



POLITICS OF ELDERLY RIGHTS IN INDIA

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Abstract

The paper throws light on the status of elderly population in India. The paper discusses the issues that the ageing population faces in India and the factors that make it vulnerable to violence. The ageing population which is increasingly female faces challenges of its own kind. While ageism has gained popularity in discourse as a new kind of discrimination however the paper analyses whether the same discrimination also exists in state policy and legislative intent. India culturally espouses the morality of taking care of parents and elderly however the same sentiment is not reflected in the policies.

Introduction

Legally, persons above the age of 60 are considered senior citizens or elderly in India¹. The United Nations also for their purposes has defined a person above the age of 65 as elderly.² This category is further divided into the age bracket of 60 to 80 years as the younger-old and those above 80 years are referred to as old age.

The problems of elderly have come under increasing focus with the increase in their life expectancy and increasing population. From a 5.63% of the population in 1961, they have arisen to 7.44% in 2011.³ In absolute numbers the number has increased from 24.6 million in 1951 to 96 million in 2011.⁴ Conterminously the life expectancy in India has gone up from 40

¹ The Maintenance and Welfare of parents and Senior Citizens Act, 2007, No. 56, Acts of Parliament, December 2007) defines a senior citizen as a person who has attained the age of 60 years or above.

²OECD, Elderly Population (2022), <https://data.oecd.org/pop/elderly-population.htm#:~:text=Definition%20of,people%20aged%2065%20and%20over> (last visited Dec. 12, 2022).

³Ministry of Statistics and Programme Implementation, *Elderly in India 2021*, 21 (2021), GOI, <http://www.indiaenvironmentportal.org.in/files/file/Elderly%20in%20India%202021.pdf> (last visited Dec. 12, 2022).

⁴ Id.



years in 1951 to 64 years in 2011.⁵ With the advancements in life saving technologies, this number is expected to increase.

Traditionally the concept of demarcation of an age as that of elderly was unknown in India. Elderly did not retire after attaining a particular age but according to their will. This still continues to be the case in traditional occupations such as farming, running big and small family businesses, craft businesses etc. The focus of elderly as a group susceptible to criminal activities is also of a recent origin as is reflected in the crime Report of 2014 by NCRB⁶. It states that “For the first time an effort has been made by the Bureau to analyse the types and patterns of ‘Crime Against Senior Citizens’ under this exclusive chapter”.⁷

Going by the NCRB data, the elderly do not seem to be the most victimised group of the community,infact the “least victim appearing group” that is the young male is the most targeted group among all. Yet nationally and internationally, policies are being framed for the increasing protection of the group. Probably the distinction lies in the fact that while a youth male does not fall victim to a crime given these characteristics, the elderly are susceptible to abuse due to their old age. This was the inspiration behind including them as a typology of victim by Von Hentig.

With the increasing life expectancy, there has been increasing discourse on the susceptibility and consequent steps taken for their protection. Help Age India undertook a study in 2011 in twelve major cities of India to study the condition of elderly in India.⁸ Their key observations were that 22% of the elderly have experienced at least one kind of abuse (abuse included verbal and physical). Whereas verbal abuse was more prevalent abuse faced by the elderly from lower socio-economic strata, neglect was reported more prevalent among higher socio economic strata. Amongst the 8 cities, Bangalore reported the highest percentage of elderly abuse (44%) along with highest percentage of emotional abuse. While family members were found

⁵HelpAge India, *Elder Abuse & Crime in India*, <https://www.helpageindia.org/wp-content/themes/helpageindia/pdf/ElderAbuseCrimeIndia11.pdf> (last visited Dec. 12, 2022).

⁶*Crime in India*, NHRC,(2014), <http://ncrb.nic.in/StatPublications/CII/CII2014/chapters/Chapter%2020.pdf> (last visited Dec. 12, 2022).

⁷ Id

⁸HelpAge India, *Elder Abuse & Crime in India*, <https://www.helpageindia.org/wp-content/themes/helpageindia/pdf/ElderAbuseCrimeIndia11.pdf> (last visited Dec. 12, 2022).



responsible for most of the abuse, daughter-in-law, along with the son, came forward as the major culprit. This is an interesting observation since parents-in-law are also often found as the major culprit in bride harassment cases. Cruelty against women by husband and his relatives has highest proportion of crimes against women.

