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# Human Rights of Aged and Disabled, Violation if their Rights

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## ABSTRACT

*Human rights attach to all persons equally, by virtue of their humanity, irrespective of race, nationality or membership of any particular social group. They specify the minimum conditions for human dignity and a tolerable life. Human rights are those which inherent to all human dignity and a tolerable life. In this democratic country even when all the law are written their rights being violated in many ways. Vulnerable groups they are considered to be vulnerable because their voice are being fastened. What can unfasten those ties lays within our hand. We deal with human beings, they've life, flesh and blood. They've hopes and aspiration, they're part and parcel of the society. The pain of unjust world, the deep rooted evil of some mankind. Justice can't hide for all of our lives, there's got to be a change of tide, if you are fasten by ropes and your hands are tied the pain you feel lets trigger it through your voice. In this fast progressing world least we think about the people are least asset to this world. Often people ignore the species are not for use while they are also humans who have hope, aspiration, dream and who are willing to live happily and peacefully. In HUMAN RIGHTS OF AGED AND DISABLED in this rights they've provided several rights still they're being neglected because of their age and disability. To build a nation there need everyone's hands together to keep up with each other. Kinds of discrimination that people face due to age and disability are: Discrimination occurs not only based on colour, sex, nationality etc... in all these category age and disability were part of it. Even if you look around you can find out that, Toilets, washroom for disabled people are less, even in public area. Disabled people should called as "Differently abled" people while most of them are not using this term. Still now there's age limitation for job opportunity (in some category), education etc. Guaranteed protection for these people are not 100% sure. Hidden talents being neglected due to their age and disability.*

**Keywords:** *Human rights, human rights of vulnerable group, Discrimination faced by aged and disabled people, Provisions under the Indian law, remedies, penalty*

## I. INTRODUCTION

In the context of the human rights of the aged and disabled, several rights have been provided;

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however, they are still being neglected due to their age and disability. To build a nation there need everyone's hands together to keep up with each other. Kinds of discrimination that people face due to age and disability are: Discrimination occurs not only based on colour, sex, nationality etc... in all these category age and disability were part of it. Even if you look around you can find out that,

- Toilets, washroom for disabled people are less, even in public area.
- Disabled people should called as "Differently abled" people while most of them are not using this term.
- Still now there's age limitation for job opportunity (in some category ),education etc..
- Guaranteed protection for these people are not 100% sure.
- Hidden talents being neglected due to their age and disability.
- Employment opportunities were less etc..

Thus to bring out the best in people, it has to be bring light to their rights which is being diminished by neglecting them.

There are lot of people around us who are capable of different things, there are lot of differently able people who achieved their dreams facing all the struggles.

While they don't have to face struggles if their rights being seen

Take the example: **Helen keller, Stephen Hawking, Nick Vujicic**, also from our own state kerala **K.V Rabiya** and many more people who achieved or gain their position even though they are not fully healthy, their capability to do and showcase their talent the stage has been provided.

Even though we can't un-see the discrimination they face, the struggle they face. They've the right to economic and social security and to a decent level of living. They have the right, according to their capabilities, to secure and retain employment or to engage in a useful, productive and remunerative occupation and to join trade unions.

### **AGED AND DISABLED PERSON**

In India, we get to see high number of disabled and aged people in our own country. India which is developing country were still lack of amenities, facilities occur in our country. Disability considering it to be weak rather than that consider it to be strength of people to overcome the challenges to conquer the goal, aspiration hope of their. Aged people often considered to be neglected. They are being unseen and unheard because of their age. It's not always about the respect it's usually about equity. We always used to "EQUALITY", Is it obvious to look forward

for equality rather than that we should give more consideration to "**EQUITY**" Being fair to everyone, having their goals achieved, to be heard, being seen and not being neglected. We have seen lot of successful achieved famous persons who conquered their name and pin their position in this society.

**Helen Keller said** "Keep your face to the sunshine and you cannot see the shadows." "The chief handicap of the blind is not blindness, but the attitude of seeing people towards them." "The true test of a character is to face hard conditions with the determination to make them better."

**Stephen Hawking** : We are just an advanced breed of monkeys on a minor planet of a very average star. But we can understand the Universe. That makes us something very special.

**K.V. Rabiya**, a village woman from Vellilakkadu near Tirurangadi, was conferred with the prestigious Padma Shree award for spreading the wisdom of education to hundreds of illiterate individuals despite being confined to a wheelchair for life. Rabiya had kickstarted a mini literacy campaign back in 1990. However, the Kerala state government later had launched the state literacy mission and decided to make her the mascot of this project. The 56-year-old also built an organisation called "Chalanam", which operates six schools for differently-abled and intellectually disabled kids in the district. Other than this, Rabiya also opened 60 neighbourhood self-help groups for women where they trained them to make carry bags, pickles and other products.

*"Getting knowledge is foremost and imparting this to others is equally important. I feel education serves its purpose only if you impart the same to others and empower them," she was quoted as saying by Hindustan Times.*

Other than polio, Rabiya was also afflicted with cancer when she was 32, and her backbone was later affected after she had survived a fall. An inspiration to many, Rabiya's courageous battle against all odds found its way to school textbooks in Kerala. She is also many and has published books, including her **autobiography "Swapnangalkku Chirakukalundu" (Dreams have wings).**

Old age and disability are considered to be constraints on healthy existence of human beings. People belonging to these two categories are vulnerable. They are unable to take charge of their own lives and need help of others.

For example, although the Constitution of India guarantees the person with disability and people in old age the full range of civil, political, economic, cultural and social rights yet these groups lead the life of deprivation.

