting a job.

Shri. G. A. Yohannan Kannampalli (Ashraya Bhavan, Pariyaaram) suggested that allowances and improved income shall be provided to special school teachers. He also commented that the mentally challenged children shall be included in the BPL ration card.

Sister Nirmala (Santhwanam, Kodinjambara) recommended that free consultation shall be given to AIDS patients. He also said that his institution does not have adequate access to water and that proper facilities for ensuring availability of water are required.

Shri. Sivaramakrishnan N. (a native of Chittor) stated that transfer of workplace should be avoided for parents of physically challenged students.

Smt. Noor Jahan Abdul Razak (District Autism Centre, Malampuzha) recommended the introduction of a curriculum for special school students apart from the regular syllabus. The special teachers should be given proper guidance and training. The special schools shall also be provided an occupational therapist. He also asked for immediate release of the sanctioned funds. He also said that the school is in urgent need of a vehicle.

Smt. Girija (President Parali Panchayath) commented that the three wheeler vehicle should be given as per the sanction to avoid the fund allotted becoming lapse.

Shri. Krishnan A. (a native of Kanjiramkunnu) asked for adequate financial assistance and job to his children.

Shri. Sivadasan M. (a physically challenged person from Pudussery) requested the authorities to sanction financial assistance for building a home.

Smt. Sajitha M. (a native of Olassery) requested for educational as well as other benefits for her son.

Shri. A. Abubacker (State Human Right Protection Centre) pointed out that the persons with disabilities among the tribal communities are not in receipt of the benefits of various schemes of the Government. He added that the services to those citizens shall be ensured.

Smt. Laila Abdul Rahman (a widow from Kizhakkanchery) requested for financial assistance from the government to take care of her children.

Shri. Ramankutty A. P. (a native of Palakkad) made a complaint regarding the land dispute he is involved in, and requested the help of authorities in settling the dispute as soon as possible.

Shri. Rajan V. D. (a blind person from Kodumbala) requested facilities for self-employment. He also requested facilities for drinking water and toilet in his house.

Smt. Sheeja P. K. (a native of Mannarkkad) made a request for getting deputed as PTCM in Education department.

Shri. Keshavan (Vice-President, Thiruvegappura Grama Panchayath) remarked that the power to sanction vehicles to physically challenged persons shall be delegated to grama panchayats.

Shri. Prasad Ponnamma (a native of Melarkodu) requested for provisions to absorb the physically challenged persons working on temporary basis in various departments and organisations.

Smt. Kanakalatha C. (a native of Palakkad) requested for adequate housing facility and a vehicle for her family. She also stated that the physically challenged people shall be provided with jobs giving due consideration to their skill and capabilities.

Shri. Radhakrishnan K. (a native of Mannarkkad) remarked that the funds should be distributed equally and that the mentally challenged people should be provided with government jobs.

Shri. K. Kannadasan (a native of Thanissery) provide small scale employment opportunities like phone booths and small scale shops to employ physically challenged people.

Smt. Jyoti (a native of Karuvissery) requested for the permanent job in Triveni Super Market as sanctioned.

Shri. Raghunathan P. (Parivaar, Malappuram) stated the following:

- » Special 'Ayalkoottam' was formed and awareness was spread in the village of the speaker. Currently these 'Ayalkootam' is not approved by Kudumbashree Department and such systems shall be re-introduced.
- » He also said that the categorization of mentally/physically challenged students should be done according to their disability level.
- » Involve the parents to spread proper awareness in the society.
- » Proper social involvement of physically and mentally challenged students should be done.

Smt. Bisna P. Bhaskaran (FAITH India Special School, Mannarkkadu) pointed out that the tribal children with disabilities are facing malnutrition and said that adequate medical facilities should be given to them including regular check-ups.

Smt. Priya K. Venugopal (Counsellor, ICDS, Malampuzha) remarked as follows:

- » The educational department should provide learning disability certificates properly.
- » The 10th standard students should be immediately given the disability certificates.

Smt. Sheela Thomas (Member Secretary, ARC) asserted that as per the petitions received, the necessary actions will be taken and that various departments of the government will be involved in rectifying the problem and would provide solutions.

