

Growing Old with Dignity in India: A Challenging Facet of Human Rights

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INTRODUCTION

Since the last century, human civilization has witnessed a silent revolution, unseen and unheard by many. Although its impact is subtle, it is of utmost significant to everyone. The biggest achievement of the last century was greater longevity that has resulted in an increasing aging population worldwide. A man ages continuously through an irreversible biological process, socially as perceived by the members of the society, economically by retiring from the workforce and chronologically with the passage of time. The survival of an increasing number of people beyond their traditional adult role causes population aging. The incredible increase in life expectancy may be termed one of the greatest triumphs of human civilization. But it has posed one of the toughest challenges to be met by modern society. The term "old" is always related to physical incapacity, biological deterioration and disabilities and psychological failures.

With fast changing socio-economic scenario, industrialization, rapid urbanization, higher aspirations among the youth and the increasing participation of women in the workforce, roots of traditional joint family system has been eroding very fast. In urban areas of the country traditional joint family system has become thing of past. In such changing situations, majority of older persons, who have passed most part of their life with their joint/extended families are on the verge of isolation or marginalization in old age. At this age, when they need family support most, they have to live on their own. Even basic needs & rights of many

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of them are not addressed. Social marginalization, loneliness, isolation and even negligence in old age lead violation of Human Rights of Older Persons.

Ironically, in India older generations are not aware of their human rights due to high prevalence of illiteracy and lack of awareness. On the other hand, due to comparatively high physical as well as psychological vulnerability their cries for help remain within four-walls, that's why only a few cases of violation of human rights of elderly come out.

Growing Population of Old Age Person:

The population of the elderly persons has been increasing over the years. As per the UNESCO estimates, the number of the aged (60+) is 590 million in 2005. The figure will double by 2025. By 2025, the world will have more elderly than young people and cross two billion mark by 2050. In India also, the population of elder persons has increased from nearly 2 crores in 1951 to 7.2 crores in 2001. In other words about 8% of the total population is above 60 years. The figure will cross 18 % marks by 2025.

Problems of the Old Age Person:

Problems of the aged as follows :

- (i) Economic problems, include such problems as loss of employment, income deficiency and economic insecurity.
- (ii) Physical and physiological problems include health and medical problems, nutritional deficiency, and the problem of adequate housing etc.
- (iii) Psycho-social problem which cover problems related with their psychological and social maladjustment as well as the problem of elder abuse etc.

Abuse of Old age Person:

Older abuse is also very often the result of long term family conflict between parent and child or between spouses. Increasingly, the relationship between domestic violence and older abuse is understood to be important. In few studies which examine this, domestic violence accounts for a significant percentage of cases identified as elder abuse. In many of these cases, the abuse is the continuance of long-term domestic violence into oldage. With the onset of disability and the intervention of community services, behaviour which has long been carefully concealed is exposed and labelled as older abuse. However, once again, the relationship is not straightforward. In some cases, the situation is reversed the long-term perpetrator becomes dependent upon their victim and the domestic violence victim now becomes the abuser under changed power relations. As well as domestic violence, a history of other forms of family violence such as child abuse plays an important role. An abusive care may also be the victim of domestic violence or the adult survivor of child abuse who is now in a position of power over their past perpetrator. A full understanding of older abuse must also move beyond individual risk factors, and concentrate upon the problem as a function of broader social structural issues such as poverty, isolation, ethnicity and gender.

Risk Factors for Older Abuse:

Most of the research on risk factors has concentrated 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. Predisposing individual

factors in the abuser, such as dementia, substance abuse or psychiatric illness, have also been identified (Kurrle et al.1992; Sadler 1994; Sadler &Weeks 1996).

Older abuse is also very often the result of long-term family conflict between parent and child or between spouses. Most of the early work on abuse of the elderly was limited to domestic settings and carried out in developed countries. In seeking explanations for elder abuse, researchers drew from the literature in the fields of psychology, sociology, gerontology and the study of family violence. To accommodate the complexity of older abuse and many factors associated with it, many other researchers have turned to the ecological model, which was first applied to the study of child abuse and neglect¹ and has been applied more recently to older abuse^{2 3}. The ecological model can take into account the interactions that take place across a number of systems⁴

The Consequences of Older Abuse:

For old age people, the consequences of abuse can be especially serious. Old age people are physically weaker and more vulnerable than younger adults, their bones are more brittle and convalescence takes longer. Even a relatively minor injury can cause serious and permanent damage. Many Old age people survive on limited incomes, so that the loss of even a small sum of money can have a significant impact. They may be isolated, lonely or troubled by illness; in that case they are more vulnerable as targets for fraudulent schemes.

