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# RIGHTS OF OLDER PERSONS: LEGAL PROTECTION AND CHALLENGES IN INDIA AND BEYOND

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## ABSTRACT

This paper discusses the rights of older persons and the legal protection available to them both internationally and in India. As the number of elderly people is increasing worldwide, many face challenges such as poverty, isolation, lack of healthcare, and discrimination based on age. This study examines how “international human rights documents such as the UDHR (Universal Declaration of Human Rights)”, ICESCR and ICCPR (International Covenants), and the CRPD (“Convention on the Rights of Persons with Disabilities”) can be used for supporting “the rights of older persons”.

In India, “the paper” examines how “the” DPSPs (Directive Principles “of State” Policy), Personal Laws, Section 144 of the BNSS(Bhartiya Nagarik Suraksha Sanhita), and the “Maintenance and Welfare of Parents and Senior Citizens Act, 2007”, offer support to elderly citizens. The paper highlights that while laws do exist, there are still many gaps in practice. It argues for stronger protection, better enforcement, and development of a global convention specifically focused over the needs and rights of older persons.

**Keywords:** Elderly Rights, Human Rights, Ageing Population, Indian Constitution, Senior Citizens, Maintenance Act 2007, CRPD, Social Protection, Age Discrimination, Legal Support for Elderly

## INTRODUCTION

World’s population is ageing faster than ever before. As per the UN(United Nations), By 2050, it has been anticipated that adult population aged 60 and older would have more than doubled. This rise in the elderly population brings new challenges, especially in protecting their basic rights and ensuring they live with dignity and security.

In many traditional societies, like India, older persons were cared for and respected within joint family systems. However, as modern life has led to smaller, nuclear families, many elderly

people today face loneliness, neglect, and financial problems. These changes have made it more difficult for elderly people to receive assistance as well as care they require.

The rights of older persons under Indian and international law are examined in this research. It covers important international agreements like CRPD, the International Covenants (ICESCR and ICCPR), along with the UDHR. It also describes how senior individuals are protected under the Indian Constitution and regulations like the “Maintenance and Welfare of Parents and Senior Citizens Act, 2007”. Study concludes by emphasizing necessity of stricter legislation and a specific international agreement to defend the rights of older persons everywhere.

## **1. THE CONSTRUCTION OF AGEING AS A SOCIAL PROBLEM**

Old age is frequently understood as a social issue rooted in the assumption that elderly individuals form a distinct category, separate from those who are not yet old. This perceived division reinforces the idea of a fundamental difference between the aged and the non-aged. Elderly individuals have frequently been viewed as unproductive economically hence have been seen as unable to contribute meaningfully to society. As a result, social services designed for them tend to be poorly resourced and of substandard quality, reflecting the widespread belief that they constitute a burden. Addressing this form of disadvantage requires the explicit recognition and application of human rights to older populations. Clarifying the connection between specific rights and specific groups is central to ongoing debates within the human rights domain, especially amid growing concerns that older persons may be neglected within generic rights-based frameworks.<sup>1</sup>

## **2. WHAT ARE HUMAN RIGHTS?**

Human rights have generally been defined as fundamental freedoms and entitlements that have been associated with each individual by virtue of being human, without regard to their legal or social status. They are universally recognized as inherent and cannot be granted or taken away by any authority. These rights are also indivisible as well as interdependent, which means

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<sup>1</sup> Marthe Fredvang & Simon Biggs, *The Rights of Older Persons: Protection and Gaps Under Human Rights Law*, Soc. Pol’y Working Paper No. 16, Brotherhood of St. Laurence & Ctr. for Pub. Pol’y, Univ. of Melbourne (2012), at 21.

realization of others has been influenced when one has been violated.<sup>2</sup>

Human rights emerge from convergence of ethical, legal, and societal principles. They are expected to be safeguarded by legal systems, with corresponding obligations placed on governments and relevant actors to uphold them. These rights are grounded in moral justification and reflect what is fair and appropriate. At a societal level, human rights function to promote peaceful coexistence, security, and dignity for all members of a community.<sup>3</sup>

