

Rights of the elderly with reference to Malaysia: *Islāmic* and western perspectives

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Abstract: By 2050, the number of older persons in the world is projected to exceed the number of young for the first time in history. The United Nations Committee on Economic, Social and Cultural Rights has identified the elderly as a vulnerable group and at risk to various forms of abuse and exploitation. Consequently, there has been an increased concern among the international community for the creation of an international convention on the rights of the older persons. Having an international convention tailored to the needs of older persons is seen as an essential tool in promoting and protecting the rights of the elderly. Considering the fact that the Malaysian elderly population has steadily increased over the years, it is essential to give special attention to the interests and rights of this special group of population. This paper provides an overview of the rights of the elderly from *Islāmic* and western perspectives, with particular reference to the position in Malaysia. It analyses the status of the elderly persons in *Islām* by referring directly to the divine sources: *Qur'ān* and Sunnah. It also discusses the status of the elderly within the framework of the international and regional human rights instruments and Malaysia's commitments to protect and promote the rights of the elderly. Looking into the legislative and policy provisions directed towards the protection of the rights of the elderly, there is a need to adopt adequate measures to safeguard the rights and interests of the Malaysian elderly.

Keywords: Elderly, Islām and the elderly, Elderly's rights', Human rights, Malaysia.

Introduction

The world is experiencing an unprecedented demographic transformation where a large number of persons are being added each year to the aged population. This phenomenon which is termed "population ageing" first swept across the industrially developed nations of Europe but currently, most parts of the world are experiencing an increase in their elderly population, although they may vary in terms of the pace and intensity. The primary demographic forces which are

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responsible for causing the rise in the proportion of the elderly are the long term decline in fertility and mortality rates.

The turn of the twenty-first century has witnessed a substantial growth in the number of elderly people in some parts of the world, particularly countries in the Asia and Pacific region. Demographers, based on the current population forecasts, predict that population ageing in the first half of this century should exceed that of the second half of the 20th century. This is substantiated by the fact that many post-war baby boomers born between 1946 and 1964, who represent a sizable demographic bulge, will gradually move into the ranks of senior citizens (Moody, 2002). The World Health Organisation (WHO) and the United Nations Committee on Economic, Social and Cultural Rights (CESCR) have recognised that the elderly persons are among the most vulnerable groups in society who deserve special attention. They are vulnerable compared to other groups, because they are more prone to various forms of discrimination, abuse and exploitation as they are often perceived to be physically weak.

The status of the elderly in *Islām* and human rights declarations

Islām accords an honourable position to the elderly and enjoins the believers to respect, show compassion and treat the older persons kindly. *Islām* obligates children to treat their parents with love and care. The *Qur'ān* (17: 23-24) is categorical in this respect:

Your Lord has decreed that you worship none but Him, and that you be kind to parents. Whether one or both of them attain old age in your life, say not to them a word of contempt, nor repel them, but address them in terms of honour. And out of kindness, lower to them the wings of humility, and say: 'My Lord! Bestow on them Your mercy even as they cherished me in childhood.

The duty to respect the aged parents is also emphasized in the *ḥadīth*. It is reported that the Prophet (SAW) said:

Let him be humbled into dust; let him be humbled into dust. It was said: Allah's Messenger, who is he? He said: He who sees either of his parents during their old age or he sees both of them, but does not enter paradise (as he has neglected his/her duties towards them. (Sahih Muslim, Book 32, *ḥadīth* No. 6189)

In another *ḥadīth*, the Prophet (SAW) is reported to have said:

No young person honors an elder due to his age, except that Allah will honor him at that age (Jami At-Tirmidhi, Vol.4, *ḥadīth* No. 2022)

In yet another *ḥadīth*, narrated by Abu Musa al-Ash'ari, the Prophet (SAW) is reported to have said: "Glorifying Allah involves showing honour to a grey-haired" (Sunan Abu Dawud, Book 036, *ḥadīth* No. 4825). In short, it can be seen from the texts in the Quran and the sunnah that *Islām* has given elderly persons a special position. Honouring and giving due respect to the elders are an act of virtue which is very much encouraged in *Islām*.

