

# A Critical Legal Study on Care of Elderly-An Essence of Morality

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## Abstract

*Social justice, the ideological signature of our Constitution consists of diverse principles. These diverse principles are necessary for the development of personality of every citizen. But elderly an exception in this regard. They are not only neglected but also become a major area of concern due to the changing societal structure.*

*Author in this research paper tried to analysis the relationship between morality and elderly care. Judiciary, NGO's and respective states governments and union playing an active role to eradicate this social problem, but self-introspection is solely needed.*

*Inspite of extensive research in the gerontology morality ethics and law shall be mingled up to end of this social crux.*

**Keywords:** *Society, morality, law, ageing, welfare*

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## Introduction

Ethics and morality are two common terms used by the scholars throughout the world in their scholarly works<sup>1</sup>. It is proved in many circumstances that ethics and morality are correlative to each other<sup>2</sup>. If we analysis the legal rules from ancient era to modern times it is nothing but based on the notion of morality<sup>3</sup>. It is proved in many circumstances that law alone cannot governed all human behavior and social relations. A moral in this respect always plays a significant role.

Now-a-days the social problem is considered one of the major disciplines of Social studies and needs a special attention<sup>4</sup>.

Author in this paper tried to light upon that how morality is well connected with the care of elderly. Author also focused the various provisions towards the positive ageing, legal protections and constitutional mandates in this regard. Henceforth, this research paper is dedicated to all aged persons who are gems for the society but neglected at large.

## Nuclearisation of Family and It's Effect on Elderly Person

A joint family is age old concept with a single kitchen. It is fact that the elderly particularly grandparents were happy with these types of family system. But presently we generally observed nuclear families are very popular in the society.

Everyone in this society is well known about the term Human Rights<sup>5</sup>. Every person has this right by virtue of his or her birth. So, we can say that Human Rights are fundamental to our very existence without which we cannot live as human beings. But this is not true for the senior citizens.<sup>6</sup>

Now-a-days nuclearization of families are common features as it is already discussed in this writing, but its effects are horrible and has a negative impact on senior citizens which are really a matter of anxiety. According to psychologist's crime against elderly on rise due to the nuclear family trend.

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## **Elderly and Their Protection Under Indian Constitution**

The theoretical roots of a comprehensive Elder Law in India can be seen in the Constitution of India. Both part III and Part IV deals with the various constitutional mandates in this context.<sup>7</sup> Article 38,41, 42 and 47 provides an important mandate regarding the right to the elderly to live a peaceful and dignified life<sup>8</sup>.

### **Benevolent Activities of The State Towards Positive Ageing**

It is a duty of the nation to provide a facility for decent living to every citizen respectively. If we classify the function of state, then it can be primary and secondary function. The secondary functions of the state fall into two classes. The second class of secondary function comprises the maintenance of welfare activities and the discharge of welfare duties for benevolent purpose.

In the basis of this benevolent purpose India has emerging towards the positive ageing. Some positive activities towards the positive approach regarding the ageing are discussed as below.

- Pension in old age really a significant issue for elderly. Under the Indira Gandhi Old Age Pension Scheme implemented by Ministry of Rural Development provided a pension to elderly is one of the positive responses of the state towards the senior citizens.
- The major problems of elderly are health problem. Keeping this in mind the Health Ministry had introduced different Programmes for Health Care of the Elderly<sup>9</sup>.
- Mostly the senior citizens are solely dependent on their children at old age. It is next to impossible to earn money for them. So, Ministry of Finance, Department of Revenue provided a number of incentives to a senior citizen under the Income Tax Act, 1961.
- The welfare activities done by Ministry of Railways are highly appreciable. As per rules male (60 yrs.) and female (58 yrs.) are granted concession in the basic fares of all classes of trains. It is mandate by the Railways that lower berths should be allotted to senior citizens.
- The Home Ministry in March 27, 2008 and August 30, 2013 has issued two detailed advisories to all state's governments/UTs advising them to take immediate measures to ensure safety to all senior citizens.

The Government of India also introduced some other welfare projects for elderly. Some of them are Rashtriya Vayoshri Yojana, Pradhan Mantri Vaya Vandana Yojana are important in this regard.

### **Legal Protection of Elderly in India**

Taking care of elderly, a legal duty other than the moral obligations. All most all personal laws made it mandatory to take care of the aged parents and other elderly in the family. Under the Hindu law every Hindu has the obligation to maintain and take proper care of their aged parents<sup>10</sup>. On the other hand, Muslim law makes it obligatory for a man to provide maintenance for his father, mother, grandfather and grandmother. Other than the personal laws the aged parents can claim maintenance u/s 125 CrPC. It is a secular law and applicable to the entire region. Moreover, the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 promoting the maintenance, care and protection of older persons<sup>12</sup>.

### **Care of Elderly An Essence of Morality**

Now-a-days it's in most people's mentality to avoid caring for their parents and elders once they get old. A burden is what old age people become to their dear ones. It should be in one's good moral for assist the elders in their time of needs. This act of helping should be for all and

it must not be confined to the aged persons for their own family. Every person should possess moral responsibility to help with all the care and love they can. It should always keep in mind that everyone has to go through the same stage of life now and then in a cyclic process.

## Conclusion

Gerontology and its importance in the society should be taken seriously. Various schemes and social security measures are already introduced by the Indian Government. Judiciary always remains proactive to protect and provide an early relief to the elderly. Lotika Sarkar, a distinguished scholar in legal studies, also faced a problem in her old age but due to the effectiveness of the judiciary she got justice at last.

Various NGOs and special care units of police in different states are keeping records of health condition, fooding and even regularly visiting to helpless and alone elderly which are really a positive attitude by the states.

In spite of many schemes implemented by the government, the positive approach of the judiciary and other responses, cruelty and crime towards the elderly are increasing progressively. It is a moral obligation of every one of the societies to assist the elderly irrespective of caste, creed, sex etc. Various regulations, rules are not ultimate solutions unless and until the inner morality of an individual is expressed to a great extent.

## Footnotes

<sup>1</sup> W. Friedmann, *Legal Theory* 25 (5th ed. 2013)

<sup>2</sup> Dr. V. D. Mahajan, *Jurisprudence & Legal Theory* 85 (5th ed. 2017)

<sup>3</sup> Dr. Sanjeev Kumar Tiwari, *Jurisprudence Legal Theory & Elements of Law* 246 (1st ed. 2014)

<sup>4</sup> Ram Ahuja, *Social Problems in India* 119 (3rd ed. 2017)

<sup>5</sup> R. N. Trivedi, *World of All Human Rights* Soli J. Sorabjee *A Festschrift* 11 (1st ed. 2015)

<sup>6</sup> *Id.* At 5

<sup>7</sup> Sugan Bhatia, *Elder Law in India* 41 (1st ed. 2012)

<sup>8</sup> M P Jain, *Indian Constitutional Law* 1430 (7th ed. 2016)

<sup>9</sup> Tattwamasi Paltasingh et al., *Caring for the Elderly Social Gerontology in the Indian Context* 272 (1st ed. 2015)

<sup>10</sup> Dr. Paras Diwan, *Modern Hindu Law* 449 (20th ed. 2009)

<sup>11</sup> R. V. Kelkar, *Criminal Procedure* 834 (6th ed. 2016)

<sup>12</sup> Bhatia, *supra*, 46