### 3. INTERNATIONAL HUMAN RIGHT LAWS

Before analysing human rights protections' present condition for elderly individuals moreover deliberating potential necessity of distinct Convention on the Rights of Older Persons, this has been important to first reflect on foundational human rights notions as articulated in international law's context. Central to this development is the UN, which helped create the UDHR in 1948, which had been 1<sup>st</sup> worldwide consensus on fundamental rights. UDHR's article 1 proclaims the core principle of equality and dignity, asserting that "*all human beings are born free and equal in dignity and rights.*" Additional rights protected by document include those pertaining to liberty, life, non-discrimination, education, property, work, and governance participation. As a declaration, the UDHR does not carry binding legal force and is therefore classified as "soft law" form within international legal frameworks.<sup>4</sup>

Following UDHR adoption, its foundational principles were later codified into two binding legal instruments: the ICCPR("International Covenant on Civil and Political Rights") along with the ICESCR("International Covenant on Economic, Social and Cultural Rights").

The ICESCR affirms significant "socio-economic" entitlements, "including the right to" work under fair as well as reasonable circumstances, access "to adequate living standard, the right to social security", education, healthcare of greatest achievable standard, moreover scientific as well as cultural advancement's advantages. The ICCPR, however, expands upon political along with civil liberties initially outlined in the UDHR and introduces protections for groups such as minorities and detainees. It guarantees freedoms such as belief and religion, protection from

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<sup>2</sup> Azmi Sharom et al. eds., *An Introduction to Human Rights in Southeast Asia*, vol. 1 (Southeast Asian Human Rights Studies Network, 2018), at 5, 11–14.

<sup>3</sup> Id. at 6–7

<sup>4</sup> Judith Randel, Tony German & Deborah Ewing eds., *The Ageing and Development Report: Poverty, Independence and the World's Older People* (Earthscan Publ'ns 1999), at 13–14.

torture, due process rights including fair trial guarantees, and access to remedies for violations. Both covenants are further strengthened by Optional Protocols, which introduce additional procedural and substantive rights.<sup>5</sup>

#### **4. THE CURRENT POSITION OF PROTECTION OF OLDER PERSON'S RIGHTS AT GLOBAL LEVEL:**

##### **4.1 THE UDHR-**

As the International Bill of Human Rights' cornerstone, the UDHR is generally accepted to "have achieved the level of customary international law, meaning that" it carries legal duties even in binding treaty's absence. This has led many of its provisions to be treated as enforceable norms. Particularly relevant to older individuals is Article 25(1), which affirms "the right of" each individual "to an adequate standard of living the right of" every individual to a sufficient quality of life that promotes their own and their families' health and well-being. This include having access to shelter, food, clothes, and healthcare—elements crucial for ensuring dignity and security in later life.<sup>6</sup>

Older individuals frequently encounter violations of the UDHR's provisions regarding fundamental rights, often rooted in age-based discrimination and stereotyping. Several specific rights are commonly compromised:

- Freedom from Discrimination (Article 2): Elderly individuals may be rejected of employment, services, or social respect due to their age, compounded by intersecting identities such as gender or disability.
- Freedom from Violence (Article 3): Many older individuals, particularly women, suffer various forms of abuse—verbal, psychological, sexual, or financial—frequently within domestic settings, including from their own families.
- Equality Before the Law (Article 6): A lack of official identification documents restricts older persons from exercising basic civil and social entitlements such as free healthcare

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<sup>5</sup> Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* 3–7 (2d ed. N.P. Engel 2005); see also Philip Alston & Ryan Goodman, *International Human Rights* 161–75 (Oxford Univ. Press 2013).

<sup>6</sup> Asbjørn Eide, Catarina Krause & Allan Rosas eds., *Economic, Social and Cultural Rights: A Textbook* 30–33 (2d ed. Martinus Nijhoff Publishers 2001); see also *Universal Declaration of Human Rights*, G.A. Res. 217A (III), U.N. Doc. A/810, at 76 (Dec. 10, 1948), art. 25(1).

or pension benefits.