INTERNATIONAL EFFORTS

¹Garbarino J, Crouter A. Defining the Community Context for Parent–Child Relations: The Correlates of Child Maltreatment. *Child Development*, 1978, 49:604–616.

²Schiamberg LB, Gans D. An Ecological Framework for Contextual Risk Factors in Elder Abuse by Adult Children. *Journal of Elder Abuse and Neglect*, 1999, 11:79–103.

³ Carp RM. *Elder Abuse in the Family: An Interdisciplinary Model for Research*. New York, NY, Springer, 2000.

⁴ The model consists of a nested hierarchy of four levels of the environment: individual, relationship, community and society.

Human Rights are universal in nature and includes, civil, political, economic, social and cultural rights which belongs to all human being irrespective of any restrictions, including Old age people. The Human Rights of the aged are explicitly set out in the Universal Declaration of Human Rights, the International Covenants, the Convention on the Elimination of All Forms of Discrimination against Women, and other widely adhered to international human rights treaties and Declarations. From different international and national instruments term human rights of older person includes the Human Rights of the old aged persons which includes the following indivisible, interdependent and interrelated human rights:

- to an adequate standard of living, including adequate food, shelter and clothing.
- to adequate social security, assistance, and protection.
- to freedom from discrimination based on age or any other status, in all aspects of life including employment and access to housing, health care, and social services.
- to freedom from discrimination based on age or any other status, in all aspects of life including employment and access to housing, health care, and social services.
- to the highest possible standard of health.
- to be treated with dignity.
- to protection from neglect and all types of physical or mental abuse.
- To full and active participation in all aspects of political, economic, social and cultural life of society.
- to full and effective participate in decision - making concerning their well-being.

Development:

The question of ageing was first debated at the United Nations in 1948 at the initiative of Argentina. The issue was again raised by Malta in 1969. In 1971 the General Assembly asked the Secretary-General to prepare a comprehensive report on the elderly and to suggest guideline for the national and international action. In 1978, Assembly decided to hold a World Conference on the Ageing. Accordingly, the World Assembly on Ageing was held in Vienna from July 26 to August 6, 1982 wherein an International Plan of Action on Ageing was adopted. The overall goal of the Plan was to strengthen the ability of individual countries to deal effectively with the ageing in their population, keeping in mind the special concerns and needs of the elderly. The Plan attempted to promote understanding of the social, economic and cultural implications of ageing and of related humanitarian and developed issues. The International Plan of Action on Ageing was adopted by the General Assembly in 1982 and the Assembly in subsequent years called on governments to continue to implement its principles and recommendations. The Assembly urged the Secretary-General to continue his efforts to ensure that follow-up action to the Plan is carried out effectively.

- i. In 1992, the U.N. General Assembly adopted the proclamation to observe the year 1999 as the International Year of the Older Persons.
- ii. The U.N. General Assembly has declared —1st October as the International Day for the elderly, later rechristened as the International Day of the Older Persons.
- iii. The U.N. General Assembly on December 16, 1991 adopted 18 principles which are organized into 5 clusters, namely-independence, participation, care, self-fulfilment, and dignity of the older persons.

Principles Providing Action for Old Age Person:

- i. Older Persons should have the opportunity to work and determine when to leave the work force.
- ii. Older Persons should remain integrated in society and participate actively in the formulation of policies affecting their well-being.
- iii. Older Persons should have access to health care to help them maintain the optimum level of physical, mental and emotional well-being.
- iv. Older Persons should be able to pursue opportunities for full development of their potential and have access to educational, cultural, spiritual and recreational resources of society.
- v. Older Persons should be able to live in dignity and security and should be free from exploitation and mental and physical abuse.

