

Human Rights Approach to Protect Elderly Persons in India

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Abstract

In the modern fast paced world, human rights for the vulnerable sections have become a mainstream concern globally. One such vulnerable section comprises of the elderly people. Different countries categories and treat elders differently. Elderly people can be understood as individuals who are not part of the productive population of a country or people who have crossed the age of retirement from work. It is commonly a stage of life associated with a loss of physical prowess, less capacity to work and an increased need of medical assistance. They are the dependent population who usually do not have a regular source of income of their own. The Indian culture has a great reverence for the elderly and instills in individuals a sense of responsibility for their care. But do these values still hold in the present society, with an ever-increasing figure of old age homes and care facilities? Are the rights to elderly people only limited to traditions? The Indian Constitution reads the Right to Life under the title of a fundamental right and the Judiciary has expanded it further to include right to life with dignity in a catena of cases. Numerous international treaties and plans have also been laid out to safeguard the rights of the elderly people. This paper evaluates the position of India with regards to the rights of its elder demographic. It draws out the legal safeguards provided to ensure human rights to the elderly and traces the various government schemes and programs targeted towards the betterment of the elderly. It aims to access the conditions and facilities given to the elderly people in the old age homes operated by the state functionaries and private organizations. Furthermore, a comparative assessment of the provisions and laws concerning the elderly in other countries is made so as to suggest changes needed in order to improve India's stance with regards to its elder population thus, ensuring that their human rights are not infringed.

Introduction

Population ageing is a natural globally occurring phenomenon, which has come to forefront in the modern world due to the medical advancement leading to increased lifespan of people. This amounts to a higher percentage of population in the old age than ever in history. The increased number of elder persons provides for various sociological, economical and legal accommodations to ensure that their interests and needs are factored in. The process of ageing is mirrored with declining cognitive abilities, economic instability and an increased dependency for carrying out the basic day to day activities.¹ Viewing the same from the present-day environment of rapid change due to the advancements in technology and rapid industrialization, the elderly population faces the added challenge of isolation from traditional societal values. Echoing these concerns, various countries and international organizations have started recognizing the rights and problems faced by the older persons by introducing various laws and conventions which outline the problem and also attempt at remedying the same in a holistic manner.

The perception and treatment of the old people depends upon numerous factors controlling the functioning and hierarchy of the society. India boasts the second largest population of old aged people in the world. The 2011 census accounted for 98.3 million elderly population(60+) amounting to 8.6% of the entire population, expected to cross 100 million within the same year.² This increase in elder population creates a distinctive discourse about their living standards comprising of social position with regards to the availability of economic, legal and human rights. The traditional system of joint family values served as the basis of the position and respect of the elders, but the same has been diluted due to modernization and the rise of the nuclear family structure leading to the isolation and neglect of the elders.³ This further lays down the responsibility on the State and the society as a whole to provide for adequate infrastructure, facilities and resources in order to ensure that the elderly population has access to the means in order to safeguard their human rights and lead a life of dignity. Indian legislative has grounded these concerns in various legislations and policy schemes so as to back the moral responsibility towards the elders with the force of legal sanctity and safeguards of enforceability via the courts.

¹Shashi Nath Mandal, *Protection of Rights of Oldage Person in India: A Challenging Facet of Human Rights*, 11 GLOBAL J. OF HUMAN SOCIAL SCI., 23 (2011).

² Ministry of Home Affairs, *Census 2011*, GOVERNMENT OF INDIA (2011), https://censusindia.gov.in/2011census/populartion_enumeration.html.

³Mandal, *supra* note 2, at 25.

Human Rights of Elder Persons

The term human rights, is all inclusive for people of all walks of life. It encapsulates the concept of right to lead one's life with dignity and access to all the basic necessities needed for the same. The Article 25 of the UDHR,⁴ articulates the intricacies of right to standard of living as a universal right of every individual which includes food, clothing, housing, accessibility and medical care. The rights can be divided into the broad categories of general absolute rights which are same for all and those rights which are specific for which the parameters are subjective to the age, gender and circumstances of the individual concerned. Therefore, the international and domestic laws recognize the vulnerabilities so as to remedy and safeguard the concerns that the universal rights are not infringed or limited due to the factum of the vulnerability. To this effect it is important to understand that the needs of elder people are varied than those of the younger demographic.

