



## **NORMATIVE INPUT**

**for the twelfth session of the**

**GENERAL ASSEMBLY OPEN-ENDED WORKING GROUP**

for the purpose of strengthening the protection of the human rights of older persons

**Focus area:**

# **Access to Justice**

In India, taking care of aging parents is more or less a legal duty as well as a social and moral obligation of their children. In India, access to justice is a fundamental right of every citizen, as guaranteed under the 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 the declining health/mental/financial status of older persons, the government of India has several provisions at different levels to help them get easy access to Justice in old age.

Different religions have varying laws in place to protect the interests and rights of older persons. Personal laws of every religion have made it a legal and moral obligation to the children to take care of their aging parents. 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.

As the latest development, the Maintenance and Welfare of Parents and Senior Citizens (Amendment) Bill, 2019, piloted by the Social Justice and Empowerment Minister, also has provisions for the elderly to claim maintenance and for mandatory registration of senior citizens care homes and other such institutions which will have to comply with prescribed minimum standards. The bill provides for the establishment of a tribunal for senior citizens to file claims for maintenance and assistance and such applications from those above 80 years of age should be disposed of within 60 days. According to the legislation, there will be a nodal officer at each

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police station, not below the rank of an assistant sub-inspector, to deal with the issues relating to parents and senior citizens.

Under the Maintenance and Welfare of Parents and Senior Citizens Act, there must be a provision for employers to take a written declaration from their employees that they take care of their elderly parents. So that welfare and maintenance of aging parents can be ensured. The said undertaking must be signed by their parents as well. In case, working younger people do not support or take care of their elderly parents, punitive actions can be taken against them like deduction of a certain amount of money from their monthly package and transfer the same to their parents' account. For this, their children must submit a declaration at the designated authority that they have done proper arrangements for taking care of their aging parents.



The goal of all these provisions is to provide safety and security to older persons across the country. In India, there are many legal challenges faced by older persons in old age. 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
- Lack of 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 demoralize older persons

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

The status of programs for awareness-raising and capacity building is depressing in India. In many cases, delivery of justice is delayed, which sometimes proves irrelevant to older persons. The status of judicial mechanism is dismal which hardly addresses the issues of age discrimination, ageism, and elder abuse.

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Currently, in India, following good practices, in terms of ensuring equal and effective access to justice for older persons 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.



In order to ensure effective access to justice for older persons, the following steps must be undertaken on an urgent basis;

- priority must be 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 appeals filed by older persons must be taken on a high priority basis.
- Special focus must be given to creating legal awareness among older persons, their family members, and other concerned stakeholders.

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