Governmental Obligation under International Instrument:

“Everyone is entitled to all rights and freedoms without distinction of any kind. Everyone, as a member of society, has the right to social security and is entitled to realization of the economic, social and cultural rights indispensable for his dignity. Everyone has the right a standard of living adequate for health and well-being, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of sickness, disability, widowhood, old age.”⁵

“States Parties undertake to guarantee that rights will be exercised without discrimination of any kind. States Parties recognize the right to work, equal opportunity for everyone to be promoted subject to no considerations other than those of seniority and competence. States Parties recognize the right of everyone to social security, including social insurance, the right of everyone to an adequate standard of living, including adequate food, clothing and housing;

⁵Universal Declaration of Human Rights, Articles 2, 22, and 25

the fundamental right of everyone to be free from hunger; the right of everyone to the highest attainable standard of physical and mental health.”⁶

“Each State Party undertakes to respect and to ensure to all individual rights without distinction of any kind. No one shall be subjected to torture or to cruel, inhuman or degrading treatment. In particular, no one shall be subjected without his free consent to medical experimentation. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human being. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, and home.”⁷

“States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular: the right to work; the right to the same employment opportunities; the right to promotion, job security and all benefits and conditions of service; the right to social security, particularly in cases of retirement, sickness, invalidity and old age. States Parties shall eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services. States Parties shall eliminate discrimination against women in rural areas in order to ensure in particular the right to benefit directly from social security programmes; to enjoy adequate living conditions.”⁸

Commitments of International Organisation for the Protection of Old age Person's Rights:

“The General Assembly urges the support of national initiatives on ageing so that: Appropriate national policies and programmes for the old age are considered as part of

⁶ International Covenant on Economic, Social and Cultural Rights, Articles 2, 7, 9, 11, and 12

⁷ International Covenant on Civil and Political Rights, Articles 2, 7, 10, and 17

⁸ Convention on the Elimination of All Forms of Discrimination Against Women, Articles 11, 12, and 14

overall development strategies; Governmental and non-governmental organizations collaborate in the development of primary health care, health promotion and self-help programmes for the Oldage; Older persons are viewed as contributors to their societies and not as a burden; Policies and programmes are developed which respond to the special characteristics, needs and abilities of older women; Families are supported in providing care.”⁹

“Objectives of the programme are to develop systems of health care as well as systems of economic and social security in old age.paying special attention to the needs of women; to develop a social support system with a view to enhancing the ability of families to take care of elderly people within the family. Governments should seek to enhance the self- reliance of elderly people to facilitate their continued participation in society. In consultation with elderly people, Governments should ensure that the necessary conditions are developed to enable elderly people to lead self-determined, healthy and productive lives and to make full use of the skills and abilities they have acquired in their lives for the benefit of society. Governments, in collaboration with non-governmental organizations and the private sector, should strengthen formal and informal support systems and safety nets for elderly people and eliminate all forms of violence and discrimination against elderly people in all countries, paying special attention to the needs of elderly women.”¹⁰

“We heads of State and Government will create action to improve the possibility of older persons achieving a better life, develop and implement policies to ensure that all people have adequate economic and social protection during widowhood, disability and old age.”¹¹“The eradication of poverty requires universal access to economic opportunities that will promote

⁹UN General Assembly Proclamation on Ageing, para. 2

¹⁰ Cairo Programme of Action, paras. 6.17, 6.19, and 6.20

¹¹ Copenhagen Declaration, para. 26 and Commitment 2

sustainable livelihood and basic social services, as well as special efforts to facilitate access to opportunities and services for the disadvantaged. There is an urgent need for policies ensuring that all people have adequate economic and social protection during disability and old age, particular efforts should be made to protect older persons, including those with disabilities, by improving the situation of older persons, in particular in cases where they lack adequate family support. Ensuring that older persons are able to meet their basic human needs meet their basic human needs through access to social services and social security, that those in need are assisted, and that older persons are protected from abuse and violence and are treated as a resource and not a burden, strengthening measures to ensure that retired workers do not fall into poverty.”¹²

“With the increase in life expectancy and the growing number of older women, their health concerns require particular attention. Diseases of ageing and the interrelationships of ageing and disability among women need particular attention. Actions to be taken: Develop information, programmes and services to assist women to understand and adapt to changes associated with ageing and to address and treat the health needs of older women. Discrimination in hiring and remuneration, promotion, continue to restrict employment, economic, professional and other opportunities for women. Actions to be taken: Adopt and implement laws against discrimination based on sex in the labour market, especially considering older women workers, hiring and promotion, the extension of employment benefits and social security, and working conditions.”¹³