- Right to Social Security (Article 22): In numerous countries, elderly people live without adequate economic support/access to non-contributory pensions, leaving them vulnerable to poverty.
- Right to Health (Article 25): Healthcare discrimination against the elderly persists due to ageist assumptions that devalue older lives or from insufficient knowledge among providers regarding age-related health conditions.
- Right to Work (Article 23): Mandatory retirement, exclusion from job opportunities, and employer biases label older persons as unfit for meaningful work, often pushing them into low-wage or exploitative jobs, with older women facing additional gender-based wage disparities.
- Right to Property and Inheritance (Article 17): In several regions, especially under customary or discriminatory legal systems, older women are denied inheritance or ownership rights, sometimes resulting in forced evictions after the death of a spouse.
- Right to Information (Article 19): Older persons often lack access to essential details on their rights, including medical services, pension schemes, or community support, due to inaccessibility of formats and limited outreach by institutions.<sup>7</sup>

#### **4.2. ICESCR (International covenant on economic, social and cultural Rights) and ICCPR (International Covenant on Civil and Political Rights)**

The ICESCR does not specifically reference older persons in its text. However, several of its provisions are essential for defending social as well as economic rights of the ageing population. These include:

1. Rights related to work (Articles 6–7), which ensure access to fair and just employment conditions.

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<sup>7</sup> Office of the High Commissioner for Human Rights [OHCHR], *Normative Standards in International Human Rights Law in Relation to Older Persons: Analytical Outcome Paper* (Aug. 2012), [https://www.ohchr.org/sites/default/files/Documents/Issues/OlderPersons/NormativeStandardsHR\\_OlderPersons.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/OlderPersons/NormativeStandardsHR_OlderPersons.pdf) (last visited Apr. 22, 2025), at 5–9.

2. Right to social security (Article 9), a foundational safeguard for income security in old age.
3. “Right to an adequate standard of living” (Article 11), encompassing clothing, food, housing, “and continuous improvement of living conditions”.
4. Right to education (Article 13), which supports life-long learning and inclusion; and
5. “Right to the highest attainable standard of physical and mental health (Article 12)”, central to ageing with dignity.

Similarly, while ICCPR needs not to specifically state older persons, its provisions remain vital to their civil and political participation. Of particular significance are:

1. Freedoms “of expression, assembly, and association (Articles 18–19, 21)”, which ensure ability of older individuals for voicing their needs and remain engaged in civic life;
2. “Right to political participation (Article 25), which” affirms the entitlement of all individuals “to take part in the conduct of public affairs”;
3. Right to equal protection of the law (Article 26), which prohibits discrimination on several grounds, including race, sex, and origin. Although age is not explicitly named, it can be interpreted within the broader category of “other status,” thus potentially encompassing age-based discrimination.<sup>8</sup>

#### **4.3 THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITY (CRPD)<sup>9</sup>**

The CRPD offers some of the most relevant international protections that older individuals can invoke, even though it does not explicitly single them out as a protected group. While not all

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<sup>8</sup> Id. at 9–11

<sup>9</sup> Arlene Kanter, *The United Nations Convention on the Rights of Persons with Disabilities and Its Implications for the Rights of Elderly People Under International Law*, 25 GA. ST. U. L. REV. 527, 572 (2009).

older persons live with disabilities, many experience age-related impairments, making several provisions of the CRPD applicable to them in seeking rights-based protections.

Notably, the Convention does not define “disability” in strict terms, allowing for comprehensive as well as all-encompassing understanding. Its core principles, outlined in Article 3, are especially pertinent to elderly individuals. These include respect for inherent dignity, autonomy, non-discrimination, inclusion, along with accessibility—values that support older adults’ right to live with independence and equality.

Several other articles are also significant:

- Article 8 commits states to challenge prejudices as well as stereotypes related to disability, like those based on age as well as gender.
- Article 12 suggests equal recognition before the law, requiring states to support rather than restrict legal capacity.
- Article 25(b) and Article 28(2)(b) specifically refer to older persons with respect to accessing healthcare and social protection.
- Article 13(1) emphasizes the importance of age-appropriate accommodations in justice systems.
- Article 16(2) recognizes need of age-sensitive assistance in preventing abuse and exploitation.

