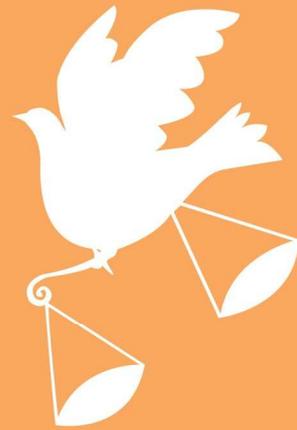


A STUDY ON THE FUNCTIONING OF  
MAINTENANCE TRIBUNALS AND APPELLATE TRIBUNALS  
FOR THE WELFARE OF PARENTS AND SENIOR CITIZENS

October 2015

Report Submitted to  
The Department of Social Justice  
Government of Kerala



Centre for Socio-economic & Environmental Studies  
Kochi-682024

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[www.csesindia.org](http://www.csesindia.org)**

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# CHAPTER I

## INTRODUCTION

### 1.1 Introduction

Maintenance Tribunals and Appellate Tribunals for the welfare of parents and senior citizens derive its powers from the central legislation Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter the Act) Before this enactment, the parents could claim maintenance under the Code of Criminal Procedure, 1973. But the procedure was time consuming and expensive. In exercise of the powers conferred on by the Act, the State government promulgated the Kerala Maintenance and Welfare of Parents and Senior Citizens Rules in 2009 (hereinafter Rules). Based on the Act and the Rules, the state government has constituted Maintenance Tribunals for Senior Citizens in every revenue division with Revenue Divisional Officers (RDO)/sub-Collectors as the Presiding Officers and Appellate Tribunals with District Collectors as the Presiding Officers in every district. The Tribunals are envisaged to provide simple, inexpensive and speedy remedies for maintenance of parents. This report presents the findings of the study on the functioning of the Maintenance Tribunals and Appellate Tribunals constituted under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

### 1.2 Ageing of Population in Kerala

Today, one in eight Keralites are 60 years or older. The share of the elderly in total population was higher in Kerala than in the country as a whole for a long period of time (Table 1.1). While the proportion was increasing very fast in Kerala (7.5 per cent in 1981 to 12.6 per cent in 2011), the same for the country was increasing only marginally (from 6.5 to just 8.0 per cent). The number of senior citizens in Kerala stood at 41.93 lakhs in 2011 (Census 2011).

**Table 1.1: Share of Elderly (60+ years) in Population (%)**

Year	Share of Elderly (60 years and above)	
	Kerala	India
1981	7.5	6.5
1991	8.8	6.7
2001	10.5	7.4
2011	12.6	8.0

Source: Census of India, Various Years

Due to better public health, health care and socioeconomic changes, the life expectancy of both men and women are going up in Kerala. The life expectancy at birth of women increased from 63 years during 1971-75 to 78 years during 2009-13 in Kerala. The corresponding figures for men were 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 were 69 years and 66 years respectively. Along with increase in life expectancy, the rapid decline in fertility rates led to a decline in the old age support ratio. It is the ratio of the population who may be economically active to older people who are more likely to be economically inactive. The 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 developed countries, today's senior citizens have smaller 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.

### **1.3. A Brief Overview of the Act**

As noted earlier, the Government of Kerala has constituted Maintenance Tribunals at the revenue division level and Appellate Tribunals at the district level to exercise the powers and discharge the functions conferred under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and the Rules framed by the state government. No civil court shall have jurisdiction in respect of any matter dealt with by the Act.

As per the Act, children and legal heirs are legally obliged to provide maintenance to senior citizens. A senior citizen or parent unable to maintain himself/herself may make an application for maintenance to the Maintenance Tribunal. The Act defines 'children' as sons, daughters, grandsons and granddaughters. In the case of childless senior citizen, the application has to be filed against the relative who under law would inherit his property. The Act defines 'relative' as any legal heir of a childless senior citizen who is in possession of or would inherit his/her property upon death. In cases in which more than one relative will inherit the property of a senior citizen, each relative will be responsible to pay the maintenance allowance in proportion to the property they will inherit. If the Maintenance Tribunal is satisfied that the senior citizen is unable to take care of oneself and that there is neglect or refusal of maintenance on the part of the children or relative, it may order children or relatives to give a monthly maintenance allowance to the senior citizen. The Maintenance Tribunal may also initiate proceedings for maintenance suo moto. The Maintenance Tribunal also has the power to order children or relative to make a monthly allowance as interim

maintenance while the application is pending before the Tribunal. The Tribunal has to pass an order for maintenance, after hearing both parties, taking into consideration the following aspects: amount needed by the applicant to meet his basic needs, income of the opposite party, value of actual and potential income from the property, if any, of the applicant which the opposite party would inherit and/or is in possession of. The maximum amount that the opposite party may be ordered to pay is presently fixed as Rs 10,000/- per month. The Maintenance Tribunal also has the power to declare a 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.

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”. The Maintenance Tribunal can use its discretion to order payment of maintenance allowance either from the date of the order or the date of application. The amount has to be paid within 30 days from the date of order. The Tribunal also has the powers to order payment of interest ranging between 5% and 18% on the monthly allowance from the date of the application. 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.

#### **1.4 Objectives of the Study**

Following are the specific objectives of the study:

1. To assess the functioning of the Maintenance Tribunals and Appellate Tribunals
2. To examine the efficiency of disposing the applications received by the Maintenance Tribunals and Appellate Tribunals.
3. To assess the problems faced in the functioning of the Maintenance Tribunals and Appellate Tribunals
4. To get feedback on their experience of the applicants for maintenance
5. To make recommendations for improving the functioning of Maintenance Tribunals and Appellate Tribunals

## **1.5 Methodology**

The study has employed a variety of methods to assess the functioning of the Maintenance Tribunals and Appellate Tribunals. The data for the study was collected from a sample of ten Maintenance Tribunals and four Appellate Tribunals. The Maintenance Tribunals covered by the study are Thalasserry, Manathavady, Perintalmanna, Tirur, Palakkad, Muvattupuzha, Fort Kochi, Alappuzha, Thiruvalla, Thiruvananthapuram. The Appellate Tribunals covered by the study are Kannur, Wayanad, Malappuram and Ernakulam. The sample Tribunals were decided in consultation with the Department of Social Justice.

A survey was conducted among the Maintenance Tribunals and the Appellate Tribunals using a questionnaire designed for the purpose. Separate questionnaires were used for Maintenance Tribunal and Appellate Tribunal. Another major component of the study was depth interviews with different stakeholders in a sample of Tribunals. Depth interviews were conducted with the Presiding Officers and staff of the Maintenance and Appellate Tribunals in the sample, conciliation Officers, District social justice Officers and representatives of the associations for senior citizens. Depth interviews were also conducted with some of the applicants. The applicants were enquired about their experience with the Tribunal, problems faced, sources of information, suggestions for improvement etc. Thirty applicants were interviewed in depth. The depth interviews were undertaken using depth interview guides.

Another component of the study was the collection and analysis of records relating to a sample of cases filed in the Maintenance and Appellate Tribunals covered by the study. Cases filed in January 2014 were taken for the analysis. The analysis was meant mainly to provide information on the time taken by the Tribunals to complete different stages of case management. Fourth component of the study was the observation of the hearing sessions of the Maintenance Tribunals in two revenue divisions.

## **1.6 Report Format**

This report is divided into four chapters. This introductory chapter is followed by the chapter detailing the findings of the study related to the functioning of the Maintenance Tribunals. The third chapter presents the findings related to the Appellate Tribunals. The fourth chapter presents a

summary of the findings of the study and the conclusions and recommendations emerging from the study.

## **CHAPTER II**

### **MAINTENANCE TRIBUNALS**

#### **2.1 Introduction**

The Maintenance Tribunals (hereinafter Tribunal means Maintenance Tribunal unless specified as Appellate Tribunal) have been established to provide easily accessible, speedy, informal and inexpensive justice to parents and senior citizens who are unable to live a dignified life due to lack of support from children/relatives. Due to factors beyond their control such as inability to work and earn, higher incidence of health problems, reduced roles in family decision making etc., the senior citizens are often vulnerable and are forced to depend on others in their old age. The Maintenance and Welfare of Parents and Senior Citizens Act recognise the right of senior citizens to claim maintenance from his/her children or legal heirs. Tribunals, which have been established as an alternative to the courts, are expected to have some features that are distinct from court processes: relatively simple processes for initiating cases, relaxed rules of evidence and often a low level of legal representation at hearings. This chapter presents the findings of the enquiry into the functioning of Maintenance Tribunals.

