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Criminal Victimization of Elderly Persons and Senior Citizens in India

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ABSTRACT

The commission of crime is multifarious process the culmination of a set of connected events and series of act. In India there is rapid rise of crime against the elderly persons and senior citizens. It has been observed that elderly persons and senior citizens are most common target of crime such as abuse, robbery, murder, extortion, cheating and sexual offences by their relatives, family members, neighbors as per the data of Help age India 2019 the main abusers were Son (52%) and Daughter-in-law (34%). According to NCRB data of 2019 the total crime registered against the Senior citizens 27,696 and the total rate is 26% throughout India. Meanwhile, we have legislation to curb the crime against the elderly but we need legislation and proper initiatives to restraint such crime against them. As the elderly persons are prone towards crime because of the age as well as their social status. The judiciary and legislature needs to play a proactive role regarding such crime. There are provision against criminal victimization of elderly but there shall be proper application and also community based approach such as awareness, policing amongst the people living within society.

Keywords: *Crime Against, Criminal Victimization, Elderly Persons, Social Security, Senior Citizens.*

I. INTRODUCTION

Elderly or senior citizens are the group of people who belong age of 60 and above. In the primitive society and even today some part of people reflect them as the figure of prodigious significance for their social and cultural role so that the highest places on the social and political scale were earmarked for them. The elder was the wisest person to whom the people's decisions and spiritual power were originated. The elderly people were knowledgeable and were able to provide good advice to the younger ones based on their life understandings. Growing elderly is accomplishing a great goal at that time, because the overwhelming mainstream of the population becoming the experts of society. We all have in our family, friends, and neighbours the elderly persons or senior citizens. Individuals who are not yet elderly or seniors would like

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to be assured that we will become one. Over the years, with progression in science and technology, there has been an extensive increase in life expectancy. As mentioned the demographic profile depicts that in the years 2000-2050, the overall population in India will grow by 55% whereas population of people in their 60 years and above will increase by 326% and those in the age group of 80 by 700%, the fastest growing group 1/8th of the world's elderly population lives in India². Moreover they have become the most vulnerable cluster in the society at these moment.

India's population currently is going through the period of transition. Older people in society face a range of complications because there is no adequate and secure income for their health care and social safety. This range of crimes are recognized as elder maltreatment, elder abuse/neglect generally refers to any knowing, intentional, or negligent act by a family member, caregiver, or other person in a trusting relationship that causes harm or creates a serious risk of harm to an older person. In the Indian society the parents spend most of their savings for the upbringing of their children, due to which they have to depend on them in their old age.³ This dependence today is one of the major reasons for the elderly abuse as their children consider them as a burden and in many cases they attempt to extract possessions. It has been observed that elderly people go through a very hard-hitting circumstances if they don't have any dependency on their own.

In the present scenario Indian courts i.e. steered by the Supreme Court, have reached unique heights in the effective recognition of the peoples' rights and recognized the sensitivity of the issues prevailing in the society and helping in active eradication. This article's purpose is to analyse the path which the Indian judiciary has taken on the rights of elderly people and senior citizens and to safeguard them from being exploited. It seeks to answer the question whether and to what extent Indian courts have employed the Indian laws and the constitution of India to combat the discrimination and also focused the legislature to form new legislation in accordance of the ever-changing society.

The word “**abuse**” is very generic and has various meaning. Elder abuse may include abuse that is physical, emotional/psychological (including threats), or sexual; neglect (including abandonment); and financial exploitation. This is a general definition; state definitions of elder abuse vary. Some definitions may also include fraud, scams, or financial crimes targeted at older people and there are various kinds of offences against elderly and senior citizens are:

² National Policy on Senior Citizens 2011

³ Government of India Ministry of Statistics and Programme Implementation, 2016, Elderly in India

- Physical abuse
- Physiological abuse
- Financial abuse
- Sexual abuse
- Neglect
- Fraud or scams or financial crimes

