

Realising the Rights of the Senior Citizens: An International Human Rights Law Perspective

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Abstract

The senior citizens throughout the world face the maximum challenges, abuse and discrimination restricting the realization of their human rights and thus, categorizing them into the vulnerable groups. Ageing is a natural phenomenon yet the aged population are traditionally concerned as burden and problems because they are non-functional, non-productive and non-active. Amongst the vulnerable groups, the United Nations has time to time recognized and revised the human rights pertaining to women, children, migrant workers and persons with disabilities but negligible focus has been given on the rights of the senior citizens as a distinct category concerning their deserving rights, extraordinary care and protection under the ambit of human rights law. Even though the rights of the senior citizens have been neglected but over few years they have become a popular agenda of professional media, NGOs and certain States which have pushed United Nations to identify the special rights, care and protection of the senior citizens in the international scenario. However, they are not adequate; reforms and revisions are yet to follow. Due to decline in mortality rate and longer life expectancy there has been an unprecedented growth in the world's senior citizen's population thereby making their group a more prominent one wherein realization of their human rights becomes inevitable. This paper intends to focus on the plight of the senior citizens from their jeopardized rights so that they get the spotlight and priority both from the national and international scenario in their generic framework. This paper would mainly focus on the contributions of the senior citizens and their rights by the virtue of being a human. It will examine the key features of the United Nations Convention on the Rights of Older Persons and other instruments that compromises the care and protection and the rights of the senior citizens both in the international as well as national scenario. And finally, it will evaluate the gaps and discuss the optimistic contemporary attitude to describe old age as a productive category, rather than being a burden, with a new social meaning and positive attitude.

Keywords: Senior Citizens, Old Age, Vulnerable Group, Human Rights, United Nations

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I. Introduction

“After a lifetime of working, raising families and contributing to the success of this nation in countless other ways, senior citizens deserve to retire with dignity.”

- Charlie Gonzalez

The aged people throughout the world face the maximum challenges, abuse and discrimination restricting the realization of their human rights and thus, categorizing them into the vulnerable groups. It is very disappointing to note that once these men and women who had been the very subject of human rights law and who themselves had voiced for their human rights, now stand amongst the vulnerable group. And it is yet more disappointing to note that even the political will of the country does not express prioritizing the special rights of the senior citizens, who had once been the main contributor to the nation’s progress, over the other categories of vulnerable groups. Ageing is a natural phenomenon yet the aged population is traditionally concerned as burden and problems because they are non-functional, non-productive and non-active. Amongst the vulnerable groups, the United Nations has time to time recognized and revised the human rights pertaining to the women, the children, the migrant workers and the persons with disabilities but negligible focus has been given on the rights of the senior citizens as a distinct group concerning their rightful and deserving rights, exceptional care and protection underneath the ambit of human rights law. Even though the rights of the senior citizens have been neglected but over few years they have become a popular agenda of professional media, NGOs and certain States which have pushed United Nations to identify the special rights, care and protection of the senior citizens in the international scenario. However, there are not adequate, reforms and revisions are yet to follow. Due to decline in mortality rate and longer life expectancy there has been an unprecedented growth in the world’s senior citizen’s population thereby making their group a more prominent one wherein realization of their human rights becomes inevitable.³

³PROJECT REPORT ON HUMAN RIGHTS OF THE ELDERLY PERSONS: LAW, POLICIES AND IMPLEMENTATION: A STUDY WITH SPECIAL REFERENCE TO KERALA Nhrc.nic.in, (last visited Apr 7, 2021), https://nhrc.nic.in/sites/default/files/Project%20Report%20on%20the%20Rights%20of%20the%20Elderly_NUALS.pdf.

II. International Human Rights Instruments

Amongst the foundational International Human Rights Law instruments, none of them expressly provide for the protection and upliftment of the rights of the senior citizens and prohibition of age discrimination. Article 2 of UDHR lays down the categories of discrimination such as race, sex, colour, language, religion, political or other opinion, property, birth, social or national origin. Again ICCPR and ICESCR provide similar grounds too. Age-based discriminations and the empowerment of the senior citizens failed to receive the focus. Out of the nine International Human Rights instruments only one speaks of prohibition of discrimination on the basis of age and two speaks of senior citizens.⁴

1. International Convention on the Protection of Rights of All Migrant Workers and Members of Their Families, 1990, prohibits age based discrimination.
2. The Elimination of All Forms of Discrimination Against Women, 1979, seeks to achieve equal rights to social security to women including old age.
3. The Convention on the Rights of Persons with Disabilities, 2008, directs the member States to render such services that would minimize and prevent further disabilities amongst the senior citizens and ensure that they get retirement benefits and other necessary programmes. It also emphasised that the senior citizens with disability must have information on their productive rights, easy access to justice and prevention of their abuse. This is the sole treaty that addresses the age-based discrimination on the grounds of access to justice, health, abuse and social protection.