Until the formation of the Tribunals, the avenue for the senior citizens to establish the right to proper maintenance was the Criminal Procedure Code, 1973. This old system was often expensive and time consuming for the applicant and their family. There are some differences between the provisions of CrPC and that of the Act. While CrPC provides for maintenance of parents, the Act provides for maintenance of senior citizens who do not have children also. The Act states that senior citizen can claim maintenance from legal heir of their property. While under CrPC, only the aggrieved parent can file a case in the court, application for maintenance can be filed in the Maintenance Tribunal by the senior citizen or parent or an organization authorized by him. The Tribunal may also take cognizance suo motu. While the proceedings under CrPC are not time bound, the Act says that the matter may be disposed within 90 days. But even the Act does not make it mandatory on the part of the Tribunal to dispose the case within the stipulated period. Given the fact that the claim is made by a senior citizen, the Act creates an option for the Tribunal,

before hearing an application, to refer the matter to a conciliation Officer. But under CrPC, no such provision is available.

## **2.2 Case Management Process by the Sample Tribunals**

As per the Rules, on receipt of application from a senior citizen, the Tribunal should ensure that the application is complete and the opposite party has, *prima facie*, an obligation to maintain the applicant. In cases where the Tribunal finds any lacunae in the application, it may direct the applicant to rectify such lacunae within a reasonable time limit. Once the Tribunal is satisfied, the Tribunal shall issue notice directing the opposite parties to show cause why the application should not be granted. The notice shall require the opposite party to appear in person on a specific date to show cause, as to why the application should not be granted. In case the opposite party wilfully abstains from the proceedings, the Tribunal shall proceed *ex parte*, by taking evidence of the applicant and making such other inquiry as it deems fit, and shall pass an order disposing of the application. If the opposite party appears and accepts his liability to maintain the applicant and the two parties arrive at a mutually agreed settlement, the Tribunal shall pass an Order accordingly. If a mutually agreed settlement is not reached, the Tribunal may refer the case to a conciliation Officer if both parties agree on the same. If the conciliation Officer, after holding discussions with both parties, agrees on a settlement, the Tribunal may pass an order based on the report of the conciliation Officer. The conciliation Officer is expected to submit the report in one month. In case the conciliation Officer fails to reach a settlement, the Tribunal shall give an opportunity to the applicant and respondents for advancing evidence in support of their respective claims. After hearing both the parties, the Tribunal should pass an order.

The process followed in practice by different Tribunals included in the sample shows some variation though the essence of the Act and the Rules are followed. At first, the claimant (parent/senior citizen) submits the claim to the Tribunal. Our interactions with the Tribunal staff revealed that the application do not have the required details in many cases. At times, the claim is submitted to the District Collector (who is the Presiding Officer of the Appellate Tribunal) instead of submitting it to the Maintenance Tribunal. The Magisterial Section of the District Collectorate redirects the application to the Maintenance Tribunal causing some delay in the process.

Once the application for maintenance is received, some of the Tribunals reported that they conduct a preliminary enquiry before the first hearing (Palakkad, Muvattupuzha, Perintalmanna, Tirur and

Thiruvalla). However, in some of the cases in these Tribunals also, no enquiry was done prior to the first hearing. Since the Presiding Officer belongs to the Revenue Department and some of the aspects of enquiry include the details of income, occupation and assets of the opposite parties, the village Officer is assigned the task to make local enquiry and submit a report to the Tribunal. Other aspects of local enquiry include circumstances of the case, opinions of the neighbours etc. In a few cases, additional report may be sought from the village Officer at a later stage when there is a contradiction between the statements of parties.

**Table 2.1: Details of Enquiry Conducted before the First Hearing**

<b>Particulars</b>	<b>Number of Tribunals</b>
Enquiry conducted by Village Officer	5
Enquiry conducted sometimes through Police Station	1
No enquiry	4
Total	10

Some Tribunals specify a deadline for submitting the preliminary enquiry by the Village Officer. For instance, it was reported that the Village Officers are asked to submit the report in seven days by one of the Tribunals. Though it may take a few more days, it was observed that the practice has helped in reducing the delay in submitting the report of the preliminary enquiry. Another Tribunal sends the notice for hearing along with the request for enquiry report to the village Officer. Since the village Officer becomes aware of the date of hearing, he/she will send the report before the first hearing date. The Alappuzha Tribunal has recently started serving notice to the parties through the Police Station, which according to the staff, has improved the attendance in the sittings. Palakkad Tribunal depends on Police department if the party fails to appear before the Tribunal in earlier sittings. It appears that the practice of serving notice through local Police station may be followed by all the Tribunals as it may increase the attendance in the hearing sessions. But it may be done only if the party fails to appear before the Tribunal in the previous sittings.

The Tribunal usually sends the hearing notice to petitioners and opposite parties through village office. In some cases where the respondents are living in other places, the notice is sent by post. Petitioners and opposite parties are normally getting hearing notice one week before the hearing date. Tribunals which receive large number of applications are conducting the hearing on a specific

day and time every week. But others have no specific date or time for hearing. They conduct it depending on the availability of the Presiding Officer and are often heard with other cases coming before the RDO.

Usually the Revenue Divisional Officer, Senior Superintendent and section clerk attend the hearing. At first, the application is read out loudly by the section clerk. Then Presiding Officer asks the applicant to present his/her arguments. Thereafter, the respondent is given the opportunity. The RDO seeks clarifications. If the arguments are completed, the Tribunal pass appropriate orders on the same day or on a later date. According to the Tribunal staff, it takes 15-30 minutes to complete the hearing of a case. Additional time is needed to pass the orders. The formal written order of the Tribunal will be delivered later and will be sent to both the parties. In some cases, additional documents may be necessary or the documents may have to be verified. Such cases will be posted for hearing on a different date. Unless both parties reach an agreement, the case is unlikely to be disposed in the first hearing.

In Palakkad, if the applicant is unable to travel, the Village Officer records his/her statements and the Tribunal pass orders based on the statement and the arguments by the respondents. This seems to be a good practice. But such practices should have legal sanctity which can be ensured only if the Rules allow such a procedure.

A Tribunal system is expected to be easily accessible, informal, speedy and inexpensive and to give the best opportunities of arriving at an amicable settlement of their differences. The Tribunal is expected to operate with the minimum of formalities and the ambience should not be intimidating to the parties involved. While legal technicalities may be ignored to a degree, the Tribunal is expected to observe the rules of natural justice. Even if legal practitioners represent any of the parties, they are not expected to wear judicial gowns. It is also important to ensure that there are no raised benches for the Presiding Officer. Our observations indicate that the proceedings of the Tribunal are usually held in the Chamber of the Presiding Officer where there are no raised benches. The proceedings of the Tribunal were also not intimidating to the parties.

### **2.3 Number of Applications Received in 2014**

The sample Tribunals, on an average, received 130 applications for maintenance from parents/senior citizens in the year 2014. It ranged from 23 in Perintalmanna to 449 in Thiruvananthapuram. Thalasserry Tribunal which filed 213 cases in 2014 came second and

Alappuzha came third. On the other hand, the average number of cases disposed of in 2014 was just 60. This is equivalent to 41 per cent of the average number of new cases filed in 2014. The number of cases disposed varied between 10 each in Perintalmanna and Tirur to 199 in Thiruvananthapuram. It appears that in the case of Tribunals which receive only a small number of cases, the high pendency is due to lack of interest and inadequate monitoring rather than the workload. However, in the case of Tribunals which receive more than 100 applications, the high pendency may be due to heavy workload as they are able to dispose off much larger number of cases.

## 2.4 Pendency of Cases

The study team went through the records of some of the applications received in January 2014 in the Tribunals included in the sample. Tracking a sample of 42 cases in different Tribunals brought out some interesting facts. The details recorded included the date of receipt of application by the Tribunal, dates of oral hearing and the status of the case (disposed or not) on the date of survey. The applications filed in January 2014 were used for analysis. We have collected the number of days taken for first hearing in the sample of cases for which the records were examined. The details are presented in Table 2.2.

