

SENSITIZING THE SAFETY CONCERN OF ELDERLY PEOPLE IN INDIA: A DESIDERATUM

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I. INTRODUCTION

Ageing is a natural process, which occurs in each individual's life. It strengthens and emaciates the human body at different stages of life. This phase of life is a matter of great value and responsibility to the society. Value of being aged is the experience, knowledge and maturity to take the right decision. This is the phase of life where society has to pay back in terms of the health, care and security of the elderly¹ people for their contribution. The percentage of the global population aged 60 years or above has rapidly increased from 8.5 % in 1980 to 12.3% in 2015 and projected to rise 21.5% in 2050.² The demographic profile depicts that in the years 2000-2050 the overall population in India will grow by 55 per cent while the population in their 60 plus will increase by 326% and those in the age group of 80 plus will increase from 6 million in 2000 to 48 million that will be 700% in 2050.³ Government has taken several steps to take care health and economic needs for elderly people. The aim is to form a society that does not treat older people as a liability. Having said this elderly people are one of the most vulnerable groups to be victim of crime.⁴ This fact is established by the burgeoning crime rate against elderly people.

II. BURGEONING CRIMES AGAINST THE ELDERLY PEOPLE: RECENT TRENDS

Elderly people face many problems because of the general perception that this is the age of dependence and every need has to be fulfilled by others. Only those elderly people are secure and happy who are physically fit and financially independent. Why elderly people are vulnerable to be victim of crime? As per population census 2011, population of elderly persons or senior citizens was 1024.6 Lakhs. National Crime Record Bureau (hereafter NCRB) in its

latest report 2015 has presented an alarming picture on the increasing crimes against the elderly people.⁵ During the year 2015 a total 20532 crimes under various sections of the Indian Penal Code, 1860 (hereafter IPC) were registered against the elderly people. During 2014 total cases were 18,714.⁶

On a careful reading of the statistics on crimes it appears that the prime motive of targeting elderly people is offences against property. The elderly people are victimized being the soft target for the people desperate for money. Delhi as usual is leading the crime rate against senior citizens also from 89 in 2014 to 108 in 2015.⁷ It is common to associate old age with not so abled to protect themselves and their property, which make them soft target against crimes.

In an empirical research, elderly people were asked whether they feel that senior citizens are soft targets. More than half of the elderly people felt that it is so. Majority of the elderly people felt so because of weakness as the main reason of crimes against them.⁸ Some of the reasons, which are responsible for the burgeoning crimes against the elderly people in India, are:

- i. Solitary living of the elderly people, due to prevailing concept of unitary families in metro cities or due to youths of the family are settled abroad.
- ii. The elderly people are considered as burden on the family economically and they are not fit socially due to generational gap.
- iii. Inability due to physical and mental weakness to protect themselves.
- iv. Their easily mingling with others who come to them to spend some time with them and ready to listen them.
- v. Non-availability of options to choose their maids and escort from few.
- vi. Their irritating behavior and ego compel them to live alone as nobody wants to be with them.
- vii. Gullibility.

⁵ NCRB is collecting data for elderly people under a separate chapter 'Crimes against Senior Citizens' only since 2014. Prior to this the crimes related to this class of citizens used to be covered generally. Senior citizens were not treated a class in themselves. See, NCRB, CRIMES IN INDIA-2015 (Ministry of Home Affairs, 2015), available at <http://ncrb.gov.in/> (last visited September 12, 2017).

⁶ *Ibid.*

⁷ Crimes registered against Senior Citizens is shown graphs wise in the Reports, available at <http://ncrb.nic.in/> (last visited September 12, 2017), under the head crimes in India, 2015 and 2014. These graphs are displaying different crimes committed against senior citizens, their status, states leading and offenders arrested etc. This is a fact well known that prior to this exclusive coverage of crime against senior citizens, these cases used to be covered under the other relevant chapters of the reports i.e. offences against woman etc.

⁸ The fieldwork for the study was carried out by Help Age India, during May 2011 in 9 cities upon 60+ elderly people and published, A REPORT ON ELDER ABUSE AND CRIME IN INDIA, available at <https://www.helpageindia.org> (last visited September 12, 2017).

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¹ The term 'elderly' is used to refer to population segments such as cohort's aged (say) 60 and above. Though in present time, more accepted terms are 'older persons' 'senior citizens'. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 defines 'senior citizen' as Indian citizen who has completed 60 years. Though the age for several social schemes is counted differently even age is relaxed on the basis of gender in certain matters of concessions.