Smt. Neela Gangadharan (Member, ARC) remarked that the Commission is of the view that the government offices in the district do not have disable persons-friendly environment and directed the district authorities to ensure that such facilities are made available in every office within the district.

Shri. C. P. Nair (Member, ARC) said that a significant portion of the funds allotted for various schemes to the panchayats are not being utilized and the government are forced to take back the funds allotted. He added that the Panchayats shall take initiative in reaching out to the needy people and shall ensure the proper utilization of the funds allotted. He also commented that the District Collector shall look into the matter.

Smt. Selvakumari (Chairperson, Welfare Study Committee, Nallapally) stated that the delay in processing disability certificates shall be avoided. He added that the campaigns for reaching out to these people shall be encouraged.

Shri. Moosa Pathiyil (District Coordinator, Social Security Mission) mentioned that there is no clarity regarding the person issuing disability proving certificate and that clarity should be brought in regarding the implementing officer. He added that adequate number of psychiatrists shall be deployed in the hospitals in the district.

Smt. Malathy (a native of Melarkode, Nenmara) stated the following:

- » Conduct camps to provide medical certificates in order to avail various facilities.
- » UIDAI cards shall be processed and distributed at the homes of the physically/mentally challenged people.

Shri. Manikantan K. C. (a native of Anakkara) said that various pension schemes are not processed easily in panchayats due to legal obstacles. He requested the Commission to develop measures to address the same.

Smt. Swayamprabha A. (a native of Cherpulassery) suggested the following:

- » The scholarships given to physically/mentally challenged students should be distributed properly. The village office should work actively in achieving this.
- » Constant survey and study must be conducted at panchayath levels.
- » Administrative Reforms Commission should improve the efficiency of panchayats in handling various schemes for the welfare mentally challenged children.
- » In case if a buds school is not present in a panchayath, the sanctioned amount cannot be utilized as the special teaching staff members are required to be involved in the utilisation of the fund.
- » Pension should be given without considering the salary scale of the parents.

Smt. Jameela (a native of Alamallur) said that her nephew is paralyzed and requested for financial assistance to that family.

Summary of Suggestions

- » Autism, Cerebral Palsy, Multiple Disorder and Mental Retardation cases should be considered separately for various schemes and allowances.
- » Provide a common concession card/ID card for the physically/mentally challenged persons with lifelong validity
- » Adequate ration provisions shall be made for the institutions working for the welfare of physically/mentally challenged people.
- » Differently abled persons shall be given vocational training and job opportunities.
- » Special consideration shall be provided to such persons at the government hospitals.
- » The provisions prescribed in the Right of Persons with Disabilities Act shall be implemented accordingly.
- » Proper distribution of UID cards to the mentally/physically challenged shall be ensured.
- » The income limit for concession in KSRTC buses shall be increased.
- » Provide pension to the HIV affected people by maintaining confidentiality of the records.
- » Government shall study the possibility of providing other means of tests for employment to the candidates affected with deafness/blindness.
- » Buds schools and scholarships should be introduced on a large scale.
- » All offices, public as well as private, shall have provisions for easy access to the physically challenged persons.
- » Government shall study the possibility of avoiding the examination tests for the physically/mentally challenged persons with adequate qualification.
- » Immediate solutions shall be given to the cases and issues related to the differently abled persons.
- » NGO participation shall be ensured in various activities for the welfare of differently abled persons. NGO accreditation shall also be brought in.
- » Awareness programmes shall be conducted across the state.
- » Adequate number of genetic lab facilities shall be set up across the state to identify and prevent the disabilities of the expected babies.
- » A respite home shall be made for the children with disabilities.
- » The reservation percentage for the candidates with disabilities shall be increased.