There is lack of necessary arrangements which can actualize the constitutional guarantees into reality. Aging brings with it illness and general disability like low vision, blindness, deafness, arthritis, loss of mobility etc.

Due to these conditions old aged people are unable to take care of themselves and need assistance in this regard. In the contemporary world there is debate focusing on idea of 'society for all'.

This indicates that we must strive to create a society that treats its entire members with respect and dignity. A democratic society must accept and accommodate the differences existing instead of excluding certain groups. Every one including old and disabled should have equal claims to resources and entitlements available in the society.

Unfortunately these two groups have not been the beneficiaries of the 'main-stream' society. The dominant social attitude towards a person with disability has been that of pity. There has been widespread discrimination against them in all walks of life. Consequently, they face exclusion, isolation and neglect in the society.

Disability is defined as a condition grounded in the physiological, biological and intellectual impairment of an individual. World Health Organization (WHO) in 1976 has defined disability as lack of ability to perform an activity in a manner or with in a range considered normal for a human being. It prevents full fillment of a role that is considered normal.

A handicap is a disadvantage for a given individual resulting from impairment and disability. The deeper understanding of disability tells us the term disability is itself flawed. All human beings are able in temporary way as we do not know when we may lose our ability due to some miss happening or accident etc.

## **II. HUMAN RIGHT?**

Human rights are the basic rights and freedom that belong to every person in the qold, from birth until death. They apply regardless of where you are from, what you believe or how you choose to live your life. Human rights are rights we have simply because we exist as human beings - they are not granted by any state. The Universal Declaration of Human Rights (UDHR), adopted by the UN General Assembly in 1948, was the first legal document to set out the fundamental human rights to be universally protected.

### **HUMAN RIGHTS OF VULNERABLE GROUP**

Vulnerable groups they are considered to be vulnerable because their voice are being fastened. What can unfasten those ties lays within our hand. We deal with human beings, they've life,

flesh and blood. They've hopes and aspiration, they're part and parcel of the society. The pain of unjust world, the deep rooted evil of some mankind. Justice can't hide for all of our lives, there's got to be a change of tide, if you are fasten by ropes and your hands are tied the pain you feel lets trigger it through your voice. In this fast progressing world least we think about the people are least asset to this world. Often people ignore the species are not for use while they are also humans who have hope, aspiration, dream and who are willing to live happily and peacefully.

Some of them are :

- 1) women and girls;
  - 2) children;
  - 3) refugees;
  - 4) internally displaced persons;
  - 5) stateless persons;
  - 6) national minorities;
  - 7) indigenous peoples
  - 8) migrant workers;
  - 9) disabled persons;
  - 10) elderly persons;
  - 11) HIV positive persons and AIDS victims; and
  - 12) lesbian, gay and transgender people.
- Clearly this is not an exhaustive list of persons in need of particular protection, as many other groups not discussed in this part suffer from discrimination and oppression.

### **WHO IS DISABLED PERSON?**

They have a physical or mental impairment, and the impairment has a substantial and long term adverse effect on the persons ability to carry out normal day to day activities.

The persons with **Disabilities (Equal Opportunities, Protection of Rights and full participation) Act, 1995** had come in to enforcement on February 7, 1996. It is a significant step which ensures equal opportunities for the people with disabilities and their full participation in the nation building.

### **WHO IS AGED PEOPLE?**

An older person is defined by the United Nations as a person who is over 60 years of age. However, families and communities often use other socio-cultural referents to define age, including family status (grandparents), physical appearance, or age-related health conditions.

The **Maintenance and Welfare of Parents and Senior Citizens (Amendment) Bill, 2019** has been introduced in the Lok Sabha on 11-12-2019, which interalia includes Homecare services for senior citizens who suffer from difficulties in performing activities of daily life due to any physical or mental impairment.

What is Maintenance and Welfare of Parents and Senior Citizen Act?

### **Maintenance of parents and senior citizens**

A senior citizen including parent who is unable to maintain himself from his own earning or out

of the property owned by him, is entitled to get relief under this Act. Children/grand children are under obligation to maintain his or her parent either father, mother or both.

### **WHAT IS DISCRIMINATION?**

When a person is treated disfavouredly or when a person's dignity is violated. The disfavoured treatment or the violation of a person's dignity must also be related to one of the seven grounds of discrimination.

### **III. PROBLEMS / DISCRIMINATION FACED BY DISABLED AND AGED**

#### **Disabled:**

- Disability discrimination is when a person with a disability is treated less favourably than a person without the disability in the same or similar circumstances.

For example,

it would be 'direct disability discrimination' if a nightclub or restaurant refused a person entry because they are blind and have a guide dog.

It is also disability discrimination when there is a rule or policy that is the same for everyone but has an unfair effect on people with a particular disability.

This is called 'indirect discrimination'.

For example, it may be indirect disability discrimination if the only way to enter a public building is by a set of stairs because people with disabilities who use wheelchairs would be unable to enter the building

- Employment - getting a job, terms and conditions of a job, training, promotion, being dismissed
- Education – enrolling or studying in a course at a private or public school, college or university
- Accommodation – renting or buying a house or unit
- Getting or using services – such as banking and insurance services, services provided by government departments, transport or telecommunication services, professional services like those provided by lawyers, doctors or tradespeople, services provided by restaurants, shops or entertainment venues
- Accessing public places – such as parks, government offices, restaurants, hotels or shopping centres.

## **Most Common Forms of Disability Discrimination**

### **1. Refusing to Hire a Job Applicant Based on Their Disability**

It may have happened to you. You had a promising phone interview with a new company but when you went in person, they cut the interview short and dismissed you once they saw your disability. Or you had a great interview process until you asked the company about reasonable accommodation for your disability and they retracted their job offer shortly after.