An overview of the *Islāmic* perspective on human rights including the protection and promotion of the elderly people are found in the Universal *Islāmic* Declaration of Human Rights (UIDHR), adopted by the *Islāmic* Council in Paris in September 1981 and the Cairo Declaration on Human Rights in *Islām* (CDHRI), adopted by the Organisation *Islāmic* Committee in Egypt on 5 August 1990. Both documents protect and promote the basic and universal human rights which are applicable to all individuals including the elderly people. Among the essential human rights that are relevant to the interests and needs of the older persons are right to life (UIDHR Article I; CDHRI Article 2), right to equality (UIDHR Article III; CDHRI Article I), right to justice (UIDHR Article IV), right to social security (UIDHR Article XVIII) and right to decent living (CDHRI Article 17 (c)). In *Islām*, universal fundamental rights for humanity such as right to life, right to equality and right to justice are conferred by Allah (SWT) upon all humankind, and that based on both the Holy *Qur'ān* and the traditions of the Prophet (SAW). These rights are inalienable, therefore, they are to be observed and respected under all circumstances. As regards to the right to life, the Holy *Qur'ān* explicitly declares that:

Because of that, We decreed upon the children of Israel that whoever kills a soul unless for a soul or for corruption (done) in the land, it is as if he had slain humankind entirely. And whosoever saves one, it is as he had saved mankind entirely. And our messengers had certainly come to them with clear proofs. Then indeed many of them, (even) after that, throughout the land, were transgressors (*Qur'ān* 5: 32).

Humankind are born equal, as explained in the Quran:

O humankind! We created you from a single (pair) of a male and female, and made you into nations and tribes, that ye may know each other (not that ye may despise each other). Verily the most honoured of you in the sight of Allah is (he who is) the most righteous of you. And Allah has full knowledge and is well acquainted (with all things) (*Qur'ān* 49:13).

The Prophet's *ḥadīth* is also clear on this point. In his farewell sermon, the Prophet (SAW) reminded his followers:

No Arab has superiority over a white person and no white person has superiority over an Arab; no black person has superiority over a white person and no white person has any superiority over a black person. The criterion of honor in the sight of Allah is righteous and honest living (Ahmad ibn Hanbal, *ḥadīth* No. 24204).

Rights of the elderly in the international and regional human rights documents

Compared to other population groups, the elderly as a distinct group has not received the international legal attention they deserve. There exists not a single international human rights instrument that adequately addresses the specific human rights needs and protections required for the elderly. In other words, the elderly remain as the only vulnerable group which has not become the subject of any specific international human rights treaties. This is not to deny the existence of some provisions in the international human rights instruments which promote and encourage respect for human rights in general and therefore covers older persons as well. These provisions can be found in the Universal Declaration of Human Rights (UDHR) 1948, the International Covenant on Civil and Political Rights (ICCPR) 1966, and the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966.

In UDHR 1948, one of the provisions relevant to the wellbeing of the elderly is Article 25 (1) which states:

Everyone has the right to a standard of living adequate for the health and wellbeing of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond control.

This provision establishes a minimum entitlement for the basic necessities of life such as food, clothing, housing, medical care in the event of old age. It also provides for security in 'old age' which is seen as a significant pronouncement to be used in favour of advancing human rights protection for the elderly (Rivera, 2010).

With regard to the ICCPR 1966, provisions pertaining to right to life (ICCPR Article 6), prohibition against torture or cruelty, inhuman or degrading treatment (ICCPR Article 7), and right to liberty and security of person (ICCPR Article 9)

are important for the protection of the rights of older people. Similarly, there are several rights enshrined in the ICESCR 1966 which are also relevant and crucial to the older persons, such as right to social security (ICESCR Article 9) right to an adequate standard of living, including adequate food, clothing and housing, and to the continuous improvement of living conditions (ICESCR Article 11) and to the enjoyment of the highest attainable standard of physical and mental health (ICESCR Article 12).