**Table 2.2: Time Taken for first Hearing**

<b>Number of days</b>	<b>Number of cases</b>	<b>Percentage of cases</b>
Less than 15 days	14	33.3
15-30 days	13	31.0
1-2 months	5	11.9
2- 3 months	1	2.4
More than 3 months	9	21.4
<b>Total</b>	<b>42</b>	<b>100.0</b>
<b>Average number of days</b>	<b>78 days</b>	

In the sample cases, on an average, the first hearing was taken up 78 days after the date of receipt of application for maintenance by the Tribunal. More than one-fifth of the cases took more than three months for conducting the first hearing. Obviously, none of such cases could be disposed within the time stipulated in the Act (90 days) even if the case is disposed of in the first sitting itself.

All the cases examined in the Thiruvananthapuram Tribunal took more than 90 days to conduct the first oral hearing. It may be noted that the largest number of cases were filed in the Thiruvananthapuram Tribunal.

**Table 2.3: Time taken for Disposal of Cases filed in January 2014**

<b>Number of days</b>	<b>Number of cases</b>	<b>Percentage of cases</b>
3 months or less	10	23.8
3-6 months	14	33.3
6-9 months	2	4.8
More than 9 months	10	23.8
Yet to be disposed	6	14.3
<b>Total</b>	<b>42</b>	<b>100.0</b>

Note: Perinthalmanna Tribunal did not receive any application in January 2014 and therefore subsequent applications were taken.

Section 5(4) of the Act states that an application filed for maintenance “shall be disposed of within ninety days from the date of the 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 truth. Table 2.3 indicates that only one-fourth of the applications were disposed of within 90 days. One-third of the applications are either pending with the Tribunals or was disposed of after more than 9 months. There is an urgent need to take initiatives for speedy delivery of justice to the hapless senior citizens who are forced to file cases against their children.

## **2.5 Number of Hearings**

The study team further enquired about the number of oral hearings which had taken place in the case of the 42 applications included in the sample of applications tracked. Of them, 6 are yet to be disposed of. Table 2.4 provides the details of the number of hearings in the 42 cases examined.

**Table 2.4: Number of Oral Hearings in the Sample Tribunals**

<b>Number of Hearings per case</b>	<b>Number of cases</b>	<b>Percentage of case</b>
One	12	28.6
Two	11	26.2
Three	6	14.3
Four	7	16.7
Five	2	4.8
Six	3	7.1
Seven	1	2.4
<b>Total*</b>	<b>42</b>	<b>100.0</b>
<b>Average number of oral hearings per case</b>	<b>2.7</b>	

\* Of this, the application is yet to be disposed of in 6 cases. Therefore a few more hearings may be necessary in such cases.

On an average, about three oral hearings were required to dispose off a case in the Tribunal. Nearly half of the cases were disposed with three or more sittings. Speedy justice definitely implies less number of hearings. But it is also important to ensure that both parties are given sufficient opportunities to explain their position.

The absence of the petitioner or one or more of the respondents is often cited as the reason for the increase in the number of hearings per case. But it was found that only in 12 out of the 42 cases analysed (29 per cent), one or more of the parties was absent on the day of hearing. Even in most of such cases, the absence of the parties was only for one hearing session. It appears that more than the absence of the involved parties, it is the administrative and procedural weaknesses in the functioning of Tribunals that lead to higher number of hearings per case.

In some of the Tribunals, hearing of cases for maintenance of senior citizens is taken up along with other cases coming before the RDO. Given the fact that the application for maintenance has to be disposed off expeditiously (within 90 days), it is desirable to have the Tribunal sittings every week. If the number of applications is low, this can go up to once in a fortnight.

## 2.6 Conciliation

As noted earlier, one of the preliminary stages of the proceedings of the Tribunal is to refer the application for conciliation. 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 and if amicable settlement has been arrived at, the Tribunal shall pass an order to that effect. The Rules further elaborates the role, functions and the process of appointment of Conciliation Officers. As per the Rules, the Tribunal shall seek the opinion of both the parties as to whether they would like the application to be referred to a Conciliation Officer included in the panel prepared by the Tribunal or any other person acceptable to both parties. If both parties agree on any person, the Tribunal shall appoint such person as the Conciliation Officer in the case. Upon receipt of a reference, the Conciliation Officer shall hold meetings with the two parties and try to work out a settlement acceptable to both the parties. If the Conciliation Officer succeeds, he/she draws up a memorandum of settlement and get it signed by both parties and forward it, back to the Tribunal. The Tribunal shall give notice to both parties to appear before it on a specific date. If both the parties appear before the Tribunal and confirm the settlement, the Tribunal shall pass the final order in terms of such settlement. If the Conciliation Officer is unable to arrive at a settlement within one month, he/she shall return the papers received from the Tribunal along with a report showing efforts made for a settlement and the points of difference between the two parties which could not be reconciled. In such cases, the Tribunal may further proceed for collecting more evidence from both the parties. It is not mandatory on the part of the Tribunal to refer a case to the Conciliation Officer. The involved parties also have the freedom not to try the conciliation process. The Rules also implies that there should be a panel of conciliation Officers in every Tribunal.

It was found that only a small proportion of the cases are sent for conciliation. Only in about 5 per cent of the cases filed in the sample Tribunals in 2014, conciliation process was initiated. It was found that in Tribunals at Thiruvalla, Palakkad and Muvattupuzha, no panel of conciliation members was available at the time of field visits. In other Tribunals covered by the study, the number of conciliation members in the Tribunals varied from 2 in Perintalmanna to 26 in Mananthavady at the time of survey.

**Table 2.5: Number of conciliation members attached to Tribunals**

<b>Tribunal</b>	<b>Number of conciliation members</b>
Thalasserry	6
Manathavady	26
Perintalmanna	2
Tirur	12
Palakkad	0
Muvattupuzha	0
Fort Kochi	4
Alappuzha	8
Thiruvalla	0
Thiruvananthapuram	11

In 14 per cent of the cases sent for conciliation, an agreement was reached between the applicant and the respondents. However, when we examine the proportion of cases in which conciliation process was successful to the total number of cases filed in the sample Tribunals, the dismal outcome of the conciliation process becomes clear. Only in less than a dozen cases filed in 2014 in the ten sample Tribunals, the conciliation was successful. In majority of the Tribunals covered by the study, no case was solved through the process of conciliation. This demands a thorough relook at the process with a view to make it more result oriented. Else, it can only delay the disposal of cases.

In practice, the Tribunal provides very limited support to the Conciliation Officers. The job of the Conciliation Officer includes sending letters to parties to appear before them for conciliation, arrange space for conciliation, interact with the parties to reach an agreement, prepare the report of the conciliation process and submit the report to the Tribunal. The process also demands some travel to the RDO office and to the venue of the conciliation meeting. Some of the conciliation Officers also visit the houses of the parties. Sometimes more than one meeting may have to be organized. All these functions have to be done without any support from the Tribunal. Physical space necessary for conducting the conciliation meetings is not available in most of the Tribunals. The

conciliation Officers are also forced to bear the expenses on stationery on their own. Though voluntarism is acceptable to some extent, there is a need to provide travel allowance and a honorarium for the conciliation Officers in getting effectively involved in the conciliation process. It may be noted that a successful conciliation outcome can reduce the time required for oral hearings. The Presiding Officer of the Tribunal, who has a large number of other duties as Revenue Divisional Officer, can be relieved of some burden. It will also be useful in motivating the Conciliation Officers.

Because of the lack of support provided to the conciliation process, some of the conciliation Officers are no longer active. It is also important to note that the conciliation Officers did not receive any training for undertaking their tasks. The conciliation Officers have different profiles and the professional profile of some of them does not seem to be appropriate for their role as a conciliation Officer. It is not at all surprising to find that only a very small proportion of the cases have been solved through the process of conciliation.

There is a need to streamline the conciliation process and only people who are genuinely interested in the welfare of the elderly should be appointed as conciliation Officers. The streamlining would also require that the Tribunal extends necessary support to the conciliation process. There is also a need to decentralize the conciliation process by which the conciliation Officers may visit the homes of the parties or organize the conciliation meetings in a place closer to their homes. Conciliation meetings may be organized at the Taluk/Block level if not at the Grama Panchayat or Municipal level so that the parties do not have to travel long distance. The facilities available in Grama Panchayat/Block Panchayat/Municipal Offices should be made available for the conciliation meetings. It will also be better if the conciliation Officers are from different localities within the revenue division.