According to the law, a prospective employer is generally not allowed to ask you disability-related questions or require you to get a medical examination until after they have made you a conditional job offer.

There is, however, an exception. If you have an obvious disability or you willingly disclose your disability, the company can ask limited questions about what types of accommodations you would require (if any) prior to making an offer.

After you get a job offer, the company can ask limited disability-related questions or require a medical exam as long as all applicants are treated the same way.

Unfortunately, employers who discriminate rarely admit the real reason behind their decisions. Even if they refused you the job because of your disability, they could lie about why or offer a vague excuse like you simply weren't a "good fit." A qualified employment discrimination lawyer may be able to help you uncover evidence that shows that disability was the basis of your rejection.

White collar business man facing disability discrimination in workplace.

**2. Firing or Demoting an Employee Because of Their Disability** It is illegal for an employer to take any adverse or negative action against a qualifying worker based on a real or assumed disability. Adverse actions include:

- Firing you or demoting you from your position
- Terminating your employment contract
- Changing your schedule or cutting your hours
- Failing to assign you to priority projects
- Refusing to put you in a client-facing role
- Denying you deserved promotions while your coworkers progress
- Cutting you out of benefits that other employees enjoy



- Taking unfair disciplinary action against you

Reducing your pay, salary, or benefits

These types of actions can delay or even derail your career. They can also cause you mental and emotional anguish. It's also illegal for your employer to retaliate against you for filing a complaint of disability discrimination. The law is on the side when it comes to protecting your rights.

### **3. Failing to Give Disabled Employees the Same Opportunities**

Your employer can't treat you differently than other employees because you are disabled. That includes how they consider you for promotions and growth opportunities at the company.

If your employer fails to consider you for a promotion or opportunity that you qualify for because of your disability, then you could have a legal claim for discrimination.

When you file a successful legal claim or lawsuit based on disability discrimination, you could receive a settlement from your employer that recovers the wages, benefits, and bonuses you lost as a result of being passed up out of an opportunity. If you prove your case, your employer may also be on the hook to pay your legal fees and court costs.

### **4. Harassing an Employee Based on Their Disability**

Harassment is a serious workplace issue with major consequences for victims. Disability discrimination and harassment can lead to a toxic or hostile work environment, which can cause you stress, anxiety, depression, and mental anguish. You could be the target of harassment by a co worker, a supervisor, a subordinate, or even a non-employee such as a customer or third-party vendor.

- Unacceptable disability harassment at work could look like:
- Verbal harassment such as teasing, jokes, or slurs based on your disability
- Intrusive comments or questions about your disability at work
- Singling you out for different treatment based on your disability
- Refusing to offer reasonable accommodation for you to do your job
- Failing by management to stop harassing behavior once it's reported
- Forcing you into positions that aggravate your disability
- Repeatedly making assumptions about your capabilities

Your health is your own business. Disabled workers have the right to a workplace safe from

harassment – a workplace that’s inclusive of all types of abilities.

### **5. Failing to Provide Reasonable Accommodations**

Under the ADA, your employer actually has a legal responsibility to provide you with reasonable accommodations so that you can do your job. If your company fails to provide these adjustments or modifications, you can sue them for discrimination.

A reasonable accommodation helps you complete your essential job duties. Examples include:

- Disability tools such as hearing aids or mobility aids
- The option to relocate your desk to an accessible area
- Schedule modifications based on your needs
- Protected leave time for medical treatments and care

When offering accommodations, your employer must take an interactive approach by including you in the process and asking about your needs. Your company doesn’t have to provide the exact solution you ask for so long as they offer a similar plan that works. However, you are responsible for communicating your needs for accommodation – the law does not require your employer to guess what you need for you. Your employer must provide accommodation so long as doing so wouldn’t be an undue hardship.

### **Aged discrimination:**

Examples of age discrimination

- A manager making choices around redundancy, or forcing someone to retire, because of their age.
- A restaurant manager refusing service to a couple with their two young children, saying the restaurant does not serve children under the age of 12 as they might disrupt other diners.
- A candidate being asked their age at a job interview and then not being given the job because the employer wants a younger person for the role.
- A caravan park enforcing a rule that prevents teenagers from moving around the grounds after 9pm.
- A group of young adults being told by a travel company that their cruise booking can’t be accepted because most passengers are retirees and families.

## IV. REMEDIES

### Equal Opportunity Act

**The Equal Opportunity Act 2010** aims to make public life free from discrimination, sexual harassment and victimisation. The law provides avenues for people to resolve complaints, and outlines the Commission's role in helping government, business and the community to identify and eliminate discrimination, sexual harassment and victimisation.

### INDIA

In implementation of its obligations under the Convention, India enacted **the Rights of Persons with Disabilities Act, 2016 (the "New Act") and the rules there under (the "Rules") in 2017**. The New Act replaced the Persons with Disabilities (Equal Opportunity Protection of Rights and Full Participation) Act, 1995 (the 'previous Act'), which covered only seven disabilities. The New Act covers more than 15 disabilities including dwarfism, acid attack victims, intellectual disability and specific learning disability. It defines a 'person with disability' as someone with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his / her full and effective participation in society equally with others. This definition under the New Act has been formulated using the text included in Article 1 of the Convention.

Under the New Act, persons with at least 40% of a disability (referred to as "persons with benchmark disability") are entitled to certain benefits. One such benefit is that at least 4% of the total number of vacancies in Indian Government establishments in specified categories (and 1% in certain others) are required to be reserved for their employment.

