

## Rights of elderly persons in India

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### Abstract

Democracy is the other name of liberty - a liberty which does not infringe on the liberty nor encroach on the rights of others; a liberty which keeps up strict discipline, and makes law its warranty and the basis of its exercise. This alone is true liberty that can produce true democracy. To Mahatma Gandhi, the best right is the right to do one's duty. Modern people are negligent about their duty but are diligent about their rights. People today are decked with knowledge but are devoid of common sense. Right and duty are jural correlative. The 'ought to be' duty towards the elderly persons is not of mere ethical value rather the same is quite scientific. It's in the nature of repayment of an outstanding loan by way of discharging certain duty in exchange of having availed certain rights in the past. We must respect our Parents and Grandparents because they give birth to us, endure great pains to raise us, educate us and get us settled in our lives. It is a lot due to their love and efforts that we become great in our lives. When we have our own children, our parents then play an important role in giving good values to our children as well. Therefore, when our parents are old and cannot take care of themselves, it is our duty to pay back their love, effort and blessings by serving them and honoring them in every way possible, even at the cost of great personal sacrifice. One of the sources of law is religion. Serving our parents is for our own good and it leads to great rewards. Conversely, not caring for them is bad Karma. No prayer yields any fruit for the person who does not serve his parents and teachers. In the Mahābhārata, there is a mention of a Brahmana boy who leaves behind his elderly parents to advance spiritually. He acquires several spiritual powers, but discovers that even a butcher who had merely served his aged parents diligently was more advanced than him. The Brahmana boy learned the lesson that serving one's parents yields a much greater reward than abandoning them and pursuing your own selfish goals. Again, in contrast to our scripture's teachings, Jesus Christ in the Bible says that one must leave behind his parents and loved ones and not worry about them to demonstrate his love for God. Quoting the Prophet Anas ibn Malik narrated that if a young man honors an elderly on account of his age, Allah appoints someone to honor him in his old age. And in the modern day context in the words of Kay Granger, "Human rights are not a privilege granted by the few, they are a liberty entitled to all, and human rights, by definition, include the rights of all humans, those in the dawn of life, the dusk of life, or the shadows of life."

**Keywords:** elderly, constitution, rights, discrimination, convention

### Introduction

To begin with a anecdote by Shel Silverstein, "The Little Boy and the Old Man;" Said the little boy, "Sometimes I drop my spoon." Said the old man, "I do that too." The little boy whispered, "I wet my pants." "I do that too," laughed the little old man. Said the little boy, "I often cry." The old man nodded, "So do I." But worst of all, "said the boy, "it seems Grown-ups don't pay attention to me." And he felt the warmth of a wrinkled old hand. I know what you mean," said the little old man."

In the context of elderly persons, a society that does not value its older people denies its roots and endangers its future. Society should strive to enhance their capacity to support themselves for as long as possible and, when they cannot do so anymore, to care for them. It is not only moral but also legal a duty to see that the elderly persons are not deprived of their rights whatever.

### Specific rights broadly relevant to older people

While older people enjoy the same universal rights as everyone else, some rights are particularly relevant to the experience of ageing:

- Right to freedom from discrimination
- Right to freedom from violence

- Right to social security
- Right to health
- Right to work
- Right to property and inheritance

Rights of elderly persons are a universal phenomenon. The Universal Declaration on Human Rights states that "all human beings are born free and equal in dignity and rights". This equality does not change with age: older men and women have the same rights as people younger than themselves. The rights of older people are embedded in international human rights conventions on economic, social, civil and political rights, yet are not made specific.

Age doesn't take away rights. Our rights do not change as we grow older. What does change is that older women and men are considered to be inherently less valuable to society. At the same time, as people get older, they face increasing barriers to their participation, become more dependent on others and lose some or all of their personal autonomy. These threats to their dignity can make them more susceptible to neglect, abuse and violation of their rights. Age discrimination and ageism are tolerated across the world. Consequently, older women and men experience violations of their rights at family, community and

institutional levels.