## **2.7 Postponement of Hearings**

Both parties will be informed about the hearing date in advance and are expected to be present during the hearing. But if one party fails to turn up, it may be postponed without oral hearing in majority of the cases. The hearing may also be postponed due to other emergencies of the Presiding Officer of the Tribunal making him/her unavailable to preside over the sitting of the Tribunal. In majority of the cases, the information about the postponement of the sitting is obtained

only after reaching the venue of the sitting causing much inconvenience to both parties. It can also be demoralizing to the elderly who approach the Tribunal for maintenance.

## **2.8 Reasons for Delay in the Process**

According to the Presiding Officers of the Tribunals, non-appearance of parties is a major cause of delay. Non-appearance can be because the respondents may be staying abroad or the parent/senior citizen may be ill. The Tribunals do not have full time administrative staff. This is a major problem especially when the Tribunal receives large number of applications for maintenance. It affects the management of cases and delays the whole process. Delay is also attributed to the time given to the parties to submit the necessary evidence. It was also pointed out that some of the applications are submitted to the District Collector, who, in turn, redirects it to the Tribunal. This initial delay also leads to more time for the completion of the case. This may be because the applicants may not be aware of the procedures and processes involved. Delay can also occur in cases in which the parent/senior citizen mentions only one son/daughter as the respondent and on a later stage other children also have to be impleaded. The Revenue Divisional Officer, who is the Presiding Officer of the Tribunal, has multiple administrative responsibilities. Therefore, some of the sittings are postponed due to administrative emergencies. For instance, one of the Presiding Officers pointed out that during election time, there will be very little time for such duties.

The following case studies will provide details about how delay occurs in the delivery of justice. The cases are presented not to give an impression that the case management is similar in all other cases. They are presented to give an idea about different problems in the case management by the Tribunals which can lead to delay in disposing cases. Therefore, the cases have been picked up with this objective in mind. The reader is cautioned not to infer that this is the general scenario in the Tribunals. On the other hand, large number of cases are properly managed by the Tribunals.

**Case I:** An application from an elderly woman was received by the Maintenance Tribunal at Alappuzha in January 2014. A notice was sent to the parties two days after it was received. The first hearing was fixed on 18-2-14. The respondent did not appear on the date of hearing. Hence the Tribunal fixed the date for next hearing one month later ie 18-3-2014. In the next hearing, the application was dismissed as the case did not come under the purview of the Maintenance and Welfare of Parents and Senior Citizens Act. The proceedings of the case clearly show that a

preliminary scrutiny of the application would have saved the time of the Presiding Officer and Staff of the Tribunal, the applicant and the respondent.

**Case II:** The Palakad Maintenance Tribunal received an application from an elderly woman aged 67 for cancelling the deed of her property on 1-1-2014. The petition was filed against her grandson. The complaint was that as the respondent was harassing her, she wanted to cancel the deed of her property. Notice for hearing the application was sent by the Tribunal two months later on 3-3-2014. The date of hearing was fixed as 20-3-2014. The respondent did not turn up on the hearing date and therefore the next hearing was fixed to be on 9-5-2014 (50 days later). The respondent did not turn up on the next hearing date also. The case was again postponed to a date 40 days later (19-6-2014). Fortunately, the respondent came for the hearing on this date and the Tribunal heard both the parties. The Tribunal passed orders one month later on 19-7-2014. The application for cancellation of the deed was not accepted by the Tribunal. The reason cited was that the property under dispute was bought by the respondent after paying the price and not inherited. However, the Tribunal directed the Police Department to provide protection to the senior citizen. Going beyond the merits of the order, the case illustrates the long wait of nearly eight months by the old woman who approached the Tribunal. It is clear that there was delay at every stage including the delay in sending notice for first hearing. It is also not clear why the interval between the dates of hearing should be more than one month especially when the respondent failed to appear.

**Case III:** Two senior citizens (husband aged 88 and wife aged 75) had to wait longer than the senior citizen in the case discussed above. Their application for maintenance was received on 16-1-2014 by the Tribunal at Thiruvalla. As per records, the 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.

**Case IV:** The application for maintenance of another senior citizen (male) was received at the Malappuram collectorate on 3-1-2014. The application was redirected to the Tirur Maintenance Tribunal which received it on 6-1-2014. A notice for hearing was sent to the applicant and the respondent by the Tribunal without any delay on 17-1-2014. The first hearing was held on 22-1-2014. Hearings were held subsequently on 24-2-2014 and 12-3-2014. The case was finally settled

in an Adalat held on 1-11-2014, more than eleven months after receiving the application. A maintenance allowance of Rs 2000/- was agreed upon by the parties.

On one of the dates fixed for hearing, the study team visited the hearing venue of a Tribunal. 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. The absence of contact phone numbers was the reason cited by the staff in not informing them about the postponement of hearing in advance.

## **2.9 The Long Wait on the Hearing Date**

The Tribunal sends notice to the parties to appear before it and give evidence on a fixed day at a fixed time. Some of the applicants reported that they had to wait for long before the Tribunal starts hearing in their case. In one of the sittings of a Tribunal in which the study team was present, 24 cases were posted at 2.30 PM. All the senior citizens, some of them aged more than 75 years, had to wait beyond 5 PM when their case was taken up for hearing. In one such case, the hearing was postponed for another date in the absence of the opposite party. As noted earlier, the Tribunal sittings are usually organised in the chamber of the RDO. Some of the senior citizens did not get even a seating facility as the limited facilities for public available in the office are shared with others who approach the Revenue Divisional Office for various needs. We also found that one of the applicants was lying on the floor of the office after a long wait. In one of the Tribunal sittings we had observed, all the cases were posted for hearing at 11 AM. The hearing on cases related to the Maintenance of Senior Citizens was taken up with other cases posted for the day by the RDO for hearing. The hearing went beyond 5 PM. The Presiding Officer was of the view that some of the applications are not genuine and are filed to settle family disputes among legal heirs of a senior citizen. The Officer joked about the situation that only genuine applicants will pursue the case if they have to wait 4-5 hours before hearing the case. One of applicants told us:

“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”.

The fact that the applicants are older people who are physically incapable (often with a poor state of health) of waiting for such a long time to ensure their rights cannot be termed as an acceptable standard. The physical toll such a waiting will have on the old people should be taken into account while fixing the timing of Tribunal hearings. There is an urgent need to take steps to reduce the waiting time of older persons for hearing their case. However we could observe a different approach in the sitting of another Tribunal. In this case, only the cases related to the maintenance of parents/senior citizens was posted for hearing. Moreover, different cases were allotted different time slots for hearing. This has helped to reduce the waiting time.

## **2.10 Non-compliance of Order**

The senior citizens get the relief only if the maintenance amount ordered by the Tribunals is received on a regular basis. The interactions with the functionaries of the Tribunals indicated that in several cases, the applicant senior citizen is forced to approach the Tribunal again for getting the maintenance amount. While in some cases, the children may not comply with the order at all, in many other cases, they provide the maintenance in the first few months and then discontinue paying it or reduce the amount paid. The frustrated parent may again approach the Tribunal. But in some cases, they feel that there is no use in approaching the Tribunal as the remedy is only temporary. The reluctance of the complainant is not surprising given the fact it takes more than three months to complete the Tribunal process in the case of three-fourths of the applications. The situation is frustrating not only for the senior citizens but also for the staff and Presiding Officer of the Tribunal. It also increases their workload and reduces the credibility of the orders of the Tribunal.

In one of the sittings in which the study team was present, the hearing of such a case came up. The senior citizen approached the Tribunal when his sons who were ordered to pay the maintenance did not pay it. The study team was present in the second hearing of the case. The Presiding Officer heard the arguments of the petitioner and the case was posted for hearing in the next sitting of the Tribunal because of the absence of the respondents.

There is no mechanism to ensure that the orders of the Tribunal are implemented. The senior citizen has to approach the Tribunal again to get the order implemented. Even for such applications, the Tribunal follows the procedure similar to that in a fresh case and may postpone the hearing if the respondent is not available. It is suggested that the procedure in such cases should be spelt out in the Rules. Instead of considering it like a fresh case, the Tribunal may assess the situation through village office or police station instead of posting it for hearing. Only if the assessment report of the concerned officials demands some clarification from the respondent, it should be posted for hearing. Such a system can reduce delay in such cases.