At the regional level, there are a number of treaties which embodied explicit provisions addressing the interests and rights of the older persons. For example Article 25 of the Charter of Fundamental Rights of the European Union provides that the Union recognizes and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

Country-specific laws for the elderly

Not satisfied with the provisions for the elderly in the international and regional declaration of human rights, some countries have enacted laws for protecting and promoting their rights. Japan has introduced and developed a number of elderly-specific legislations, beginning with the Poor Relief Law which covered the disadvantaged and disabled elderly introduced before the Second World War. After the war, the Japanese government enacted the National Law for the Welfare of the Elders. This elderly-specific legislation received strong public support from welfare organisations and senior citizens' groups. The law clarified the responsibilities of the national and local governments towards the welfare of the elderly, and endorsed a systematic and universal approach to welfare policies for the aged, such as the promotion of facilities for the elderly, home welfare, health promotion and social participation (Masanobu and Kojima, 2001). The Act empowers the central and local governments to provide funds to the elderly welfare homes which offer home care, aid services, respite care services and other similar services. The Act was designed to cater for the needs of the low-income elderly who has no relatives to care for them. As the demand for long term care services increases, the coverage eventually expanded to include any elderly person based on this social welfare services law. The Health and Medical Service Law for the Elderly 1982 is another important piece of legislation which is relevant to maintaining and protecting the physical and mental health of the Japanese elderly.

The United States of America too has been concerned with the plight of its elderly population. One of the earliest legislations passed in order to enforce the rights of the older persons is the Older Americans Act 1965. This Act aimed at providing comprehensive social services for older persons. It was passed as a response to congressional concerns about the lack of community social services

for the elderly then. The Act is considered the major vehicle for promoting the delivery of social services to the ageing population. This Act not simply allocated grants to states to create social services for the elderly . It is also responsible to help improve the lives of all older people and to ensure the continuous care services for the vulnerable elderly.

South Africa has also taken measures to provide legislative protection for the enjoyment of elderly rights. The South African Act on Older Persons, No. 13 of 2006 spelt out its objectives to maintain and promote the status, well-being, safety and security of older persons, to maintain and protect the rights of older persons (Article 2 (b)) and to combat abuse of older persons (Article 2 (e)). The Act basically aims to create an enabling and supportive environment for older persons living in community-based care and also residential settings. The act places responsibilities on the providers of support services for older persons to comply with the national norms and standards to ensure that the rights of the older persons are protected and to prevent them from abuse and exploitation (Chapters 2-3).

Within the South East Asian region, Thailand has enacted specific legislation for the protection and maintenance of its elderly people. Thailand enforced the Older Persons Act 2003 on 1 January 2004. The Act consists of 24 sections, which among others provide for the establishment of the Elderly Fund (section 3), the rights of the elderly to have access to medical and public health services, education, useful information, transportation, housing, food and clothing (section 11) and tax privilege for children who take care of their parents (section 17). In addition to the Thailand Older Persons Act 2006, the rights of the poor older persons to enjoy public health services and welfare is constitutionally recognised. It is stipulated that a person who is over sixty years of age and has insufficient income for living shall have the right to welfare, public facilities and appropriate aids from State (Constitution of the Kingdom of Thailand 2007, section 57). Some countries have enacted specific legislation with provisions for the maintenance of aged parents by their children. Singapore (Maintenance of Parents Act 1995) and the Philippines (Parents Support Act 1998) are examples of such statutes.

