
AGE DISCRIMINATION LAWS IN INDIA: EMERGING ISSUES AND CHALLENGES

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ABSTRACT

Age discrimination implies treating a person less favourably or less receptively, or not giving him/her the same opportunities as others in the similar situation because he/she is considered too old or too young. It is a kind of bias against someone due to his/her age. Age discrimination has surfaced as a notable but still overlooked challenge in the present legal system in India. Although discrimination on the grounds of religion, race, caste, sex, and place of birth has been given due recognition under the constitution of India and also by the judiciary but issue of age discrimination still remains unredressed. Discrimination based on age impacts both generations whether old or young. Young people often face difficulties in employment because of lack of experience, whereas older people encounter issues like compulsory retirement, denial of employment due to deteriorating health or other reason, etc. Age-based classifications may sometimes try to fulfil legitimate objectives but unreasonable classification has the potential to erode the constitutional principles of equality, dignity and social inclusion.

India does not have direct or comprehensive legislation on age discrimination but derived indirectly through the constitutional provisions manifested in Articles 14, 15, 16, 21, 38, 39, and 41, labour codes, judicial interpretation and welfare legislation for senior citizens. The constitutional framework acts as the foundational base for protecting citizens from unfair discrimination. However, these provisions do not expressly give due recognition to age as an explicit prohibited ground of discrimination. Judicial interpretations have tried to address and balance the state's authority to prescribe age-based classifications in consonance with the individual's right to equality. This paper examines the notion of age discrimination in India and analyses the issues and challenges that are encountered due to lack of explicit constitutional and statutory framework design relating to age-based discriminations. The paper also analyses judicial verdicts and identifies the limitations in the existing legal structure. The paper finally proposes suggestions to overcome the limitations.

Keywords: Age, Constitution, Discrimination, Equality, India.

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1. Introduction

Age discrimination implies considering an individual less favourably or not giving him/her the same opportunities as others in the similar situation because one is too old or too young. It is a kind of bias against someone due to one's age. The question is that if learning has no age limit then why there is age discrimination in education, workplace etc? Age is usually considered a factor by the organisations while recruiting which may resultantly affect the workplace culture too. For example, not employing a person as he/she will not adjust with other employees due to his/her age; not recruiting a young person because of the assumption that he/she will quickly move on to another job, etc.

In India there is no specific law on age based classification. The Constitution of India defends certain fundamental freedoms to its people. Neither there is any specific statutory body to deal with matters pertaining to age discrimination nor do penal laws provide criminal liabilities for it. Hence, only common law remedies may be availed if age based discrimination is without justification or reasonable reasons. Based upon the class of the employee or nature of the claim sought, suits can be instituted in labour courts, service tribunals or civil courts.

As per World Population Ageing data released by United Nations in 2019, "by 2050, one in six people in the world will be over the age of sixty-five, up from one in eleven in 2019.¹ All societies in the world are in the midst of this longevity revolution. Some are at its early stages and some are more advanced. But all will pass through this extraordinary transition, in which the chance of surviving to age sixty-five rises from less than fifty per cent. Globally, there were 703 million older persons aged sixty-five or over in 2019. Eastern and South-Eastern Asia was home to the largest number of the world's older population (260 million), followed by Europe and Northern America (over 200 million)"².

If age discrimination continues in employment there may be serious repercussions not only on the livelihood of the people in the near future but also on their mental health. National Policy on Older Persons in 1999 was announced by the government to ensure the welfare of

¹United Nations Organisation,
https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/undesa_pd_2024_wpa2023-report.pdf.