There is confusion among some of the Tribunal functionaries about the action to be taken in cases of non-compliance of Tribunal orders. As per the Act, the maintenance order made under the Act shall have the same force and effect as an order passed under Chapter IX of the Code of Criminal Procedure, 1973 and shall be executed in the manner prescribed for the execution of such order by that Code. The Act specifies the procedure to be followed in case of non-compliance of the order. The Act (section 5(8)) states:

“If, children or relative so ordered fail, without sufficient cause, to comply with the order, any such Tribunal may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person for the whole, or any part of each month's allowance for the maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made whichever is earlier”.

However, the Act also brings a condition that:

“Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Tribunal to levy such amount within a period of three months from the date on which it became due.”

One of the Presiding Officers was of the opinion that one month imprisonment of the children for non-payment of maintenance is likely to adversely affect the senior citizen. Another Presiding Officer expressed the opinion that the Rules are silent on how to issue a warrant in case of non-compliance of the orders.

## **2.11 Lack of Regard to the Age of the Claimants**

In two Tribunals which were included in the sample -Fort Kochi and Perintalmanna-, the hearings are held on the first floor of multistoried buildings. The elderly who want to make use of the services of the Tribunal find it very difficult. Given the fact that the Tribunals are meant for elderly persons, the state government should make sure that the Tribunals are held in a place convenient to them on the ground floor itself. It is also important to ensure that the elderly should have seating facilities, access to drinking water and sanitation facilities.

### **2.12 Problems faced by the Parents/ Senior Citizens**

Some of the problems reported by the senior citizens who approached the Tribunal are listed below:

- Postponement of hearings and multiple sittings necessitate commuting to the headquarters of the revenue division several times.
- There is no mechanism to inform the applicant or respondent in advance about the postponement of hearings. The parties come to know about it only after reaching the venue.
- There is no mechanism to ensure that the orders of the Tribunal are implemented. The senior citizen has to approach the Tribunal again to get the order implemented. Even for such applications, the Tribunal follows the procedure similar to that in a fresh case and may postpone the hearing if the respondent is not available.
- The senior citizens may not have the required knowledge to fill the application. Errors may creep in. At times, the amount of information provided in the application may not be sufficient. The Tribunal staff should make sure that any additional information necessary for deciding the case is collected on the first occasion when the applicant is available at the Tribunal. The contact phone numbers, if available, should also be collected.
- Some of the applicants who were interviewed as part of the study reportedly face difficulties in communicating with the non-Malayalee Presiding Officers during the hearings of the Tribunal.

### **2.13 Problems faced by the Tribunals**

- Our interactions with different stakeholders including the Presiding Officers and the staff of the Tribunals and senior citizens brought out some additional problems in the functioning of the Tribunals. One major problem reported by the Presiding Officers was that no funds are

allotted to the revenue divisional offices for the functioning of the Tribunal. The expense related to its functioning has to be met from the limited funds available with the office. As a result, the Tribunals are not in a position to organize programmes for creating awareness about the Tribunal. The lack of funds also affects the functioning in other ways also.

- Another important problem is that the staff involved in the functioning of Tribunals have many other duties and therefore the staff support is inadequate especially in Tribunals which handles a large number of cases. Only in Thiruvananthapuram Tribunal, a clerk of the revenue department is exclusively engaged in the activities related to the Tribunal. It may be noted that Thiruvananthapuram Tribunal received the largest number of applications in 2014. There is a need for increasing the staff support for the Tribunals. With the present staff support, the Tribunal faces difficulties in examining each application in detail before the hearing.

#### **2.14 Confusion about the Provisions in the Act and Rules**

Our interactions with Presiding Officers and staff of the Tribunals and the review of some of the orders of the Tribunals indicated that there is some confusion among them about the provisions in the Act and Rules. They are discussed in this section.

- As per the Act, the Tribunal can cancel a deed made after 2007 on the basis of application from a senior citizen if the holder fails to provide necessary care to the applicant. In some of the cases we have reviewed, the Tribunals dismissed the application as the property was sold to a third party before the application was filed before the Tribunal. There is confusion among the Presiding Officers whether the registration of deed can be cancelled if the property under dispute is sold.
- According to one Presiding Officer, the Rules do not clearly specify what can be done if the children fail to pay the maintenance amount decided by the Tribunal.
- Suppose a case is filed by the daughter in law against the mother in law under Protection of Women from Domestic Violence Act and the latter filing an application for maintenance against the son, what action should the Tribunal take - asked a Presiding Officer.
- If the son is abroad, whether the daughter in law can represent him. – a doubt raised by the staff of one of the Tribunals
- It is not clear whether the parties have to appear along with the legal practitioner

- One of the Presiding Officers aired his doubt about entertaining application of parents aged below 60 years though the Act which clearly states that parents can seek maintenance irrespective of their age.
- Another Presiding Officer was doubtful about the course of action in a case where both the applicant and the respondent were senior citizens.

## **2.15 Need for Training for the Presiding Officers and Staff of Tribunals**

It was found that very little training inputs have gone into functioning of the Tribunals. Some of the Presiding Officers and staff whom we interviewed shared their confusion regarding the legal provisions and procedures to be followed by the Tribunal. It was also observed that different Tribunals are following different procedures and case management systems. The Presiding Officers, staff and conciliation Officers have different levels of experience and exposure to aspects related to the Tribunal. To streamline the case management and to improve the decision making in the Tribunals, training is necessary for the Presiding Officers, staff and the conciliation Officers. The training should include legal aspects, case management and procedural aspects. Training for Presiding Officers should cover jurisdiction specific knowledge and skills and case management. The training may also include other aspects such as evaluating evidence and assessing credibility. This will help in adopting a consistent approach by different Tribunals. The staff should get training inputs on legal procedures and case management. At present the conciliation Officers are empanelled by the Tribunals without providing any training. The profile of the present conciliation Officers indicate that majority of them do not have any previous experience in conciliation. Therefore, training should include not only legal aspects but also aspects related to conciliation/mediation/counseling. Involvement of judges/legal practitioners as resource persons in the training programmes may be necessary. Prior to organizing training programmes, a workshop may be organized to develop the training module. The workshop should include participants representing various categories of stakeholders such as Presiding Officers of Tribunals, staff, conciliation Officers, judges, legal practitioners and representatives of voluntary organizations for the welfare of the senior citizens.

## **2.16 Need for Awareness Programmes**

The Tribunals rarely take up activities to increase awareness about the rights of the parents/senior citizens as well as the functioning of the Tribunals. The people come to know about the Tribunal

and the Act through senior citizens' forums, newspapers, radio programmes, legal practitioners, village Officers, human rights activists, NGOs and police. There is a need to increase the awareness about the Tribunal through these channels in a more effective way. The elected representatives at the local level seldom play a role either in creating awareness or in directing the cases to the Tribunals. This channel has a much higher potential as a point of information. There is also a need to increase the awareness among grassroot level functionaries such as Anganwadi workers, ASHA and Kudumbasree functionaries.

### **2.17 Suo Moto Cases**

As per the Act, the Tribunals can take cognizance suo moto. But Tribunals rarely take up cases suo moto. Only three out of the ten Tribunals have taken such cases in 2014. The Tirur Tribunal took up a case based on press reports. The senior citizen was admitted in the Government old age home in the district based on the orders of the Tribunal. In Kannur, an innovative programme was initiated for the welfare of the elderly. The officials of the Social Justice Department visit the old age homes in the district and prepare a list of inmates who have been abandoned by children or legal heirs. A notice is served on them to appear before the Tribunal and are asked to give their explanation for abandoning the senior citizens. The process was undertaken in the Government Old Age Home and Prathyasa Bhavan of the Archdiocese of Thalasserry. Notice was sent to children of 30 inmates of Government old age home and 12 inmates of Prathyasa Bhavan. Seven senior citizens in the Government Old Age Home joined their children after the hearing. In other cases, the RDO asked the children to visit the parents at least once in a month and pay a small amount regularly. The District Social Justice Officer and the Conciliation Officers are involved in the process.

### **2.18 Legal representation**

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. As a result, the process is becoming increasingly legalistic. The parties are compelled to pay for legal representation. 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 some imbalance in the process and becomes

disadvantageous for the senior citizens. There should be some provision for some legal aid for the applicants.

### **2.19 Role of the Social Justice Department**

The role of the Social Justice Department in the functioning of the Maintenance Tribunal is very limited. Their role is limited to providing the services of District Social Justice Officer as a Conciliation Officer. However, not all Tribunals have empanelled District Social Justice Officer as a Conciliation Officer. In the case of revenue divisions located outside the district headquarters, including them as Conciliation Officers may not be advisable.

