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PROTECTION OF THE HUMAN RIGHTS OF OLDER PERSONS

Submission by Agewell Foundation, India

(In Response to UN-OEWGA questionnaire)

Equality and non-discrimination

Our country's constitution and legislation guarantee equality explicitly for older people of all ages and forbid discrimination explicitly based on age. The right to equality and non-discrimination is well defined in our constitution and laws.

Older persons are denied governmental jobs due to various retirement policies, prevailing in the country. They have equal right to access to goods and services. However, in practical terms, due to social and physical barriers they have limited access to services and goods. In India, older people are protected in all societies as there is a tradition of taking care of elderly family members. But due to changing socio-economic scenarios traditional and social values are diminishing very fast. The government has made legal provisions to ensure social and health care for older persons. Due to ever rising population of older persons and the hectic lifestyle of younger generations a good chunk of older persons are forced to live alone with virtually no support mechanism. Many of them live in inhuman conditions due to their poor financial status in old age and lack of any practical support from family or state.

- As per the Survey conducted by Agewell Foundation approx. 1/4th elderly population had no access to proper medicine/healthcare facilities.
- In urban areas, status of healthcare facilities was found slightly better in comparison to rural areas of the country.
- Every second elderly respondents have savings/investments as their net-worth value whereas half of the respondents claimed that they have a good number of investments in financial products, etc. Ref.: Human Rights of Older People in India - A Reality Check

Differential treatment based on old age is explicitly justified in terms of mandatory retirement and age-based benefits. To some extent, for financial services and products like insurance products, differential treatment is given based on age.

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Violence, neglect and abuse

As per the study conducted by Agewell Foundation every third of elderly persons suffering from elder abuse stated misbehave/mistreatment as the most common form of elder abuse. Survey suggests that every fifth elderly are affected due to restrictions in their social life by their family members or others. Common forms of Elder Abuse in old age -

- Misbehave /Mistreatment
- Restricted social life
- Abuse/mental torture
- Denial of basic needs
- Physical harassment /Assault
- Other forms of harassment

Violence, abuse, and neglect particularly affect older people in the age group of 71+, who are weaker physically as well as psychologically. Ref.: Ref.: Human Rights of Older People in India - A Reality Check

In India, we have the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. In addition, several other old legislations also address issues of violence, mistreatment, and neglect against older persons.

Presently, there are provisions of the protection of older persons from financial abuse in many prevailing legislations like the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Code of Criminal Procedure Act, 1973, Hindu Adoptions and Maintenance Act, 1956, Muslim Law, etc.

Long-term care and palliative care

Older persons face many health-related problems, but it is not easy and convenient for older people to undergo treatment and checkups at various hospitals and clinics in our country. Healthcare in old age is the most urgent area in which government and other stakeholders should work intensively. Perceptions on medical treatment for the elderly In India, only 1/5th of respondents reportedly admitted that it is easy and convenient for older people to undergo treatment and checkups at various hospitals and clinics.

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- 63.1% of respondents said that medical checkups and treatment in old age a difficult task. 32.4% of respondents said that it's too difficult for old people to undergo treatment and checkups at health centres.
- 16.4% of respondents do have not much idea about the medical problems of older people hence they remained neutral and didn't express their clear-cut views on the subject.

The state of hospitals and clinics across the country is not standardized. While in urban India with the right kind of resources an elderly person can get good healthcare facilities the same is not the case for a majority of the population as the infrastructure and sensitivity towards older persons is lacking on the medical front. Coupled with the already existing medical issues for older persons, the lack of infrastructure and sensitization of hospital staff and clinics towards the elderly is one of the main reasons why so many respondents have vehemently disagreed with the statement.

Most elderly persons are being looked after by their family members & relatives in old age and they don't want to depend upon outsider caregivers, even in critical health conditions. In India, even today outside the family caregiver is considered a taboo because the social customs demand caregiving by family members.

Autonomy and independence

Ageing can often reduce an individual's independence. In changed socio-economic circumstances, older persons cannot possibly expect more from their family members as well as from society in India. To lead a comfortable and respectful life in today's changing environment older persons have to be prompted to become self-reliant in every field of their life – socially, medically, financially as well as emotionally.

In Old Age when serious disability or illness occurs, those with good personal resources and social support system are more likely to be able to access the necessary support system. Older persons should have adequate income, support with personal health needs (including speedy and affordable access to health services), appropriate housing and security, and concerns about transport.

Post-Retirement Life in Old Age Older persons are productive even after their retirement, but due to a lack of post-retirement job opportunities they remain unproductive throughout their remaining lives. People consider older persons a rich source of experience, knowledge, and wisdom but always doubt their performance. Due to the increased life span in old age, there is an urgent need for post-retirement income generational opportunities.