WHO has also been increasingly focussing on the issues of the elderly population. In May 2016, it adopted the *Global Strategy and Action Plan on ageing and Health* as its objective to ensure that adult lives are not only longer but also healthier.⁹

Parents in India generally preferred the birth of sons over daughters as they believed that the son had the responsibility of taking care of his parents in old age. This preferential treatment to one sex over the other has led to skewed sex ratio in India is 925 (for every 1000 males)¹⁰ apart from this family virtues such as living in joint families was extolled which automatically took care of the parents. But with increasing families option to live nuclear set up has led to their neglect. Prior to the retirement age being adhered to in public and private offices, persons would go on to work till they wished but used to be informally attached to their family businesses and enterprises. The help Age data revealed that a part of elderly population was still involved in working.¹¹This part of the demography has been increasingly portrayed as the victims of abuse, neglect, harassment and crimes.

This growing population is now becoming victims of crime and the crime against the elderly is being recognized as an emerging social problem in contemporary India.¹² The cases of crimes against the elderly are on the rise across the country. Today, they are victims of grievous hurt, murder, and abuse and isolated by neighbours, family members and domestic servants. According to the National Crime Records Bureau's report (2010), 32496 elderly have been murdered and 5836 cases of not amounting to murder and kidnapping have been reported all over India from 2001 to 2010. Group for Economic and Social Studies (2009) conducted a

⁹WHO, *Global Strategy and action plan on ageing and health* (Jan. 02, 2017),

<https://www.who.int/publications/i/item/9789241513500> (last visited Dec. 12, 2022).

¹⁰ Ministry of Health and Family Welfare, *Update on Child Sex Ratio*, PIB (Dec. 17, 2021, 2:28 PM)

<https://pib.gov.in/PressReleasePage.aspx?PRID=1782601> (last visited Dec. 12, 2022).

¹¹HelpAge India, *Elder Abuse & Crime in India*, <https://www.helpageindia.org/wp-content/themes/helpageindia/pdf/ElderAbuseCrimeIndia11.pdf> (last visited Dec. 12, 2022).

¹²*Crime in India 2020*, NCRB, <https://ncrb.gov.in/en/Crime-in-India-2020> (last visited Dec. 12, 2022).



survey in four metropolitan cities of India and reported different types of crime that are committed against the elderly.

MAJOR PROBLEMS FACED BY THEM

No person is immune to the misfortune that may befall her but owing to her feeble age she does become a likely target of abuse. Old age comes with its set of problems that leaves her vulnerable to victimity and reasons of this class falling in one or the other typology of victims by the early victimologists.¹³ The National Sample Survey Organization (NSSO) Report 2019 provided insight into the sex ratio of the ageing population in India.¹⁴ In rural areas, there are 985 females per 1000 males, while in urban India, there are 1046 females per 1000 males. In a 2001 census, it was reported that 75% of the elderly are rurally located and 48.2% of these peoples are females.¹⁵ Of the 48.2% females, 55% are widows. The dependency ratios are 12.5 and 10.3 for rural and urban India respectively. In rural areas, 67% are dependent on others and it is also approximated that 6.7% of the elderly are either confined to their bed or their home.¹⁶

Feminization of Ageing

From 1971 to 2011, there has been an increase in the sex ratio of the elderly. From 938 women to 1000 men, it increased to 1033 women to 1000 men. Projection models state that figure should rise to 1060 women to 1000 men by 2026.¹⁷ This increase can be attributed to the fact that no significant decline in mortality among males can be noticed, especially during adulthood and old-age. A common result of the feminization of ageing is the discrimination and neglect which elderly females experience as they grow older. This is aggravated by widowhood often resulting in total reliance upon other persons.

¹³ *Introduction to Victimology*, https://uk.sagepub.com/sites/default/files/upm-assets/83271_book_item_83271.pdf (last visited Dec. 12, 2022).

¹⁴ National Statistical Commission, *Annual Report 2019-2020*, GOI https://mospi.gov.in/documents/213904/0/Revised+Eng+version_NSC+Annual+Report+2019-20.pdf/38888e79-dd52-7f78-5576-bef62e6e26d8?t=1613736966951 (last visited Dec. 12, 2022).

¹⁵ Ministry of Home Affairs, *Census of India 2011- Household Schedule*, GOI, https://censusindia.gov.in/nada/index.php/catalog/central/?page=1&sort_by=popularity&sort_order=desc&ps=15 (last visited Dec. 12, 2022).