² Ibid.

the older people in a holistic manner³. Re-emphasizing the provision laid down in Article 41⁴, although the policy emphasizes on empowerment of community to sufficiently address the issues of ageing, it does not specifically talk about age discrimination. Its basic objectives are confined to financial or health security, shelter, education/information needs etc. Another initiative of the Ministry includes “Senior care Ageing Growth Engine” (SAGE), a scheme started in 2021 to motivate innovative start-ups for developing services for the welfare of the elderly⁵. The Atal Vayo Abhyuday Yojana⁶ another scheme of the government is meant to enhance the life quality of life of the elderly and endeavours to include awareness through sensitization programs with educational institutions for improving bonding between generations. It strives to provide educational material to people for better comprehension of the aging process. According to American Association of Retired Persons⁷, “sixty four per cent of workers have witnessed or experienced age discrimination.” A survey by JobBuzz⁸ found that thirty three per cent of employees in India face or have faced age based biases at their workplaces.⁹

2. Stating the problem

Notion of equality is considered as the most foundational principle of constitutional framework. Contemporary legal structure gives recognition to equal dignity, social inclusion and opportunities irrespective of other factors that have no nexus with one’s merit and efficiency.

Age discrimination implies meting out a treatment to a person in a less favourable or less receptive manner, or not giving him/her the opportunities as given to others in similar situations either because one is considered too old or too young. It is a kind of bias against someone due to his/her age.

³Department of Social Justice and Empowerment, <https://socialjustice.gov.in/writereaddata/UploadFile/National%20Policy%20for%20Older%20Persons%20Year%201999.pdf>

⁴ “State to secure the right to work, education and public assistance in certain cases such as unemployment, old age, sickness and disablement.”

⁵ Department of Social Justice and Empowerment, <https://scw.dosje.gov.in/seniorcare-ageing-growth-engine>.

⁶ Ministry of Social Justice, <https://socialjustice.gov.in/schemes/43>.

⁷American Association of Retired Persons, <https://www.aarp.org/advocacy/fighting-age-discrimination-in-workforce-2025/>.

(An interest group in the United States focusing on issues affecting those over the age of fifty.)

⁸ A research website for giving active and passive job seekers the knowledge and resources to make intelligent career decisions.

⁹ *Too young for senior position? Age-based bias becoming more prominent at workplaces* The Economic Times, March 26, 2020, <https://economictimes.indiatimes.com/magazines/panache/too-young-for-senior-position-age-based-bias-becoming-more-prominent-at-workplaces/articleshow/74830156.cms?from=mdr>.

Age discrimination has surfaced as a notable but still overlooked problem in the contemporary legal framework in India. Although discrimination on the grounds of “religion, race, caste, sex, and place of birth”¹⁰ has been given due recognition under the constitution of India and also by the judiciary but issue of age discrimination still remains unredressed. Discrimination based on age impacts both generations whether old or young. Young people often face difficulties in employment because of lack of experience, whereas older people encounter issues like compulsory retirement, denial of employment due to deteriorating health or other reason, etc. Age-based classifications may sometimes try to fulfil legitimate objectives but unreasonable classification has the potential to erode the constitutional principles of equality, dignity and social inclusion.

India does not have direct or comprehensive legislation on age discrimination but derived indirectly through the constitutional provisions manifested in Articles 14, 15, 16, 21, 38, 39, and 41, labour codes, judicial interpretation and welfare legislation for senior citizens. The constitutional framework acts as the foundational base for protecting citizens from unfair discrimination. However, these provisions do not expressly give due recognition to age as an explicit prohibited ground of discrimination. Judicial interpretations have tried to address and balance the state’s authority to prescribe age-based classifications in consonance with the individual’s right to equality.

This paper examines the notion of age discrimination in India and analyses the issues and challenges that are encountered due to lack of explicit constitutional and statutory framework design relating to age-based discriminations. The paper also analyses judicial verdicts and identifies the limitations in the existing legal structure. The paper finally proposes suggestions to overcome the limitations.

3. Understanding the Arguments

The paper is categorised into three parts. First part covers legal framework in India that includes constitutional and statutory design. Part two deals with judicial interpretations on age discrimination and their analyses. Part three deals with the issues and challenges emerging in the contemporary society due to lack of comprehensive laws on age discrimination in India.