As old age is a phase of life where the dependency upon others increases due to depleting bodily capability the rights needed and the ensured should be centered around specific needs like physical and mental health, accessible transportation, safe housing, technological literacy and so on. Clubbing the problems of older people, the human rights involved need to be in line with solutions for economic, physical and psycho-social problems. Thus, the rights of the elder people can be further divided into three limbs of protection, participation and image.⁵ Protection covers the ambit of securing and safeguarding physical, psychological, social and emotional safety of elderly in light of their vulnerability to the possibility of abuse and ill treatment. Participation involves initiatives to ensure active role of older people in decision making and the society. Image refers to negating derogatory narratives of discrimination and meekness by replacing it with positive imagery of older people with regards to their ability and capability of living life to the fullest. The frameworks and mechanisms therefore, should be drafted by keeping in view the specific needs of the elderly as they are unique to their position in life.

National Position – Legislations and Safeguards for Elders

The moral duty to maintain and provide for the elder persons is recognized and acknowledged by all people. The Indian State has formalized this moral duty into a mandated liability by a series of policy and legal initiatives. The Constitution of India in Article 41

⁴G.A. Res. 217 A (III), art. 25 (Dec. 10, 1948)

⁵*Human Rights of older people in India: A reality check*, Agewell Foundation (July 11, 2014) <https://www.agewellfoundation.org/pdf/Human%20Rights%20of%20Older%20People%20in%20India%20-%20A%20Reality%20Check%20-%20July%202014.pdf>.

casts a general responsibility on the State to ensure right to work, education and public assistance in certain cases in which old age is read in as a factor.⁶

The first initiative by the government in forwarding the interests of the elderly persons came in with the preparation and adoption of the ‘National Policy on Older Persons’ in January 1999.⁷ The same has been reformulated again in 2011 factoring in the changes pertaining to technology and social inclusivity over the years. The policy aimed at consolidating and fast tracking the welfare schemes launched to empower the older population by providing them economic, social and legal safeguards. It operated in a directory capacity banking on the moral obligations of the state to affirm and assure the well-being of all its citizens. Within its operational period the policy has acted as a skeleton framework for various government functionaries to accommodate the priorities of the older people and ensuring their inclusivity in the social order. Under the banner of the policy narrative various social welfare schemes⁸ have been launched by different organizations like the Ministry of Social Justice and Empowerment establishing a dedicated National Council for Older Persons, the Life Insurance Cooperation launching the JeevanDharaYojana, Senior Citizen Unit Yojana, etc.

Apart from policy initiatives, the legislative has also formulated various laws which incorporate the scheme for maintenance of older persons within its ambit. Amongst the category of personal laws, Section 20 of the Hindu Adoption and Maintenance Act, 1956⁹ imposes a legal obligation on the children to maintain and care for their ageing parents once they become breadwinners. The section is applicable to both sons and daughters as has been observed by the Courts on numerous instances. But, the application of the section is only for those parents who are unable to maintain themselves financially. Under secular laws the provisions for maintenance of parents by the children upon proof of neglect despite having financial capacity for the same is provided under the Section 125 of the Code of Criminal Procedure when amended in 1973.¹⁰

⁶INDIA CONST. art. 41.

⁷National Policy on Older Persons, 1999, Ministry of Social Justice and Empowerment, Government of India (Jan. 13, 1999).

⁸*Schemes and Programmes being run by the various Ministries/Departments of Government of India, for welfare of Senior Citizens*, PENSIONERS PORTAL, <https://pensionersportal.gov.in/Document/WelfareSchemes.pdf>

⁹The Hindu Adoptions and Maintenance Act, 1956, No. 78 Acts of Parliament, 1956 (India).

¹⁰ The Code of Criminal Procedure, 1973 No. 2 Acts of Parliament, 1974 (India).