Rights of the elderly in Malaysia

Like many other developing countries, Malaysia is gradually moving towards demographic ageing. Table 1 demonstrates the Malaysian population structure for the past four decades (1970-2010). During this period, there was a steady increase in the share of the persons aged 60 and above. The data indicates that the proportion of older persons has increased from 5.2 percent in 1970 to 6.3 percent

in 2000 (Department of Statistics, 2000). During the same period, there has been a continuous reduction in the proportion of the children (0-14 years) from 44.9 percent in 1970 to 33.5 percent in 2000.

Table 1: Past trends of senior citizens, Malaysia, 1960-2000

| Year | Number of Senior citizens ('000) | Percent of total population | Growth rate of: | |
|------|----------------------------------|-----------------------------|-----------------|------------------|
| | | | Senior Citizens | Total population |
| 1960 | 386.6 | 4.8 | - | - |
| 1970 | 546.1 | 5.2 | 3.5 | 2.6 |
| 1980 | 745.2 | 5.7 | 3.1 | 2.3 |
| 1991 | 1,032.3 | 5.9 | 3.0 | 2.6 |
| 2000 | 1,398.5 | 6.3 | 3.4 | 2.6 |

Source: Department of Statistics, Malaysia (2000). *Population Ageing Trends in Malaysia, Population Census Monograph Series No. 1, 2000*. Kuala Lumpur: Department of Statistics.

The trend in the yearly increase of the number of the elderly continues. In 2011, the total percentage of persons aged 65 years and above was 5.1, it increased slightly to 5.3 in 2012 and continued to raise to 5.5 in 2013 (Department of Statistics, 2013). The increase in the number of population aged 60 and above is projected to continue for the next twenty years. Table 2 shows that between the year 2010 and 2040 the total number of older persons will increase by more than twofold. The statistics shows that Malaysia is likely to attain the status of an ageing nation by the year 2040 when the number of people aged 65 and above will make up over 10% of the total population.

Table 2: Population projection by age group Malaysia, 2010-2040

| Year | 0-14 ('000) | % | 15-64 ('000) | % | 65+ ('000) | % | Medium age |
|------|-------------|------|--------------|------|------------|------|------------|
| 2010 | 7,822.1 | 27.4 | 19,341.4 | 67.6 | 1,425.1 | 5.0 | 26.3 |
| 2015 | 7,733.4 | 25.4 | 20,917.9 | 68.8 | 1,779.9 | 5.8 | 28.2 |
| 2020 | 7,780.7 | 24.0 | 22,445.9 | 69.2 | 2,214.6 | 6.8 | 29.9 |
| 2025 | 8,009.5 | 23.4 | 23,533.4 | 68.6 | 2,751.3 | 8.0 | 31.5 |
| 2030 | 8,087.9 | 22.5 | 24,542.0 | 68.2 | 3,335.7 | 9.3 | 33.0 |
| 2035 | 7,893.4 | 21.1 | 25,606.1 | 68.5 | 3,889.9 | 10.4 | 34.5 |
| 2040 | 7,537.2 | 19.6 | 26,615.6 | 69.0 | 4,405.1 | 11.4 | 36.0 |

Source: Department of Statistics Malaysia, *Population Projections Malaysia 2010-2040*, November 2012. Kuala Lumpur: Department of statistics of Malaysia, p. 2.

Improvement in public health, particularly dealing with sanitation and the availability of clean and potable water, the eradication of infectious diseases, as well as advances in medical technology have brought about a reduction in the number of children being born and more people surviving to old age. Life expectancy of the Malaysian population has improved tremendously. As of 2013, life expectancy of Malaysian male and female were 74.2 years and 79.1 years respectively. With the intensity of the sudden surge of older population, the topic of population ageing and concerns of the elderly is becoming a high priority agenda, and it will remain important and relevant as many will, in due course, join this “special” group of people. It is, therefore, timely to address the issue of how the human rights of the elderly can be promoted and protected, so that they can enjoy these rights similar to other groups in society.