¹⁰ Article 14, 15 and 16.

4. Legal framework

4.1 Age discrimination and its types

Age discrimination implies unequal treatment of individuals sheerly due to their age instead of their merit or competency. Since age is a universal characteristic experienced by every individual, age discrimination hence acquires a peculiar characteristic as people may benefit from or suffer due to age-based classifications during different phases of their lives. The pertinent factor in age discrimination is that, age based classification lacks rational and reasonable justification. Opportunities, privileges, benefits etc are denied completely due to one's age instead of competence. Sometimes discrimination is also considered as direct or indirect.

Direct discrimination

Direct age based discrimination implies where an individual is tendered less favourable treatment due to one's age. For instance; refusing employment above specified years of age, denial of promotion explicitly due to crossing a particular age bar etc. In such kinds, age itself becomes an express ground for discrimination.

Indirect discrimination

Indirect discrimination exists when policies inadequately disadvantage particular age groups. For example; requirement of mandatory prior experience for certain positions which has the tendency to oust the freshers, compulsory retirement policies that may impact the old employees despite having good performances. Indirect discrimination therefore has the potential to bring unequal outcomes.

Constructive discrimination

All age-based classifications are not always unlawful or unequal discriminations. Certain age based classifications are constructive and necessary as well as legally acceptable because the same is required for public policies. For instance minimum voting age, minimum marriage age, juvenile protection, child labour prohibition, limits for defence services, etc. Such classifications can be justified on the ground of their rationality and public policy. The primary question to be determined is whether age classifications satisfy constitutional principles of rationality and reasonableness rather than whether age classifications exist.

4.2 Constitutional framework

The India's Constitution incorporates the foundation for a broader principle of equality. Explicit banning of discrimination on the grounds of religion, race, caste, sex, place of birth is provided and the judiciary has constructively interpreted and tried to safeguard and cure the people's rights. Reasonable classification that includes age-based distinctions depends primarily upon the notion of reasonable classification laid down under Article 14.

Fundamental rights

Article 14 puts a responsibility upon the State to not deny equality before the law or the equal protection of the laws to any person in India. The provision includes both citizens as well as non-citizens. The judiciary has consistently declared that Article 14 does not restrict classification but prohibits arbitrary classification. A classification is tested on the touchstone of constitutionality and will be considered constitutional only when the same satisfies two conditions of intelligible differentia and that the differentia bears a reasonable nexus with the objective to be achieved.¹¹

Age based classification forms an intelligible differentia because people of different ages may possess varied physical, mental or professional capabilities. Hence, statutes prescribing minimum age for marriage, voting, entering into contracts, hazardous employment etc, are usually tested through constitutional audit. But when age classifications are arbitrary and without any justification courts may declare them unconstitutional.

Article 15 incorporates restriction on discrimination on grounds only of religion, race, caste, sex, place of birth or any of them. Age is not mentioned in this constitutional provision. The omission is based on public policy and legal requirements and is reflected in its historical evolution of the preparation of the constitution as well. While drafting of India's constitution discriminations were largely arising from caste, religion, gender inequality etc. When the question is of bare survival, independent human rights issues were not given much precedence.

Article 16 incorporates equality of opportunity in public employment. Since public recruitment always prescribes minimum and maximum age limits, maximum litigation relating to age-based discrimination occurs under this article. Such classifications are upheld if they acquire a rational basis. For instance, age classification in police services, armed forces, fire fighting

¹¹ State of West Bengal v. Anwar Ali Sarkar AIR 1952 SC 75.

services, is based on the ground of physical and functional demands of such offices.

Article 21 incorporates the notion of dignity by conserving the personal liberty of the individual in accordance with the established procedure. The article has been expanded in its scope and incorporates human dignity, livelihood, privacy, health, education, social inclusion and many more. Age-based discrimination usually affects these rights indirectly. For example, old citizens who are denied employment due to age despite being competent lose economic independence and dignity. Judiciary's expansion of this article indicates that dignity should not mitigate just because an individual is growing older.