The major legislation with regards to the safeguard of the rights of old people is the Maintenance and Welfare of Parents and Senior Citizens Act of 2007¹¹ that ensures and provides for a legal obligation and enforcement mechanism for the aid and care of elder parents by the children in way of monthly allowance. It aims to provide a cost effective and fast redressal procedure to claim maintenance.¹² It also casts the responsibility on a broader set of people as it is applicable to the children as well as relatives of the senior citizens for the purpose of maintenance.¹³ It makes abandonment of senior citizens a criminal offence which is indictable with an imprisonment term extendable up to a maximum of three months or fine up to five thousand rupees or both.¹⁴ The Act, additionally sets a duty on the State to establish and run old age facilities for giving maintenance and shelter to indigent senior citizens and deserted parents.¹⁵ The financial safeguards are also provided under the Income Tax Act, 1961 which lays out tax benefits and exemptions on the basis of age.¹⁶

Additionally, various Government agencies and departments like the Ministry of Railways¹⁷ and Ministry of Civil Aviation¹⁸ have taken many incentives with regards to providing infrastructural inclusivity and ease of access to the older people. Provisions like ticket cost relaxation, reservation of seats, medical facilities with basic equipment and ramps and buggies for convenient travelling are some of the means

The Indian Judiciary also acts as an *avantgrandew* with regards to the enforcement and safeguarding the rights of the elderly. It has in a catena of cases upheld the need to enforce human rights of the aged people recognizing their right to live life with dignity.¹⁹ The case of *YogeshSadhwaniv. Commissioner of Police*²⁰ the Bombay High Court in the public interest litigation noted the complete failure for the enforcement of the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 whereby the State Government was ordered to file their response with an affidavit listing the efforts made in the direction.

¹¹The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 No.56 Acts of Parliament, 2007 (India).

¹²*id.* at § 5.

¹³*id.* at § 4 & § 9.

¹⁴*id.* at § 24.

¹⁵*id.* at § 19.

¹⁶Senior Citizens-Income tax, <http://www.incometaxindia.gov.in>.

¹⁷ Senior Citizens, <http://www.india.gov.in>.

¹⁸ The information given by Minister of State for Social Justice and Empowerment, Shri Vijay Sampla in a written reply in the Rajya Sabha.

¹⁹Senior Citizen Welfare Organisation and &r. v. State of Uttrakhand&Anr, W.P. No. 52 of 2013 (decided on 12 June, 2018) (India).

²⁰*YogeshSadhwaniv. Commissioner of Police*, (2015) SCC Online Bom 959 (India).

Further, in the case of *People's Union of Civil Liberties v. Union of India*²¹, the Supreme Court issued directives covering multiple schemes as a way of interim measure for the implementation of rights given to the old.

Thus, there exists a substantial legal framework and government machinery in place in order to safeguard and ensure the rights of elder persons in India. But reality of the matter despite the extensive paraphernalia of schemes and laws remains far from satisfactory based on the numerous studies conducted on the issue. The studies highlight that there are stark inequalities prevalent amongst senior citizens as a significant number of people face concerns in terms of monthly income, access to basic facilities like healthcare and instances of abuse across the country.²² Therefore, there needs to be a considerable follow-up on the grassroots level implementation and outreach of the schemes and laws laid out for the welfare of the elder persons.

International Position – A Comparative Analysis

The rights of older persons are recognized universally as a unique category which needs to be set aside and worked on by the State machinery. Different countries have devised different means to ensure the enforcement of older person rights.²³ Having elaborated upon the various provisions in India, the following section elaborates upon the laws and policies prevalent in the following countries:

United States of America

The American Constitution does not have an express mention prohibiting discrimination and segregation on the criteria of age, but the broad federal framework is contained in the Age Discrimination in Employment Act of 1967²⁴ which expressly mandates against discrimination of people 40 years or older in job opportunities. The American Social Security Act of 1936²⁵ lays out the provisions for availing the Old Age Insurance and Disability (OASDI) benefits and Supplementary Social Income for older persons. The protection against

²¹People's Union of Civil Liberties v. Union of India, 2007 (1) SCC 728 (India).

²²Agewell Foundation Research and Advocacy Centre, *Sense of Security & Human Rights of Older Persons*, NHRC (2019), https://nhrc.nic.in/sites/default/files/ResearchStudyReport_Sense_Security_HumanRightsOlderPersons_Agewell%20Foundation.pdf.