Human rights in Malaysian law

In Malaysia, some of the basic human rights principles as embodied in the international human rights instruments are enshrined in the Federal Constitution. These human rights principles are applicable to all persons which include the older people. These international human rights principles are embodied in Part II of the Constitution as follows:

Article 5 (1): No person shall be deprived of his life or personal liberty save in accordance with the law.

Article 8 (1): All persons are equal before the law and entitled to the equal protection of the law.

Article 9: Freedom of movement

Article 13 (1): No person shall be deprived of property save in accordance with law.

National policy for the elderly

The issue of the elderly was specifically highlighted for the first time in the Sixth Malaysian Plan (Government of Malaysia, 1990), thus giving impetus to action and place some kind of pressure on the government to formulate policies responsive to the growing number of this group. In response to this, the National Policy for Older Persons was formulated and it was endorsed by the government on 25th October 1995, with the integral aim of:

Creating a society of senior citizens who are contented and possess a high sense of self-worth and dignity, by optimizing their potential and ensuring that they enjoy all opportunities as well as care and protection

as members of their family, society and nation (Jabatan Kebajikan Masyarakat, 1999: 9).

The underlying principle of this policy is to give due respect and recognition to the status of the older people by creating a dignified and highly esteemed society of older persons. Being the older members of society who have contributed significantly in many aspects, they deserve a special position in the family, society and the nation. Focusing on the principle of 'active and productive ageing' as advocated in the Vienna Action Plan of Ageing 1982, the policy envisages a positive perception of the older persons by allowing them to integrate, participate and contribute to the social and national development. They are not to be marginalized in the mainstream of development. Instead, they should be accepted as integral members of society who can contribute to the productivity of the country. This whole vision is a move away from the conventional perspective, where more often than not, the elderly are viewed as passive recipients of benefits.

This national policy has three principal objectives, namely:

1. To enhance the respect and dignity of the elderly in their family, society and nation,
2. To improve the potentiality of the elderly so that they continue to be active and productive in national development, and to create opportunities to assist them to continue to be self-reliant,
3. To encourage the establishment and availability of specific facilities to ensure the care and protection of the elderly towards enhancing their well-being.

The abovementioned national policy for the elderly together with its objectives were formulated based on the principles laid down in the United Nations World Assembly on Ageing in Vienna 1982, where by its Action Plan lays emphasis on the strategies to safeguard the rights, interests and needs of the elderly in five specific areas: Respect and dignity; Self reliance; Participation; Care and protection; and Research and development.

Following the endorsement of the said policy, a National Senior Citizens Advisory and Consultative Council (NSCACC), under the then Ministry of National Unity and Social Development (MNUSSD), was established on 22nd May 1996 (Jabatan Kebajikan Masyarakat, 1999: 3). The NSCACC which comprises government, non-government and selected individuals functions as the national coordinating body on ageing; it formulates policies, coordinates, monitors and evaluates ageing related activities. Nonetheless, it should be pointed out that the NSCACC, to date, has not performed particularly well. This is due to its limited

jurisdiction and it has little de facto control over the functioning of various agencies responsible for issues related to the elderly (Fu and Hughes, 2009).

Two years after the establishment of the NSCACC, the National Action Plan for the elderly was formulated in December 1998. The central aim of this Action Plan is to ensure the integration and participation of the elderly in the development process. Among the focus areas in this Action Plan are education, employment, social integration, recreation, health, social security, media, research and development. On 5 January 2011, a new National Policy for Older Persons and its action plan were launched to replace the 1995 National Policy for Older Persons and the 1998 Plan of Action for the Older Persons. This new national policy for older persons was formulated with the objectives to develop the potential of the elderly so that they remain active and productive in national development and to create opportunities for them to continue to live independently. In addition, it is also expected that society's respect towards the elderly will continue to improve. In formulating this new national policy for the elderly, the government has taken into consideration the three priority areas outlined in the Madrid International Plan of Action on Ageing. These three priority areas are mainstreaming ageing in the nation's developmental agenda, advancing health and well-being of the older persons and ensuring enabling supportive environment for the aged.

