
Human Rights of Elderly Persons

by

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Abstract:

The elderly population is growing worldwide, and elderly individuals are often vulnerable to social, economic, health-related, and legal issues. Recognizing the inherent dignity and equal rights of all human beings, including the elderly, the Universal Declaration of Human Rights emphasizes the importance of protecting the human rights of elderly persons. However, in many societies, senior citizens face various challenges, including a lack of gainful employment opportunities, declining health status, loneliness and isolation, financial problems, legal issues, and interpersonal problems. It is crucial to address these issues through policies, programs, and initiatives that promote the well-being, dignity, and rights of elderly individuals.

Keywords: elderly persons, aging population, human rights, vulnerability, social challenges, health issues, legal issues, policies, programs, initiatives, well-being, dignity.

1. INTRODUCTION

The quote "Matru Devo Bhav and Pitru Devo Bhav" emphasizes the importance of treating parents and elderly persons with respect and reverence. In the past, joint family systems were common, and the father of the family was known as Karta. However, with the influence of globalization and westernization, nuclear families have become more prevalent, and the elderly are often neglected in modern busy lifestyles.

Human rights are applicable to all regardless of age, including senior citizens or elderly persons who are often viewed as vulnerable due to their biological, psychological, and social ageing. While legislation, policies, and integrated programmes have helped to uplift their status, more needs to be done to address their specific needs. Ageing is a natural process that involves a decline in bodily functioning, but the elderly still possess valuable knowledge and experience that can benefit younger generations and the

economy at large. With their population increasing, protecting their rights becomes essential as they are among the most vulnerable members of society.

India's elderly population is estimated to be around 10 crore, which is about 8.6% of the total population as per the 2011 census. By 2050, this percentage is expected to increase to a quarter of the total population, leading to various social, economic, and political problems. The government and society tend to focus more on the financial aspects of ageing, as dependence on others increases with age, requiring more financial support from the government.

Despite this, senior citizens in India often lack basic medical care, adequate financial support, and face discrimination, mistreatment, insecurity, isolation, and abandonment. India has the second-largest population of elderly people globally, highlighting the importance of addressing their specific needs and rights.

2. ISSUES FACED BY THE ELDERLY PERSONS

Old age requires both mental and social support, which are interconnected. Social support can be classified into four categories: emotional, instrumental, informational, and appraisal support. In societies where there are poor facilities for sanitation, infrastructure, and healthcare, the elderly suffer the most.

According to the Age Well Foundation's "Human Rights of Elderly in India Survey" conducted in 2015, the elderly in India face various problems such as lack of gainful engagement opportunities, declining health status, lack of respect in family/society, loneliness/isolation, psychological issues, financial problems, legal issues, and interpersonal problems. Addressing these issues is crucial to ensure the well-being and rights of the elderly population in India.

3. PROTECTION OF ELDERLY PERSONS FROM INTERNATIONAL PERSPECTIVE

3.1. Universal Declaration of Human Rights, 1948

The Universal Declaration of Human Rights (UDHR) of 1948, adopted by the United Nations, recognizes the inherent dignity and equal and inalienable rights of all members of the human family as the foundation of freedom, justice, and peace in the world.

Some of the articles related to human rights in the UDHR include:

Article 1: All human beings are born free and equal in dignity and rights.

Article 2: Everyone is entitled to all the rights and freedoms without discrimination.

Article 3: Everyone has the right to life, liberty, and security of person.

Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6: Everyone has the right to recognition everywhere as a person before the law.

Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law.

Article 25: Everyone has the right to a standard of living adequate for health and well-being, including food, clothing, housing, medical care, necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age, or other lack of livelihood in circumstances beyond their control.

These articles emphasize the importance of upholding human rights and promoting equality, dignity, and well-being for all individuals regardless of their age, gender, race, religion, or any other factor.