### Obligations on private establishments in India

While Indian private establishments are exempt from reserving jobs for persons with disabilities, the New Act requires them to adhere to a slew of obligations. The term 'private establishment' has been very widely defined to include a company, firm, factory or such other establishment. This would include the Indian presence of any foreign company, be it a liaison office, branch, subsidiary or a joint venture. The New Act makes it unlawful for an establishment to discriminate against a person on the ground of his or her disability unless it can be proved that the discriminating act in question is a proportionate means to a legitimate objective. The Rules make the "head" of the establishment responsible for ensuring that this provision of the New Act is not misused to the detriment of disabled persons.

The New Act requires establishments to prepare and publish an Equal Opportunity Policy (the

“EOP”) for persons with disabilities. A copy of the same is required to be registered with the State Commissioner or the Central Commissioner. The EOP must inter alia contain: (a) details regarding amenities and facilities put in place for persons with disabilities; (b) lists of posts identified for such persons; and (c) details of training, promotion, allotment of accommodation and provision of assistive devices and barrier free accessibility for such persons. Further, these establishments must appoint a liaison officer to look after the recruitment of persons with disabilities including the provisions and amenities for disabled employees. Such appointment is to be notified in the EOP. Furthermore, the establishments are required to maintain records relating to persons with disabilities enumerating the following:

- The number of disabled persons employed and the date of commencement of their employment;
- the name, gender and address of employee(s) with disabilities;
- the type of disability that such employee(s) are
- the nature of work being performed by such employee(s); and
- the type of facilities being provided to the disabled employee(s).
- The establishments are further required to produce the aforesaid records for inspection as and when called upon to do so by the relevant authorities

The Rules prescribe adherence to standards concerning physical environment, transport and information and communication technology applicable to disabled employees.

### **Complaints and penalties**

The Rules also lay down the procedure for dealing with complaints relating to discrimination. Complaints about exploitation of persons with a disability can be made to the Executive Magistrate and the local police. Violation of any provision of the New Act invites fines and penalties and in certain cases makes directors and senior officers of an establishment personally liable.

The New Act stipulates a monetary fine of Rs. 10,000/- for the first violation and fines between Rs. 50,000/- and Rs. 500,000/- for subsequent violations. If the violation is committed by a company, both the entity as well as the person(s) responsible for the conduct of the business of the company would be liable. Directors, officers and managers of a company would be individually liable if it is established that the violation was committed with their consent, or is

attributable to their negligence.<sup>2</sup>

Failure by an establishment to provide required information, documents or records (as required under the Act) is an offence under the New Act. The monetary fine provided for each such offence by an organisation is Rs. 25,000/-. An additional fine of Rs.1,000/- would be applicable for each continuing day of such failure or refusal, as the case may be.

The Act also imposes **criminal liability** on anyone who within public view insults or intimidates a disabled person with the intention of humiliating such person. This would also apply to such actions within a workplace. The punishment provided for such an offence is imprisonment for a term between 6 months to 5 years and fine.

Prosecutions for offences under the New Act are triable by a Sessions Court which is required to be notified by State Governments for each district as a 'Special Court

**India alone has 22 million disabled people as highlighted by 2001 census of our country.**

The causes of disability include war, civil conflict, poverty, overcrowding and unhygienic living conditions, accidents, natural disasters, old age, congenital diseases etc. On the one hand poverty causes disability on the other hand disability and its consequences are increased by poverty. Disability often results in loss of income. It demands additional expenditure on medical treatment, purchase and maintenance of special devices etc. Malnutrition in various forms also results in disability like blindness, beriberi, pellagra, rickets etc. There are number of occupational hazards for workers employed in stone quarrying, leather industry, glasswork, weaving, diamond cutting and hand embroidery. Children employed with carpet, cracker and match industry are especially at great risk. Many women and children abducted for being used in prostitution, slavery and beggary run high risk of emotional, mental and physical disabilities.

### **Approaches to Disability**

The issue of disability can be approached by **four models: the charity model, bio-centric model, the functional model and human rights model**. The charity model treats people with disability as helpless victims needing care and protection and relies on goodwill of benevolent humanitarianism for care of disabled. On the other hand human right model views all human beings irrespective of their disabilities as equal claimant to all rights and opportunities. It focuses on equality and non discrimination, reasonable accommodation, accessibility, equal participation, inclusion and freedom. The rights of persons with disabilities to participate in their societies can only be achieved primarily through political and social action. Legislation

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<sup>2</sup> the Rights of Persons with Disabilities Act, 2016, section 89.

has been enacted to guarantee to the disabled persons the rights to and opportunities for schooling employment and access to community facilities, to remove cultural and physical barriers and to ensure that discrimination against disabled persons is discouraged and ended. The emergence of disability rights movement brought with some change, including strong cross disability unity and major legal redefinition of disability.

**During the 1980s, the disability movement received a big boost with the UN General Assembly designating 1981 as the International Year of the Disabled.** This has brought focus on three relatively new areas; (1) The progressive awakening of persons with disabilities to their status as a disadvantaged minority, and to the need for them to assert for their rightful place in the community; (2) the growing realization that in the past, the disabled have been relegated to the role of little more than "objects of condescension and charity"; and (3) the emerging global resolve to protect the rights of such disadvantaged people as potentially productive and contributing citizens.

## **V. LAWS AND PROVISIONS DEALING WITH DISABILITY**

While there has been concern for rights of various sections of society right from the beginning in general this concern was expressed in the shape of equality for all. During last few years there has emerged awareness to consider specific rights for vulnerable groups. Both at international community level and in various state specific formulations for these groups have either been accepted or are in the process of formulations.