- » Provide special courts for trials of the special children in cases such as sexual harassment.
- » The pension given to the disabled persons shall be based on the medical attention required for them.
- » The teachers as well as support staff in the special schools shall be given allowances and other financial assistance accordingly.
- » The government shall extend its assistance to the students of special schools in the private sector also.
- » Free consultation shall be given to the AIDS patients.
- » Frequent transfer of the parents of disabled children shall be avoided.
- » A new curriculum shall be introduced for special school students.
- » Proper guidance and training shall be given to the teachers in special schools.
- » The service of an occupational therapist shall be made available at the special schools.
- » The authority to sanction vehicles for the physically challenged persons shall be delegated to grama Panchayats.
- » Adequate measures shall be taken to address the malnutrition faced by the tribal children with disabilities
- » The timely issue of learning disability certificates shall be ensured.
- » Adequate number of psychiatrists shall be deployed in the government hospitals.
- » The scholarships sanctioned for the physically/mentally challenged students shall be distributed properly.

Shri. T. P. Babu (Additional Secretary, ARC) expressed his appreciation and gratitude to all participants and affirmed that the Commission will take necessary actions to address the various grievances received during the hearing session. He requested them to send their additional opinions.

Appendix V

EXECUTIVE SUMMARY

Public Hearing, 11 January 2018, Kannur

The Background

The State of Kerala has always made it a point to address the needs of the sidestepped and vulnerable communities through the effective implementation of relevant acts and schemes. The evidently high rate of educational attainment, better sex ratio, low infant mortality rate and better access to education and medical care may be mentioned as a few of the laurels that the State has to its credit. However, despite efforts to address the issues of the marginalized classes of the society, undesirable situations keep surfacing from time to time, evidently, due to the lack of effective implementation of various schemes and acts.

A major concern that has been observed of late is the problems faced by the women and children. Proper drafting and implementation of welfare legislations and addressing the issues pertaining to the welfare of mentally challenged people are also crucial in the upliftment of the disadvantaged sections in the society. Taking cue from this, the Administrative Reforms Commission decided to study the issues pertaining to the quality of life of women and children as well as the issues pertaining to the welfare legislations and mental health, and to harness valuable suggestions regarding the same.

The Public Hearing

The Government of Kerala has set up the Administrative Reforms Commission (ARC) to study various issues in governance and to suggest reforms to make the public services more public-centered, efficient, effective, equitable, affordable, accountable, sustainable and accessible to all. The Commission has selected “Reaching the unreached” as an important area of its functioning. In this backdrop, the Commission held a public hearing session on January 11, 2018 at Police Sabha Hall, Kannur, to identify the flaws in the implementation of various welfare legislations for women and children, and to harness valuable suggestions regarding the welfare legislations and issues pertaining to mental health. Various government functionaries, dignitaries from Non-Governmental Organisations and members from the general public turned up at the venue to voice their opinions and concerns regarding the welfare of senior citizens and migrant workers in the state.

Smt. Sheela Thomas (Member Secretary, ARC) welcomed the members of the Commission as well as the participants of the public hearing. She said that it is the duty of every government to provide an environment suitable for the enrichment of every group of people and that in order to bridge the gap between the people and the government, the Kerala Government had constituted the Commission. She asserted that the Commission attempts to inspect the service delivery mechanism prevalent in the state and seeks to identify and propose remedial measures for the shortcomings in ensuring prompt services to the public, irrespective of caste and creed. She added that the public hearings are being held to identify the flaws in the current

service delivery mechanism. She remarked that the primary objective of the contemporary hearing session was to investigate the issues pertaining to the welfare of mentally challenged people, women and children.

In the absence of Honourable Chairman of the Commission Shri. V. S. Achuthanandan, Smt. Sheela Thomas conveyed his message to the audience. The message highlighted the importance of the public hearing sessions held by the Administrative Reforms Commission, and indicated that the petitions, suggestions and grievances received at the hearing sessions will be looked upon by the Commission and will be forwarded to corresponding departments. He stated that the various schemes of government shall reach to every class of the society, so as to ensure that the disadvantaged classes are in receipt of the benefits. He added that due to negligence and indifferent attitude of certain government employees, the government has not been able to reach to the disadvantaged classes effectively. He observed that the earlier public hearing sessions were quite instrumental for the Commission to learn the real issues faced by the underprivileged groups. He said that all the grievances received had been documented and he demanded active participation by the audience.