Crime against Senior Citizen (60 Years & Above) (State/UT-wise) - 2017-2019

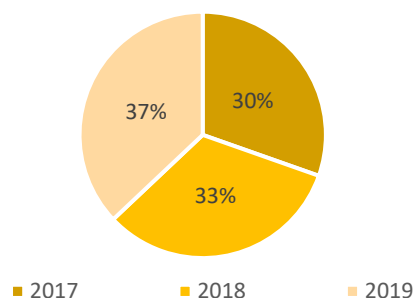


Fig No.1 Data collected from NCRB CRIME IN INDIA VOLUME II

The data which collected through National Crime Records Bureau Ministry of Home Affairs from Crime in India Volume II which states about the crimes and cases registered are Murder 1156 cases, Grievous Hurt 1010 cases, Rape 62 cases, theft 4973, robbery 915, Dacoity 42 cases and fraud & cheating 332 cases against the elderly and senior citizens. As per the Help Age India 2018-2019 report approximately one-fourth (25%) elder's experienced abuse. The main abusers were Son (52%) and Daughter-in-law (34%) and the average age of abuser was 42 years. The most common form of abuse experienced was Disrespect (56%), Verbal Abuse (49%) and Neglect (33%). Economic Exploitation was 22% and Beating & Slapping was a disturbing 12% they are subjected to such abuse since the past 5 years. It was also mentioned 65% elderly stated that extreme attention given to phones/ computers was disrespectful and out which 73% elders felt that their adult children were too busy on the phone even when at home with them⁴. The main reasons of old age exploitation are monetary dependency on family and relatives. Secondly, growing intellect of independence in the young generation. Since nowadays the young population doesn't like any form of interference in their decision making process and their lifestyle, they consider elders as a burden and restriction on their freedom. Another reason is selfish desires to get more property and money of the elders⁵. Finally, due to

⁴ Help Age India Annual Report 2018-2019

⁵ Sharma, Monica, 2016, In Chandigarh, Elderly Use 2007 Law to Cancel Property Transfer to Children. Hindustan Times, 11 July 2016. Retrieved October 2019

work pressure and burden individual life they try to exploit the adult as they are most vulnerable section due to their age and their bodily weakness it makes them more prone towards mistreatment.

II. EXISTING LAWS TO RESTRAINT THE ELDERLY AND SENIOR CITIZEN CRIMINAL VICTIMIZATION

(A) Constitutional Law

Right to work, to education and to public assistance in certain cases: The State shall, within the limits of 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 undeserved want⁶.

Promotion of educational and economic interests of and other weaker sections: The State shall promote with special care the educational and economic interests of the weaker sections of the people and shall protect them from social injustice and all forms of exploitation⁷. However, these provision are included in the Chapter IV i.e., Directive Principles of the Indian Constitution are not enforceable by any court of law. But Directive Principles impose positive obligations on the state, i.e. what it should do. The Directive Principles have been declared to be fundamental in the governance of the country and the state has been placed under an obligation to apply them in making laws. The courts however cannot enforce a Directive Principle as it does not create any justifiable right in favour of any individual. It is most unfortunate that state has not made even a single Act which is directly related to the elderly persons.

(B) Legislative Provisions

The moral duty to maintain parents is recognized by all people. However, so far as law is concerned, the position and extent of such liability varies from community to community. It also focus on the laws which causes social disturbance and effects society at a large through criminal offences.

1. Protection under Hindu Laws

(Chapter III – Hindu Adoption and Maintenance Act, 1956) A Hindu is bound during his or her life-time, to maintain his or her legitimate/illegitimate children and his or her aged or infirm parents. Amongst the Hindus, the obligation of sons to maintain their aged parents, who were

⁶ Article 41 of the Indian Constitution

⁷ Article 46 of the Indian Constitution

not able to maintain themselves out of their own earning and property, was recognized even in early texts. And this obligation was not dependent upon, or in any way qualified, by a reference to the possession of family property. It was a personal legal obligation enforceable by the sovereign or the state. The statutory provision for maintenance of parents under Hindu personal law is Article 46 of the Constitution of India 24 Section 20(1) of Hindu Adoption and Maintenance Act, 1956 25 Section 20(3) of Hindu Adoption and Maintenance Act, 1956 contained in Sec 20 of the Hindu Adoption and Maintenance Act, 1956. This Act is the first personal law statute in India, which imposes an obligation on the children to maintain their parents. As is evident from the wording of the section, the obligation to maintain parents is not confined to sons only, and daughters also have an equal duty towards parents. It is important to note that only those parents who are financially unable to maintain themselves from any source, are entitled to seek maintenance under this Act.