### **International Provisions**

There have been many international instruments created for protecting and promoting rights of disabled. They provide the basic framework to ensure rights and other safeguards against discrimination and deprivation.

Most important of these are:

- Universal Declaration of Human Rights, 1948
- The International Covenant on Civil and Political Rights, 1966
- The International Covenant on Economic, Cultural and Social Rights, 1966
- The UN Declaration on the Rights of Mentally Retarded Persons
- The UN Declaration on the Rights of Disabled Persons

Along with these UNO declared 1983-92 as Decade of Disabled Persons.

## National Provisions: The Constitution of India

In the Constitution of India, the Preamble, Fundamental Rights<sup>3</sup> and the Directive Principles of State Policy<sup>4</sup> outlay a constructive role of the state towards weaker and disadvantaged people.

In the list of Fundamental Rights, Article 14 guarantees Right to Equality (right to equality before law and equal protection of law).

The entry 24 in list III of schedule VII deals with welfare of labour, provident funds, liability of workmen's compensation, invalidity and old age pensions etc.

Indian legislature and judiciary also have promoted equality and social justice to achieve dignity of physically and mentally challenged people.

Certain legal safeguards have been created like **Persons with Disabilities (Equal opportunities, protection of Rights and Full Participation) Act 1995**. It prohibits discrimination on basis of disability in matters of public employment and in access to public facilities. On the positive side we have increase in litigation concerning disability. However, at present the disposal of such cases by the judiciary and quasi-judicial bodies are very slow. The government of India has established the Central Social Welfare Board to assist voluntary agencies in organizing welfare programmes for certain vulnerable groups including persons with disability

## DISABILITY LAWS

Since independence India has promoted welfare of the disabled persons which include:

Opening of special employment exchanges

- Setting up of vocational rehabilitation centers
- Establishment of sheltered workshops
- Job reservation in certain identified positions; and
- Provision of financial assistance

Following Acts have particularly been enacted for the welfare of the disabled.

### **The Mental Health Act, 1987**

This Act appears as a civil rights legislation that aims to regulate standards in mental health institutions. It says that no mentally ill person shall be subjected during treatment to any indignity or cruelty. Also they cannot be used for research, unless it is for purpose of the treatment and by the consent of the patient.

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<sup>3</sup> Part III of Indian constitution

<sup>4</sup> Part IV of Indian constitution

The National Human Rights Commission (NHRC) under section 12 of Protection of Human Rights act, 1993 is authorized to visit Government run mental health institutions to study living conditions of inmates and make recommendations thereon. However, the loophole of this act is that it considers institutional care as the only arrangement for the care and protection of people with mental illness. Lot of human rights violations occur outside the formal institutional perview.

### **The Rehabilitation Council of India Act, 1992**

This act enhanced the role of already existing Rehabilitation Council of India RCI (1992) responsible for regulating and standardizing training policies and programmes in the field of rehabilitation of persons with disabilities.

### **The Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995**

The Persons with Disabilities (Equal Opportunities, protection of Rights and Full Participation) Act aims at promoting equality and full participation of persons with disabilities. This act tries to protect and promote economic and social rights of people with disabilities.

The comprehensive legislation passed by the Government addresses the multifarious problems faced by the disabled in India and provides a framework for the implementation of progressive and economic activities. Our parliament thus has legally endorsed the right to access for the disabled to educational training premises, travel on public transport, a barrier free environment for integrated living and participation, access to information and means of communication and thus providing them independence and dignity. The Act places the disabled at par with other able bodied citizens of India in terms of opportunities to participate and benefit from the society. Avenues have been created for-them to overcome the various hurdles, psychological, physical and social. This was the first time that a law was enacted to protect the rights of the disabled people.

- i) Surveys, investigations and research concerning the cause of disabilities.
- ii) Promote methods of preventing disabilities
- iii) Screen all children at least once in a year for early detection.
- iv) Training of staff at Primary Health Centres.
- v) Initiate or sponsor awareness campaigns.
- vi) Take measures for prenatal, and post natal care of mother and child.



vii) Create awareness amongst the general public on related issues through use of various media.

### **Education**

The Act requires the Government and appropriate authorities to :

- i) Ensure for education till a child with disability attains the age of 18years.
  - ii) Take steps to integrate the students with disability in the normal schools.
  - iii) Setting up of special schools throughout the country to cater for the needs of special education to the disabled.
  - iv) Equip the special schools with vocational training facilities.
  - v) Make schemes and programmes for non formal education i.e. open schools, interactive electronic media, special books and equipment, part time classes etc.
- VI) To initiate research for designing and developing assistive devices, teaching aids, special teaching material etc.
- vii) To create facilities to train teachers to impart education to children with special needs.
  - viii) To prepare a comprehensive education scheme to include the following :-
    - a) Transport facilities.
    - b) Financial incentives to the parents of the disabled children.
    - c) Setting right the architectural barriers in buildings.
    - d) Supply of books, uniforms etc.
    - e) Grant of scholarships.
    - f) Setting up of forum for the parents of disabled children to voice their grievances.
    - g) Suitable modification in the system of examination.
    - h) Restructuring of curriculum.

### **Employment**

- i) Identification of posts which can be reserved for persons with disabilities.
- ii) Reservation for the disabled in every establishment.
- iii) Vacancies which can not be thus filled on a particular occasion are to be carried forward.
- iv) A record of such enrolment is to be maintained by each employer.

v) The schemes to ensure employment is to be maintained by each employer

- Training opportunity
- Relaxation in upper age limit
- Regulating the employment
- Institutionalise health and safety measures
- Creation of an authority to administer the scheme

### **Affirmative Action**

Provision of aids and appliances to persons with disabilities.

it) To form schemes for persons with disabilities for preferential allotment of land at concessional rates for house, business, setting up special recreation centres, special schools, research centres, factories.