### **2.20 Linking with Civil Society**

Linking the Tribunals with civil society organizations, media, local governments, police, religious organisations and other stakeholders is important to enhance the awareness about the Tribunal and thereby increasing accessibility to justice for the elderly.

### **2.21 Cases in which Warrant or Summons were Issued**

The Tribunals rarely issue warrant or summons to bring parties for hearing. Only in 3 per cent of the cases in the sample Tribunals, warrant/summons was issued.

## CHAPTER III

### APPELLATE TRIBUNALS

#### 3.1 Introduction

Appellate Tribunals are constituted at the district level to hear the appeal against the order of the Maintenance Tribunal. As noted earlier, the Appellate Tribunals are presided over by the District Collector. A senior citizen or parent, aggrieved by an order of a Tribunal may file an appeal against the order within sixty days from the date of the order. However, the Appellate Tribunal has the power to waive this time limit if there is valid reason. On receipt of an appeal, the Appellate Tribunal sends notice to the respondents. The Appellate Tribunal may call for the record of proceedings from the Tribunal against whose order the appeal is filed. The Act envisages the order of the Appellate Tribunal to be pronounced within one month of the receipt of an appeal.

A sample of four Appellate Tribunals viz., Kannur, Wayand, Malappuram and Ernakulam were studied in detail for understanding the aspects related to their functioning. The aspects covered included the number of cases filed, number of cases in which orders were passed, case management process etc. The study team interviewed the Presiding Officers and staff of the Appellate Tribunals and a small group of applicants. The case records of 9 appeals were also examined by the study team.

#### 3.2 Number of Appeals

Table 3.1 present the details about the cases filed in the four sample Appellate Tribunals covered by the study.

**Table 3.1 Details of Cases Filed in the Sample Appellate Tribunals in 2014**

<b>District</b>	<b>Number of cases filed</b>	<b>Number of cases disposed</b>	<b>Number of Sittings of the Appellate Tribunal</b>
Kannur	5	5	3
Wayanad	1	1	1
Malappuram	4	4	2
Ernakulam	12	8	7

Table 3.1 indicates that only in a very small proportion of the cases filed in the Maintenance Tribunal, an appeal is filed before the Appellate Tribunal. The number of appeals filed in the Appellate Tribunal in 2014 ranged between 1 and 12. The pendency of cases is also low. In two of the four sample Appellate Tribunals, a decision was taken in all the appeals filed in 2014.

### 3.3 Case Management in Appellate Tribunals

The Magisterial Department of the District Collectorate (which comes under the Revenue Department) handles the appeals on the orders of the Maintenance Tribunal except in Ernakulam district. In Ernakulam, the magisterial department directs these applications to the District office of the Social Justice Department. The hearings of the Appellate Tribunal are fixed on a date convenient to the District Collector who is the Presiding Officer of the Appellate Tribunal. The hearings are held in the Collectors' chamber.

**Table 3.2: Time taken for Disposal of Sample Appeals filed in 2014**

<b>Number of days</b>	<b>Number of cases</b>
One month or less	3
1-3 months	2
More than 3 months	4
<b>Total</b>	<b>9</b>

It is found that only one-third of the appeals filed before the Appellate Tribunals in 2014 is disposed within one month, the time limited prescribed in the Act. In Ernakulam Appellate Tribunal, there is additional delay as the applications received at the magisterial department of the collectorate are transferred to the Social Justice Department. The average time taken for the appeal to reach the Social Justice Department from the Magisterial Section of the Collectorate is 17 days.

It was found that the register of appeals is not regularly updated in the Appellate Tribunals. Inadequate staff support is a problem faced by the Appellate Tribunals also. The Malappuram Appellate Tribunal used to entertain application from children till recently. All the four appeals filed before the Appellate Tribunal in 2014 were that of children. Hearing was conducted in all the four appeals. As per the Act, the parents can approach an Appellate Tribunal if they are unhappy with

the order, while the respondents have no option but to appeal before the High Court. The situation highlights the need for training for the Presiding Officers and staff of the Appellate Tribunal. However, other Appellate Tribunals dismissed appeals from children.

## **CHAPTER IV CONCLUSION**

### **4.1 Introduction**

Kerala has the highest share of elderly in total population among the states in India. Increasing life expectancy, rapid decline in fertility rates and migration of state's working population to other countries and other states are leading to a fall in old age support ratio of the state. Like developed countries, the senior citizens in Kerala have smaller 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. While it is always preferable for disputes to be resolved at the family level, this is not always possible and in such cases the Maintenance Tribunals and Appellate Tribunals allow the senior citizens to enforce their rights to get maintenance from their children and legal heirs. The functioning of the Tribunals is governed by the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and the Kerala Maintenance and Welfare of Parents and Senior Citizens Rules, 2009. The state government has constituted Maintenance Tribunals in every revenue division and Appellate Tribunals in every district. The Tribunals are envisaged to provide simple, inexpensive and speedy delivery of justice to senior citizens. In the following sections, we discuss the summary of findings and major suggestions emerging from the study.

### **4.2 Summary of Findings**

The Tribunals have helped the senior citizens in a major way to establish their right to proper maintenance. Before the formation of the Tribunals, the avenue for establishing this right was the Criminal Procedure Code, 1973, which was often time consuming and expensive. The Tribunals in the sample, on an average, received 130 applications and disposed 60 applications in 2014 indicating the high pendency of the cases. The figures have to be viewed along with the timeframe of 90 days envisaged in the Act for disposing applications. The study finds that only one-fourth of the applications are disposed within 90 days, a situation demanding immediate attention. On an average, about half of the cases required three or more oral hearings to dispose a case in the Tribunal. The absence of one or both parties, procedural problems and the failure of the conciliation mechanism has led to larger number of hearings and delay in disposing the cases.

The senior citizens are also affected by the postponement of hearings at short notice. As of now, the Tribunals are not able to effectively monitor the execution of its orders. The lack of monitoring on the functioning of the Tribunals at the state level is another major weakness of system.

The Tribunal functions are different from most other duties of the Presiding Officer. The knowledge and expertise required for functioning as the 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.

At present, only less than a dozen appeals came before the sample Appellate Tribunals. But still there is pendency in some of the Appellate Tribunals. The absence of a monitoring system for the appeals coming before the Appellate Tribunal and delay in organizing its sittings are some of the problems faced by the Appellate Tribunals.

It was noticed that the number of applications for maintenance and cancellation of deed coming before various tribunals is showing an increasing trend. With increasing awareness about the Maintenance Tribunal among the senior citizens, the number of applications is likely to grow multifold in the near future. Therefore, the present facilities, skeleton staff support and the time spent for tribunal activities by the presiding officers may become grossly inadequate in the near future. New ways to handle the situation may have to be worked out. The efficiency of the system to address such a scenario will also have to be improved. The possibility of starting additional Maintenance Tribunals in districts such as Thiruvananthapuram and Kannur which have only one Maintenance Tribunal to cater to the whole district may have to be considered by the Government. The Maintenance Tribunals in these districts are already reeling under the pressure of large number of applications.

### 4.3 Suggestions and Recommendations

Based on the study, the following suggestion/recommendations are made to improve the functioning of the Maintenance Tribunals and Appellate Tribunals formed for the welfare of parents and senior citizens.

1. The early case assessment mechanism may be strengthened. Early case assessment involves the assessment by the Tribunal staff and the preliminary field enquiry by Village Officer or local Police. An effective case assessment at an early stage can help in increasing the availability of information and reducing the number of oral hearings necessary for disposing cases. The inability of the senior citizen to provide evidence to his/her claim should not come in the way of a favourable decision by the Tribunal. It is possible that additional information received by the Tribunal from that provided in the original submission may be highly relevant to understand the case. Based on the information collected, early case assessment could be undertaken by the Tribunal staff to avoid the need for multiple oral hearings or to ensure that the Tribunal has as much relevant information as possible when making its decision. This raises the need for better procedures for gathering additional information during the first visit of the claimant or the opposite party. At present it is being done in different ways by different Tribunals and different officials such as village officer, Police officer etc. The aspects of enquiry may also vary. Apart from the preliminary enquiry by the Village Officer or the local police, the staff of the Tribunal should be equipped to undertake early case assessment which can be done only by imparting training to the Tribunal staff on this aspect. The Tribunals may use common format for local enquiry and checklist for early case assessment. One Tribunal specifies a deadline for submitting the preliminary enquiry by the Village Officer. Another Tribunal sends the notice for hearing along with request for enquiry report to the village officer. Such practices have helped in expediting the preliminary enquiry and therefore may be adopted in other Tribunals also.
2. The Tribunal usually informs the parties about the hearing date through the village office. But the Tribunals which are serving notice to the parties through the Police Station reports better attendance in hearing sessions. It is suggested that in case a party fails to appear

before the Tribunal on a hearing date, the notice for the next hearing may be served through the local police.