Older people as compared to younger ones face very specific threats to their rights in relation to age discrimination, for example, in access to health care, in employment, in property and inheritance rights, in access to information and education and in humanitarian responses. Older people also face particular forms of violence and abuse. They face particular threats to their rights in care settings and as carers themselves.

Demographic ageing creates new challenges such as protecting the rights of people living with dementia, of older detainees, and the equitable allocation of resources in health care. Older people's rights to access to justice, equality before the law and the rights to housing, privacy and a private life all require greater attention.

### **Response of the UN towards Ageing**

The UN established the Open-ended Working Group on Ageing (OEWG) in 2010. Its purpose is to strengthen the protection of older people's rights by reviewing how existing instruments address older people's rights, identify gaps in protection, and explore the feasibility of new instruments.

Help Age and other civil society organisations actively engage with this process. Age Demands Action activists and our partner organisations call on their governments to support a convention and participate constructively in the process. We support older people to take part in the OEWG and evidence was submitted from various programmes around the world to demonstrate why their rights need protecting.

### **Movement towards a Convention**

Up till now, the OEWG has clearly established that there are gaps in the international human rights framework with regard to older people's rights. Support for a new convention is growing among member states from every region of the world.

National human rights institutions were granted participation rights in the OEWG for the first time at its seventh session in December 2016. The OEWG also decided to focus its discussions on what the content of a new instrument might be before deciding what type of instrument would be most suitable.

The eighth OEWG took place in New York in July 2017 and discussed the rights to non-discrimination and equality, and to freedom from violence, abuse and neglect. Help Age consulted older women across 19 countries on these two rights in order to ensure the discussion at the OEWG was informed by the lived experience of older people themselves.

The ninth OEWG is taking place in 2018. It is to look at the content of the rights to non-discrimination and equality, and to freedom from violence, abuse and neglect in more details. It is also to discuss new topics: autonomy and independence, long-term care and palliative care. Help Age is consulting with older people to find out their experience of rights in these areas.

### **Position of Elderly Persons in Law in India**

Elderly persons enjoy several constitutional safeguards under the Constitution of India. There are various rights given to the senior citizens of our country. They include:

### **Constitutional protection**

Various provisions are mentioned in the Constitution of India for senior citizens of India. Directive principles of state policy talk about these provisions. Article 41 and article 46 are the constitutional provisions for them. Although directive principles are not enforceable under the law, it creates a positive obligation towards the state while making any law. Therefore, while making any law, the state should consider the directive principles mentioned for the elderly people.

Article 41- Right to work, to education and to public assistance in certain cases. 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.

Every citizen has the right to work over a certain period of time. They cannot be retired from doing their work whether in the private or the public sector organizations.

Article 46- Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections. The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation

### **Legal Safeguard**

#### **Personal law and Elderly Persons**

Moral duty is wider in connotation than legal duty. The moral duty to maintain parents is recognized by all people. However, so far as the law is concerned, the position and extent of such liability differ from place to place and community to community.

#### **Elderly person under Hindu laws**

Amongst the Hindus the obligation of sons to maintain their aged parents, who were not able to maintain themselves out of their own earning and property, was recognized even in early texts. And this obligation was not dependent upon, or in any way qualified, by a reference to the possession of the family property. It was a personal legal obligation enforceable by the sovereign or the state. The statutory provision for maintenance of parents under Hindu personal law is contained in Sec. 20 of the Hindu Adoption and Maintenance Act, 1956. This Act is the first personal law statute in India, which imposes an obligation on the children to maintain their parents. As is evident from the wording of the section, the obligation to maintain parents is not confined to sons only, and daughters also have an equal duty towards parents. It is important to note that only those parents who are financially unable to maintain themselves from any source, are entitled to seek maintenance under this Act.