Shri. C. P. Nair (Member, ARC) stated that the purpose of the Commission is to reduce the gap between the public and the government and that it is imperative to identify the measures that are to be implemented at grass root level to improve the governance. He added that the Commission have a keen ear in hearing the grievances of the marginalized and disadvantaged strata of people, and that the Commission will strive to develop reform measures to address such issues. He asserted that the various issues and grievances reported at the public hearing sessions of the Commission will be considered accordingly. He urged the participants to openly express their views in the areas selected for study by the Commission.

Shri. K. V. Sumesh (District Panchayat President) stated that the Administrative Reforms Commission (ARC) aims at bridging the gap between the government and people efficiently under the chairmanship of Shri. V. S. Achuthanandan and called for active participation by all the participants.

Summary of Verbal Comments Received at the Hearing

Shri. Johny P. A. (Psychosocial Rehabilitation, Jyoti Nivas, Wayanad) shared his views regarding the issues of mentally challenged people. His major suggestions were:

- » The government should start rehabilitation centres to take care of such affected people by providing legal support.
- » Age-wise categorization of the affected people should be introduced.
- » Government should recruit caretakers to cater the increasing demand.
- » Medication should be given free of cost and should be availed at primary health centres even at remote areas to ensure that the mental health of the affected individuals is restored.
- » Training Centres should be introduced in cities.
- » Special grants and pension should be given to such challenged people.

Shri. P. P. Mohanan (Member of Progressive Arts and Cultural Forum, Kannur) spoke about the exploitation happening to the physically and mentally challenged people. He suggested the following measures shall be recommended by the Administrative Reforms Commission to the State Government.

- » Rehabilitation centres running in the state should be undergoing thorough checks regularly by the government by unifying the ventures under a single body.
- » Government should take care of the expenses of the physically/mentally challenged people.
- » The government hospital employees and doctors should create a friendly atmosphere in the hospitals for these people.
- » Ramps and lifts sanctioned to cater the needs of the physically challenged people should be installed and inspected.

Shri. P. C. Vijayarajan (Member, Child Welfare Committee) shared his views on the need for rehabilitation of the affected people. He made the following recommendations before the Commission:

- » Introduce more rehabilitation centres, Nirbhaya homes and girl's homes.
- » Take immediate action to prevent spreading of pox among the affected girls.
- » Special courts should be established to maintain secrecy to give legal support to women and children.

Shri. Kaanam Kunjiraman (a native of Peringala) asked to sanction a utility wheelchair for his transportation. He also indicated the need to make reforms regarding the design of buses suitably for physically challenged people.

Shri. M. J. Stephen (Sneha Bhavan, Ariyandag) highlighted the problems when the children are adopted from mentally and physically challenged mothers. He made a request to consider such cases and to devise specific measures for the same. He also added that Government shall take steps to provide salary/financial assistance to the caretakers of mentally challenged people in all institutions.

Shri. Damodaran Nair (Santhwanam, Calicut) made the following suggestions before the Commission:

- » Need to set up an office in North Kerala (Malabar Area) to receive sanctions/certificates about health problems.
- » Begin a rehabilitation centre at the land acquired by the government in Kozhikode District Panchayat.

Shri. T. K. Saji (President, District Orphanage Association) requested to provide ration allowances to the orphanages. He also asked for release of the applicable funds without causing delay. He also asked for modification of the Juvenile Justice Act.

Shri. Narayanan T. V. (Member, Kerala Sasthra Sahithya Parishad) raised his concerns regarding the welfare of women and children and made the following suggestions:

- » Gender impact assessment and gender audit should be conducted.
- » Reservations for SC and ST candidates(female) should be made in several posts
- » Provide 33% reservation for women in the posts of heads of various departments and boards.
- » Make sure that the office environments are child, gender and age friendly by providing legal support.
- » Multiple awareness programs must be conducted.