¹⁶ *Id.*

¹⁷ Neha Chauhan, *Feminisation of Ageing in India: Concerns and Vulnerabilities*, SPRF, https://sprf.in/wp-content/uploads/2022/01/SPRF-2022_IB_Feminisation-of-Ageing-in-India_Final.pdf (last visited Dec. 12, 2022).



Elder Ruralisation

According to a 2011 census, more than 70% of the elderly in India reside in rural spaces. Rural areas feature issues such as poor transportation facilities, inadequate access to healthcare and physical isolation.¹⁸ Along with income insecurity, these issues are far more severe for rural elders as compared to urban elders. Poorer states such as Odisha, Bihar, and Uttar Pradesh have a higher percentage of rural elderly folk than richer states.

Elderly Migration

The movement of younger people moving from rural areas to urban sectors to find work can have a multifarious impact on the lives of the elderly. After a certain age, living unattended or with just a partner or spouse brings about a forlorn mood with social isolation, poverty and affliction being common. However, living in their own homes and communities provides some securities to the elderly. They have access to financial resources for medical and household expenses. Technological innovations have also meant that the logistics of life do not necessarily enforce social isolation between families. Easy voice-over internet protocol and video-conferencing has allowed for rural elders to stay in touch with their children in a manner not imaginable in the past.

Problems facing the most senior citizens

Large swathes of people above the age of 80 prefer to live in rural areas.¹⁹ People above that age have necessary health and family care requirements. It is also important to note that there are wide differences between the problems faced by persons between 60-79 years of age than those above 80. While the younger groups is concerned with their economic needs, physical fitness, and independence, those older than 80 are often physically feeble, susceptible to crime, heavily reliant on others, and in periodic need for urgent support services. Another important aspect of those above 80 is that they are often excluded from social and economic spheres of everyday life. There is a distinction between the problems faced by the elderly. With growing

¹⁸Ministry of Home Affairs, *Census of India 2011- Household Schedule*, GOI, https://censusindia.gov.in/nada/index.php/catalog/central/?page=1&sort_by=popularity&sort_order=desc&ps=15 (last visited Dec. 12, 2022).

¹⁹National Statistical Commission, *Annual Report 2019-2020*, GOI https://mospi.gov.in/documents/213904/0/Revised+Eng+version_NSC+Annual+Report+2019-20.pdf/38888e79-dd52-7f78-5576-bef62e6e26d8?t=1613736966951



age, their issues and dependencies change and we cannot classify all elderly people within the same bracket. Of the oldest old people (persons over 80), women are perhaps the most threatened. The large majority of these oldest of old women are widows. The status of women in India at any age is detestable but at stages of elder life, their lives are far more tortuous than men. There is much progress still to chart to ensure that Indian elders are provided with the opportunities and rights afforded to them under Article 21 and other Articles of the Constitution.

Income Insecurity

A leading cause for the indigence of the Indian elderly is income insecurity. In India, cultural norms mean that families are generally responsible for the needs of the elderly, this includes social and economic needs. The changing socio-economic and demographic landscape has meant that financial security from personal income, and asset holdings have become factors influencing the well-being of older people. According to the BKPAI survey, 26% of older males and 60% of older females do not have any personal income.²⁰ About a third of the elder population receives income through employer or social pensions. It is important to note that older males still predominantly rely on salaries or wages for income. This is indicative of the fact that older males require to work in order to support themselves, despite their age.

Abuse

Elder abuse specifically refers to “any intentional or negligent act by a caregiver or any other person that causes harm or a serious risk of harm to a vulnerable adult.”²¹ Abuse directed towards the elderly is a global and existential problem for humankind. Old and feeble, these elders are heavily reliant on others to help furnish their daily needs. These persons are frequently abused, neglected, and exploited throughout the world. The malefactors of such abusive behaviour are generally family members, trusted caregivers, or relative and friends. There is limited information in India regarding abuse of elderly people. In 2011, BKPAI conducted a survey on elder abuse in few selected urban areas of the country. The results of the

²⁰Report on Status of Elderly in Selected States of India, 2011, UNFPA (2012)

https://india.unfpa.org/sites/default/files/pub-pdf/AgeingReport_2012_F.pdf (last visited Dec. 12, 2022).