Malaysia health policy for older persons

Persuant to the endorsement of National Policy for Older Persons 1995, the Ministry of Health (MOH) launched the Plan of Action for Older Persons Health Programme in 1997 aimed to provide medical and health facilities suitable and specific to the needs of the elderly to ensure optimum health care for the elderly in this country. Ten years after the launching of the Plan of Action for Older Persons Health Programme, in 2007 the MOH convened a workshop for drafting the National Health Policy for Older Persons as well as to review the existing action plan. The workshop was held from 26 February to 1 March 2007, and was attended by sixty-three participants from various professional backgrounds.

The National Health Policy for Older Persons was drafted and eventually endorsed in 2008. The Policy Statement is as follows:

To ensure healthy, active and productive ageing by empowering the older persons, family and community with knowledge, skills an enabling environment; and the provision of optimal health care services at all levels and by all sectors (Minstry of Health, 2008: 12).

The objectives of this policy are three fold:

1. To improve the health status of older persons.
2. To encourage participation in health promoting and disease prevention activities throughout the life course.
3. To provide age friendly, affordable, equitable, accessible, culturally acceptable, gender sensitive, seamless health care services in a holistic manner at all levels.
4. To advocate and support the development of an enabling environment for independent living (ageing-in-place) (Ministry of Health, 2008: 13-14).

Together with this policy, a detailed plan of action for the health of older persons was also endorsed. This Plan of Action governs six specific areas:

1. Services for primary health care.
2. Services for medical care and rehabilitation at secondary and tertiary level.
3. Health education and promotion.
4. Research and development.
5. Interagency and intersectoral collaboration.
6. Legislation.

Conclusion

Like many other countries in the world, Malaysia too is experiencing an increase in the share of her elderly population as indicated in the National Census which has been conducted in the past fifty years. In response to these demographic changes, the Malaysian government has formulated and endorsed the National Policy for Older Persons 1995 as well as the Malaysian Health Policy for Older Persons 2008 with a view to protecting and promoting the general wellbeing of elderly Malaysians. Compared to other age groups, older persons are in a vulnerable position and they are prone to various kinds of discrimination, exploitation and violation of their rights. As such, it is timely to rethink the appropriate measures or approach in protecting their rights. One of the mechanisms which can be adopted is to have a specific legislation to protect the civil, political, economic, social and cultural rights of older persons. Malaysia must begin to think of creating a body of laws that will safeguard the elderly's rights, so that they too can lead dignified and secured life as equal members of society.

One noticeable omission in all the laws relating to the elderly is the absence of legal protection of their rights and interests. To date, there is no specific and comprehensive legislation governing the elderly in Malaysia, which provides adequate protection to them. The existing elderly related legislations are the Workmen's Compensation Act 1952 and the Employee Social Security Act 1969 which provide indemnity against employment related accident or injury. The Pension Act 1980 and the Employment Provident Act 1991 provide for income security or old age financial support after retirement. As regards the elderly who are living in institutional care settings and community care, the law that governs them are the Rules for the Management of Old Persons' Homes 1983, Rules for the Management of Homes for the Chronically Ill 1978 and the Care Centre Act 1994. These relevant legal provisions regulating institutional care for the elderly however, only provide a minimum protection to the residents in terms of ensuring the safety and hygiene of the premise. There is no explicit provision which guarantees and confers legal rights to them as residents. The existing rules and regulations seem to be ineffective in protecting the elderly from abuse and neglect and inadequate in their approach to autonomy and individual rights.

Evidently, there is a dire need to have complementary legislation to improve the existing legal framework in order to protect the human rights of the older persons. Alternatively, the internationally-recognized elderly rights can also be incorporated into the existing elderly-related domestic laws to further enhance their status.

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