#### **Elderly Person under Muslim law:**

Children have a duty to maintain their aged parents even under the Muslim law. According to Mulla:

- a. Children in easy circumstances are bound to maintain their poor parents, although the latter may be able to earn something for themselves.
- b. A son though in strained circumstances is bound to maintain his mother, if the mother is poor, though she

may not be infirm.

- c. A son, who though poor, if earning something is bound to support his father who earns nothing.

According to Badruddin Tyabji, who was an Indian lawyer and served as the third President of the Indian National Congress, parents and grandparents in indigent circumstances are entitled under Hanafi law to get maintenance from their children and grandchildren who have the means, even if they are able to earn their livelihood. Both sons and daughters have a duty to maintain their parents under the Muslim law. The obligation, however, is dependent on their having the means to do so.

#### **Elderly Person under Christian and Parsi law**

The Christians and Parsis have no personal laws providing for maintenance for the parents. Parents who wish to seek maintenance have to apply under provisions of the Criminal Procedure Code.

#### **The Code of Criminal Procedure**

Prior to 1973, there was no provision for maintenance of parents under the code. The Law Commission, however, was not in favour of making such provision. According to its report:

The Cr. P.C is not the proper place for such a provision. There will be considerable difficulty in the amount of maintenance awarded to parents apportioning amongst the children in a summary proceeding of this type. It is desirable to leave this matter for adjudication by civil courts.

The provision, however, was introduced for the first time in Sec. 125 of the Code of Criminal Procedure in 1973. It is also essential that the parent establishes that the other party has sufficient means and has neglected or refused to maintain his, i.e., the parent, who is unable to maintain himself. It is important to note that Cr. P.C 1973, is a secular law and governs persons belonging to all religions and communities. Daughters, including married daughters, also have a duty to maintain their parents.

#### **Governmental protections for elderly Person**

The Government of India approved the National Policy for Older Persons on January 13, 1999, in order to accelerate welfare measures and empowering the elderly in ways beneficial for them. This policy included the following major steps:

1. Setting up of a pension fund for ensuring security for those persons who have been serving in the unorganised sector,
2. Construction of old age homes and day care centres for every 3-4 districts.
3. Establishment of resource centres and re-employment bureaus for people above 60 years.
4. Concessional rail/air fares for travel within and between cities, i.e., 30 per cent discount in train and 50 per cent in Indian Airlines.
5. Enacting legislation for ensuring compulsory geriatric care in all the public hospitals.

1. The Ministry of Justice and Empowerment has announced regarding the setting up of a National Council for Older Person, called Age well Foundation. It will seek an opinion of aged on measures to make life easier for them.

2. Attempts to sensitise school children to live and work with the elderly. Setting up of around the clock help line and discouraging social ostracism of the older persons are being taken up.
3. The government policy encourages a prompt settlement of pension, provident fund (PF), gratuity, etc. in order to save the superannuated persons from any hardships. It also encourages to make taxation policies elder sensitive.
4. The policy also accords high priority to their health care needs.
5. According to Sec 88-B, 88-D and 88-DDB of Income Tax Act there is a discount in tax for the elderly persons.
6. Life Insurance Corporation of India (LIC) has also been providing several schemes for the benefit of aged persons, i.e., Jeevan Dhara Yojana, Jeevan Akshay Yojana, Senior Citizen Unit Yojana, and Medical Insurance Yojana.
7. Former Prime Minister A.B. Bajpai has also launched 'Annapurana Yojana' for the benefit of aged persons. Under this yojana, unattended aged persons are being given 10 kg food for every month.
8. It is proposed to allot 10 per cent of the houses constructed under government schemes for the urban and rural lower income segments to the older persons on easy loan.