Shri. Balakrishnan M. (Pulikkal Paliative Care Clinic) drew special attention to the issues faced by the mentally challenged people and made the following suggestions:

- » The legal restrictions and objections regarding the rehabilitation of the mentally disabled individuals shall be minimized.
- » Provide concession for such people in buses and other transport means.
- » Provide adequate ration for the affected people living in poor conditions.

Adv. T. K. G. Nambiar (Asha Niketan, Koyilandy) grieved that the land owned by Asha Niketan has been taken by the highway authority, and the same has led to a reduction in space to continue its functions. He also demanded provision for ration cards to the affected people in the institute.

Shri. Damodaran Nair (Santhwanam, Balussery) stated that adequate measures shall be developed to ensure that the disability certificates are provided to affected people with proper judgement of the disability. In addition to this, he made the following recommendations:

- » Financial assistance to the mentally/physically challenged people shall be given with minimal restrictions.
- » Ensure smooth running of camps and introduce adequate social intervention activities.

Smt. P. Santha (Parent of a mentally challenged child, Kunnamangalam) spoke about the need for adequate number of buds schools and vocational schools. She cited that one parent needs to stay at home with the kid while the other parent needs to work. She added that the government shall sanction additional leaves for such parents. She remarked that the guardianship certificates shall be issued as and when a requirement arises.

Shri. C. P. Rashid (Poonoor, Kozhikode) called for adequate interventions for more day care units across the state and provisions for medical aids to vagabonds whenever needed. He said that government shall also ensure proper rehabilitation of orphans.

Shri. Arun P. S. (Freelance Public Policy Researcher) suggested that proper assistance should be given to women facing workplace harassment. He also stated the following:

- » Dampen the overriding effect of the Mental Health Act where the mentally challenged ones are treated as the physically challenged ones.
- » Ensure the best capabilities of the Mental Health Care Review Board and provide digital assistance wherever necessary.

Shri. Ganeshan (a native of Kannadiparambu) said that even after submitting a lot of petitions to the government to get the financial assistance sanctioned by the government, he had not received any reply. He requested for timely disbursement of the aforementioned amount.

Smt. Nisha Edamana (Treasurer, Kannur District Buds School Association & Principal, Buds School, Madayi) complained that the scholarships provided are not always reaching the concerned applicants. She also asked the Administrative Reforms Commission to provide assistance in providing enough salary to the employees of the buds school.

Shri. Saralakshan M. (a retired Head Master from Mamba) suggested the following:

- » Make sure that the procedures used in availing pensions and funds from the government by the affected people are not troublesome.
- » Medical aids should be given to the affected people.
- » Issues related to mentally challenged people should fall a different board other than the board for physically disabled.

Smt. Geetha Balram (Sasthra Shelter Home, Pazhayangadi) requested that immediate care and legal support should be provided for women and children subjected to domestic violence.

Shri. Renjith Babu E. R. (a retired Principal from Koothuparamba) made the following suggestions:

- » Provide a teacher evaluation in schools to improve the efficiency
- » Ensure that the high school students are provided food in school.
- » Conduct surveys to study the condition of political killings and the impacts of it on students.

Shri. M. P. Karunakaran (Parivaar Dist. Secretary) suggested that training institutes must be introduced for teachers of the educational institutions for the mentally challenged children. He also stated that measures should be taken to aid the divorcee mothers who were earlier dependent upon the husbands. He also remarked that there is an urgent need for providing special wards for mentally challenged people in government hospitals.

Shri. K. M. Basheer (Joint Secretary, Initiative in Community Psychiatric Society) pointed out that the schemes provided are not reaching the grass root levels. His suggestions were:

- » Reduce the delay in granting disability certificates to mentally and physically challenged people.
- » Conduct awareness regarding the various certificates/schemes and the procedures involved in getting the certificates.

- » Retain the existing provisions in the panchayat level to ensure maximum benefits.
- » Ensure the availability of psychiatrists in all government hospitals and make sure that enough awareness programs are conducted.
- » The Akashaparava Scheme should be utilized for providing food for the poor and challenged people.

