



# Access to Justice

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In India, access to justice is a fundamental right of every citizen, as guaranteed under Article 14 & 21 of Constitution of India. Older persons have equal rights to justice; however, they face a lot of constraints in getting justice, due to their old age related restrictions. In view of declining health/mental/financial status of older persons, government of India has several provisions at different level to help them get easy access to Justice in old age.

## National legal framework

Taking care of ageing parents is more or less a legal duty as well as a moral obligation of their children. Personal laws of every religion have made it a legal and moral obligation to the children to take care of their ageing parents. In India, there are several laws to ensure justice to elderly. While different religions have varying laws in place to protect the interests and rights of older persons. Some are very particular such as the statutory provision for maintenance of parents under Hindu personal law contained in Section 20 of the Hindu Adoption and Maintenance Act, 1956. Similar laws are found in Muslim laws, Christian laws, and even Parsi laws.

## Steps taken to ensure the availability of judicial and non-judicial mechanisms for older persons

'The Maintenance and Welfare of Parents and Senior Citizens Act, 2007' was passed by the Government of India, which laid an emphasis on familial care of the aged. The MWPC Act mandates States formation of tribunals for every sub-division of a district to look into the grievances of older persons, particularly those who don't receive care in the form of proper food, shelter, clothing or medical treatment from their kin. The legislation enables a neglected parent or/ and older persons to approach the tribunal if they are unable to maintain themselves from their own earnings and property. Section 125(1)(d) of Code of Criminal Procedure, 1973 makes a person having sufficient means to maintain his parents if they are unable to maintain themselves.

The goal of all these provisions is to provide safety and security to the older persons across the country.



## Specific challenges encountered by older persons in accessing justice and remedy

In India, there are many legal challenges faced by older persons. Some specific challenges are as under:

- Lengthy legal process, which prove fatal for older persons
- Mobility constraints - many older persons find it difficult to reach court premises
  - Prevailing literacy and low awareness among older persons about the provisions and schemes
- Lack of free and accessible transportation facilities for older persons to visit lawyers/courts
- Large number of pending cases in various courts



Source: Agewell Foundation

## Good practices available in terms of ensuring equal and effective access to justice for older persons

Currently, in India, following good practices are available to some extent;

- Creating awareness about legal rights of older persons among elderly and their family members through various media
- Assisting elderly in getting justice by providing the free transportation facility, free legal advice, prioritizing their hearing in courts, other incentives, etc.
- Ensuring equal and effective access to justice for older persons through various NGOs/volunteers, etc.

## Provisions adopted to ensure effective access to justice

Priority is given to cases of older persons over the age of 60 in the courts with a view to expeditious disposal. Under the Right to Information Act, 2005 second appeal filed by older persons is taken on a high priority basis. It is unfortunate, despite the existence of various legal provisions and schemes for older persons, their benefits have reached very few older persons,



primarily because of lack of awareness among old people about their own legal rights including their human rights.

The Free Legal Services are provided to older persons, which includes- Payment of court fee, process fees and all other charges payable or incurred in connection with any legal proceedings, Providing Advocate in legal proceedings, Obtaining and supply of certified copies of orders and other documents in legal proceeding and Preparation of appeal, paper work including printing & translation of documents in legal proceedings.

Under the Para-legal Volunteer Scheme a group of volunteers from among the rural people is built to act as intermediates between the common people and legal services institutions at Central, State, District and block levels.

Various Lok Adalats (public courts) have been set up in order to widen the network of Public Courts to Government Departments, Petitions pending before Women's Commissions, various Tribunals, Labor Courts, Industrial Tribunal and Tax Tribunals etc., setting-up Special Lok Adalats in all Family Courts.

Legal Aid Clinics are being set up at in the States on the latest laws i.e. Maintenance and Welfare of Parents and Senior Citizens Act, 2007, etc. to create awareness among older persons and their family members/relatives/others.

### **Existing public policies and awareness-raising and capacity building programs**

Status of programs for awareness raising and capacity building is depressing in India. Indian judicial system is based on the principles of independence and impartiality. However, in many cases, delivery of justice is delayed, which sometimes proves worthless to older persons. Status of judicial mechanism is dismal which hardly addresses the issues of age discrimination.

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