#### **The Ten Main Duties (dharma) in Hinduism**

In Hinduism dharma primarily means duty. All other meanings of dharma arise from this root meaning only. Even God takes upon Himself certain duties, although He has no desires and no interest in doing or not doing anything. All our duties, energy, consciousness, and qualities arise from Brahman, the Supreme Being, since He delegates them to His numerous manifestations according to their status and hierarchy in creation. Since God is eternal, his duties are also eternal, and since Hinduism is all about performing God's duties by humans upon earth, Hinduism is traditionally known as Sanatana dharma, or eternal duty. The Ten Main Duties (dharma) in Hinduism are

- Duty towards self
- Duty towards gods
- Duty towards ancestors
- Duty towards progeny
- Duty towards fellow human beings
- Duty towards other living beings
- Duty towards society
- Moral duties
- Professional (caste) duties
- Duties towards other faiths

#### **BIBLE on rights of and duty towards elderly persons:**

Timothy 5:1-3 never speak harshly to an older man, but appeal to him respectfully as you would to your own father. Talk to younger men as you would to your own brothers. Treat older women as you would your mother, and treat younger women with all purity as you would your own sisters. Take care of any widow who has no one else to care of her.

1. Hebrews 13:17 Obey your leaders and submit to them, for they are keeping watch over your souls, as those who will have to give an account. Let them do this with joy and not with groaning, for that would be of no

2. Job 32:4 Now Elihu had waited before speaking to Job because they were older than he.
3. Job 32:6 And Elihu the son of Barachel the Buzite answered and said: "I am young in years, and you are aged; therefore I was timid and afraid to declare my opinion to you.

**Benefit of listening to their wise words**

1. King Rehoboam consulted the elders who had served his father Solomon during his lifetime. "How would you advise me to answer these people?" he asked.
2. Wisdom is with the aged, and understanding in length of days.
3. A wise son hears his father's instruction, but a scoffer does not listen to rebuke.
4. Listen to advice and accept instruction, that you may gain wisdom in the future.
5. Listen to your father who gave You life, and do not despise your mother when she is old.
6. "So whatever you wish that others would do to you, do also to them, for this is the Law and the Prophets.
7. "Cursed is anyone who dishonors their father or mother." Then all the people shall say, "Amen!"
8. And do not forget to do Good and to share with others, for with such sacrifices God is pleased.

**A Duty of the Young**  
Anas ibn Malik narrated that the Prophet said, "If a young man honors an elderly on account of his age, Allah appoints someone to honor him in his old age." (At-Tirmidhi)

In another hadith Muslims are told to be merciful to all people, Muslim and non-Muslim: Anas ibn Malik narrated that the Prophet said, "By Him in Whose Power my soul is, Allah does not bestow His mercy except on a merciful one." They (the Companions) said, "All of us are merciful." The Prophet replied, "Not only that each of you has mercy upon the other, but to have mercy also upon all people."

A Sign of Reverence for Allah  
Abu Musa Al-Ash'ari narrated that the Prophet said, "It is out of reverence to Allah to respect the white-headed (aged) Muslim." (Abu Dawud)

In one hadith, the Prophet disavows those who do not venerate the elderly and considers them alien to the Muslim society:

ones and esteem to our elderly." (*At-Tirmidhi and Ahmad*)

Abu Hurairah narrated that the Prophet said, "The young should (initiate) salutation to the old, the passerby should (initiate) salutation to the sitting one, and the small group of persons should (initiate) salutation to the large group of persons." (Al-Bukhari)

visiting, advising, Phoning, and so on. Similarly, giving priority to the elderly in different situations is a token of respect and honor to them:

elderly." Malik ibn Al-Huwayrith narrated that the Prophet said, "When the time for prayer is due, one of you should announce Adhan and the oldest among you should lead the prayer." (*Al-Bukhari*)

Ansari. Concerning obligations, Islam exempts the elderly who cannot bear fasting the month of Ramadan from observing this obligation, but requires them to feed a poor person for each day that they miss. Also, the elderly who cannot pray standing up are allowed to pray sitting down; if they cannot pray sitting down, they are allowed to pray lying on a side. Also, Islam allowed the elderly who cannot perform Hajj to delegate another person to perform it on their behalf. Al-Fadl narrated that a woman from the tribe of Khath' am came to the Prophet and said, "*O Allah's Prophet! The obligation of Hajj has become due on my father while he is old and weak, and he cannot sit firm on the mount; may I perform Hajj on his behalf?*" The Prophet replied, "*Yes, (you may)*".