3. In Palakkad, if the applicant is unable to travel, the Village Officer records his/her statements and the Tribunal pass orders based on the statement and the arguments by the respondents. This seems to be a good practice. But such practices should have legal sanctity which can be ensured only if the Rules allow such a procedure.
4. Time standards should be established for the completion of key steps involved in scheduling and hearing cases, and monitor performance against these standards. In developing these standards it will be necessary to establish and maintain realistic estimates of the availability of the Presiding Officer and his/her case resolution capacity. Since hearing is not the only activity expected from the Presiding Officer, factor in other required activities (e.g., case preparation, writing reasons for decision etc) to improve the accuracy of the schedules. The reasons for postponements and adjournments should be recorded on a structured set of categories to enable consistent tracking of its composition.
5. There is a need to ensure that the orders of the Tribunal are properly executed. At present the applicants have to again approach the Tribunal in case the order is not executed. Even for such applications, the Tribunal follows the procedure similar to that in a fresh case and may postpone the hearing if the respondent is not available. It is suggested that the procedure in such cases should be spelt out in the Rules. Instead of considering it like a fresh case, the Tribunal may assess the situation through village office or police station instead of posting it for hearing. Only if the assessment report of the concerned officials demands some clarification from the respondent, it should be posted for hearing. Such a system can reduce delay in such cases.
6. The local police station where the parent/senior citizen resides should be given the responsibility to ensure that the Tribunal orders are executed. The police stations should maintain the records of such orders. Unlike other types of cases, the victims of non-execution of orders of the Tribunal are aged people without any support even from their children. Because of the inadequate administrative support, the Tribunals are unable to monitor the execution of its orders effectively. The beat constables may visit the senior citizen and ascertain the position. As per Circular No 16 of 2010 of the Director General of Police, "each Police Station shall maintain an up-to-date list of Senior Citizens living within

its jurisdiction, especially those who are living by themselves". The Circular also necessitates that "a representative of the police station, as far as possible, together with a social worker or volunteer shall visit such senior citizens at least once in a month". Expanding the scope of the circular to specifically visit the senior citizens benefitted by the 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. This reduces the hardships of the senior citizens and improves the image of the Tribunal among the public. Moreover, it reduces the workload of the Tribunal.

7. Tribunal panels should be encouraged not to adjourn cases. This is because when an adjournment occurs it may be weeks before it is reheard causing inconvenience and possibly create added stress to claimants by requiring them to attend the Tribunal for a second time. The postponement and adjournment of cases should be based on a set of criteria developed at the state level. The criteria should be developed in such a way that the principles of natural justice and procedural fairness are not hampered. Unrepresented persons should be informed about the nature and requirements of Tribunal proceedings to improve the likelihood that they will appear at subsequent hearings.
8. Sometimes the hearing is postponed at short notice. In majority of the cases, the parties come to know about the postponement of the sitting only after reaching the venue of the sitting causing much inconvenience to both parties. It can also be demoralizing to the elderly who approach the Tribunal for maintenance. Tribunal administrators must make greater efforts to avoid cancelling hearings at short notice.
9. It is found that only one-third of the appeals filed before the Appellate Tribunals in 2014 are disposed within one month, the time limit prescribed in the Act. In Ernakulam Appellate Tribunal, there is additional delay as the applications received at the magisterial department of the collectorate are transferred to the Social Justice Department. The Appellate Tribunals have to usually handle less than a dozen cases in a year. There is scope for expediting the delivery of justice. In the case of Appellate Tribunals, early case assessment can help in reducing the number of hearings on appeal as in many cases the appeals are non-maintainable.

10. Appellate Tribunals should hold sittings at least once in a month if there is any appeal is filed. Otherwise, the time limit of one month prescribed in the Act to dispose of appeals will not be possible.
11. At present the registers are not properly maintained particularly in Appellate Tribunals. Registers indicating the status of each case filed before the Maintenance Tribunal and Appellate Tribunal should be maintained.
12. Another change worth considering is giving parties a non-binding opinion on the merits of the claim after a brief and informal consultation on the facts surrounding a claim. The Conciliation Officer may be able to play this role. If this is made available, it may help to avoid claims being pursued where both parties genuinely believe that the law is on their side, but where it quickly becomes evident that the case of the applicant or respondent is based on a misunderstanding or is weaker than they originally expected.
13. It is felt that the 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 he/she agrees to it. This will provide necessary evidence in case of breach of order.
14. A successful conciliation outcome can reduce the time required for oral hearings. But, as of now only a small proportion of the cases are sent for conciliation and out of them very few are successful. This demands a thorough relook at the process with a view to make it more result oriented. Otherwise, it can only delay the disposal of cases. There is a need to streamline the conciliation process and only people who are genuinely interested in the welfare of the elderly should be appointed as conciliation Officers. At present the conciliation Officers are empanelled by the Tribunals without providing any training. The profile of the present conciliation members indicate that majority of them do not have any previous experience in conciliation. Therefore, they should be trained not only in legal aspects but also in aspects related to conciliation/mediation/counseling before performing their roles as conciliation Officer. Involvement of legal practitioners/mediators/counsellors as resource persons in the training programmes may be necessary. The streamlining would also require that the Tribunal extends necessary support to the conciliation process. There

is also a need to decentralize the conciliation process by which the conciliation Officers may visit the homes of the parties or organize the conciliation meetings in a place closer to their homes. Conciliation meetings may be organized at the Taluk/Block level if not at the Grama Panchayat or Municipal level so that the parties do not have to travel long distance. The facilities available in Grama Panchayat/Block Panchayat/Municipal Offices should be made available for the conciliation meetings. It will also be better if the Conciliation Officers are from different localities within the revenue division. Though voluntarism is acceptable to some extent, there is a need to provide travel allowance and honorarium for the conciliation Officers in getting effectively involved in the conciliation process. After improving the conciliation process, the Tribunal should exercise its discretion for promoting reference of disputes to Conciliation Officer.

15. As of now, no additional funds are available for the functioning of Tribunals. The applicants do not have to pay any fees. The existing infrastructure, staff and facilities in the Revenue Divisional Office and the Collectorate (in the case of Appellate Tribunal) are made use of. In a state like Kerala where large number of people have migrated to outside the state and country for work, the notices may have to be sent to foreign countries also. It was pointed out that the Tribunals face difficulties in raising funds for such inevitable expenses related to its functioning. Due to fund shortage, awareness programmes are seldom organized. A necessary condition for improving the effectiveness of the Tribunal is the availability of additional funds for its functioning.
16. Only a skeleton staff spared by the Revenue Department is available for administrative support. This has affected the functioning of the Tribunal. Case flow management and regular follow up of cases can be done only if there is sufficient staff support for the Tribunal especially in Tribunals which receive more than 100 applications in a year. This may be considered by the government in sanctioning new posts and or work allocation.
17. It appears that there is some confusion regarding the roles of the Department of Revenue and the Department of Social Justice. The Presiding Officer belongs to the Revenue Department and usually the staff involved in the functioning of the Tribunal is also from the Revenue Department. The role of the Social Justice department may be clearly defined so as to avoid confusion among the officials involved.