²¹Elder Abuse, NATIONAL INSTITUTE ON AGING, <https://www.nia.nih.gov/health/elder-abuse> (last visited Dec. 12, 2022).



study were published in 2015 and showed that about half of the elderly population surveyed experience abuse in some form.²² The results also showed that abuse was more prevalent in women than men.

TREATMENT THROUGH LEGISLATION

While the development on the rights of the elderly was underway on the international stage, Indian at the time of independence had already recognised this need. Article 41 of the Constitution states that

“State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of underserved want”.

This article becomes the base for all the further initiative taken in this regard by the state. First major initiative that was taken for the elderly was in 1992 with the implementation of “Integrated Programme for Older Persons” (IPOP) scheme.²³ The objective of the scheme was to improve quality of older persons by providing basic amenities such as food, shelter, medical care. The idea is to aid by capacity building of Governmental/ Non Governmental/ Panchayati Institutions/ Local bodies etc to provide such services to the intended beneficiaries. The scheme helps run myriad of projects such as Running of Multi Service Centres for Older Persons, Maintenance of Old Age Homes, and Mobile Medicare Unit Multi Facility Care Centre for Older Widows, Physiotherapy Clinics, Regional Resource and Training Centres, Helplines and Counselling for Older Persons, Programme for Sensitization Schools/College Student etc.

In 1999 the Government renewed its commitment towards protection of the elderly in the form of National Policy on Older Persons (NPOP).²⁴ The policy includes many micro schemes that

²²Report on Status of Elderly in Selected States of India, 2011, UNFPA (2012)

https://india.unfpa.org/sites/default/files/pub-pdf/AgeingReport_2012_F.pdf (last visited Dec. 12, 2022).

²³Ministry of Social Justice & Empowerment, *An Umbrella Scheme for Senior Citizens*, GOI (2020) <https://grants-msje.gov.in/display-napsrc> (last visited Dec. 12, 2022).

²⁴Ministry of Social Justice & Empowerment, *National Policy for Older Persons Year 1999*, GOI, <https://socialjustice.gov.in/writereaddata/UploadFile/National%20Policy%20for%20Older%20Persons%20Year%201999.pdf> (last visited Dec. 12, 2022).



shall focus on the basic needs of the elderly. The focus was financial assistance by the state through making changes in the Taxation policies, pension related, health care protection, awareness generation towards inter-generational bonding etc. In pursuance of this policy the Government established the National Council for Older Persons (NCOP) in the same year. This council was constituted under the aegis of the Ministry of Social Justice and Empowerment to manage the different initiatives taken under the policy. This body also aides and advices the government on any incidental matters.

This Ministry also seeks inter-departmental help to ease the lives of the elderly. For example the Ministry of Rural Development implements the Indira Gandhi National Old Age Pension Scheme (IGNOAPS).²⁵ This pension scheme seeks to provide financial assistance to the household below poverty line by paying a sum of Rs 200 per month to persons above 60 years and Rs 500 per month to persons above 80 years. Along with these policies and programmes the government in an effort to boost the morale has also introduced a scheme of National awards for senior citizens and institutions who shall provide distinguished services for elderly specially the most vulnerable.

In 2010, Dr.Mohini Giri committee was appointed for an upgradation of the policy over the one 1999 due to changes in the demographic patterns, technological, socio-economic realities, social values etc.²⁶ The policy shows a need for a more targeted approach specially towards the elderly women, elderly above 80 years, the rural poor and the unorganised sector. The highlights of the new policy were that it lay emphasis on the use of technology in providing improved care and protection for the elderly. The report observed that familial care was the best way of securing the rights of elderly and as such talked about the importance of inter-generational bonding and proving assistance to families to take care of their adults. The report also stresses upon the need to have financial independence of senior citizens and spoke about productive ageing. Some other suggestions included efficient implementation f the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and to deal with cases of elder abuse effectively and stringently; the need of setting up of a National Commission for senior citizens for effective redressal for their grievances.

²⁵NSAP, <https://nsap.nic.in/> (last visited Dec. 12, 2022).

²⁶*National Policy for Senior Citizens*, PIB (Nov. 29, 2011, 05:25 PM)

<https://pib.gov.in/newsite/PrintRelease.aspx?relid=77868> (last visited Dec. 12, 2022).