² Available at http://www.un.org/en/development/desa/population/publications/pdf/popfacts/PopFacts_2014-4Rev1.pdf (last visited September 5, 2016).

³ See, National policy on Senior Citizens, 2011 Draft, available at <http://socialjustice.nic.in/writereaddata/UploadFile/dnpsc.pdf> (last visited September 12, 2017).

⁴ Chris Phillipson, AGEING (Polity Press, 2013).

The safety issues of the elderly become complex if two or more factors are clubbed. Like if, the elderly people are living in isolation, none of their family member is there to take care of and they are suffering from some medical issues, such elderly people become the most vulnerable to crime and consequently softly targeted. Similarly old age is also having its different stages: sixty to seventy, and seventy to eighty. Hence, as much they proceed in age, so much they need more and specific attention.

III. LAWS TO PROTECT THE ELDERLY PEOPLE

Problems of elderly people were considered during the colonial period also but not as a class apart. They took certain steps, which were basically for the social security.⁹ Most of these laws were related to social security. Indian composite culture and family set up was considered conducive for the elderly people. Elderly people were considered as asset to the family and offences against the elderly people were rare. Our cultural values have made us believe that our parents are the living Gods to us. Elderly people's blessings are considered as the blessings of God. It was not a concern to have specific laws to prevent crimes against the elderly people because this was almost negligible. Another reason we can see that why India did not carried out elderly specific policies either for social security or for crimes against the elderly people, may be because of these were not so considerable issues in terms of population and problems.

However at international level the question of ageing became an issue after commencement of United Nations Declaration of Human Rights (hereafter UDHR). This was initiated by Argentina in 1948 and by Malta in 1969 but successfully it got the voice only when General Assembly of the United Nations asked the Secretary General to prepare a detailed report with appropriate guidelines at international and national level. In 1978 General Assembly decided to hold first world conference on ageing, which was held in Vienna from July 26 to August 6, 1982.¹⁰ First time an international plan of action on ageing was adopted. As a follow up action, Secretary General in 1992 adopted a proclamation to declare the year 1999 as 'International year for older persons' and 1st October as a 'The international day for the older persons'.¹¹ The Second World

⁹ The Pension Act, 1871, The Workmen's Compensation Act, 1897, the Adarkar Commission Report 1944 are few of them.

¹⁰ Recommendation 18 at the World Assembly on Ageing at Vienna, Austria, 1982 (Approved by the United Nations General Assembly in 1982 vide resolution 37/51 and in 1991 resolution 46/91) reads as: Government should: ensure that food and household products, installations and equipment conform to standards of safety that take into account the vulnerability of the aged; encourage the safe use of medications, household chemicals and other products by requiring manufacturers to indicate necessary warnings and instructions for use.

¹¹ K. Gergen, SOCIAL CONSTRUCTION IN CONTEXT (Sage Publication, London, 2001).

Conference on ageing took place in Madrid in 2004 for declaration and action plan on ageing.

Elderly people specific efforts in India and to make specific policies to bring them into mainstream of social welfare started in 1986 but these could only be fructified in concrete manner in 1999 when first National Policy on Older persons was framed. As per the census data 2011 and United Nations reports,¹² India is among the youngest country in the world. We boast of having the largest number of youth population in the world. This may be positive outcome of the sustained efforts in health care, which is improving our life expectancy. India took specific step in the direction of taking issues of the elderly people in 1999 by adopting National Policy on Older Persons.¹³ Thereafter, another draft policy on senior citizens has been prepared. Also Ministry of Social Justice and Empowerment, which is the nodal agency for senior citizens, has taken following steps to deal with the concerns of senior citizens:

- i. Adoption of National Policy on Older Persons, 1999 (Draft Policy On Senior Citizens, 2011).
- ii. Setting up of inter-ministerial committees.
- iii. *Vayoshrestha Samman*
- iv. Training of manpower for care of senior citizens.
- v. Concessions and facilities in various government services, Railways, Banking etc.
- vi. Establishment of National Council for senior Citizens.
- vii. Other Ministries have also taken steps to look into issues of the senior citizens.
- viii. Many schemes of insurance launched by the Government undertaking and private players in that field.

Economic Security Measure taken by the Government are:

- i. Indira Gandhi National Old age Pension Scheme
- ii. Social Pensions by State Government
- iii. The Unorganized Workers' Social Security Act, 2008
- iv. Post retirement benefits for the employees' of Central Government and State Government.