Additional provisions—like “Article 9 (accessibility), Article 19 (independent living), Article 20 (mobility)”, as well as “Article 26” (rehabilitation)—can be interpreted to strengthen protections for older adults, particularly those who face functional decline or discrimination related to ageing.<sup>10</sup>

#### **4.4.THE VIENNA PLAN**

The international community began formally addressing issues of ageing with the first World

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<sup>10</sup> OHCHR, *Normative Standards in International Human Rights Law in Relation to Older Persons: Analytical Outcome Paper*, supra note 7, at 12–15.

Assembly on Ageing, convened in 1982 following a resolution by the UN General Assembly in 1978. Attended by 124 countries, the assembly gives “the Vienna International Plan of Action on Ageing”—a milestone document that outlined concrete strategies in areas like healthcare and nutrition, housing and environmental conditions, consumer protection for the elderly, employment, social welfare, income security, family support systems, education, alongside the systematic collection as well as use of data for policy formulation.

Almost 10 yrs later, in 1991, the UN General Assembly built upon the Vienna Plan by adopting the UN Principles for Older Persons, that identified 18key entitlements grouped under five core themes:

- Independence: Access to essentials like food, water, healthcare, housing, employment, as well as education;
- Participation: The right to engage actively in societal development and policy-making processes through associations and organizations;
- Care: Protection as well as assistance irrespective of whether older people reside in homes, institutions, or shelters;
- Self-fulfilment: Opportunities to pursue personal growth and access cultural and educational opportunities;
- Dignity: Assurance of safety, and protection from abuse, neglect, and discrimination, thereby preserving personal integrity.

These principles laid the groundwork for an international rights-based approach to ageing, promoting the inclusion and empowerment of older persons in all aspects of life.<sup>11</sup>

Existing international human rights framework, while foundational, does not fully address the particular risks that elderly people experience. Instruments like the UDHR, ICESCR, as well as CRPD offer general protections, but they do not directly respond to the intersectional challenges of age-related discrimination, poverty, social isolation, and elder abuse. As a result,

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<sup>11</sup> United Nations, *Vienna International Plan of Action on Ageing* (1982) & *U.N. Principles for Older Persons*, G.A. Res. 46/91, U.N. GAOR, 46th Sess., Supp. No. 49, at 265, U.N. Doc. A/RES/46/91 (Dec. 16, 1991), <https://www.un.org/development/desa/ageing/resources/vienna-international-plan-of-action.html> (last visited Apr. 22, 2025).



there is growing support among scholars, activists, and policy-makers for the establishment of a binding international convention which explicitly outlines the rights of older persons. A convention like that would not only fill normative gaps in current law but also impose clear legal obligations on states to develop inclusive policies, establish age-sensitive services, and ensure access to justice for the elderly. Moreover, stronger enforcement mechanisms are required for holding governments responsible for violations as well as for translating rights from theory into practice. Ageing recognition as a human rights issue must move beyond policy aspirations and be embedded into enforceable international law that reflects the dignity, autonomy, and equal worth of older individuals across the globe.

## 5. THE RIGHTS OF AGED PERSON IN INDIA

In traditional Indian society, caring for the elderly was a moral and cultural obligation deeply rooted in the joint family structure. Older members of the household were typically provided emotional, physical, and financial support by their children and extended family. However, with the growing shift towards nuclear family systems, driven by modernization, urban migration, and economic pressures, this age-old practice is deteriorating. Consequently, various older individuals now endure emotional neglect, isolation, as well as financial hardship, compounded by the lack of comprehensive social security mechanisms.<sup>12</sup>

### 5.1. Constitutional Protections

The Indian Constitution, although not granting enforceable fundamental rights specifically for the elderly, contains important provisions under the DPSPs. These principles assist the state in establishing policies for the welfare of older people who have been expected to support their parents:

- Article 41 stipulates that the State, within its economic competence, shall provide public assistance in circumstances of old age, disease, unemployment, and disability.<sup>13</sup>
- Article 37 clarifies that although DPSPs are not justiciable in court, they are

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<sup>12</sup> R.S. Deshpande & K. Raju, *Human Development in India: Emerging Issues and Policy Perspectives* 174 (Rawat Publ'ns 2005).