### **Non Discrimination**

i) Transport

- Adaptation of rail compartments, buses, vessels and aircrafts to facilitate access.
- Adapt toilets in various modes of transport to permit the wheel chair users to use them conveniently

ii) On road

- Installing auditory signals for the visually handicapped.
- Curb cuts and slopes in pavements for wheel chair users.
- Engravings near zebra crossing for people with low or no vision.
- Engravings on the edges of railway platforms.
- Warning signals taking into account the various types of disabilities.

iii) In Public Buildings

- Construction of ramps.
- Adoption of toilets for wheel chair users.
- Braille symbols and auditory signals.

iv) Promotion

- If an employee acquires a disability during service he/she will not be dispensed with or reduced in rank.
- No promotion shall be denied to a person merely on the ground of his disability

### **Social Security**

The Government and the local authorities shall within the limits of their economic capacity undertake the following:-

- Rehabilitation of all persons with disabilities.
- Grant of financial assistance to non government organizations
- Consult the non-governmental organization working for the cause of disabled persons while forming policies.
- Formulate insurance schemes for the benefit of employees with disabilities.
- Formulate a scheme for payment of unemployment allowance to persons with

the special Employment Exchange enrolled for more than two years and could not be placed in any gainful employment.

### **Mechanisms for Implementation:**

It has to be aware and compassionate citizen with whose help the provisions of the law will be implemented. However the following have been catered for:-

- 1) Coordination Committees at Central and State level with adequate participation of the disabled, the NGOs, eminent persons.
- 2) The disabled people must be made well versed with the law and involved in the consultative exercises with the planners and providers of services and goods.
- 3) The law treats disability as civil rights rather than a health and welfare issue.
- 4) By encouraging greater participation of disabled people in all activities of society the law projects them as assertive and productive service providers and not mere receivers.
- 5) Positive image of disabled people should be highlighted through the media.

### **The National Trust Act, 1999**

The National Trust for Welfare of persons with Autism, Cerebral palsy, Mental Retardation and Multiple Disability Act ensures reliable arrangement for well-being of those who are severely disabled. It aims to empower persons with disabilities to live as independently and close to their community as far as possible. It also lays for creation of Local Level Committee (LLC) to decide upon applications of legal guardianship. This Act also discusses duties of legal guardian of the disabled people

## **VI. ROLE OF NGOS AND CIVIL SOCIETY**

In our country, there are various NGOs, voluntary organizations and self-help groups working for disability. These NGOs in collaboration with the Government provide training, employment and other support services to the disabled. They encourage Government to legislate disabled friendly policies and programmes. However, many of the voluntary organizations view people with disabilities dependents who need help to carry day-to-day activity of their lives. This is a problematic approach. On the other hand self-help organizations work on right based approach. They are led by disabled people themselves. These self-help groups view people with disability not as subjects of protection but as active participants of development goals.. People suffering from disability are often subjected to physical and sexual abuse. They are forced to live in institutions outside the, society. Also they are restrained from getting married or having children. Despite of various governmental legislations, nothing much has been possible in this regard. For example, Article 15 (Fundamental Rights) prohibits discrimination on grounds of religion, race, caste, sex or place of birth but does not clearly mentions person with disability as a group. It appears that earlier the Government of India generally has been practicing charity approach towards the issue of disability. It has been basically the result persistent struggle of disability movement under the broader human rights movement that lots of positive changes have been possible. The Government has been relying on charitable institutions to deliver basic services to people with disabilities. The need is to change the approach of welfare to that of human rights and entitlement based approach.

## **VII. THE ELDERLY PEOPLE**

United Nations declared the period from October 1, 1998 to December 3, 1999 as the International year of the older prsons. Occasionally one reads a report or an item in the newspaper or magazine, but otherwise there has hardly been any discussion on the problems faced by old people. In fact most people do not realize that old persons have serious grievances and that they too need care. We like to believe that in India we have a strong tradition of family values, and that we respect our elders and take care of them.

### **The State of Neglect**

There are several socio-economic reasons for the growing number of neglected old people. With increasing industrialization and urbanization, there has been a break up in the traditional family system.

Now children move out of their parent's house and have their own houses. The old parents are

often left behind in the villages. Some choose to go and stay in cities with their children in spite of the strangeness of situation and become dependent and unhappy.

In an urban situation, with both son and daughter-in-law working outside home, the elderly staying with their children find themselves uncared for. Things are no longer the same for the old people. Then it is felt that someone is not useful enough, that person is cast off. This often is the case with the senior citizens. It is said that in a twenty five year period starting from 1991, the population of those above 60 will nearly double itself<sup>5</sup>. Among them, men outnumber women as they have longer life expectancy. The incidence of widow hood is much higher among females. There are four times as many widows as widowed males. The position of old women is more vulnerable as few persons are willing to take care of them. Older women, thus become victims of triple neglect and discrimination, on account of gender, widow hood and age

An older person is defined by the United Nations as a person who is over 60 years of age. However, families and communities often use other socio-cultural referents to define age, including family status (grandparents), physical appearance, or age-related health conditions

Our seniors are our responsibility. Intergenerational equity is a principle of natural justice. A generation which neglects its elders and aged commits crime and shall be mate with same fate in their elder years. Ageing is a natural process, which inevitably occurs in human life cycle. It brings with a host of challenges in the life of the elderly, which are mostly caused by the changes in their body, mind, thought process. Ageing refers to a decline in the functional capacity of the organs of the human body, which occurs mostly due to physiological transformation. The senior citizens constitute a precious reservoir of such human resource as is gifted with knowledge of various sorts, varied experiences and deep insights. May be they have formally retired, yet an overwhelming majority of them are physically and mentally capable of contributing to the well being of the society. Hence, given an appropriate opportunity, they are in a position to make significant contribution to the socioeconomic development of their nation.