²³Israel Doron, Carole Cox et. al., *Comparing Older Persons' Human Rights: Exploratory Study of the International Older Persons' Human Rights Index*, 59 THE GERONTOLOGIST, 625 (2019), <https://academic.oup.com/gerontologist/article/59/4/625/5049303>.

²⁴Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621 (1967).

²⁵American Social Security Act of 1936, 74 U.S.C. § 6 (1936).

abuse is laid out in the Federal Elder Justice Act, 2010²⁶ which aims at growing federal and resident capacity to stop elder abuse by an interconnected network of State and civil society operations. The Older Americans Act of 1965²⁷ also offers a catena of support mechanisms enabling the active participation of elders in the community and also ensuring them the right to legal aid.

Additionally, besides the elder persons themselves the caregivers are also given certain benefits and incentives by the State through various schemes like the American National Family Caregiver Support Program of 2000²⁸ and the Lifespan Respite Care Act of 2006²⁹ which lays out funds for the states to improve and modernize care facilities. Thus, there is multipronged system targeting not just the old people but also benefitting those who are involved in providing care to them on a daily basis.

South Africa

The Constitution of Republic of South Africa under the Article 9(3)³⁰recognizes age has a unique category against which discrimination is prohibited. Thus, all the laws in the country recognize this distinction in spirit even if not expressly mentioned in the text. The South African Employment Act of 1998,³¹ expressly prohibits explicit and implied discrimination based on age in giving employment. In addition, the Social Assistance Act of 2004³²provides for the right to pension for old age pension for people above 60 years of age, who pass the conditions specified for the same. Further, the prevention of abuse and means to curb the same against the elderly are laid out in various laws like the Aged Persons Act, 1967,³³the Aged Persons Amendment Act, 1998,³⁴ as well as the Older Persons Act of 2006.³⁵

However, there is no legal mandate obligating the children and relatives for the care of the elder people, instead a general recognition of the same exists upon the reading of Article 10 of the Older Persons Act of 2006³⁶that expands on the community-based care and support services. The act also guarantees rights like housing, employment and legal aid for the older

²⁶Federal Elder Justice Act of 2010, 111 U.S.C. § 795 (2009-2010).

²⁷Older Americans Act of 1965, 89 U.S.C. §88 (1965).

²⁸American National Family Caregiver Support Program, Administration of Community Living (2000), <https://acl.gov/programs/support-caregivers/national-family-caregiver-support-program>.

²⁹Lifespan Respite Care Act of 2006, 109 U.S.C. §109-110 (2005-2006).

³⁰REPUBLIC OF SOUTH AFRICA CONST. art. 9(3).

³¹South African Employment Act, 1998 No. 55 Act of Parliament, 1998 (South Africa).

³²Social Assistance Act, 2004 No. 13 Act of Parliament, 2004 (South Africa).

³³Aged Persons Act, 1967 No. 81 Act of Parliament, 1967 (South Africa).

³⁴ Aged Persons Amendment Act, 1998No. 100 Act of Parliament, 1998 (South Africa).

³⁵Older Persons Act, 2006 No. 13 Act of Parliament, 2006 (South Africa).

³⁶id. at§ 10.

people. Additionally, in order to ensure medical and personal autonomy to the elder people the South African government provides for the Advance Care Directive Act of 2013³⁷ and the Enduring Powers of Attorney and Agency Act of 1984³⁸ which give complete legal recognition to the instructions given by the person for future management of health like consent for the type of treatment and personal matters like those pertaining to property and will.

Ireland

The laws in Ireland for the protection of elders against discrimination on the basis of age are centered in the Equal Status Acts, 2000–2015³⁹ and the Employment Equality Act, 1998.⁴⁰ Social Welfare and Pensions Act of 2013⁴¹ provides for old age pensions including a specific State Pension which is from a contributory collective fund and universal. Additionally, initiatives are also given to the caregivers in terms of temporary leave in the Carer's Leave Act of 2001⁴² and carer's allowance under the Social Welfare Act of 1990.⁴³

Similar to the South Africa, Ireland also provides facility to elder persons to provide health care directives and/or execution of any continuing power of attorney under the Assisted Decision Making (Capacity) Act of 2015.⁴⁴ Additionally, there exists a National Positive Ageing Strategy of 2013⁴⁵ but no specific law guaranteeing legal aid or assistance for the older persons.