However, these available rights of the senior citizens are accessible by the virtue of being either a migrant or any member of the migrant's family or being a women or a person having a disability.

III. International Documents on Senior Citizens

⁴ International Conference on Human Rights of older persons & non-discrimination Ohchr.org, (last visited Apr 7, 2021),
<https://www.ohchr.org/Documents/Issues/OlderPersons/ConferenceSantiagoReport.pdf>

A. Vienna International Plan of Action on Ageing, 1982

This international document is the foremost one that was endorsed by the General Assembly by 37/51 resolution addressing the guidelines on the income, social welfare, family, health and securities of the senior citizens.⁵

B. The UN Principles for Older Persons, 1991

These principles were adopted by the General Assembly by 46/91 resolution reaffirming the faith in fundamental human rights and right to equality. It enshrines 5 major principles recognising the rights of the senior citizens which includes firstly, right to independence having access to adequate food, clothing, shelter and health care, secondly, right to participation, thirdly, right to care and protection including mental, physical and emotional wellbeing, fourthly, right to self-fulfilment and having access to cultural, educational, spiritual and recreational right and fifthly, right to dignity and right against any sort of exploitation and abuse. However, these principles lacked the binding nature.⁶

C. Madrid International Plan Action on Ageing, 2002

This plan accompanied a political declaration containing three major priority objects. They are health and well-being, development and enabling environments. This plan laid its concentration on the preferment and upliftment of human rights of the senior citizens and elimination of age-based discrimination. However, it was witnessed by the General Assembly in 2011 that only 42 States out of 192 States had responded in favour of its implementation.⁷

D. Soft Laws Recognising Rights of Senior Citizens

⁵ Vienna International Plan of Action | *United Nations For Ageing United Nations For Ageing* | Ageing, (last visited Apr 7, 2021),
<https://www.un.org/development/desa/ageing/resources/vienna-international-plan-of-action.html>.

⁶ OHCHR | *United Nations Principles for Older Persons* Ohchr.org, (last visited Apr 7, 2021), <https://www.ohchr.org/EN/ProfessionalInterest/Pages/OlderPersons.aspx>.

⁷ Madrid International Plan of Action on Ageing | *United Nations For Ageing United Nations For Ageing* | Ageing, (last visited Apr 7, 2021)
<https://www.un.org/development/desa/ageing/madrid-plan-of-action-and-its-implementation.html>.

Soft law refers to non-enforceable or non-binding expressions or views in issuing any Treaties Body and Special Procedure. The treaty bodies which supervises the implementations of the Treaties have been seen to make general comments and recommendations on particular issues that affects the rights of the senior citizens.⁸

General Comments and Recommendations

The Committee on Economic, Social and Cultural Rights in 1995 in its general comment no. 6 emphasized the economic, cultural and social rights of the senior citizens. In reference to that comment the CESCR made it obligatory for the States to ensure and recognize different rights pertaining to the senior citizens. Later on, this general comment no. 6 was reported as the most appropriate guidance for recognising the rights of the senior citizens as right to adequate standard of living, right to health, right to food and housing, right to social security and right to work by the High Commissioner for Human Rights in its April, 2012 Report.

The Committee Against Torture in 2008 in its general comment no. 2 instructed all the places or institutions wherein older people are kept under control or custody that it will be obligatory on their part to forbid torture or any other cruel or undignified or inhumane treatment or penance of the senior citizens and redress it.

The Committee on Elimination of Discrimination against Women in 2010, in its general recommendations no. 27 pointed out the impact of discrimination and nature of ageing against older women which showed the high risk of vulnerability among the aged women.

Special Procedure

The Independent Expert in 2010 presented a report on the problematic enjoyment of human rights of the senior citizens in regard to their social security to the Human Rights Council in its 14th Session.

⁸ SARA TONOLO, <https://medwinpublishers.com/NNOA/NNOA16000183.pdf>, 5 Nanomedicine & Nanotechnology Open Access (2020), (last visited Apr 7, 2021), <https://core.ac.uk/download/pdf/162438126.pdf>.

The Special Rapporteur in 2011 drafted a thematic study and submitted to the Human Rights Council in its 18th Session outlining the attainments of the standard and the highest enjoyment of mental as well as physical health rights of the senior citizens.