Problems of the aged as follows:

- (i) Economic problems.
- (ii) Physical and physiological problem.
- (iii) Psychosocial problem

The Maintenance and Welfare of Parents and Senior Citizens (Amendment) Bill, 2019 has been introduced in the Lok Sabha on 11-12-2019, which interalia includes Homecare services for

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<sup>5</sup> Draft National Policy on Old People

senior citizens who suffer from difficulties in performing activities of daily life due to any physical or mental impairment.

### **What is Maintenance and Welfare of Parents and Senior Citizen Act?**

Maintenance of parents and senior citizens

A senior citizen including parent who is unable to maintain himself from his own earning or out of the property owned by him, is entitled to get relief under this Act. Children/grand children are under obligation to maintain his or her parent either father, mother or both.

Currently, parents could take back the property only if it was handed over with the condition that it would be reclaimed if the children did not take care of the dependent parents. Kerala included the clause to the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, in 2009 the gift deed was executed before the commencement of this Act, i.e., December 29, 2007, then the senior citizen does not have a remedy under this Act. However, they can challenge the same before a High Court.

Process of getting property back

Once eligibility is confirmed, the senior citizen will be required to get the gift deed revoked. The revocation of gift deed will be done via section 23 of the Act. It is important to note that section 23 is prospective in nature. It only deals with those transactions which are made by senior citizens after the commencement of the Act. However, recently a petition has been filed challenging the retrospective provision of section 23 in Delhi High Court.

### **What the Equality Act says about age discrimination**

The Equality Act 2010 says that you must not be discriminated against because: you are (or are not) a certain age or in a certain age group someone thinks you are (or are not) a specific age or age group, this is known as discrimination by perception you are connected to someone of a specific age or age group, this is known as discrimination by association. Age groups can be quite wide (for example, 'people under 50' or 'under 18s'). They can also be quite specific (for example, 'people in their mid-40s'). Terms such as 'young person' and 'youthful' or 'elderly' and 'pensioner' can also indicate an age group.

- The BCI, an apex body to regulate legal education and profession in the country, had in September last year restored Clause 28 of its Legal Education Rules, 2008, that fixed upper age limit of 20 years for admission to five-year integrated law course and 30 years for three-year law course. The BCI joint secretary Ashok Kumar Pander, in a letter to all the law college principals and university vice-chancellors on September 17, said that

after a Supreme Court order, Clause 28 of Legal Education Rules 2008 has been restored and the institutions have to comply with it. Clause 28 that deals with age restriction was notified in March 2009. Subsequently, BCI had withdrawn Clause 28 vide a resolution in 2013. However, the withdrawal was challenged in the Madras high court which termed it as illegal. The BCI's appeal in the SC was also dismissed.

India currently does not have any codified law on age discrimination and there is no designated statutory body that deals with matters pertaining to age discrimination. In this situation, only common law actions can be instituted in exceptional cases.

There are no codified laws, national or local, in India that directly deal with the issue of age discrimination. The Constitution of India guarantees certain fundamental rights to the citizens of India, including protection to individuals from discrimination only on the grounds of religion, race, caste, sex or place of birth. Age is not included. These fundamental rights are available only against the State. Nonetheless, under common law (India being a common law country), it would be possible for an individual to seek protection against age discrimination.

Generally speaking, where there are reasonable grounds for discrimination on the basis of age, such as the nature of the job, location of the job, etc., discrimination may be justified. For example, there is an age limit for recruitment in armed forces, and the retirement age of cabin crew of India's national airlines is less than the retirement age of other central government employees or public undertakings.

### **What enforcement/remedies exist?**

Since there is no codified law on age discrimination in India, there is no designated statutory body which deals with matters pertaining to age discrimination.

Under the general Indian penal laws, no criminal sanctions are prescribed in relation to age discrimination. Since there is no statutory protection available, only common law actions can be instituted where discrimination on the basis of age is highly unjustified. Civil remedies may include reinstatement (where an employee is terminated) with or without back wages and compensation. Depending on the category of the employee and nature of claim/allegation, such cases can be instituted in labour courts, service tribunals or civil courts.

How common are claims?

Claims pertaining to age discrimination are not very common in India and there are limited precedents which deal with the issue. In contrast, claims alleging other forms of discrimination (such as religion, race, caste, gender or place of birth) do exist as these are guaranteed as

fundamental rights under the Constitution of India. Also, claims are increasingly more common based on allegations of discrimination due to sexual harassment and pregnancy amongst women. Depending on prescribed standards, retrenchment of workmen usually involves complex procedural formalities for an employer and it therefore is somewhat more difficult for an employer to retrench workmen, much less on the basis of age.

Even claims pertaining to age discrimination in recruitment are very rare. There are very limited reported instances of claims of discrimination being made on the basis of age at the time of recruitment.

It is interesting to note that with an increase in the number of younger workers in the Indian economy, there have been media reports of disgruntled older employees. There seems to be a slightly more heightened awareness that subtle discrimination based on age does exist in the private sector, such as instances where a more senior employee is not given a training opportunity which is instead given to a younger employee at the same level. However, there is limited or no case law thus far where a formal claim of age-related discrimination has been raised by an employee in the private sector.