3.2. World Assembly on Ageing, 1982

The Vienna International Plan of Action on Ageing is the first international instrument on ageing, guiding thinking and the formulation of policies and programmes on ageing. It was endorsed by the United Nations General Assembly in 1982 (resolution 37/51), having been adopted earlier the same year at the World Assembly on Ageing at Vienna, Austria. It is sometimes known as the 'Vienna Plan' in honour of its city of origin. More frequently, however, it is referred to as the 'International Plan', underscoring its relevance for all world regions.

It aims to strengthen the capacities of Governments and civil society to deal effectively with the ageing of populations and to address the developmental potential and dependency needs of older persons. It promotes regional and international cooperation. It includes 62 recommendations for action addressing research, data collection and analysis, training and education as well as the following sectoral areas:

- ✓ health and nutrition
- ✓ protection of elderly consumers
- ✓ housing and environment

- ✓ family
- ✓ social welfare
- ✓ income security and employment
- ✓ education

The Plan is part of an international framework of standards and strategies developed by the international community in recent decades. It should, therefore, be considered in relation to agreed standards and strategies in the areas of human rights, advancement of women, families, population, youth, disabled persons, sustainable development, welfare, health, housing, income security and employment, and education.

3.3. United Nations Principles for Older Persons, 1991

Adopted by General Assembly resolution 46/91 of 16 December 1991

The General Assembly,

Appreciating the contribution that older persons make to their societies,

Recognizing that, in the Charter of the United Nations, the peoples of the United Nations declare, inter alia, their determination to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small and to promote social progress and better standards of life in larger freedom,

Noting the elaboration of those rights in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and other declarations to ensure the application of universal standards to particular groups,

In pursuance of the International Plan of Action on Ageing, adopted by the World Assembly on Ageing and endorsed by the General Assembly in its resolution 37/51 of 3 December 1982,

Appreciating the tremendous diversity in the situation of older persons, not only between countries but within countries and between individuals, which requires a variety of policy responses,

Aware that in all countries, individuals are reaching an advanced age in greater numbers and in better health than ever before,

Aware of the scientific research disproving many stereotypes about inevitable and irreversible declines with age,
Convinced that in a world characterized by an increasing number and proportion of older persons, opportunities must be provided for willing and capable older persons to participate in and contribute to the ongoing activities of society,
Mindful that the strains on family life in both developed and developing countries require support for those providing care to frail older persons,
Bearing in mind the standards already set by the International Plan of Action on Ageing and the conventions, recommendations and resolutions of the International Labour Organization, the World Health Organization and other United Nations entities,
Encourages Governments to incorporate the following principles into their national programmes whenever possible:

I. Independence

1. Older persons should have access to adequate food, water, shelter, clothing and health care through the provision of income, family and community support and self-help.
2. Older persons should have the opportunity to work or to have access to other income-generating opportunities.
3. Older persons should be able to participate in determining when and at what pace withdrawal from the labour force takes place.
4. Older persons should have access to appropriate educational and training programmes.
5. Older persons should be able to live in environments that are safe and adaptable to personal preferences and changing capacities.
6. Older persons should be able to reside at home for as long as possible.

II. Participation

7. Older persons should remain integrated in society, participate actively in the formulation and implementation of policies that directly affect their well-being and share their knowledge and skills with younger generations.
8. Older persons should be able to seek and develop opportunities for service to the community and to serve as volunteers in positions appropriate to their interests and capabilities.

9. Older persons should be able to form movements or associations of older persons.

III. Care

10. Older persons should benefit from family and community care and protection in accordance with each society's system of cultural values.

11. Older persons should have access to health care to help them to maintain or regain the optimum level of physical, mental and emotional well-being and to prevent or delay the onset of illness.

12. Older persons should have access to social and legal services to enhance their autonomy, protection and care.

13. Older persons should be able to utilize appropriate levels of institutional care providing protection, rehabilitation and social and mental stimulation in a humane and secure environment.

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

IV. Self-fulfilment

15. Older persons should be able to pursue opportunities for the full development of their potential.

16. Older persons should have access to the educational, cultural, spiritual and recreational resources of society.

V. Dignity

17. Older persons should be able to live in dignity and security and be free of exploitation and physical or mental abuse.