E. Regional Human Rights Documents

The American Convention on Human Rights, 1069

The Convention prohibits capital punishment for the persons above 70 years of age and the additional Protocol provides for special privileges such as food and medical care and social security rights for the senior citizens.

The African Charter on Human and Peoples' Rights, 1981

The Charter and along with its Protocol on Rights of Women in Africa, 2003 provides for the protection and promotion of the senior citizens' basic human rights as well as the rights of the aged women against violence and abuse.

The Arab Charter on Human Rights, 1997

The Charter speaks of the responsibility of the State to provide outstanding and special care and protection to the senior citizens.

The Charter of Fundamental Rights of the European Union, 2000

This Charter speaks of the prohibition of discrimination on the basis of age, identifies the right to dignity and independence of the senior citizens and right to social security and right to participation in social and cultural life.⁹

F. Fourth Coming other Regional Human Rights Instruments

- a. A Protocol is currently being drafted to the African Commission on Human and People's Right by the Working Group on Older Persons and People with Disabilities in Africa.
- b. A draft Convention recognising the human rights of the senior citizens is under process by the Organization of American States.¹⁰

⁹ SARA TONOLO, <https://medwinpublishers.com/NNOA/NNOA16000183.pdf>, 5 Nanomedicine & Nanotechnology Open Access (2020), (last visited Apr 7, 2021), <https://core.ac.uk/download/pdf/162438126.pdf>.

¹⁰ THE CAMBRIDGE HANDBOOK OF NEW HUMAN RIGHTS: RECOGNITION, NOVELTY, RHETORIC , *The Status of the Human Rights of Older Persons*, 183–190 (Tiina Pajuste).

G. The UN Open-Ended Working Group on Ageing

On December, 2010, the United Nations General Assembly set up the UN Open-Ended Working Group on Ageing with a resolution of 65/182 to strengthen, identify and ensure the protection and promotion of the basic human rights of the senior citizens. The agenda of this Group is to identify and evaluate the present international framework for the rights of the senior citizens, critically analyse the gaps and finally find the best way to address them so as to achieve their agenda of realizing and guaranteeing the senior citizens of their basic and essential human rights. In this course, they are also privileged to recommend for additional instruments or other appropriate measures which might prove to be fruitful. In its first two working sessions, the Group had allowed the member States as well as the NGOs to participate, wherein the reports from them and the follow up to Second World Assembly on Ageing: Report of the Secretary General to the Second Session, 2011 revealed that there lies significant normative gaps along with implementation gaps in the framework of the international instruments which are addressed to the senior citizens. Eventually, there was a recommendation for a new specific convention dedicated to the rights of the senior citizens as Convention on the Rights of Older Persons. Most of the South American States have favoured for the creation of a legally binding instrument, while most of the European States have favoured for the rectification and stronger implementation of the existing instruments by the way of amendments or protocols.¹¹

IV. Key Issues Faced by the Senior Citizens

A. Facing Age Based Discrimination

Violation of human rights has been witnessed among different categories of human beings, however, age based discrimination has been given the least importance in any International documents. Negative and stereotypes attitudes manifest isolation, exclusion, marginalization and abuse of the senior citizens in various forms. It can be aptly said that along with other discriminations that a person had faced throughout his or her life based on sex, race, marital status,

¹¹ INTERNATIONAL CONFERENCE Human Rights of older persons & non-discrimination Ohchr.org, *The Status of the Human Rights of Older Persons*, <https://www.ohchr.org/Documents/Issues/OlderPersons/ConferenceSantiagoReport.pdf>.

disability or origin, one more basis gets added to it that is age, now, the person has to fight this age-based discrimination in the last few years of his life. Say, older women, most of them have worked in informal sector having no access to institutional benefits like proper wage, pension schemes, health insurance, provident fund and others. They had spent their life supporting their family without paying any heed to their financial condition, thereby, making the poorest of poor. Even if they were working women, they have been subjected to various discrimination such as disproportionate income, gender discrimination, forced household work and rearing of children, obstacles in pursuing higher education and other forms of abuses. So, there is an add-on factor in their list that is age-based discrimination wherein they stand in a very vulnerable position having no access to social and financial security. Due to these legal and structural barriers often the senior citizens fails to enjoy their lawful human rights. Above that the mistreatment faced by them is not only a clear hindrance to the fullest realization of their basic human rights but also an insult to their dignity, thereby, it requires clear demarcation and focus by the international human rights instruments. To cite an example, the Human Rights Committee was of the opinion that ‘right to work’ can only be permitted if it is found objective as well as reasonable. Thus, under this veil of objective and reasonable the employers continue rejecting the profiles of the senior citizens even if they are able and most suitable for that work solely on the basis of just a number. Apart of these, even the discrepancies in the different legislations of the nation based on eradicating discrimination fails to focus on the key discrimination based on age which ultimately affects the senior citizens in realizing their lawful rights. The older people have to pay high and indiscriminate premium rate for any health and life insurance policies especially when it is them who need them the most being more prone to sickness and injuries. Without any clear International Human Rights Standards, these unjust and unreasonable premiums on insurance policies are bound to marginalize them. The inheritance of pension schemes is also denied to the same-sex survivors in a LGBT couple. Moreover, they are subjected to financial abuse or ignored financial crisis based on extortion and undue influence that threatens their very existence. They are also denied housing facilities and are forced to institutionalize themselves against their wills. They are also denied the right to information. To cite an example in South Africa and Tanzania the senior citizens have been denied to have access