The Constitution of India is the supreme law of the land. It has guaranteed fundamental rights to all citizens even many of them irrespective of

¹² India has 356 million youth i.e, 28 percent of the total population, available at <https://www.unfpa.org> (last visited September 13, 2017).

¹³ It was a step considered in right direction in pursuance of the UN General Assembly Resolution 47/5 to observe 1999 as International Year of Older Persons.

citizenship. Article 14-18 is enshrining the Rule of Law. Article 14 strikes at the root of discrimination. State must ensure equality before law and by any action of the state equally situated persons must not be discriminated. There is hardly any iota of doubt to accept that senior citizens are a class in themselves. Law, which is inherently not able to provide justice and failed to protect them from being exposed to crimes just because of their vulnerability due to being old age, necessarily violates their fundamental right. So, treating elderly people along with others while their interest, needs and state responsibility towards them are greater in comparison of others is violation of elderly people's fundamental right. Meaning thereby state should treat them class apart to provide them security.

Part IV of the Constitution is devoted to the socio economic rights. These are progressive in nature. Article 41 specifically mentions that the state shall, within the limits of its economic capacity and development, make effective provision for securing the right to public assistance in cases of old age, unemployment, sickness, disablement and other cases of underserved want. Entry 24 of list III of schedule VII deals with the welfare of labour including work conditions, provident funds, workers compensation, invalidity/ disability, old-age pensions and maternity benefits, Entry 23 deals with social security and social insurance employment and unemployment. These entries must be read with other entries, which are empowering the legislatures to enact laws on the issue related to security of the people. 'Police' and 'Public order' are state subjects. There is no restriction if States enact specific laws to tackle the safety and security concerns of the elderly people. Those states, which are leading the table of crimes, committed against elderly people must utilize these entries to take up the issues. State of Himachal Pradesh is first state in India, which passed a special legislation to deal with the issues of the elderly people.¹⁴

Parliament enacted the Maintenance and Welfare of Parent and Senior Citizens Act, 2007.¹⁵ Senior Citizen is defined as 'any citizen of India who has attained the age of sixty years or above'.¹⁶ As the name suggests this is basically a law to give them social security. It includes Parents as well as other senior citizens. For parents being sixty years is not the condition. However this is special legislation and to implement the scheme and to achieve the objective of law a tribunal has to be established in every state under the Act.¹⁷ Further, leaving or abandoning senior citizen by a person having care and protection of

¹⁴ The Himachal Pradesh Maintenance of Parents and Dependents Act, 2001.

¹⁵ Act No. 56 of 2007.

¹⁶ *Id.*, section 2(h).

¹⁷ *Id.*, section 7.

such senior citizen has been made punishable offence.¹⁸ The National Council for Senior Citizens' in its first meeting held in August 2016 discussed as following:¹⁹

- i. Review of the policy for senior citizens at central and state levels.
- ii. Review of the programme being implemented by different Ministries for the welfare of senior citizens, such as Integrated programme for Older Persons (IPOP), Indira Gandhi Old Age Pension Scheme (IGNOAPS) which is a component of National Social Assistance Programme (NSAP), National Programme for Health Care of the Elderly (NPHCE) etc.
- iii. Review of the working of Maintenance and Welfare of Parents and Senior Citizens Act, 2007.
- iv. Review of measures taken by government for the physical safety and security of senior citizens.
- v. Review of measures for the economic well being and financial security in old age, with special reference to pension plans, reverse mortgage scheme etc.
- vi. Discussion on senior citizens welfare fund.
- vii. Review of health care facilities with special reference to geriatric care, respite/palliative care, home care and health insurance.
- viii. Review of concessions and other facilities available to senior citizens.
- ix. Review of effectiveness of public administration in safeguarding the interest of senior citizens in the society.
- x. Evaluation of the extent of awareness and sensitization of younger generation regarding the special needs and right of senior citizens.

The National Council for Senior Citizens is required to review the measures taken by Government for the physical safety and security of senior citizens. This is one of the mandate²⁰ to constitute this council, to advise the central and states government on the gamut of issues related to senior citizens, related to the welfare as well as for the enhancement for the quality of life with special reference to the following:

¹⁸ *Id.*, section 24, says "whoever having the care and protection of Senior citizens leaves, such senior citizens in any place with the intention of wholly abandoning such senior citizens, shall be punishable with imprisonment of either description for a term which may extend to three months or fine which may extend to five thousand rupees or with both" and under Section 25 such offence has been declared as cognizable and bailable.