18. At present the people come to know about the Tribunal and the Act through senior citizens' forums, newspapers, radio programmes, legal practitioners, village officers, human rights activists, NGOs and police. There is a need to increase the awareness about the Tribunal through these channels in a more effective way. The Social Justice department should take the initiative to improve awareness among the people about the Tribunal. Apart from the current channels, the elected representatives, particularly at the local level, can play a major role in helping the needy parents/senior citizens to approach the Tribunal. One option to make them aware of the Tribunal is to include the details about the roles and functions of the Maintenance Tribunal in the training programmes organized by the Kerala Institute of Local Administration (KILA) for elected representatives. Increasing awareness through the Kudumbashree network, Jagratha Samithi, Gramasabha and the Police force are other options available. There is also a need to increase the awareness among grass root level functionaries such as Anganwadi workers and ASHA.
19. It was found that very little training inputs have gone into functioning of the Tribunals. Some of the Presiding Officers and staff whom we interviewed shared their confusion regarding the legal provisions and procedures to be followed by the Tribunal. We have seen that different Tribunals are following different procedures and case management systems. The Presiding Officers and staff have different levels of experience and exposure to aspects related to the Tribunal. To streamline the case management and to improve the 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 and jurisdiction specific knowledge and skills and case management. The training may also include other aspects such as evaluating evidence and assessing credibility. This will help in adopting a consistent approach by different Tribunals. The staff should get training inputs on legal procedures, early case assessment and case management. Involvement of judges/legal practitioners/mediators/counsellors as resource persons in the training programmes may be necessary.
20. Prior to organizing training programmes, a workshop may be organized to develop the training module. The workshop should include participants representing various categories of stakeholders such as Presiding Officers of Tribunals, staff, conciliation Officers, judges,

legal practitioners and representatives of voluntary organizations for the welfare of the senior citizens.

21. In two Tribunals which were included in the sample -Fort Kochi and Perintalmanna-, the hearings are held on the first floor of multistoried buildings. The elderly who want to make use of the services of the Tribunal find it very difficult. Given the fact that the Tribunals are meant for elderly persons, the state government should make sure that the Tribunal hearings are held in a place convenient to them on the ground floor itself or the building should have lift access to other floors. It is also important to ensure that the elderly should have seating facilities, access to drinking water and sanitation facilities.
22. The Tribunal at Fort Kochi had earlier organized the sittings in different taluks under the revenue division. This has helped to reduce the difficulties in travelling faced by the senior citizen. Such a practice may be adopted by other Tribunals especially those in revenue divisions which covers a whole district. It may be noted that the two Tribunals in the sample which received the largest number of applications (Thiruvananthapuram and Kannur) cater to the whole district.
23. The initiative of the Kannur Tribunal to rehabilitate the inmates of the old age homes is worth replicating. The intervention of the Tribunal has helped some of the senior citizens to join their family.
24. Given the fact that the senior citizen may have to face negative consequences if he/she goes back to the children after legal proceedings, there is a need for counselling both the claimant and the children.
25. Section 5 (8) of the Act provides that in case of failure on the part of children or relative to comply with the order, the Tribunal can issue a warrant for levying the amount and even sentence such person to imprisonment. So, this is the coercive mechanism provided under the Act for ensuring compliance. The Act also provides a limitation period of 3 months for filing application for execution of the order. In Section 11 of the Act, it is specifically provided that a maintenance order under this Act could be executed in the manner prescribed for the execution of orders passed under Chapter IX of Cr PC. So apparently both these provisions deal with non-compliance and enforcement. Clarification is needed for a harmonious interpretation of these two provisions especially the limitation period prescribed under Section 5 (8). The task should not be left to the Presiding Officers.

26. The possibility of providing video conferencing facility for hearings may be considered. This can help the parties not to be physically present in the oral hearings.
27. A manual/Handbook for use by the presiding officers, Tribunal staff and Conciliation officers may be prepared at the state level and circulated among them for bringing in uniformity in case management and in the decision making process.

Based on the findings of the study, the following amendments are suggested for the Kerala Maintenance and Welfare of Parents and Senior Citizens Rules in 2009.

1	<p>As per the Act, an application filed for monthly allowance for the maintenance and expenses for proceeding shall be disposed of within ninety days from the date of the service of notice of the application to such person:</p> <p>Provided that the Tribunal may extend the said period, once for a maximum period of thirty days in exceptional circumstances for reasons to be recorded in writing.</p> <p>But it was found that only one-fourth of the applications are disposed within ninety days. With a view to achieving quicker disposal of applications for maintenance, the following amendments are suggested in the Rules:</p> <ul style="list-style-type: none"> <li>i. prescribing the period within which applications are to be admitted, notices are to be issued to opposite party and the applications are to be decided. Similar provisions are also proposed also in respect of appeals;</li> <li>ii. no adjournment to be ordinarily allowed unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by the Tribunal.</li> </ul>
2	<p>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”.</p> <p>The Rules may be amended to make the Social Justice Department responsible for monitoring the functioning of the Maintenance Tribunals”. A standard format for monitoring should be appended to the Rules.</p>
3	<p>It should be clearly spelt out in the Rules that the complaints related to failure of complying with the orders of the Tribunal have to be treated differently by the Tribunal. It is suggested that the procedure in such cases should be spelt out in the Rules. Instead of considering it like a fresh case, the Tribunal may assess the situation through village office or police station instead of</p>

	<p>posting it for hearing. Only if the assessment report of the concerned officials demands some clarification from the respondent or opposite parties, it should be posted for hearing. The Rules should spell out the procedure to be adopted by the Tribunal in case the order of the tribunal is not complied with.</p> <p>It should also be spelt out in the Rules that such applications should be disposed within 30 days.</p>
4	<p>It should be spelt out in the rules that Appellate Tribunals should hold sittings at least once in a month if any appeal is pending. Otherwise, the time limit of one month prescribed in the Act to dispose of appeals is not likely to be followed.</p>
5	<p>Rules have to be amended to make provisions to record the statement of the applicant who is unable to travel and there is no one to represent him/her by an authorised officer by visiting the applicant's house.</p>
6	<p>Rules may be amended to allow video conferencing facility in hearings involving parties who are unable to be physically present.</p>
7	<p>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 1<sup>st</sup> January and 1<sup>st</sup> July, respectively, and at every time any change is effected therein.”</p> <p>It is felt that the panel of conciliation officers need to be revised only annually. The Rules may be modified accordingly. Given the wide variation in the number of conciliation officers in the panel, it is felt that the rule should stipulate the maximum number of conciliation officers needed under a tribunal. The Rules should also suggest that as far as possible, conciliation officers are selected from different taluks in the revenue division.</p>
8	<p>Rule 3: Add a clause to make sure that at least one of the conciliation officers is a woman.</p>
9	<p>Rule 17: Rules have to be amended to incorporate provisions for examining the maintainability of appeals. Notice need to be issued only in appeals which are maintainable.</p>
10	<p>Appendix to the Rules: Form A (Application before the Maintenance Tribunal) given as appendix to the Rules may be amended to include a provision for furnishing the contact telephone number of the applicant (if available). This will help in communicating any postponement of hearings and in informing the parties about any additional information to be furnished.</p> <p>Also in Form H (Appeal before Appellate Tribunal), such a provision should be made.</p>

A monitoring system at the Tribunal level as well as at the state level may be introduced. At present it is more or less absent. Formats for monitoring the functioning of Maintenance Tribunal and Appellate Tribunal is suggested below:

**Format for monitoring the functioning of Maintenance Tribunal for the Month of .....**

<b>Sl. No.</b>	<b>Indicator</b>	<b>Number</b>	<b>Remarks</b>
1	Number of new applications filed in the month		
2	Number of pending applications (including those filed in the month)		
3	Number of applications pending for more than 90 days		
4	Number of cases in which final orders were issued in the month		
5	Number of cases in which conciliation process was initiated in the month		
6	Number of cases settled through conciliation in the month		
7	Number of cases related to the non-execution of earlier orders of the Tribunal		
8	Number of cases scheduled for hearing in the month		
9	Number of cases in which hearing was adjourned		
10	Number of cases in which oral hearings were held in the month		
11	Number of Tribunal sittings in the month		
12	Number of sittings of the Tribunal postponed in the month		

**Format for monitoring the functioning of Appellate Tribunal for the Month of .....**

<b>Sl. No.</b>	<b>Indicator</b>	<b>Number</b>	<b>Remarks</b>
1	Number of appeals filed in the month		
2	Number of pending appeals (including those filed in the month)		
3	Number of appeals pending for more than 30 days		
4	Number of cases in which final orders were issued in the month		
5	Number of cases dismissed after initial verification as it is non-maintainable.		
8	Number of cases scheduled for hearing in the month		
9	Number of cases in which hearing was adjourned		
10	Number of cases in which oral hearings were held in the month		
11	Number of sittings of the Appellate Tribunal in the month		
12	Number of sittings of the Appellate Tribunal postponed in the month		