**Examples of the Prophet's Mercy**  
Having discussed the Islamic code of treating the elderly, it is now appropriate to get enlightened from some practical examples from the Prophet's life. We will see him listening politely and respectfully to an elderly polytheist, seeking to release an elderly man captured by Quraish, and honoring an elderly person and ordering him to improve his appearance.

appearance. Treating the elderly gently. Ibn Kathir tells the following in his biography of the Prophet. When the Prophet entered Makkah in Ramadan AH 8 (January 630) and entered the Sacred Mosque, Abu Bakr brought his father, Abu Quhafah, to the Prophet to embrace Islam. When the Prophet saw him, he said to Abu Bakr, "Why didn't you leave the old man at his house and I would've gone to him there?" Abu Bakr said, "You are more deserving of him coming to you than he is of you going to him." The Prophet seated Abu Quhafah in front of him and honored him. Then he passed his hand on Abu Quhafah's chest and asked him to embrace Islam and Abu Quhafah did. The Prophet, noticing that Abu Quhafah's hair was white, directed that his hair be dyed. These are just few examples of the Prophet's gentleness,

mercy, and respect towards the elderly. These examples, and many others, translate the sublime Islamic code of ethics for treating the elderly and provide Muslims, generation after generation, with a practical model that they ought to pursue. Such care for the elderly is in line with the Islamic principle of the dignity of the human being and with the spirit of solidarity and compassion that pervades the Muslim society. From the above stand point Law as a thing appears to have a very smaller role to play. Still there must be specific legislations in matters of the rights of elderly persons followed by proper implementation thereof.

### Supreme Court on Rights of elderly Persons

In the landmark case of *Dr. Ashwani Kumar v. Union of India and Ors*, the rights of elderly persons was observed to be one such emerging situation that was perhaps not fully foreseen by our Constitution framers. Therefore, while there is a reference to the health and strength of workers, men and women, and the tender age of children in Article 39 of the Constitution and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want in Article 41 of the Constitution, there is no specific reference to the health of the elderly or to their shelter in times of want and indeed to their dignity and sustenance due to their age.

The Supreme Court referring the case of *Francis Coralie Mullin v. Administrator, Union Territory of Delhi* acknowledged that the right to life guaranteed by Article 21 of the Constitution includes the right to live with dignity which includes, inter alia, nutrition, clothing and shelter - all of which require some finances. Provision for these basic necessities can be made only if the elderly are provided with some pension which is meaningful and not pension which is equivalent to ₹ 92 per month. The court sought whether the right to life is limited only to protection of limb or faculty or does it go further and embrace something more and clarified that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings. Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self.

In matter of the right to shelter the Supreme Court recognized that the right to shelter or the right to reasonable accommodation is one of the basic needs of any human being. Unfortunately, while there has been some positive development in this regard, attention has not been paid to the needs of the elderly who require special care and attention which, in many sections of our society, is missing. With this in mind, the petitioner emphasized the right to shelter and referred to several decisions, many of which recognize the right to adequate shelter as a fundamental right, which we believe applies to the elderly as well.

In the case of *Shantistar Builders v. Narayan Khimalal Totame* the Supreme Court recognized the right to food, clothing and shelter as being a guarantee of any civilized society. As far as the right to shelter is concerned, it was observed that there is a right to reasonable accommodation.

It was held that Basic needs of man have traditionally been accepted to be three — food, clothing and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in.

In *Chameli Singh v. State of Uttar Pradesh* the Supreme Court explained that the right to shelter would include adequate living space but that does not mean a mere right to a roof over one's head. It was held that the right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right. It was added that in any organized society, right to live as a human being is not ensured by meeting only the animal needs of man. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being. Right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right. As is enjoined in the Directive Principles, the State should be deemed to be under an obligation to secure it for its citizens, of course subject to its economic budgeting.