Article 24 prescribes age limit of fourteen years as the age bar below which a child cannot be employed in a hazardous occupation. Keeping in view the tenderness of the children, their employment in hazardous employment is banned.

Directive Principles of State Policy reiterate constitutional commitment towards social empowerment.

Article 38 gives directions to the State for promotion of social, economic, and political justice while reducing inequalities. Age-based ouster from public employment can widen the economic inequalities amongst older citizens.

Article 39 talks of adequate means of livelihood for the citizens. Denial of employment on the grounds of age despite competency and possessing necessary qualifications may result in economic alienation contradictory with the constitutional principles.

Article 41 instructs the State to secure right to work, education old age etc. Although the provision is non-justiciable, it provides statutory protection for senior citizens from neglect and economic insecurity¹².

4.3 Statutory Framework

India does not possess a detailed or specific statute on age-based classification rather age-related protections are scattered across multiple statutes addressing various policy objectives.

¹² Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

Maintenance and Welfare of Parents and Senior Citizens Act, 2007

This predominant statute protects senior citizens. Although the law protects economic and social security it does not explicitly prohibit discrimination in employment, healthcare, insurance, education, housing etc.

Labour Laws

Indian labour codes contain various age-related provisions such as prohibition of child labour, retirement provisions, pension schemes etc. Although these codes protect vulnerable sections of society but they do not prevent discrimination against older people. The problem is even more in private employments.

5. Judicial approach

India's Constitution does not expressly bar discrimination on the ground of age but the judiciary has usually tested such classifications through the prism of Articles 14, 15 and 16 and has been largely successful in making them permissible only when they are found to be equitable, logical and having just nexus with the objectives to be achieved.

The doctrine of arbitrariness has widened the ambit of Article 14 beyond traditional classification. The modern approach recognizes that arbitrary state action itself violates equality. In *E.P. Royappa v. State of Tamil Nadu*¹³ the court observed that equality being a dynamic notion cannot be confined within conservative limits as arbitrariness is opposite to the objectives of article 14. In *Maneka Gandhi v. Union of India*¹⁴ the Supreme Court recognised that notion of equality is dynamic and incorporates multiple dimensions and cannot be restricted to traditional limits. Reasonableness is basic to both equality and non-arbitrariness. In *R.D. Shetty v. The International Airport Authority of India*¹⁵ the court observed that article 14 acts as a framework to analyse if the actions of executive or legislature are arbitrary or contradictory to notion of equality. If it is then there is contravention of equality. In *Bachan Singh v. State of Punjab*¹⁶ the court focused on the notion of rule of law that forms the essence of India's constitution and is completely devoid of arbitrariness. In *D.S. Nakara v. Union of*

¹³ AIR 1974 SC 555.

¹⁴ AIR 1979 SC 1628.

¹⁵ AIR 1979 SC 1628.

¹⁶ (1982)3SCC24.

India¹⁷ test of intelligible differentia was laid down that must have a just connectivity with the objectives to be achieved.

In *Kashmiri Lal Sharma v. Himachal Pradesh State Electricity Board Ltd. and Anr*¹⁸ the Supreme Court recently observed that specifying divergent ages of retirement based upon a particular kind of disability is not constitutional and contrives article 14. In *State of U.P. v. Dayanand Chakrawarty and Ors*¹⁹ the Supreme Court struck down a regulation that prescribed two different retirement ages for employees who held the same posts but were hired from different recruitment sources. In *Commissioner, M.C.D. v. Shashi & Ors*²⁰ the employer attempted to use a narrow age short listing criterion (28 to 30 years) simply to filter down an overwhelming number of applications. The Delhi High Court stated that the “MCD had impermissibly discriminated against a candidate based on her age. While age is not explicitly written in Article 15, any age-based discrimination that lacks an intelligible differentia violates Article 14.” In *Air India v. Nergesh Meerza*²¹ Air India regulations forced female air hostesses to retire at the age of thirty-five years or earlier if they married or became pregnant, while male stewards retired at fifty-eight. While the court in the beginning confirmed a disparity in retirement ages founded upon administrative frames, it struck down the absolute power given to the Managing Director to extend service based on personal discretion. This historical case forced later state policies to create more uniform, less arbitrary age brackets.