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- More than half the respondents i.e. 54.4% reportedly said that our government or society does not support older people's right to earn income to a large extent. According to them, government policies and our social norms are not at par so far as financial security in old age is concerned.
- Out of the total respondents, 13.8% persons were found to strongly disagree with the fact that the government/society supports income-generational jobs in old age.
- 24.4% of respondents expressed their inability to respond when volunteers asked them about older people's right to earn money and remained neutral.
- Only 21.2% of respondents claimed that our government and society is doing enough to protect older person's right to earn income. As in most developing nations, the thrust of most government aid is towards women empowerment, children, youth and the environment. The elderly remain a marginalized lot in terms of financial rights. Income-generating activities for the elderly are few and far between.

Civil society has stepped in to make a difference, however, a lot more needs to be done to secure the right to income for the elderly. This is primarily why a majority of the respondents disagree with the statement that government and society support older people's right to earn income. In a changed scenario, the profile of older persons also has changed. They seem to be more active, healthy, energetic and even wiser. That's why the majority of them like independence at all levels instead of compromising with situations. There is an urgent need to create gainful engagement opportunities for older persons at all levels.

Social protection and social security

Aging is a chronological process. Generally, with increasing age the aging process is often associated with declining health, loss of independence, dwindling social roles, isolation and feelings of loneliness, limited or no financial income, being treated as a burden on the family/society, intergenerational conflicts, mistreatment and elder abuse in old age. Within the families, the condition and status of old people are dependent on their physical health, net worth, and socio-economic situation, the extent of availability of family care and social support systems available.

With a remarkable increase in longevity and comparatively better healthcare facilities, there has been a hasty increase in the population of old people in India, which is home to over 130 million elderly and it is expected to rise to 324 million by 2050.

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Their proportion in the overall population has been increasing more rapidly. In India, only 10% of retired employees get pensions from the government and 90% are forced to survive either on other sources of income from what they have earned, saved, invested, or inherited or they depend on their children/ relatives. In old age, with a limited source of income ever-increasing medical expenses, all-around inflation and other convergencies in comparison to lack of / shrinking sustainable source of income often lead to dependence, insecurity, and distress within the family. Such a situation also steals the dignity and independence of the elderly and social protection and social security remain the most challenging issues. Needless to say, social issues have a deep impact on almost every old person.

However, in India health problems are generally considered to be more important in comparison to social issues in old age. The availability of familial support is a key element in providing care services to elderly people. For older people, a network of family members, relatives, friends, and neighbors is the appropriate social support in old age. The existence of a negative social perception and attitude towards the elderly and lack of social support systems result in poor mental health and problems of adjustment which make them more vulnerable and helpless in old age due to the lack of proper social support old people have to face loneliness, isolation and even depression.

Education, training, lifelong learning and capacity-building

Today, most people in their 60s and 70s are physically fit and employable. They often feel the need to continue working, even after retirement, to ensure their economic independence and good quality of life. Needless to say, access to new forms of literacy, and lifelong learning, adapted as needed to changing cognitive capacities in old age also facilitates old people's participation in societal development and enjoyment of cultural life.

Modern technological know-how and new-age skills play crucial roles in improving poor living conditions and infrastructure and eradicating poverty. In India where pensions, disability insurance, health benefits, and savings become almost worthless due to rising inflation rates, every retired and old person needs to remain engaged in some gainful occupation. Lifelong learning has been an integral part of Indian culture. The ancient Indian religious tradition and culture have accorded prime importance to the acquisition of knowledge and upheld the virtues of learning.

Despite the gradual modernization of society and the emergence of multiple channels of learning, the first formal recognition of lifelong learning came in 1966 when the Indian Education Commission (1964-66) made the observation that - Education does not end with schooling, but is

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a lifelong process. The elderly need an understanding of the rapidly changing world and the growing complexities of society.

Even those who had the most sophisticated education must continue to learn. The process of developing the policy framework of lifelong learning has been rather slow in India and seems to be linked to external stimulus. Currently, lifelong learning is often used as an umbrella term to cover basic literacy, post-literacy, continuing education and extension programs of different organizations, refresher/continuing courses of professional bodies, private institutions, and business houses; but not conceived as an overarching framework of learning.

For older persons, there are almost no lifelong programs being conceived /implemented in India at governmental as well as non-governmental levels. In today's changed socio-economic scenario, skill development training, lifelong learning, and capacity-building training programs have become the most urgent priorities to address the ever-increasing concerns of fast-growing community of older persons.