In the case of *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan* the Supreme Court referred to and followed *Chameli Singh* and was reminded of our obligations under international law, including the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights. The petitioner strongly relied upon our international obligations and submitted that apart from the law laid down by the Supreme Court in several judgments, we should respect and acknowledge our international obligations in regard to the right to shelter. It was supplemented that Article 19(1) (e) accords right to residence and settlement in any part of India as a fundamental right. Right to life has been assured as a basic human right under Article 21 of the Constitution of India. Article 25(1) of the Universal Declaration of Human Rights declares that everyone has the right to a standard of living adequate for the health and well-being of himself and his family; it includes food, clothing, housing, medical care and necessary social services. Article 11(1) of the International Covenant on Economic, Social and Cultural Rights lays down that State parties to the Covenant recognize that everyone has the right to standard of living for himself and his family including food, clothing, housing and to the continuous improvement of living conditions.

In matter of the right to health of elderly persons it was submitted by the petitioner that medical facilities and geriatric care are not given the due importance that they deserve. He submitted that, by and large, it is older persons who require medical care more frequently than younger persons and if they are not provided the necessary medical facilities, it would adversely impact on their right to health. In support of his contention that the right to health is a human right and a constitutional right, Taking the above matter sensibly, the Supreme Court issued directions in the Medical support for senior citizen requiring the State Government to ensure that -

1. the Government hospitals or hospitals funded fully or

- partially by the Government shall provide beds for all senior citizens as far as possible;
2. separate queues be arranged for senior citizens;
3. facility for treatment of chronic, terminal and degenerative diseases is expanded for senior citizens;
4. research activities for chronic elderly diseases and ageing is expanded;
5. There are earmarked facilities for geriatric patients in every district hospital duly headed by a medical officer with experience in geriatric care.

At last but not the least, in matter of establishment of old-age homes-

The State Government may establish and maintain such number of old-age homes at accessible places, as it may deem necessary, in a phased manner, beginning with at least one in each district to accommodate in such homes a minimum of one hundred fifty senior citizens who are 'indigent' which means any senior citizen who is not having sufficient means, as determined by the State Government, from time to time, to maintain himself.

### Conclusion and Suggestions

Apathy can be overcome by enthusiasm, and enthusiasm can be aroused by an ideal which takes the imagination by storm, and a definite intelligible plan for carrying that ideal into practice. Duty towards elderly person is not a bounty or charity rather is a duty stronger than a duty of legal nature. If we perform certain duty towards elderly persons, it may not be for the reciprocity of certain rights; rather, corresponding to certain rights availed in the past without our having done towards them prior thereto. It is in fact in the nature of discharging the outstanding obligations. We avail in life so many invaluable things without being able to pay for example, what had we done to get the rain, what had we done to get the Sun ray, what had we done to get the Moon light, what had we done to get the air to breathe and at last but not the least, what had we done to avail so many more invaluable things for our life and comfort???

Performance of duty towards elderly persons may not be a virtue but non-performance of the same is certainly a vice. In order to make the moral duty towards the right of elderly persons more forceful than a mere legal duty, we need a convention on the rights of older people since the existing human rights mechanisms fail to adequately protect and promote the rights of older people. A comprehensive instrument, a novel international convention on the rights of older people, is the most desirable way to effectively ensure that all people enjoy their human rights in older age, and on an equal basis with others. Further we need a convention to establish legal standards that challenge and replace stigmatizing and dehumanizing ageist attitudes and behavior; Clarify how human rights apply in older age; ensure states understand their human rights obligations to us in our older age; better understand and assert our rights in our older age; improve accountability of states for their human rights obligations towards us in older age and provide a framework for policy and decision making. A convention must- provide a comprehensive and systematic framework for the protection and promotion of all our human rights in older age, prohibit all forms of discrimination in older age in every aspect of our lives, articulate how each human right specifically applies to us in older age and provide for a strong implementation,

monitoring and accountability system.

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