Chile

Chile also has laws elucidating the rights of the older persons despite there being no specific mention of discrimination in respect of age in the Chilean Constitution in the Article 19(2)⁴⁶ and the Chilean Labour Code under Section 16.⁴⁷ The Chilean Social Security program incorporated an insurance cover of older persons by either a compulsory,

³⁷ Advance Care Directive Act, 2013 No. 24 Act of Parliament, 2013 (South Africa).

³⁸ Enduring Powers of Attorney and Agency Act, 1984 No. 2 Act of Parliament, 1984 (South Africa).

³⁹ Equal Status Act, 2000 No. 8 Act of Parliament, 2000 (Ireland).

⁴⁰ Employment Equality Act, 1998 No. 12 Act of Parliament, 1998 (Ireland).

⁴¹ Social Welfare and Pensions Act, 2013 No. 38 Act of Parliament, 2013 (Ireland).

⁴² Carer's Leave Act, 2001 No. 19 Act of Parliament, 2001 (Ireland).

⁴³ Social Welfare Act, 1991 No. 7 Act of Parliament, 1991 (Ireland).

⁴⁴ Assisted Decision Making (Capacity) Act, 2015 No. 64 Act of Parliament, 2015 (Ireland).

⁴⁵ Dept. of Health, National Positive Ageing Strategy, Gov. of Ireland (April 30, 2013), <https://www.gov.ie/en/publication/737780-national-positive-ageing-strategy/>

⁴⁶ CHILE CONST. art. 19(2).

⁴⁷ Chile Labour Code, § 16.

government-controlled pension fund or via an incentivized, tax-funded, needs-based pension system. The law against violence as amended in 2010 also covers older population in case of abuse. Chile Law No. 20.584⁴⁸ provides for honouring the right of choice of patients of all age groups for health care wishes and preferences. But there is no obligation levied upon the relations of the older person to maintain them. Despite the fact that Chile has a National Senior Citizen Service established in 1995 and a Ministry of the Elderly in 2003, there exists no targeted law pertaining to elder person rights.⁴⁹ Thus, the Chilean legal system is loosely set and does not cover every aspect with regards to the care and facility of the elder persons.

Australia

The Australian Constitution doesn't specifically refer to rights of older and elderly persons against discrimination but, the Discrimination Act of 2004⁵⁰ forbids discrimination on the basis of age in employment. With regards to financial assistance the Social Security Act of 1991⁵¹ lays out an Age Pension which is depending on an asset evaluation. But there is no precise regulation with respect of abuse and neglect. Broadly, the Aged Care Act of 1997 provides for the structure of established care and reporting as well preventing abuse in these services. Simultaneously, there are also many initiatives throughout the country covering multiple aspects like the Policy for Healthy Life and Better Aging of 2013 and the central legislation Aged Care Act of 1997.⁵² Similar to other countries, Australia also provides for recognition and respect of the carers under the Carer Recognition Act of 2010.⁵³ Additionally, there is complete autonomy given to people with regards to preference of medical treatments.

Old Age Homes in India – An Outline

The State is obligated to provide the facility of old age homes under the provisions of Section 10 of the Maintenance and Welfare of Parents and Senior Citizens Act of 2007, but are the facilities given adequate for the needs of the older people remains a point of research and debate. Further, the act provides for a state-run old age home in every district in India. This objective is not completed as the majority of operational old age homes are concentrated in

⁴⁸Mental Health Legislation, Law No. 20.584, 2012 (Chile).

⁴⁹ Human Rights of Older Persons and Non-Discrimination, The Office of the United Nations High Commissioner for Human Rights (Oct. 3, 2017), <https://www.ohchr.org/sites/default/files/Documents/Issues/OlderPersons/ConferenceSantiagoReport.pdf>.

⁵⁰Age Discrimination Act, 2004 No. 24 Act of Parliament, 2004 (Australia).

⁵¹Social Security Act, 1991 No. 78 Act of Parliament, 1991 (Australia).