Right to Work and Access to the Labor Market

Over the past decades work culture across the sectors has changed remarkably primarily due to the advancement of technology. The majority of older persons are unskilled, and digitally challenged or have lower academic qualifications as compared to younger people. Moreover ever-increasing unemployment and lack of post-retirement gainful engagement opportunities discourage older persons from realizing their right to work in old age. A very low percentage of the elderly workforce are engaged in poorly paid jobs in the informal sector, either as casual workers or as self-employed in low-skilled or unskilled occupations since their access to the labor market is very limited. Inadequate provision of social security for the elderly in India has left the majority without any economic support and they continue to look for employment opportunities in their old age.

Availability, Accessibility, Acceptability and Quality of Work: India has approximately 135 million older persons and the majority of them are in the age group of 60-70. In this age group, most older persons are active and want to work for a few more years. However, in the job market, they hardly find any takers, who can offer them suitable jobs due to their age and other limitations. Older persons have experience, knowledge, and wisdom but they lack much needed skills and training.

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Steps taken to ensure the access of older persons to the labor market: In India, no tangible steps have been taken at any level to ensure the access of older persons to the labor market including through physical accessibility, access to information about employment opportunities, training and the provision of appropriate workplace accommodations. However, concerned stakeholders at multiple levels have realized the need to bring older persons into the mainstream by involving them in income-generational activities.

At the government level, no major steps are taken, except promoting older persons-friendly projects like setting up recreation centres for older persons, senior citizens organizations, etc.

Good practices in terms of ensuring the older person's right to work: In the organized sector, the right to work is enjoyed by a small number of older persons, that too for 2 to 5 years beyond the age of 60 years. However, in the unorganized/informal sector older persons have equal rights to work and earn their livelihood. Due to the increased longevity share of older persons is also increasing in the labor market.

Equality and non-discrimination: So far as the job market is concerned, older persons are not treated equally and they have to face a lot of discrimination due to their age. The current retirement age for most government workers in India is 60. Most private companies have aligned their age of superannuation to the central and state governments.

Access to justice

'The Maintenance and Welfare of Parents and Senior Citizens Act, 2007' was passed by the Government of India, which emphasized familial care of the aged. The MWPSA Act mandates the 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 neglected parents or/older persons to approach the tribunal if they are unable to maintain themselves from their 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 older persons across the country.

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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 proves 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
- A large number of pending cases in various courts
- Provisions adopted to ensure effective access to justice

Priority is given to cases of older persons over the age of 60 in the courts for 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, that despite the existence of various legal provisions and schemes for older persons, their benefits have reached very few older persons, primarily because of a lack of awareness among old people about their legal rights including their human rights.

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 supplying certified copies of orders and other documents in legal proceeding and Preparation of appeal, paperwork 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 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., 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.

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Contribution of Older Persons to Sustainable Development

India has the second-largest population of elderly citizens in the world, with currently an estimated 140 million+. They constitute the fastest-growing segment of the population in the country and are expected to reach about 19% of the population in 2050. Till a few years back, in India, issues concerning older persons were considered as peripheral issues only. But now government at various levels has started including issues concerning older persons in its central agenda.

So far as the national legal and policy framework is concerned, as per Article 41 of the Constitution, the State shall, within the limits of economic capacity and development, make effective provisions 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. Further, Article 46 says that the State shall promote with special care the educational and economic interests of the weaker sections of the people including older persons, and shall protect them from social injustice and all forms of exploitation.

The National Policy for the Older Persons and subsequent laws, implemented for the welfare and empowerment of older persons keep a realistically achievable component. Educating the people about this new policy framework and legal provisions and creating awareness can ensure older persons' participation in sustainable development to a great extent.

Preparing financially for longer lives and finding ways to reduce aging-related disability have become our priorities. Experience shows that it is critical to address challenges concerning old age sooner rather than later. Waiting significantly increases the costs and difficulties of addressing these challenges. To provide older persons with decent, active, and healthy lives, policymakers need to take necessary steps to improve the well-being of older people. This issue is of high importance because people do not stop moving when they reach the age of sixty and, thereby, they need equal opportunities to participate in sustainable development.

Gainful re-employment is an area of great concern, for many older persons. They want it because they find themselves completely active but retired and financially compromised. Since they are mentally and physically fit to work for some more years in old age, they may participate in several productive activities and contribute in sustainable development.

By the year 2050, India will have 20% of its population in the age group of 60+. Management of such a large section of retired older people, who will have time, experience, and even resources, but no opportunities, may be a huge challenge for the government of India. To address this,

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governments at all levels, need to modify their retirement rules and make them older persons friendly.