to information and testing services on HIV. This gap continues and eventually makes them the marginalized group.¹²

B. Exposure to Violence and Abuse

The lack of effective remedy as well as security in both international and national legal system for senior citizens results to an open exposure to physical, financial, emotional as well as sexual abuse of the aged people. Although the Universal Declaration of Human Rights and ICCPR have emphasised on right to life and social security, they have not provided protection from all forms of violence and abuse to which the senior citizens are subjected to very often. The senior citizens are neglected and physically abused at different institutions such as hospitals, psychiatric institutions and also at detentions since their family members too are least bothered about their well-being and there is no one who can speak for their rights. Back at home their conditions are worse. If they have sound bank balance they are extorted and if not then they are ill-treated and considered as burden upon the family or as a non-performing asset. They are not even given access to any information and connection with the outer world so that they do not get any external support. Furthermore, the fear of abuse and loss of habitation and food is so strong in them that even they get habituated with the situation and do not report about their abuse. A critical gap exists whenever a person undergoes a survey on the abuse of the senior citizen between the data collected and the information or data recorded because the reporting system for the senior citizens are often challenging. But no one cares to monitor them and listen to their grievances. They are constantly denied the palliative care which is torture in actual sense.¹³

C. Denial to Social Rights and Security

It is astonishing to note while we speak about right to and free access to education on one hand, we put age limits on the other hand. Paradoxically, right to education is open only for the younger generation indiscriminate to sex but

¹² OHCHR | Human rights of older persons Ohchr.org, (last visited Apr 7, 2021), <https://www.ohchr.org/en/issues/olderpersons/pages/olderpersonsindex.aspx>.

¹³HUMAN RIGHTS OF OLDER PEOPLE IN INDIA A REALITY CHECK Agewellfoundation.org, (last visited Apr 7, 2021), <https://www.agewellfoundation.org/pdf/Human%20Rights%20of%20Older%20People%20in%20India%20-%20A%20Reality%20Check%20-%20July%202014.pdf>.

discriminate to age. The aged people are highly discriminated and even marginalized when step in the field of education. There are many who could not complete their studies or pursue higher studies due to family work load in spite of having great interest but the society as well as our education system leaves negligible scope for them. The same goes with their scope for work. The advancement of technologies and the stereotype mentality of the society insults their experience and dedication towards works. This situation can only be rectified once we have a dedicated legislation for their sincerity. The right to social security has been enshrined both in UDHR and ICESCR under Article 22 and Article 11 respectively. But in most of the cases the States have failed to implement it due to their economic constraints and further push their responsibilities on the shoulders of their children. Even then the senior citizens fail to avail that benefit because their children might have migrated to some other place or they might have failed owing to their own monetary crisis. The senior citizens are often denied access to loans, rents, insurance, land and grants. Not only that during any kind of relief of any natural disaster the senior citizens are served the least as they are not prompt enough to voice their needs or present themselves at the queues or get themselves registered. If they send their representative to avail the benefits designed especially for them, they often get cheated by their representative.¹⁴

D. Limitations to Access to Justice

Under Article 7, UDHR guarantees right to equality before law and most of the States have incorporated this concept. However, the lacunae lie to access the justice. Most of senior citizens are ignorant about their rights due to lack of awareness or obstacles to access the information due to technological advancements. Negligible steps have been taken by the State to educate the senior citizens to realize their rights and have proper recourse to justice. Since without knowing these a senior citizen cannot avail his right to justice, it comes down to the conclusion that justice has been denied to him. Not only that, they must be relieved from the complex and lengthy proceedings for their speedy remedy because they are not in a physical as well as mental capacity to continue and bear the rigours of an ordinary court proceedings. And eventually, when