Shri. Sreya P. (Anweshi, Kozhikode) the police systems are not working properly as a few among them are biased. Women and children should be given unbiased treatment at police stations. She pointed out the following:

- » Departmental bodies should be created to check domestic violence.
- » Medical as well as legal support must be given to women and children.
- » Doctors should timely report domestic violence cases.
- » Continuous feedback should be taken as and when it is necessary.

Shri. Kunjiraman (a native of Pappinissery) reported a case where money lending without any relevant proof lead to cheating. He stated that awareness program must be conducted to avoid such situations.

Shri. M. Jagajeevan (Parent, Veliyannur) suggested the need for a rehabilitation facility for the mentally/physically challenged children after the demise of their parents.

Dr. Muneer K. (Psychiatrist, Thalassery Govt. Hospital) suggested that the disability certificates should be collected well in advance of the final exams and that the schools need to ensure the same.

Summary of Suggestions

- » The government should start rehabilitation centres to take care of mentally challenged people by providing legal support.
- » Government should recruit caretakers of mentally retarded children to cater the increasing demand.
- » Medication to such people should be given free of cost and should be availed at primary health centres even at remote areas to ensure that the mental health of the affected individuals is restored.
- » Rehabilitation centres running in the state should be undergoing thorough checks regularly by the government by unifying the ventures under a single body.
- » Ramps and lifts sanctioned to cater the needs of the physically challenged people should be installed and inspected.
- » Introduce more rehabilitation centres, Nirbhaya homes and girl's homes.
- » Take immediate action to prevent spreading of pox among the affected girls.

- » Special courts should be established to maintain secrecy to give legal support to women and children.
- » Introduce reforms regarding suitably designing of buses for physically challenged people.
- » Hassle-free adoption of children of mentally and physical challenged mothers shall be ensured.
- » The feasibility of providing financial assistance to the teachers and caretakers of various educational institutions for the mentally challenged children shall be studied.
- » Orphanages shall be provided with ration cards to cater the needs of the inhabitants properly.
- » Delay in availing the sanctioned funds shall be avoided.
- » Gender impact assessment and gender audit should be conducted.
- » Reservations for SC and ST candidates (female) should be made in several posts.
- » Provide 33% reservation for women in the posts of heads of various departments and boards.
- » Make sure that the office environments are child, gender and age friendly by providing legal support.
- » Multiple awareness programs must be conducted.
- » The legal restrictions and objections regarding the rehabilitation of the mentally disabled individuals shall be minimized.
- » Disability certificates shall be provided without delay and with proper judgement of the disability.
- » Financial assistance to the mentally/physically challenged people shall be given with minimal restrictions.
- » Adequate number of buds schools, vocational schools, Nirbhaya homes, etc. shall be established across the state.
- » The scope of providing additional leaves to the parents of mentally challenged people shall be studied by the government.
- » Necessary arrangements shall be taken to issue guardianship certificates in a timely manner.
- » Government shall ensure proper assistance to the women facing workplace harassment.
- » Dampen the overriding effect of the Mental Health Act where the mentally challenged ones are treated as the physically challenged ones.

- » Ensure the best capabilities of the Mental Health Care Review Board and provide digital assistance wherever necessary.
- » It shall be ensured that the scholarship funds are properly utilised and disbursed to the right applicant.
- » Issues related to mentally challenged people should fall a different board other than the board for physically disabled.
- » Immediate care and legal support should be provided for women and children subjected to domestic violence.
- » Training institutes must be introduced for teachers of the educational institutions for the mentally challenged children.
- » Measures shall be taken to aid the divorcee mothers who were earlier dependent upon the husbands.
- » Special wards shall be allotted for mentally challenged people in government hospitals.
- » Conduct awareness regarding the various certificates/schemes and the procedures involved in getting the certificates.
- » Ensure the availability of psychiatrists in all government.
- » The Akashaparava Scheme shall be utilized for providing food for the poor and challenged people.
- » Medical as well as legal support must be given to women and children.
- » Doctors should timely report domestic violence cases.
- » Rehabilitation facility shall be set up for the mentally/physically challenged children after the demise of their parents.
- » It shall be ensured that the disability certificates are collected by schools well in advance of the final exams.