18. Older persons should be treated fairly regardless of age, gender, racial or ethnic background, disability or other status, and be valued independently of their economic contribution.

3.4. Second World Assembly on Ageing, 2002

The Second World Assembly on Ageing took place in Madrid from 8 to 12 April 2002.

The participating countries adopted two key documents: a Political Declaration and the Madrid International Plan of Action on Ageing, 2002. Both documents included

commitments from Governments to devise and implement measures to address the challenges posed by ageing. The documents also put forward over 100 recommendations for action based on three priority themes: older persons and development; advancing health and well-being into old age; and ensuring enabling and supportive environments. The Assembly gave the United Nations regional commissions responsibility for translating the International Plan of Action on Ageing into regional action plans reflecting, inter alia, the demographic, economic and cultural specificities of each region and serving as a basis for implementing the recommendations.

4. PROTECTION OF ELDERLY PERSONS FROM INDIAN PERSPECTIVE

4.1. Constitution of India

As a supreme law of the land Constitution gives protections to all its citizens and even some extent to non-citizens irrespective of anything. The first word of the preamble i.e., “WE” it gives security and hope in all of us. What are all the Fundamental rights enjoyed by Citizens is also available to Senior Citizens.

Again, In order to protect the interest of the most valuable assets of the country i.e. elderly people, our Constitutional framers have inserted certain provisions under Part IV of the Constitution i.e. Directive Principles of State Policy. Furthermore, although not explicitly stated as a Fundamental Right, the judiciary reads the rights of the elderly as a facet of Article 21 of the Constitution.

Article 41 of the Constitution provides that, “The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.”

Article 38(1) enjoins the State to strive to promote welfare of the people by securing and protecting as effective as it may a social order in which justice social, economic and political shall inform all institutions of the national life.

Article 39(e) requires the State to secure that the health and strength of workers, men and women and children of tender age are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their area of strength. To achieve these goals, State provides pensions as monetary benefit to former employees so that they can live meaningful life with dignity.

4.2. Maintenance and Welfare of Parents and Senior Citizens Act, 2007

Up until 2007, there were no special or separate legislation exclusively addressing the elderly population. The Directive Principles, although mentions rights of the elderly, they were not applicable towards private citizens. For private citizens, two Acts—the Code of Criminal Procedure, 1973, and the Hindu Adoption and Maintenance Act, 1956—placed obligations regarding the care of parents by their children if they are unable to take care of themselves.

It was only with the passing of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 that a specific legislation for the protection of senior citizens came into force in India. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 seeks to make it a legal obligation for children and heirs to provide sufficient maintenance to senior citizens, and proposes to make provisions for state governments to establish old age homes in every district.

The Act places an obligation on children and relatives to maintain a senior citizen or a parent to the extent that they can live a normal life. The definition of senior citizen includes both Indian citizens aged over 60 years, and all parents irrespective of age.

This obligation applies to all Indian citizens, including those residing abroad. The Act defines “children” as sons, daughters, grandsons and granddaughters and “parents” includes biological, adoptive or step parents. A senior citizen who is unable to maintain himself based on his own earnings or property shall have the right to apply to a maintenance tribunal for a monthly allowance from their child or relative. If he is incapable of filing the application on his own, he may authorise any other person or registered voluntary association to apply on his behalf. The maintenance tribunal may also, on its own, initiate the process for maintenance.

In case of childless senior citizens, relatives are obliged to provide maintenance. The Act defines “relative” as someone who is in possession of or would inherit a senior citizen’s property.

Under Section 9 of the Act the maximum limit of maintenance to be awarded is fixed as 10,000 /- . The Act empowers the State with the entire responsibility of establishing Tribunals, enacting rules and such.

The Act mentions various duties of the State Government. The Act states that the state government may establish and maintain at least one old age home per district with a minimum capacity of 150 senior citizens per home.