“Older persons are entitled to lead fulfilling and productive lives and should have opportunities for full participation in their communities and society, and in all decision-

¹² Copenhagen Programme of Action, paras. 24, 25, and 40

¹³ Beijing Platform for Action, paras. 101, 106, and 165

making regarding their well-being, especially their shelter needs. Their many contributions to the political, social and economic processes of human settlements should be recognized and valued. Special attention should be given to meeting their evolving housing and mobility needs in order to enable them to continue to lead rewarding lives in their communities. We commit ourselves to: Promoting shelter and supporting basic services and facilities for education and health for older persons.”¹⁴

INDIAN EFFORTS

Constitutional Protection:

“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 want.”¹⁵

“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 exploitation.”¹⁶

However, these provision are included in the Chapter IV i.e., Directive Principles of the Indian Constitution. The Directive Principles, as stated in Article 37, 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

¹⁴Habitat Agenda, paras. 17 and 40

¹⁵ Article 41 of the Constitution of India

¹⁶ Article 46 of the Constitution of India

any justiciable right in favour of any individual.

Legislative Protection:

▪ Protection under Personal Laws:

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.

Protection under Hindu Laws:

“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.”¹⁷“The obligation of a person to maintain his or her aged infirm parent or a daughter who is unmarried extends in so far as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or others property.”¹⁸

Thus amongst the Hindus, the obligation of sons to maintain their aged parents, who were 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 Section 20 of 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.

¹⁷ Section 20(1) of Hindu Adoption and Maintenance Act, 1956

¹⁸ Section 20(3) of Hindu Adoption and Maintenance Act, 1956

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.

Protection under Christian and Parsi Law:

The Christians and Parsis 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.

▪ **Protection under Criminal Laws:**

Protection under the Code of Criminal Procedure, 1973

“If any person having sufficient means neglects or refuses to maintain his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct.”¹⁹

“If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in

¹⁹ Section 125(1)(d) of Criminal Procedure Code 1973

the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made.”²⁰

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.

▪ **Government Protections:**

In order to address the problems of the older persons, the Ministry of Social Justice and Empowerment(MoSJE) has launched in the year 1999, a National Policy on Older Persons (NPOP). Its main features are as follows:

1. The old age pension scheme to eventually cover all eligible older persons
2. Pension scheme to be broadened to include both public and private sectors
3. Tax exemption for medical and nursing care, transportation and support services for the old or the son or daughter with whom they are staying.
4. The public distribution system to reach out to cover all 60+ living below the poverty line
5. Subsidy for the health care needs of the elderly poor and graded system of user charges for others
6. Providing public health services and health insurance to ensure preventive, curative, restorative and rehabilitative needs of the older persons
7. Tax reliefs, grants, land grant at concessional rates to NGOs and private hospitals to provide economical and specialized care for the older person.
8. Setting up geriatrics wards and running of training and orientation programmes for geriatric care.

²⁰ Section 125(3) of Criminal Procedure Code 1973

9. Expansion of mental health services, counselling facilities for the elderly having mental health problems
10. Earmarking 10% of the houses in private & Govt. housing schemes and easy access to loans.
11. Layout of housing colonies to be sensitive to the needs of the older persons
12. Quick disposal of cases of property-transfer, mutation, property-tax etc.
13. Identify the more vulnerable among the older persons such as poor, infirm and those without family support. Institutional care to be only the last resort
14. Assistance to voluntary organizations by way of grants in aid for construction/maintenance of Old-Age Home, Day-care Centres, Multi-service Citizens Centre, outreach services, supply of disability related aids and appliances etc.
15. Setting up welfare fund for older persons with support from Corporate Sector, trust, charities, individual donors and others.
16. Providing identity cards, fare concession, preference in reservation of seats, earmarking of seats in local public transport, modifications in designs of public transport, priority in allotting gas and telephone connections, etc.
17. Supporting NGOs and ensuring transparency, accountability, simplification of procedures and timely release of grants to NGOs working for the older persons
18. Encourage Research and documentation on ageing
19. Medical colleges and Training Institution for nurses, paramedical institutes to introduce courses on geriatric care
20. NGOs associated with such activities to get support for training and orientation of their personnel and to provide specialized services.