⁵²Ageing in Australia, Australian Assn. of Social Workers (April 2013), <https://www.aasw.asn.au/document/item/4356>

⁵³Carer Recognition Act, 2010 No. 23 Act of Parliament, 2010 (Australia).

certain hotspots while there are no accommodation facilities for the old people in other places.

Based on the reports of the Agewell Foundation over the years one can gather that the conditions in the old age facilities are not sufficient and adequate to cater to the requirements of the elderly.⁵⁴ As per another survey conducted it is stated that an average 25% increase has been observed in the number of old age homes in India⁵⁵ with currently a total of 728 out of which information is only available for 547 which includes 325 homes working free of cost, 95 charging for accommodation and the remaining 110 providing both paid and free staying facility.

Another report highlights that there is not adequate capacity in the old age facilities to serve the requirements of the total number of populations seeking assistance. The conditions in the different old age homes also vary as those operating on private funding have better facilities as compared to the government run homes.⁵⁶ Observing the metrics used for assessing the facilities of old age homes the report observed that there is a lack of basic facilities like accessible infrastructure, medical facilities, nutritious food and so on. Furthermore, it was also recorded from the sample size that the old people residing in these old age homes do not feel a sense of safety and security.

Therefore, there is a substantial deficit of accommodation facilities in the country for elder persons in terms of old age homes. This in turn affects and dents the right to live with dignity for the elders as shelter is considered as a basic necessity for maintaining a basic standard of living for human beings.

Conclusion and Suggestions

The rights of elderly persons in India are deeply rooted in the traditional system. But in the present times that system is not standing on a structurally stable ground as the social values of the modern society are moving away from preset notions. This provides the need and operation of legislations specifically aimed at ensuring and safeguarding the right to life with dignity of elder people. Based on the observations made in the paper in light of the

⁵⁴Human Rights of Older People in India: A Reality Check, Agewell Foundation, (July 2014), <https://www.agewellfoundation.org/pdf/Human%20Rights%20of%20Older%20People%20in%20India%20-%20A%20Reality%20Check%20-%20July%202014.pdf>

⁵⁵Report on Old Age Facilities in India, Tata Trusts, <https://www.tatatrusts.org/upload/pdf/report-on-old-age-facilities-in-india.pdf>.

⁵⁶ Annual Report (Year 2018-2019), Agewell Foundation (2019), https://www.agewellfoundation.org/wp-content/uploads/2019/11/Annual_Report-2018-19.pdf.

comparative analysis and the state of old age homes operating in the State the following suggestions are made for providing human rights to old people:

- There needs to be a stricter punishment in place in the Maintenance and Welfare of Parents and Senior Citizens Act of 2007 for the people who abuse and abandon the elderly.
- There needs to be a specific legislation in place with regard to the right to medical facilities for the older population. It should be provided to them at government hospitals at regulated rates. Additionally, their right to the choice of medical treatments and future healthcare requirements should be recognised by the State.
- There needs to be a provision for the economically weaker older people, so that either they receive funds from the government or they are provided with suitable opportunities to earn their livelihood to the best of their abilities.
- The mental health of the elderly people should also be considered as a perimeter of their human rights and there needs to be schemes and programmes specially centered around active concern for psychological well-being.
- There needs to be schemes which focus on spreading awareness about the rights of elderly people in the country specifically in the rural and backward areas.
- As in other countries there needs to be certain perks and incentives like provision of leave etc. for people who are the primary caregivers for elderly people. It should not be made an inconvenience for them to accommodate the needs of the elderly into their lives. Therefore, any possible assistance for the same should be provided by the State.
- The working of old age homes should be periodically evaluated and the report so made should contain suggestions of the residents of such homes so as to address the primary concerns. If there are deficiencies noted in the care facilities of the old age homes the same should be resolved in a timebound manner.

The legal and scheme framework covering the rights of the elderly is extensive in India. The slack due to which there continues to be numerous instances of elderly abuse is the fact that the facilities provided are not adequate enough to ensure effective implementation of the rights so enumerated. Thus, there needs to a complete and holistic policy as well as legislation tuning along with social sensitization in order to warrant effective enactment of the rights of the elderly people in the country.