<sup>13</sup> *CONSTITUTION OF INDIA*, art. 41.

fundamental to governance and must inform legislative and executive action.<sup>14</sup>

## 5.2. Protection under Personal Laws

Under Hindu law, children have been required to provide for their parents. The Bombay High Court interpreted Section 20 of the “Hindu Adoptions and Maintenance Act”, 1956, affirming that while an elderly mother has been entitled to maintenance, she cannot demand residence in her son’s family household.<sup>15</sup>

## 5.3. Provision under the Bhartiya Nagarik Suraksha Sanhita, 2023

Section 144 of the BNSS, 2023 creates the legal obligation for children to provide for their parents in the event that they have been unable of maintaining themselves. This provision is seen as a tool of social justice, aiming to protect dependents such as women, children, and aged parents, regardless of religion or community.<sup>16</sup>

## 5.4. “The Maintenance and Welfare of Parents and Senior Citizens Act”, 2007

To reinforce elderly protections, the “Maintenance and Welfare of Parents and Senior Citizens Act”, 2007 was enacted. Any Indian citizen aged 60yrs or older, including parents of any age, has been considered senior citizen. The Act introduced the Maintenance Tribunal, a quasi-judicial body empowered to ensure expeditious relief to older persons. It provides for:

- Legal rights to claim maintenance from children or relatives;
- Section 19, which obligates state governments for establishing minimum 1 old age home for each district;
- Protection of life and property of senior citizens, including mechanisms for legal redress against abuse or neglect.<sup>17</sup>

India has taken notable steps toward recognizing the rights and welfare of older persons, but these efforts remain largely rooted in welfare-based approaches rather than enforceable rights

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<sup>14</sup> Id. art. 37

<sup>15</sup> *ANANDHI D. JADHAV v. NIRMALA RAMACHANDRA KORE*, A.I.R. 2001 Bom. 267 (India).

<sup>16</sup> *BHARTIYA NAGARIK SURAKSHA SANHITA*, No. 46 of 2023, § 125 (India).

<sup>17</sup> *MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS ACT*, No. 56 of 2007, §§ 4, 19 (India).

frameworks. Constitutional provisions such as Article 41 under the DPSPs encourage government to offer public aid in elderly instances, but they are not enforceable by law since they are not justiciable. One significant “piece of legislation is the Maintenance and Welfare of Parents and Senior Citizens Act, 2007” offering legal remedies to elderly individuals neglected by their children or relatives. However, its implementation varies significantly across states, various elderly individuals remain unable to/unaware of access these protections. India has not yet advocated strongly for global “convention on the rights of older persons” moreover has 0 standalone national human rights instrument that addresses ageing comprehensively. While schemes and pension programs exist, they are often underfunded, fragmented, and insufficiently monitored. For India to align with global best practices, it must move toward a rights-based model of elder care—anchored in dignity, autonomy, and social inclusion—and actively encourage establishment of an international framework that gives special aging population’s requirements 1<sup>st</sup> priority.

## **CONCLUSION**

Elderly individuals deserve life with respect, dignity, and support. While there are several laws at both the international and national levels that talk about their rights, many elderly people still suffer from neglect, abuse, and poverty. In India, traditional family systems used to care for the elderly, but changes in lifestyle have made many older people more vulnerable and dependent on legal protections.

The Indian Constitution, personal laws, as well as recent legislation including the 2007 Act are important steps toward protecting the elderly, but more needs to be done. Stronger enforcement, better public awareness, and government support are necessary to make these protections meaningful. At the global level, a special convention focused only on older persons could ensure that their rights are recognized and protected worldwide. Protecting the elderly is not just a legal issue, but a moral responsibility for every society.