Special Laws:

The only Act, which was finally passed and was said to have included relevant laws for the maintenance of the aged was in 2007, it being **The Maintenance and Welfare of Parents and Senior Citizens Act, 2007**. The concept of maintenance for the aged emphasizes on the fact that the people who are old should be bestowed with ample rights and should be empowered substantially by the law to fight well for their subsistence, which over a period of time has withered away due to the acts of the next generation. Also that the aged being weak and frail physically need more care and attention from their loved ones. The idea of maintenance has a twofold perspective. Firstly, it is the most apt form of granting financial independence to the old parents and senior people and, secondly, it provides the senior citizens a much needed sense of liberty and also grants them the power to live not bowed down before their children, but independently and with elegance.

Also, with the inception of the apposite Act though brought in 2007 for the Maintenance of Parents and Senior Citizens, i.e. The Maintenance and Welfare Of Parents and Senior Citizens Act, 2007, the security of the elderly have rest been assured. A few salient features of the act are:

- The Act aims to make it a legal obligation for children and heirs to provide maintenance to senior citizens. It also permits state governments to establish old age homes in every district.
- A senior citizen who is unable to maintain himself due to his/her financial inadequacy shall have the right to apply to a maintenance tribunal for a monthly allowance from their child or from a person who would thus be benefitted as him being a legal heir.
- The Act makes it mandatory for such a person, with the intervention of the law, to award the parent, senior citizen an amount to a maximum of Rupees ten thousand per month.
- If the aged is incapable of filing the application on his own, he may authorize any other person or registered voluntary association to apply on his behalf. The

maintenance tribunal may also, on its own, initiate the process for maintenance, but the person cannot be a legal practitioner.

CONCLUSION

Progress of human civilization, advancement in medical science and healthier lifestyle of people has obviously increased life of Old Age. Ironically, changed socio-economic conditions have completely changed living conditions of older persons in the country. In changed set up, old people face increased incidences of age discrimination, ageism, elder abuse and mistreatment of older community, which are strictly against any civilized society.

Awareness of Human Rights of Older Persons in the society, particularly among older persons and protection of their human rights has become an uphill task for all of us. To decrease the incidences of age-discrimination, age-discriminatory policies like retirement policies in both government and public sector, various reservation policies need to be amended. Today, we urgently need an inclusive social security program for older persons at grass root level while utilizing tools like value based education, awareness generation, research & advocacy in order to protect Human Rights of Older Persons. India today has a very large population (and ever increasing) of old people who are the first timers (as old persons in their families). Most of them have not seen their own parents living this long. For them Old Age is a new experience for which they never prepared themselves. Though everyone wants to live for as long as possible, preparation for Old Age is an alien concept. The individual or his/her family no one seems to be prepared for Old Age. Even the policies

for old people are more cosmetic than effective. Rights of an individual in old age are considered as more of a moral responsibility of the family members. No one seems to be concerned about the fact that an individual who is old has certain basic human rights.

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 socio-economic development process at a larger scale. This participation must result in an end to their social isolation and increase in their general satisfaction with their life. Any attempt to secure the help of the Old age in offering their service to the nation must simultaneously ensure some sort of package of services aimed at arranging for them a better quality of life and a well-designed social security network for the senior citizen. The society and the state in India need to accept the challenge of their effectiveness focusing their attention on the following twin issues of:

- (i) How to provide a fair-deal to the senior citizens so that they are able to peacefully, constructively and satisfactorily pass their lives; and
- (ii) How to utilize the vast treasure of knowledge and rich life experience of the older people so that they are able to utilize their remaining energies and contribute to the all round development of their nation.

The Constitution of India states “The 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 undeserved want.”²¹ Finally, it may be conclude by saying that the problem of the Old age must be addressed to urgently but with utmost care. There is urgent need to amend

²¹Article 41 of the Constitution of India.

the Constitution for the special provision for the protection of aged person and bring it in the periphery of fundamental right. With the degeneration of joint family system, dislocation of familiar bonds with arrival of nuclear family concept and loss of respect for the aged person in the family, in modern times should not be considered to be a secure place for them. Thus, it should be made the Constitutional duty of the State to take effective steps for the welfare and extra protection of the senior citizen including palliative care. As we know that the country like India is not lacking in law instead lacking in implementation of laws which is to be taken care of properly with appropriate measures. Be it an individual, a family, society in general or the government, each one of us needs to be sensitive towards needs & rights of old people.