The state government may also prescribe a scheme for the management of such homes which shall specify standards and services to be provided including those required for medical care and entertainment of residents of these old age homes. It shall ensure separate queues for senior citizens, expand facilities for treatment of diseases and expand research for chronic elderly diseases.

The Act also directs the state government to ensure that government hospitals and those funded by the government provide beds for all senior citizens as far as possible.

Our State adopted the Act and implemented the Karnataka Maintenance and Welfare of Parents and Senior Citizens Rules in 2009 and having Department for the Empowerment of Differently Abled and Senior Citizens and come out with so many schemes like, monthly pension scheme, day care center for senior citizens, help line for senior citizens, identity card for senior citizens, sandhya surkasha scheme, concessional bus pass.

4.3. The National Policy for Older Policy, 1999

Demographic ageing was a phenomenon discussed in the National Policy for Older Persons. The following implications were highlighted:

1. Changes in Society- Societal values have changed owing to industrialisation, urbanization, education and exposure to lifestyles in developed countries.
2. Changes in economy- Higher life expectancy and higher costs to meet with their needs.

The National Policy recognized that the older persons and their concerns were of national importance. Although a lot of broad goals were laid down such as need for an age-integrated society, more opportunities for the older generation and facilitate them to lead an active life. However certain principle focus areas were recognised such as:

Financial Security: It was recorded that almost two thirds of the 60+ population is financially fragile. Old age pension, better and effective disbursement of retirement benefits, expansion of pension coverage, favourable taxation policies, right of maintenance.

Healthcare and nutrition: affordable and highly subsidised healthcare for older persons, trusts and charitable societies would be encouraged to take this up by providing them with tax incentives, special training in care of the elderly, state sponsored hospices, spreading awareness about the special needs of older people.

Shelter: housing schemes specifically targeting the older generation such as the Indira AwasYojana, speedy development, easy availability of loan. Developing the housing society with specific services for instance group housing facilities with meals, laundry, common room etc. would be encouraged.

Education: education and training in areas specifically relevant for this age group, continuing education programmes, out-reach programmes.

Welfare: Among the older persons the most vulnerable group would be identified and welfare services would be provided to them on a priority basis. Old-age homes, voluntary organisations would be given grants to carry out these objectives; welfare fund for older persons would be set up.

Protection of Life and Property: older generation has become an easy target for criminal elements. They are often victims of fraudulent dealings, physical and emotional abuse. Intervention of voluntary organisations and friendly vigils by Police would be appreciated.

Implementation of the above goals was to be done by the relevant ministry by inculcating the above points in their Five year and Annual Action Plans. Time-bound targets, special schemes etc. must be devised. The Annual reports of the Ministry must indicate the progress made and every three years a review would be carried out by the Ministry of Social Justice. An autonomous registered National Association of Older Person (NAOPS) was established as a facilitative wing to undertake the activities and also advise the government on future programmes.

4.4. The National Policy for Senior Citizens, 2011

In 2011, a new policy, “National Policy for Senior Citizens 2011” was formulated. It refocused the new policy onto priority to issues of older women, implementation of the Madrid Plan of Action and Barrier Free Framework, increased employment opportunities, implementation of Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and living facilities of abandoned senior citizens.

It specifically highlighted areas of implementation with an ‘Implementation Section’ wherein concerned ministries have been assigned different policy elements. The focus areas remain more or less similar to the original National Policy. However, the implementation mechanism is substantially different.

1. ADHAAR was made integral for distribution of the benefits under the Policy
2. A separate Department of Senior Citizens under the aegis of the Ministry of Social Justice was formed and appointed as the nodal agency for all matter relating to the implementation of the NPS 2011.
3. Directorates of Senior Citizens in State and union territories and National Council for Senior Citizens would be established.

Problems in any of these areas have an impact on the quality of life in old age and healthcare when it is needed. Increase in life span also results in chronic functional disabilities creating a need for assistance required by the Oldest Old to manage simple chores. This policy looks at the increasing longevity of people and lack of care giving.