¹⁴ THE CAMBRIDGE HANDBOOK OF NEW HUMAN RIGHTS: RECOGNITION, NOVELTY, RHETORIC , *The Status of the Human Rights of Older Persons*, 183–190 (Tiina Pajuste).

justice is delayed it stands as justice denied. Surprisingly, the prison rights of senior citizens have also gone unnoticed. Even in UN Standard Minimum Rules on the Treatment of Prisoners, their rights went unaddressed whilst they need particular care in prison such as medicines, proper food, mobility, protection from both mental and physical violence, counselling. On another note, since the senior citizens who longer pose a threat a to the society due to physical infirmity and have already spent a considerable time in incarceration, they must be released with or without bail so that even they can get a chance to live the remaining few years with dignity. However, no international instrument has yet recognised the re-entry of the senior citizens into the society. Moreover, the people who get released at their old age have to face lots of struggle to rehabilitate in the society. They do not get any support from the State to earn their living, no access to employment, no pension, no medical facilities or other social security making their condition worse.¹⁵

E. Restriction in Autonomy and Independence

There are varying degrees of dependence of senior citizens which has always been seen as welfare and benefits. Apart from these, they should be provided their independence and autonomy for the fullest enjoyment of their rights, their liberty must not be deprived of them due to their old age. Due to the lack of proper legislation the senior citizens are denied to their right to choose residence, to take their independent decisions, to participate in public and family occasions, their daily activities, create and maintain family and personal relations with others, food habits, visit to places and many more. They and their decisions are always disrespected and they have no room for their privacy. They are mostly detained and are forced to act like security guards or keeper of the children. The condition of the widowed aged women is extremely deplorable. They are treated no less than a bonded housemaid or beggar.¹⁶

¹⁵OHCHR | Human rights of older persons Ohchr.org, (last visited Apr 7, 2021), <https://www.ohchr.org/en/issues/olderpersons/pages/olderpersonsindex.aspx>.

¹⁶HUMAN RIGHTS OF OLDER PEOPLE IN INDIA A REALITY CHECK, Agewellfoundation.org, (last visited Apr 7, 2021), <https://www.agewellfoundation.org/pdf/Human%20Rights%20of%20Older%20People%20in%20India%20-%20A%20Reality%20Check%20-%20July%202014.pdf>.

V. Conclusion and Recommendations

The overview is not an exhaustive summary of international instruments that failed to protect the rights of the senior citizens around the world. Nevertheless, it can be evidently made out that the United Nations have prepared a porous shield to safeguard and uplift the rights of the senior citizens. The current international instruments have failed to define the protections of the senior citizens and their dignity. There is range of options available to address the rights of the senior citizens and thereby create a dedicated and comprehensive framework realizing the rights of the senior citizens. Thus, the most effective way is to recognize the plights of the senior citizens which they face every day and address those by a systematic articulation of binding standards to meet the gap between the newly formulated or available laws and adequate implementation of those laws as they the senior citizens have already waited very long to realize their rights and this is the very hour of their need when their rights must be immediately addressed to.

Few recommendations keeping in mind the position of the senior citizens would be –

1. The Open-Ended Working Group must be given enough support technically as well as financially so that they can carry on identifying the key issues being faced by the senior citizens and the gaps in the implementation for the realization of those rights and undertake further measures to address them in a dedicated legislation for bringing a binding effect for the upliftment of the rights of the senior citizens.
2. An UN Special Rapporteur for the Rights of the Senior Citizens ought to be appointed for examining as well as reporting the status of human rights of the senior citizens all over the world to drag attention over the violation of their rights.
3. The rights of the senior citizens must find a place in regional, national as well as international stages of discussions as one of the central key issue and only then their rights would be addressed soon.
4. Even though a lenient approach have been noticed from the side of most of the Western countries in creating a new instrument dedicated to the rights of the senior citizens, the other UN member States, the interest groups, recognized NGOs as well as media must continue to voice the rights of the senior citizens and continue to favour it so that sooner or

later they can leave a positive impact on the other Western UN member States.

5. The advocacy groups must try to educate the mass about the rights of the senior citizens and must stretch out their hands to help them realizing their rights. They must try to point out to the current government the prevailing gaps and shortcomings in the present legal system wherein the rights of the senior citizens have been omitted which needs to be mitigated as early as possible. Any significant change in the domestic laws can prove to be useful as they will not only recognise the rights of the senior citizens in their own country but also will set an example for the rest of the countries in the world.
6. The soonest adoption of Convention on the Rights of Older People will a historical move in identifying the rights of the senior citizens which would significantly address the rights of the senior citizens and their needs by creating a binding effect on the government of the signatories for the better realization and upliftment of their rights.