2. Protection under Muslim Law

Children have a duty to maintain their aged parents even under the Muslim law. According to Mulla: (a) Children in easy circumstances are bound to maintain their poor parents, although the latter may be able to earn something for themselves. (b) A son though in strained circumstances is bound to maintain his mother, if the mother is poor, though she may not be infirm. (c) A son, who though poor, is earning something, is bound to support his father who earns nothing. Both sons and daughters have a duty to maintain their parents under the Muslim law.

3. Christian and Parsi Law

The Christians and Parsi have no personal laws providing for maintenance for the parents. Parents who wish to seek maintenance have to apply under provisions of the Criminal Procedure Code.

4. Under The Code of Criminal Procedure

The provision, however, was introduced for the first time in Sec. 125 of the Code of Criminal Procedure in 1973. It is also essential that the parent establishes that the other party has sufficient means and has neglected or refused to maintain his, i.e., the parent, who is unable to maintain himself. It is important to note that Cr.P.C 1973, is a secular law and governs persons belonging to all religions and communities. Daughters, including married daughters, also have a duty to maintain their parents.

5. Penal Laws

As per Indian Penal Code provisions the punishment will be provided according to the offences that are committed against the elderly i.e., murder, cheating, theft, robbery, abuse, grievous hurt, sexual offences.

a) Government of India Protection

The Government of India, Ministry of Social Justice & Empowerment is the nodal Ministry responsible for welfare of the Senior Citizens. It has announced the National Policy on Older Persons covering all concerns relating to the welfare of older persons. The National Policy on Older Persons recognizes a person aged 60 years and above as a senior citizen. This policy included the following major steps:

- (i) Setting up of a pension fund for ensuring security for those persons who have been serving in the unorganized sector,
Construction of old age homes and day care centres for every 3-4 districts,
- (ii) Establishment of resource centres and reemployment bureaus for people above 60 years,
- (iii) Concessional rail/air fares for travel within and between cities, i.e., 30% discount in train and 50% in Indian Airlines.
- (iv) Enacting legislation for ensuring compulsory geriatric care in all the public hospitals.
- (v) Attempts to sensitise school children to live and work with the Old age. Setting up of a round the clock help line and discouraging social ostracism of the older persons are being taken up.
- (vi) The government policy encourages a prompt settlement of pension, provident fund (PF), gratuity, etc. in order to hardships. It policies elder sensitive.

Apart from the government policies the Government of India has also provided special concessions and benefit for its Senior citizens and elderly persons and they are as follows:

- i. The Chief Justice of India has directed Chief Justices of all High Courts to accord priority to cases involving older persons and ensure their expeditious disposal.⁸
- ii. Second appeals filed by senior citizens and differently abled persons under the Right to Information Act (RTI) are taken on a high priority basis, according to a directive of the Central Information Commission.

⁸ [vide letter of Government of India, Ministry of Social Justice & Empowerment (SD Section), New Delhi, F. No. 20-76/99-SD dated 03.11.1999]

- iii. There is provision for separate queues for senior citizens at hospitals and health care centres.
- iv. The Indian Income Tax Department for the current slabs of Income Tax including rebate admissible to senior citizens.
- v. It has been observed that government also provides a higher rate of interest to senior citizens on certain Savings schemes in Post Offices (Senior Citizens Savings Scheme) and Public sector Banks.

In case of *Pramod Ranjankar & Others Vs Arunashankar & Others (2018)* the Humble Supreme Court recognised the difficulty of senior citizens in India and stated that the same should be recognized and properly executed.