4.4.1. Elderly Women Need Special Attention

Women and men age differently. Both have their concerns. The problems of elderly women are exacerbated by a lifetime of gender based discrimination, often stemming from deep-rooted cultural and social bias. It is compounded by other forms of discrimination based on class, caste, disability, illiteracy, unemployment and marital status. Patriarchal hierarchy and access to property rights are also discriminatory. Burdened with household chores for a longer span of time compared to older men, older women don’t have time for leisure or recreational activity. Women experience proportionately higher rates of chronic illness and disability in later life than men. Women suffer greater non-communicable diseases and experience lower social and mental health status, especially if they are single and/or widowed. Over 50% of women over age 80 are widows.

Elderly women and their problems need special attention as their numbers are likely to increase in the future and, given the multiple disadvantages they face in life, they are likely to be grossly unprepared to tackle these issues.

4.4.2. Rural Poor Need Special Attention

Many households in rural areas at the bottom of the income distribution in India are too poor to save for their old age. Available resources are used to meet daily consumption needs. Even at slightly higher income levels there is likely to be little demand for savings and pension instruments that require a commitment of several decades. Instead, the savings of households in the lower deciles of the income distribution are likely to be earmarked for self-insurance against emergencies; or perhaps, in short term investments that increase their own productivity or the productivity of their children. Liquidity is highly valued. The absolute poor in India cannot be expected to participate in long term savings schemes for old age and they do not. The poverty in rural areas for older persons is increasing and needs attention. Hence rural poor would need social security in large measure.

4.4.3. Increasing advancement in technology

There have been several advancements in medical technology, medicine and in technology for assistive living (and technology) for elderly that have prolonged life for senior citizens and this needs to be factored in the policy that not only for the eighty plus but rural poor, women and disadvantaged seniors will have longer years and will need many of the policy interventions.

The National Council of Older Persons was reconstituted in 2012 as National Council of Senior Citizens with wider national impact. The new Council has wider gamut of functioning in relation to

- ✓ Policies, programmes and legislative measures;
- ✓ Promotion of physical and financial security, health and independent and productive living; and
- ✓ Awareness generation and community mobilization.

5. GOVERNMENT SCHEMES FOR THE BENEFIT OF ELDERLY PERSONS

The government of India has launched various schemes in favour of elderly persons/senior citizens to protect their rights and maintain good health. Some of the top government schemes for senior citizens in India are listed below –

1. Pradhan Mantri Vaya Vandana Scheme

This is one of the most popular senior citizen pension schemes in India. Designed for senior citizens above 60 years of age, the policy term of this Prime Minister Senior Citizen Scheme extends to ten years. The pensioner can choose the frequency of the payment - monthly/quarterly/half-yearly/annually. You can earn interest of 8% per annum over this scheme. The minimum and maximum capping of pension are Rs. 3,000 per month and 10,000 per month, respectively.

2. Indira Gandhi National Old Age Pension Scheme (IGNOAPS)

Specially intended for older adults above the age of 60 years, who fall below the poverty line, according to the guidelines prescribed by the Government of India. The IGNOAPS assists with money up to 200 p.m., and 500 p.m., for people between 60 and 79 years and above 80 years, respectively.

3. National Programme for the Health Care of Elderly (NPHCE)

Introduced in 2010, this scheme concentrates on preventive as well as promotive care for the maintenance of overall health. This program was launched to address the health issues faced by seniors. The district-level objectives include providing dedicated health facilities in district hospitals, community health centres (CHC), primary health centres (PHC), and sub-centres (SC) levels through State Health Society. These facilities maybe free or highly subsidized.

4. Varishta Mediclaim Policy

This policy aids seniors by covering the cost of medicines, blood, ambulance charges, and other diagnosis related charges. Designed for senior citizens between the age of 60 and 80 years, this helps meet the health-related expenses of senior citizens. Moreover, income tax benefits are allowed for payment of premium under Section 80D. Although the policy period is for one year, you can extend the renewal up to the age of 90 years.