¹⁹ Available at <http://pib.nic.in/newsite/PrintRelease.aspx?relid=149363> (last visited September 14, 2017).

²⁰ Available at <http://pib.nic.in/newsite/PrintRelease.aspx?relid=124561> (last visited September 14, 2017).

- i. Policies, Programme and legislative measures
- ii. Promotion of physical and financial security, health and independent and productive living
- iii. Awareness generation and community mobilization.

Security arrangements generally available in most of the metros in India are:²¹

- i. Senior citizens security cell, even Delhi police has planned to issue identification card to senior citizens.
- ii. Round the clock dedicated helpline for elderly people.
- iii. Special measures to verify all the attendants and maids in service of senior citizens. (However, many of the elderly are hiring their maids and servants without having their verification, which has resulted into commission of crimes by them).
- iv. Sensitizing NGOs and other society welfare groups regarding specific attention towards the elderly people living in their locality.
- v. Counseling of the elderly people.

IV. APPROACH OF THE JUDICIARY TOWARDS SENIOR CITIZENS

Elderly people are forming a group in themselves and because of age, their resistance power decays so is the relevance of self-defense to them. This easy accomplishment of criminal design against elderly people is one of the dominant factors in recording higher number of offences against property rather than body. IPC does not have any specific provision to deal with the crimes against elderly people but like any other class of people. But in changed perspectives of crimes, this must be reconsidered and elderly people must be treated as vulnerable class. Punishment of the same crime which, if it is committed against the elderly people be enhanced. However, we have not many recorded cases, which are specifically dealing with elderly people. Most of the cases have been brought forth are on the interpretations of the provisions of the 2007 Act.²² In one of the matter, the Kerala High Court held:²³

To get the benefit under the Act, parents must be without means or with inadequate means and the children must have refused to maintain him or her. The filial obligation has nothing to do with the children's possessing the parent's property or their succeeding to it in future.....so, we

²¹ Project Report submitted by Group of Economic and Social Studies to Bureau of Police Research and Development in 2009 available at <http://www.bprd.nic.in/WriteReadData/userfiles/file/201609180235357960864Summary.pdf> (last visited September 14, 2017).

²² The Maintenance and Welfare of Parents and Senior Citizens Act, 2007

²³ *Janardhanan v. The Maintenance Tribunal Appellate Authority and District Collector*, 2017(4) KLT454.

reckon that entire scheme of the Act does not contemplate or provide for resolving property disputes between or among the family members...this Act cannot annihilate the rights of the other members of the family, however laudable or salutary the Act's objective is.

Rule 19 framed by the State of Kerala in pursuance of the Act, empowers the District Magistrate to protect the life and property of the elderly citizens living in the District, so that they can live with dignity and security. Under Section 9 of the Act, district magistrate is the appellate tribunal. In a similar matter, the Bombay High Court, considering the order of vacating the premises by the middle aged son in favour of his elderly parents, constructed and owned by them, observed that:²⁴

Keeping in view the growing problems of the elders, the legislature has made earnest endeavour to introduce an Act in the interest of senior citizens and parents who are old and infirm. It was also noticed by the Legislature that apart from the economic stringencies, due to lack of source of income, senior citizens and parents were also exposed to emotional neglect and social insecurity. The procedure to ventilate the grievances were made simpler. It is also provided in the Act that if the children or relatives, so ordered, fails without sufficient cause to comply with the order, the Tribunal may, for every breach of the order, issue a warrant for levying fine and sentence such person to imprisonment, which may extend to one month or only payment of maintenance.

The Division Bench of Punjab and Haryana High Court outlined the objectives of the Act. It observed:²⁵

In order to appreciate and answer the aforesaid questions in the context of the factual matrix, it is necessary to analyze the relevant provisions of the said Act. The Statement of Objects and Reasons set out that the traditional norms and values of the Indian Society which lay stress on providing care for elderly getting diluted due to the withering of the joint family system, the elders are facing emotional neglect and lack of physical and financial support. Thus, aging has become a major social challenge and despite the provisions of the Code of Criminal Procedure, 1973 for maintenance, it was deemed necessary that there should be simple, inexpensive and speedy provisions to claim maintenance for the parents. The Act is not restricted to only providing maintenance but cast an

²⁴ *Santosh Surendra Patil v. Surendra Narasgopnda Patil*, 2017(3) Bom CR(Cri)690.