6. Emerging issues and challenges

- India is deficient in a dedicated legislation dealing expressly with age-based discrimination. Existing protections are limited and scattered across multiple legislations like the constitution, labour codes etc. This results in lack of clarity and willingness to seek suitable legal remedies.
- Private employment exercises huge discretion in recruitment and retirement matters. Lack of appropriate legislations defy legal remedies despite legal injury that further creates legal complexities.

¹⁷ (1983) 1 SCC 305.

¹⁸ 2025 INSC 472.

¹⁹ (2013) 7 SCC 595.

²⁰ Civil Writ Petition No 11331 of 2009 decided by SC on 07-09-2009.

²¹ 1982 SCR (1) 438.

- Judicial protection based on ordinary litigation is expensive and tardy compelling the people to avoid seeking their rights.
- Existing stereotypes project young population as lacking in experience and older ones as technologically less productive. Such stereotypes impact the employment practices.
- India's increasing ageing population may create more demands for employment opportunities and protection against age-based discrimination.

The existing statutory design is inadequate to redress these emerging demographic issues.

7. Suggestions

- India needs a comprehensive dedicated statute to prohibit arbitrary age-based discrimination across public and private sectors. The law must incorporate direct/indirect discrimination, harassment, permissible exceptions etc. Legal and policy reforms need to be considered afresh keeping in view the age-based discrimination.
- The legislation should expand to include in its ambit education, healthcare, insurance, housing, transportation, banking, digital services etc. Private employment should also justify age based restrictions. Recruitment advertisements prescribing age limits without having any reasonable nexus with the objectives to be achieved should be prohibited.
- Retirement policies should be flexible and consider performance, occupational capabilities rather than age.
- All civil society stakeholders should encourage consciousness among people regarding age based discrimination.
- A specialized commission may be constituted to provide accessible and expedited remedies for affected victims of age-based discrimination.

8. Conclusion

India's legal framework is scattered and fragmented. Existing statutes primarily address protection of children, welfare of senior citizens but no specific statute prohibits age based

discrimination expressly. Lack of dedicated statute leaves a vacuum in matters of employment, education and other public services offering no adequate legal remedy. Age-based discrimination laws must be enacted to fully ensure social inclusion and in consonance with constitutional principles of equality, reasonableness, social inclusion and dignity. Although the Constitution provides as a base for challenging arbitrary age-based classifications yet these protections are inadequate as age is not explicitly recognized as a prohibited ground of discrimination. Judicial interpretations are restricted to the tests laid down by it usually backed by reasonable policy considerations. A sufficient balance is therefore required to be maintained between governmental discretion and individual rights of the citizens.

Since India's older population is increasing and labour market conditions are evolving leading to the requirement for a detailed legal redressal mechanism. A comprehensive anti-age discrimination law will strengthen the principles of equality and social inclusion. Such reforms will have the potential to remove the societal prejudices and stereotypes. In a constitutional democracy persons should be assessed as per their competencies instead of age.

Differentiation on the ground of age must be recognized as a fundamental right in India. Age should not be considered as a bar in the holistic development of a person. Now is the time to delve upon the issue of age discrimination and utilize the wisdom of elderly with full respect and honour. Experiential accounts of the elderly can be helpful in better understanding. Let us talk openly about age discrimination issues. Like other forms of discrimination, this issue too needs redressal and requires to be taken out of the box. Being silent contemplates indirect mode of accepting age discrimination. Time has come to reflect upon the proverb '*Old is gold*' and revamp the requisite Constitutional and statutory provisions and promote social inclusion.