So far as the right to work is concerned, older persons must be given equal rights and opportunities in a non-discriminatory manner, so that their participation in the mainstream and contribution to sustainable development can be ensured.

Economic security

Despite the efforts by the Government to introduce new policies, older persons lack the security needed in old age and live with a low social status with increasing reports of financial deprivation, abandonment and humiliation.

In India, majority of older persons face financial hardship in old age as most of them are not in a position to earn their livelihood. Their savings, if any, are not enough to meet their day-to-day expenses, particularly medical expenses. Many times their family members and relatives exploit them due to their vulnerability. Many surveys suggest that in India more than 2/3rd the population of the aged had to depend on others for their day-to-day maintenance and care. Gender-wise, the majority of elderly men are comparatively more economically independent.

Older persons facing financial crisis in India, usually belong to the middle, lower-middle, or lower classes. This section of the elderly population has also suffered a lot of problems, particularly due to their miserable financial condition even in their younger age.

Economic security in old age is directly linked with their financial independence. In rural areas, older persons hardly enjoy economic security in comparison to their counterparts living in urban or semi-urban areas of the country. With the increasing nuclearization of the family system, particularly in urban settings, more and more older persons tend to choose to live on their own and want to utilize their net worth value to the maximum.

Older people, particularly those inhabiting urban and semi-urban areas have a higher level of awareness about their financial interests and rights. However, the financial rights and interests of older women and elderly men (75+) are often jeopardized by their family members, etc., particularly when they are widowed.

After retirement, older persons don't want to remain completely jobless and seek gainful engagement. They often tend to start a new business or a gainful job. There are several ideas to get going for older persons in India that are not completely intended to make money but to enjoy

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working in old age. Retired older persons can take up these occupations as per their choice, expertise, knowledge, experience, and interests.

Ensuring economic and social security in old age for its population is the major challenge before the Government of India that cannot be addressed only by making budgetary provisions from time to time. To overcome such ever-growing challenges, the government must also focus on some out-of-the-box measures and devise continuing strategies.

Right to Health and Access to Health Services

The Central Government formulated the National Programme for the Health Care of Elderly (2011) to provide easy access to preventive, curative, and rehabilitative services to the elderly along with specialized long-term and short-term training of health professionals to address their growing health needs. Earlier, the government had enacted the Maintenance and Welfare of Parents and Senior Citizens Act (2007). Despite these provisions, healthcare for the elderly is virtually non-existent.

The ever-growing elderly population puts immense strain on the healthcare system. Growing old is a progressive process associated with a decline in functioning, impaired maintenance and repair systems, and increased susceptibility to disease. They need healthcare and medical support more in comparison to other age groups.

About 90% of the elderly are from the unorganized sector or abandoned by their children, without adequate food, clothing or shelter, healthcare, or medical treatment. The absence of scarcity of government-supported social security and geriatric medical services compounds the problem. Ironically, Geriatrics is ignored in the same manner as the elderly are subjected to neglect and abuse.

In India, hearing and vision impairment are the most common morbidities. Pain in the joints and joint stiffness, dental complaints are other critical issues. Mental disabilities among older people are frequently not seen in the healthcare setting as they are construed as being part of old age by family members. One out of two elderly people in India suffers from one or more chronic diseases, which require lifelong medication.

The stigma of aging, as well as the health and social conditions the elderly commonly face (such as dementia, depression, incontinence, or widowhood), is another social barrier to access to health, which manifests in the Indian case in unique ways.

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Access to mental health services in the medical sector is limited, and, thus, most care and support was provided ad hoc, informally, and in the family. Consequently, “dependency anxiety” was a common phenomenon among the elderly, i.e., the elderly felt the need to curtail their dependence upon the family and felt anxious about informing them about their health problems

Social Inclusion

In India, the unorganized sector employs more than 90% of the nation’s workforce, where most of the employees remain deprived of post-retirement benefits like monthly pensions and healthcare benefits. Elderly workers in the unorganized sector are highly vulnerable.

In old age, more than 2/3rd older people have to depend on others for their various needs & requirements. Elderly people are forced back to schemes like MGNREGA for social inclusion. A total of 138.54 lakh individuals aged 61 and above, availed of work benefits under the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) scheme in 2020–21.

The absence of financial security also appears to be a significant threat to the elderly, who do not have enough options and opportunities to earn money. Currently, approximately 25 lakh individuals (about 0.6 percent of the total estimated size of the informal sector) are covered by the national pension system under the unorganized sector category.

As the demographic size of the elderly is increasing rapidly, the current social security net is a cause of concern.