Chhattisgarh HC in a recent judgment held that the Senior Citizens can seek 'Interim' ejection under Maintenance and Welfare of Parents and Senior Citizens Act⁹. To provide dignity to old Karnataka HC held that the Senior Citizens cannot be used as commodity or chattel by their children. The provisions of Maintenance and Welfare of Parents and Senior Citizens Act are applicable to foreign citizens living in India.

In *D.S. Mane vs. Lilabai Shivaji Mane & Others*, it was held by Bombay HC that no child can stay forcefully with parents in their house, particularly senior citizens.

III. RISK FACTOR AND PREVAILING PROBLEMS

It was witnessed that most of research conducted on risk factors has focussed upon identifying individual pathologies, either on the part of the victim or of the perpetrator, or pathologies of the family environment. Studies have shown the important influence of dependency of the abused upon the abuser. In some cases, this is due to some form of cognitive or physical impairment of the abused. Carer stress, the most common early explanation for the existence of elder abuse, appears to be a less influential factor than first thought. Rather, where carer stress is a contributing factor, it is usually associated with dependency or other mediating influences.

While time and again the legislature has transported numerous provisions for the welfare of senior citizens. Even judiciary has also played very active role to comfort their injuries. Still one of the important factor to solve any problem is effective implementation of the rules, regulations and policies. Like, although the legislature has passed Maintenance and Welfare of Parents and Senior Citizens Act, 2007, still many people are unaware about such provisions.

⁹ N.D.Vanamala Vs State of Karnataka & Others (2017)

So there is a need to organize community awareness programmes for the same. Another pressing problem is that most of the times many senior citizens do not report any abuse, due to fear of their family's reputation, as well as fear of their financial dependency on their children or relatives. The crime such as robbery and cheating it is due to their age as they are much easily convinced by the offenders.

IV. CONCLUSION

In spite of aforesaid distinct provisions for the elderly persons and senior citizen persons the position of is not happier and it is because of our social approach toward elderly people in the present scenario. It is very known fact that though services are provided but there is no mechanism to check whether they have been availing the same or unable to avail the facilities. The present approach towards old age person is required to be changed. In reality certain strategies and approaches at different level of policy making, planning and programming shall have to be adopted or altered in order to harness this vast human resource for promoting their involvement and participation in the main stream of socioeconomic development process at a larger scale. If we compare India's present status then it is in Worrysome position but countries like Philippines has a state policy that ensures social justice and dignity to the senior citizens in the country. Here are few things the policy enlisted

20% discount and exemption on VAT on purchase of medicines, professional fees of attending physicians, dental services, utilization of services in hotels, admission rates in places for entertainment and for funeral and burial services. At least 50% discount on electricity, water and telephone services for Govt. and privately run senior citizens. Needy senior citizens shall be entitled to a monthly stipend to help them sustain their everyday and medical needs. The amount is revised every 2 years by the Government whereas the Policies for the welfare of senior citizens in Japan are

About 50% of the elderly in Japan have expressed a strong desire to work beyond the stipulated age for retirement and are ably supported by their Government. A senior citizen and a caregiver is paid an amount depending on the medical condition of the senior citizen so that his day-to-day needs and medical facilities are taken care of. There are community homes for the elderly and the senior citizens can enjoy a meal and also avail of basic medical care inside the facility.

V. RECOMMENDATIONS

- Data base of elderly people who lives alone shall be maintained by the Local Self Government.

- Visit by police to the houses of elderly living alone must be done systematically and ordered as a mandate duty to them.
- Regular interactions with elderly and overviews shall be done by LSG with the help of SHG workers.
- Local companies can adopt elders in a village or the inmates of an old age home using their CSR fund.
- Introduce day care for elderly in every Districts
- Engage elderly productively in Children's day care for effective interaction and sociability
- Introduce special queue counters in railway stations, hospitals and Government institutions
- Reservation of seats in buses should be implemented mandatorily and fine should awarded by the ticket checker in case of non-compliance
- The Constitutional duty of the State to make an Act for the welfare and extra protection of the senior citizen including palliative care.
- Strict punishment should be imposed who commits any kind of criminal offence on the elderly or senior citizens by the court.

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