²⁵ *Justice Shanti Sarup Dewan, Chief Justice (Retired) v. Union Territory, Chandigarh*, 2014 (5) RCR (Civil) 656.

obligation on the persons who inherit the property of their aged relatives to maintain such aged relatives. One of the major aims was to provide for the institutionalization of a suitable mechanism for the protection of 'life and property of older persons.

V. ROAD AHEAD TO NIP THE TROUBLE IN THE BUD

Sensitizing the safety issues of the elderly people is need of the hour. Two points are well known. *Firstly*, elderly people require special attention. It is a recent realization in India and government has come out to tackle their issues through policy and legislation in India, *Secondly* - Most of the measure hitherto been taken are civil in nature. The elderly people have not been considered so far from their protection or safety point of view. Reasons were obvious; their negligible percent in the total population and the Indian concept of being older was always a matter of respect, care and their parental image. But now as their population is rapidly increasing and societal norms towards them have changed, so law, being the dynamic one, must update itself with these changing demands to be relevant and deliver the justice. How we can control burgeoning crimes against the elderly people.

Rapid increase in the population of the elderly people requires to take their issues seriously. Most of the initiatives taken by the government are related to social security, health, care and economic perspective. But increasing number of crimes against elderly people because of their inability to protect them successfully, compel us to think elderly people as a class in themselves. A special law be passed to treat the offences committed against the elderly people and therefore to treat them differently. For this purpose either the punishment, under the existing provisions if, they are invoked due to committed against elderly people, be increased and fine be imposed to give the quantum of fine to the victim or special law should be passed to cover all the offences which are actually being registered against elderly people. To sensitize the issues of safety and security of the elderly people, we must take following measures in the existing framework of law:

- i. Offence against the elderly people should be tried speedily and for the same fast track court should be established. Complexities of law of evidence should be relaxed to deal with the crimes committed against the elderly people.
- ii. In offences against elderly people, FIR should be registered at the place of the victim. Victim's statement should be recorded in congenial atmosphere of the victims.

- iii. Free legal service should effectively be provided to the victim. At state and district level, functioning Legal Services Authorities should establish special service desk for senior citizens.
- iv. Each State should have an exclusive cell for senior citizens. In some of the cities like Delhi it is working since 2004.²⁶
- v. Each state should have its Senior citizens helpline No. 24X7. It may be initially different but later on all India basis it can be same helpline No. Presently, in Delhi helpline No. for senior citizen is 1291, in Mumbai 1090. Many other metros have their own specific helpline numbers for senior citizens.
- vi. All Police stations should have special officer in charge of the matters related to the crimes against elderly people especially in all metros. Gradually it should be applied in all police stations.
- vii. Every Police station should maintain record of those elderly persons who are living alone. Such registration can be made compulsory by making the kith and kin of that older person responsible to do that registration.
- viii. Any domestic help should be employed by elderly people only once verification is conducted by the police
- ix. Those NGOs, who are devoted for the cause of elderly people may be engaged for sensitizing the issue of their safety and security.
- x. At every level from top to bottom, manpower should be trained to tackle the issues of elderly people. Panchayati raj institutions office bearers, health care center and other volunteers can be tapped for the purpose.
- xi. Recently a Bill has been passed by the Legislature of Assam, which is providing for deduction of a proportion from the salaries of those government employees who have failed to maintain their parents. It has been termed as PRANAM.²⁷

VI. CONCLUSION

The draft National Policy on Senior Citizens 2011 explicitly undertakes on the concerns of safety and security of senior citizens. It says provisions would be made for stringent punishment for abuse of the elderly. Crimes against elderly, especially widows would be tackled severely and community awareness would be invoked. Police would be directed to keep a friendly visit and monitoring

²⁶ Dwaipayana Ghosh, *Special police unit to protect the elderly*, TIMES OF INDIA, Kolkata edition, January 3, 2015.

²⁷ The Assam Employees Parents Responsibility and Norms for Accountability and Monitoring Bill, 2017.

of such senior citizens. Protective measures would be taken. Had these steps been taken seriously many of the crimes committed would have been averted. In sum and substance, crimes against elderly people are different from the crimes committed against other segment of the society. They are soft targets for the desperate people. Sensitizing responsible agencies and the people about the problems of elderly people may change a lot. Our culture still holds them high in respect and care.