Shri. T. P. Babu (Additional Secretary, ARC) expressed his appreciation and gratitude to all participants and requested them to chime in their opinions in written or digital format as well.

Appendix VI

THANKS

The Administrative Reforms Commission express its sincere gratitude to the following Govt.Servants / Persons for their wholehearted participation and valuable suggestions

1	Sri. A. Alexander	Labour Commissioner
2	Dr. Saritha R. L.	Director of Health Services
3	Sri. Alex K. John IPS	Superintendent of Police, State Women Cell, Thiruvananthapuram.
4	Sri C. J. Antony	Acting Chairman, KSCPCR
5	Smt. Smitha Satheesh	JJB Member, Thrissur
6	Smt. Sumadevi.V	Superintendent, Children's Home, Alappuzha
7	Sri. Manoj Joseph	State in Charge-Kerala, Childline India Foundation
8	Smt. Sheeja A. V.	Deputy Superintendent, Government Special Home and Children's Home
9	Smt. Premlal. S. I.	Slof Police, DCRB, Thiruvananthapuram
10	Sri. A. S. Ganesh Kumar	Former Programme Manager, SCPS
11	Smt. Bindu Gopinath	Regional Assistant Director, Department of Social Justice
12	Smt. Jyothi V.	Advocate
13	Smt. Sathidevi V. V.	Superintendent (in charge), Rescue Home, Thavanoor.
14	Smt. Mary M. R.	Matron, Rescue Home, Thavanoor.
15	Shri. PadmaKumar P. N.	Secretary Kerala State Social Welfare Board
16	Dr. Leela Kumari P.	Rtd. Professor, IMG.
17	Smt. C. T. Cicily Kumary	Inspector of Police, Women Cell, Thiruvananthapuram Rural
18	Smt. Bindu Bhaskar	UDC, Kerala State Social Welfare Board
19	Sri. Biju P.	District Child Protection Officer, Kasargod
20	Smt. Sreelatha R. S.	Women Protection Officer, Thiruvananthapuram.
21	Smt. Sonia George	Secretary, SEWA
22	Sri. Suresh Kumar S.	Law Officer, Women and child Development Department.
23	Smt. Sundari C.	Joint Director, Women and Child Development Department
24	Smt. Jessy Joseph	Additional Director of Public Instruction (GI), General Education.
25	Sri. K. K. Surendra Kumar	K.K.Surendra Kumar, Additional Director, Social Justice Department
26	Dr. A. Suhruth Kumar	Associate Professor, Govt.Law College,Thiruvananthapuram
27	Sri. Anil K. Pappachan	Research Officer, Kerala Women's Commission.



GOVERNMENT OF KERALA

Abstract

Personnel and Administrative Reforms Department – Administrative Reforms Commission – constituted – Orders issued

PERSONNEL & ADMINISTRATIVE REFORMS (AR -12) DEPARTMENT
G.O(Ms) No.16/2016/P&ARD. Dated, Thiruvananthapuram, 06/08/2018

ORDER

Government hereby order constitution of Administrative Reforms Commission with a view to improve the efficiency of the State Administrative System. The composition of the Administrative Reforms Commission is as follows:

Shri. V.S. Achuthanandan, MLA,
Ex.Chief Minister,
Velikkakath,
Punnapra North P.O,
Alappuzha.

Chairman

Shri. C.P.Nair
Chief Secretary (Retd.)
'Seasons', PPD,
Kuravankonam, P.O,
Thiruvananthapuram.

Member

Smt. Neela Gangadharan,
Chief Secretary (Retd.),
No.528/Type VI, CPW Quarters,
27th Main Road, HSR Lay out,
Bengaluru -560 102

Member

Principal Secretary
Personal and Administrative Reforms Department

Member Secretary

The Chairman of the Administrative Reforms Commission will have the rank and status of Cabinet Minister and the members will have the rank and status of Chief Secretary to Government

The Terms of Reference of the Commission will be issued separately.

(By Order of the Governor)

S.M. VIJAYANAND
Chief Secretary to Government

To

Shri. V.S. Achuthanandan,
MLA, Chairman, Administrative Reforms Commission.
(Velikkakath, Punnapra North. P.O, Alappuzha).