The primary reason for senior individuals to work under distress in the informal sector is the lack of money and savings to lead a retired life. This signals the need to provide an equitable and inclusive retirement and pension plan for senior citizens in the informal sector.

Established in 1999, the National Policy on Older Persons (NPOP) was one of the first major policies directed at the nation’s elderly population. Currently, the umbrella policy that targets the senior population of the country is the Atal Vayo Abhyuday Yojana (formerly known as the National Action Plan for Senior Citizens or NAPSrC). This plan looks at several aspects of senior citizens’ lives, including, but not limited to, their basic needs. The policy also advocates for intergenerational ties between the young and the old and aims to ensure active and productive aging via regional resource and training centers across the country.

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A national plan can be devised with a special focus on healthcare provisions for informal sector workers like health insurance, financial security, etc. The national plan can focus on making sure poor elderly are brought into a protective net of hospice and care.

The private sector should also be involved in this space as it relies on the work done by the informal sector. Individuals who work under subcontracted units should be put under the aegis of the formal companies/organizations they indirectly work for, and can be provided with pension options and healthcare options.

Accessibility, infrastructure and habitat (transport, housing, and access)

Many older persons prefer to live independently for as long as possible. With the help of small measures, older persons may be enabled to stay at home for a relatively long time. Such measures may be assistance for the remodeling of homes to remove barriers and make them accessible for persons with disabilities. Others may be small mobile services offered at home for older persons with reduced mobility, such as Meals on Wheels, assistance in the household, shopping or mobile hairdressers. For older persons whose pensions are small, financial support may be feasible, for example in the form of discounted repair services or heating subsidies.

Infrastructural accessibility is a unique barrier that older people with disabilities face compared to other vulnerable groups. There are quite a few programs in India that aim to provide basic services to the poor but many old people with disabilities are left out because of several barriers like lack of accessible transport, inaccessible government offices, difficulty standing in long queues, undertaking follow-up visits, dealing with inaccessible information, insensitive officials and so on.

Despite 20 years of disability legislation, 10 years of the ratification of the UN Convention on the Rights of Persons with Disabilities (CRPD) and one year of the Accessible India Campaign, the programs and services are continuing to be planned and implemented in a manner which is not accessible.

For example, e-toilets (fully automatic electronic toilets) have been installed in some cities of India. None of them are disabled-friendly. Skywalks are being built at several places but they will only have escalators.

The Government is increasingly engaging with citizens through technology but most government websites, for example, MyGov, and IRCTC, were found to be inaccessible based on a study. Accessibility again cuts across all the goals and is a prerequisite for targets to be met for older persons with disabilities.

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Participation in public life and decision-making processes

Older persons are integrated into society in many ways. They are part of social networks of friends and family, are active in clubs and associations, work as volunteers and are economically active. However, older persons may be vulnerable to exclusion. Potential obstacles to equal social participation of older persons include poverty, poor health, low educational levels, lack of transportation, access to services, and age discrimination. In this context, achieving social integration and participation has many aspects. It brings all social groups and individuals into the political, social, cultural, and economic structures of society so that they can participate in the decision-making process on issues that concern them. This requires a consensus that exclusion should be minimized and eliminated and that all those who are disadvantaged should be assisted by society.

Older persons in India have an important role in the democratic process. They not only constitute a larger chunk of actual voters but also form a bigger set of elected representatives. Their opinions and decisions are purely based on their vast experience of life and their surroundings. The higher voting pattern of older persons shows that they are sincere voters and tend to assert their right to vote. Due to their sense of sacrifice, compassion, and generosity, they hardly raise issues about their old age. As a result, there are not many schemes and policies for the welfare of older persons in India.

Younger older people (60-70 years) are struggling to adjust themselves in fast changing socio-economic environment so that they can be dynamic and play an active role in society. Instead of becoming a burden on national resources, this section of older people prefers to contribute its experience, knowledge and resources and remain self-reliant as long as they can. They are expecting opportunities and possibilities.

It was observed that irrespective of economic, cultural, or educational background or gender divide most of the older persons opined about politics and believed that their age has given them enough experience or understanding) of all political maneuverings. Policymakers do not keep the realities of life in mind. Almost all of them are not old as yet and look for easier options. Although we are a country where Old Age is respected socially and culturally, we do not have any provisions to provide food, shelter, health, or legal support for older persons.

Ironically, though older people represent both the ends of democracy (as voters and leaders) there is hardly any focus on them.

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(Contributions to Agewell Foundation are tax exempted under 80-G of the Income Tax Act, 1961.)
FCRA No.231660163