5. Rashtriya Vayoshri Yojana

This scheme provides physical aids and assisted-living devices for older adults above 60 years of age that belong to the BPL (below the poverty line) category. So, if senior citizens wish to avail this, then they must have a BPL card. This is a Central Sector Scheme and is entirely funded by the Central Government.

6. Varishta Pension Bima Yojana

This pension scheme, launched by the Ministry of Finance, is for senior citizens above 60 years. The LIC of India has the authority to operate this scheme. You don't need to get any medical check-ups done to avail this policy. It offers assured pension with a guaranteed interest rate of 8% per annum for up to 10 years – you can opt for monthly, quarterly, half-yearly, and yearly pension – depends on how you'd like to receive it.

7. Senior Citizens' Welfare Fund

Launched by the Ministry of Social Justice and Empowerment, this fund includes unclaimed amounts from small savings and savings accounts in the Central government schemes. It aims to make seniors financially stable for their overall welfare and health care.

8. Vayoshreshtha Samman

This scheme focuses on those seniors who have made significant contributions in their disciplines and recognizes their efforts. It was upgraded to the National Award in 2013, and since then, awards have been granted under thirteen categories.

9. Reverse Mortgage Scheme

This scheme was launched in 2007 by the Ministry of Finance to benefit senior citizens. They can mortgage their residential property against a loan of 60% of the value of the house, with a minimum tenure of 10 years.

10. Pradhan Mantri Jan Arogya Yojana

This scheme was launched in 2018 by the Ministry of Health and Family Welfare for covering up to 10 crore people belonging to poor and vulnerable families. Under this scheme, coverage of up to Rs. 5 lakhs per family for secondary and tertiary hospitalization is provided. With a broad spectrum of schemes launched by the Government of India, benefitting senior citizens belonging to various classes, planning for your health, and other related expenses has become easier.

6. JUDICIARY AND ELDERLY PERSONS

The Judiciary plays a very important role as the protector of the Constitution and the basic guarantees given to citizens of the country. The rule of law is the bedrock of democracy, and the primary responsibility for implementation of the rule of law lies

with the judiciary. Judiciary contributed a lot towards the protection of elderly persons. Some of the cases are as follows:

In, *Yogesh Sadhwani v. Commissioner of Police*, (2015 SCC Online Bom 959), case, A PIL was filed on behalf of Mrs Jayashree Gholkar. This case brought forth a complete failure of the execution of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The Court directed the State Government to file affidavit mentioning therein the steps taken:

- ✓ To establish tribunal under Sec. 7.
- ✓ Designate a maintenance officer under Sec. 18.
- ✓ For establishment of old age homes under Sec 19.
- ✓ To give medical support to the senior citizen as under Sec. 20.
- ✓ For publicity, awareness, etc. for welfare of senior citizen under Sec. 21

This case therefore is an example of judicial intervention to question the efficacy of the Executive.

In, *Santosh Surendra Patil v. Surendra Narasgopnda Patil*, (2017 SCC Online Bom 3053) case, The litigating parties in the case were parents and their sons. The respondent was the son of the Petitioners and was appealing against an order of vacation of the residential premises owned and constructed by the Petitioners. The court went on to discuss the need for the enactment of Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The moral duty to take care of one's parents was crystallised as a legal responsibility under this Act. The State also takes it upon itself the guardianship of Senior Citizens and old infirm parents. The eviction order was upheld by the court as such an order is permissible under Sec. 23 of the Act of 2007.

7. CONCLUSION

In concluding remarks, it can be say that, yesterday's child is today's youths, today's youths are become tomorrow's elderly persons. Giving respect and protecting them and keeping touch with elderly persons is a great responsibility on all of us. We are Indians, our customs and tradition teaches us how to treat our parents. But today in society we found few people are neglected their parents, shows inhuman behaviour, cruelty against their parents for the sake movable and immovable assets. Law are should me more

strengthen and updated according to the needs of elderly persons. Judiciary helping a lot to elderly persons through their verdicts, law makers shall use the cues of verdicts and come out with the best updated law.

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