With respect to discrimination matters, most of the work handled by Kochhar & Co. involves claims/allegations pertaining to gender, religion and sexual-harassment based discrimination.

### **Retirement ages in India**

In India, the age of retirement for Central government employees is currently 60 years. The retirement age for State government employees varies from State to State. For example, in the State of Kerala, the retirement age for government employees is 55 years while in the State of Punjab and the State of Assam it is 60 years.

The main Indian law that provides for an age for retirement/superannuation is the Industrial Employment (Standing Orders) Act and Rules there under, as amended by State law. This law applies only when an establishment has a specified number of “workmen”, with variations to the applicability from State to State. Certain State laws provide for an age of retirement, which is typically fifty eight (58) years or such other age as the employer and the employee may agree to. Under the **Employees’ Provident Funds and Miscellaneous Provisions Act, 1952** (“EPF Act”, which is a social welfare legislation), a covered employee’s right to accrue pension benefits under the “Pension Scheme” ends when the employee is 58 years old. However, the contributions towards the “Provident Fund/Deposit-Linked Insurance Fund” can continue to be made as long as the employee works. Thus, this law suggests that an employee does not need to retire at age 58 – he can continue to be employed as per the company’s retirement policy but



his statutory pension accruals under the EPF Act will end at this age.

Companies in the private sector in India often do not choose to specify an age of retirement, which is more of a practice followed in public sector companies. In case a private sector company does have a retirement age policy, the age varies between 58-65 years, which can be extended at the company's discretion.

As mentioned earlier, claims on age discrimination are rarely brought to the Indian courts. The case discussed below deals with the issue of different retirement age of male and female crew members of Air India.

**Air India Vs. Nergesh Meerza and Others** <sup>6</sup>The issue that came up for consideration before the Honourable Supreme Court of India was whether Regulation 46(i)(c) and Regulation 47 of the Air India Employees Service Regulations were discriminatory in nature and were unconstitutional. Regulation 46(i)(c) fixed the age of retirement for air hostesses working for Air India at 35 years. It also provided that the air hostesses would retire upon first pregnancy or on marriage within first four years of service, whichever is earlier. Regulation 47 provided that on being found medically fit, the retirement age of air hostesses could be extended by 10 more years at the option of the Managing Director. The retirement age of male cabin crew on the other hand was 58 years.

The Honourable Supreme Court of India struck down two service conditions applicable to Air India employees. First, the Court struck down the service condition which provided for termination of service of air hostesses on first pregnancy, holding it to be in violation of Article 14 (Right to equality) of the Constitution of India. Second, the Court struck down the provision which provided that the extension of service of an air hostess beyond 35, if found medically fit, would be at the discretion of the Managing Director. While striking the latter condition, the Court held that the real intention of the makers of this regulation has not been carried out because the Managing Director has been given uncontrolled, unguided and absolute discretion to extend or not to extend the period of retirement after an air hostess attained the age of 35 years. The Court held that the said regulation gave wide powers to the Managing Director which might result in discrimination.

However, with respect to the claim regarding the disparity in retirement age of the air hostesses and the male crew members, the Court rejected the claim as not being discriminatory. The Court observed that male and female members of the crew are distinct cadres with different conditions of service. Appreciating the fact that Air India had fixed the retirement age of air hostesses

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<sup>6</sup> (AIR 1981 SC 1829)

different from the male crew members taking into account the nature of work, prevailing conditions of service, the need to safeguard health of females, and other relevant factors, the Court negated the grievance that service conditions providing lower age of retirement to air hostesses is unfavourable or discriminatory.

### **Does India need an age-based employment discrimination law?**

Companies are focusing on enhancing diversity and inclusion practices, but one of the ignored areas while considering diversity and inclusion is ageism. “There is no age for learning”, is one of the well-known statements, but does age matter while hiring in the workplace and how seriously age discrimination is taken into account?

### **STATISTICS**

#### **Disabled Population in India as per census 2011 (2016 updated) –\**

In India out of the 121 Cr population, 2.68 Cr persons are disabled which is 2.21% of the total population. Among the disabled population 56% (1.5 Cr) are males and 44% (1.18 Cr) are females. In the total population, the male and female population are 51% and 49% respectively. Majority (69%) of the disabled population resided in rural areas (1.86 Cr disabled persons in rural areas and 0.81 Cr in urban areas).

In the case of total population also, 69% are from rural areas while the remaining 31% resided in urban areas. **Older people** are a valuable resource for any society. Ageing is a natural phenomenon with opportunities and challenges.

According to **Census 2011**, India has 104 million older people (60+years), constituting 8.6% of total population. Amongst the elderly (60+), females outnumber males

#### **Government of India’s National Policy on Older Persons 1999,**

- Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and \*National Policy for Senior Citizens 2011, provide the legal framework for supporting the needs of seniors.
- The National Programme for Health Care of Elderly and Health and Wellness Centres under the Ayushman Bharat programme provide dedicated healthcare to elderly at primary health care settings.

## **VIII. CONCLUSION**

In this fast growing world, we usually have all the necessary things near our doorstep. While still we lay behind not knowing What? Where? How? When? things will happen or how to deal

with it. People unaware of their rights and struggling in their life is phase which should be considered without neglecting it.

Aged people as per 2011 census 104 million older people are there in India. Half of the majority are in Old age home others homeless while others facing discrimination based on their age. When it comes to disability, even when there's act Rights of person with disability act, 2016, they still face struggle discrimination and lack of amenities.

How far this will be reduced?

- Awaiting them about their rights
- Providing facilities/ amenities that they need.
- Taking actions for their discrimination
- Making them learn how things works.

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