THE MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS ACT, 2007

Besides the above mentioned various policy initiatives and committee reports, legislature had put in place various legal provisions for the protection of the elderly. The constitution places the issues of the elderly in list III of Schedule VII along with the issues of welfare of labour, including their conditions of work, provident funds, liability for workmen's compensation, old age pension.²⁷ Section 125 of the Criminal Procedure Code before the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 was the most enabling provision in providing social security to the elderly. Besides these some or other kind of protection was given in acts such as The Hindu adoption and maintenance act, 1956, Protection of domestic violence Act - 2005, The Widows Protection and Maintenance Act-2006. But it's pertinent to discuss the Maintenance and Welfare of Parents and Senior Citizen Act, 2007.

The act was passed with the objective of providing maintenance to ageing parents and senior citizens. The implementation mechanism is through a tribunal meant to give speedy and effective justice to elderly persons. The maintenance is in the form of "provision for food, clothing, residence and medical attendance and treatment". The person not fulfilling the maintenance order can also be punished with imprisonment up to 1 month but for a person responsible for protection and care of a senior citizen intentionally abandons the elderly person could be held liable to pay a fine of Rs 5000 or imprisoned up to 3 months.

A remarkable provision provides for revocation of transfer of property by the senior citizen done after the enactment of this act. This protective mechanism was provided in response of the harassment faced by ageing parents who were left abandoned after the transfer of property. Apart for fixing responsibility on children/ grandchildren/ or other relatives, the act also places onus on state funded hospitals for giving amenities and concessions to the elderly. The state is to also maintain Old Age homes for the ones who have nowhere to go. It is important to note that a claim can only be made under this act or section 125 of the Criminal Procedure Code and not both.

²⁷INDIA CONST.



INTERNATIONAL EFFORTS

The 1982 World Assembly on Ageing in Vienna is an important marker for the improvement of elder rights.²⁸ There, the International Plan of Action on Ageing was adopted and this served as the basis for the development of policies and programmes on ageing. The second World Assembly on Ageing was held in 2002 in Madrid. In 1991, the United Nations Principles for Older Persons were adopted by the General Assembly through Resolution 46-91.²⁹ Under the Principles, there are five factors which States are encouraged to champion as State-wide programs. These are:

1. Independence – All elderly folk should have access to food, water, shelter, clothing, health care, work and other income generating opportunities, education, training, and a life in a safe environment.
2. Participation – Efforts should be made to help elderly people remain incorporated in their social communities. They should have political participation in the formation legislation and law affecting their quality of lives.
3. Care – Access to social and legal services, and healthcare for the maintenance of physical, mental, and emotional health is paramount. Elders should be given complete respect with regards to dignity, beliefs, needs, and privacy.
4. Self-Fulfilment – Elder folk should be encouraged to realize their potential through educational, cultural, spiritual, and recreational resources.
5. Dignity – Elders should be treated with respect and not subjected to exploitation, physical or mental.

CONCLUSION

This specialised focus on certain groups or certain kinds of rights is symptomatic of how human rights are being debated in most forums. Even though Human rights are being defined as the fundamental rights of all yet there has been a tendency to fight for these rights on a micro

²⁸First World Assembly on Ageing, 26 July – 6 August 1982, Vienna, UN, <https://www.un.org/en/conferences/ageing/vienna1982#:~:text=The%20World%20Assembly%20on%20Ageing,to%20contribute%20to%20national%20development> (last visited Dec. 12, 2022).

²⁹United Nations Principles for Older Persons, UN, <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-principles-older-persons#:~:text=1.,to%20other%20income%2Dgenerating%20opportunities> (last visited Dec. 12, 2022).



level. Elderly rights are no different. The issues of the elderly have been discussed at the world stage in one or the other forums. Generally the push is from the developed nations to the developing nations which is again symptomatic of how issues are discussed on the international level. Nationally India has formulated one law, a few reports by the Parliaments in house committees and a few provisions here and there. Elderly do not form a major political bloc in the country, hence do not appear in populist measures unless an incident focussing on their rights occurs, unlike in the more developed west where they hold considerable power. West has also been the originator of the push for their rights.

The projected increase in the elderly population over the next few decades is a developmental concern and requires prescient planning. India must be made friends for senior citizens to live and this can be done through socio-economic policies. India currently has the largest number of people aged between 18-35 in addition to having the second largest population on the planet. This means that the youth of today will be the elders of tomorrow but will just as the youth of today are able to enjoy a higher standard of living that youth of yesterday, will the elders of tomorrow be seemingly weak social pariahs that the elders of today are viewed as.