Shri. C.P.Nair, Chief Secretary (Retd.),
[‘Seasons’,PPD, Kuruvankonam. P.O, Thiruvananthapuram].

Smt.Neela Gangadharan, Chief Secretary (Retd.)
[No.528/Type VI,CPW Quarters, 27th Main Road, HSR Lay out, Bengalure – 560 102]

The Principal Accountant General (Audit), Kerala, Thiruvananthapuram
The Accountant General (A&E), Kerala, Thiruvananthapuram.
The Director, Information & Public Relations Department.
The General Administration (SC) Department [Vide Item No. OA -16], Dated, 03.08.2016]
The District Treasury Officer, Thiruvananthapuram.
The Sub Treasury Officer, Secretariat Sub Treasury
Thiruvananthapuram.

Copy to:

Information and Public Relations (Web&Media) Department
for uploading in the official web site of Government of Kerala.
Additional Secretary to Chief Secretary
PA to Principal Secretary, P&ARD.
Stock File /Office Copy.

Forwarded/By Order,

(Sd/-)
Section Officer



GOVERNMENT OF KERALA

Abstract

IAS- Posting Smt. Sheela Thomas IAS (Rtd.) as Member Secretary, Administrative Reforms Commission on re-employment basis-Orders issued.

GENERAL ADMINISTRATION (SPECIAL-A) DEPARTMENT

G.O.(Rt) No.2528/2017/GAD.

Dated, Thiruvananthapuram, 22/04/2017

ORDER

Smt. Sheela Thomas IAS (Rtd.) is appointed as Member Secretary, Administrative Reforms Commission on re-employment basis.

2.The above appointment will be subject to the usual terms and conditions of re-employment.

(By Order of the Governor)

NALINI NETTO

Chief Secretary to Government

To

Smt. Sheela Thomas IAS (Rtd.)
The Principal Accountant General (A&E)/(Audit),Kerala,Thiruvananthapuram
The Secretary, Ministry of Personnel, Public Grievance & Pensions, Department of Personnel & Training, Government of India, New Delhi.
The Member Secretary, Administrative Reforms Commission,Thiruvananthapuram
The Personnel and Administrative Reforms Department
The General Administration (SC) Department
The Information and Public Relations Department
The Web and New Media.

Copy to:

The Secretary to Chief Minister.
The Private Secretary to Chief Minister.
The Additional Secretary to Chief Secretary-
PA to the Additional Secretary General Administration (Special A&C) Departments
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(Sd/-)

Section Officer.

ADMINISTRATIVE REFORMS COMMISSION

TERMS OF REFERENCE

GO(MS) No. 21/2016/P&ARD Dated 30/08/2016

1. To review the structure and functioning of the administrative machinery of the State and suggest measures for improving its responsiveness, efficiency and effectiveness as is required in a welfare State.
2. To revisit and redefine the roles of department and important agencies in Government.
3. To suggest measures for co – ordinated and joined – up functioning of Government departments and agencies to enhance positive outcomes.
4. To suggest measures to eliminate delays, corruption, favouritism and nepotism and to make administration result – oriented.
5. To suggest steps for enhancing delegation of powers to increase efficiency and citizen satisfaction.
6. To suggest modern management methods and Information Technology system and tools, which can be adapted in Government.
7. To review the policies relating to recruitment, placement and promotion and suggest measures for improvement of the performance of civil servants.
8. To suggest methods for democratization of different organs of Government at various levels and increase participation of the people in governance.
9. To assess the delivery of key public services and suggest measures for increasing their efficiency.
10. To suggest measures to make Government more open and accountable.
11. To suggest measures to refine/ operationalize Gender Budgeting, Child
12. Budgeting.
13. To recommend modern fiscal planning tools like output and outcome – based budgeting.
14. To assess the capacity building system in Government and suggest
15. measures to make it more effective.
16. To make any other recommendation arising from the above matters or incidental to them or considered necessary or appropriate by the Commission.

