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Strategies in the prevention or reduction of Elder Abuse in Bangladesh and Malaysia

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Abstract

The United Nations have projected that there will be more than 2 billion elder population in the world by 2050. In order to prepare the affected countries for the huge increase in elder population, the United Nations had initiated various international documents emphasising on the wellbeing of the elderly. Malaysia and Bangladesh have been influenced by these international documents in tackling elder issues including abuse. Both countries have introduced strategies in preventing elder abuse through policy and legal framework. This paper highlights and examines the issue of elder abuse and the strategies undertaken by both countries to overcome the issue.

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1. Introduction

The United Nations Social Policy Development Division on Ageing reported that as at 2012 there are approximately 810 million persons aged 60 years or over in the world and this number is projected to grow to more than 2 billion by 2050. In 2009, estimated 737 million persons were aged 60 years and over two third of this figure lived in the developing countries. Malaysia's older population of 60 years and more increased from 1.5 million in 2000 to 2.0 million in 2009. By 2020 it is estimated that the number of older persons will be 3.4 million and by 2035, Malaysia

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will be in the category ageing nations as defined by the United Nations with older persons constituting more than 15 percent of the population (10th Malaysian Plan). On the other hand, Bangladesh has a population of about 150 million people, and 7.4% of its populations is elderly (Bangladesh Bureau of Statistics, 2011). This percentage of elderly population is projected to increase to 8% in 2020, 11.9% in 2035 and it will be an ageing nation when it reaches 17% in 2050 (Rahman and Nasrin, 2012). Both Malaysia and Bangladesh are making efforts to implement policies and strategies to embrace this inevitable increase in elder population. International documents such as Vienna International Plan of Action on Ageing 1982, United Nations Principles for Older Persons 1991, Proclamation on Ageing 1992, and Madrid International Plan of Action Ageing 2002 are adopted as foundational references in designing domestic policies and strategies in both countries. The ultimate goal of all these policies and strategies combined is to ensure a comprehensive growth for the elder population not only in terms of health and economy but also in their general well-being. Twenty years after the Vienna Plan, in 2002 Madrid Plan of Action's specific recommendations for action by member states are to give priority to older persons in specific areas of development, advancement of health and well-being into old age, while ensuring enabling and supportive environments. Fostering independence in ageing is therefore a priority to be supported by the structures and agencies within the system. With this, both countries are trying to ensuring the well-being of the elders by various strategies. Thus, this paper is an attempt to make a comparative analysis of these strategies and to show whether these are sufficient to address elder abuse and to ensure welfare of the elders.

2. Concept of elder abuse

Elder abuse covers two broad categories abuse and neglect. Abuse is a positive act, commonly an act of commission, and there is active involvement or interaction on the part of the abuser (James, 1994). Neglect, by comparison is used to describe acts of omission, specifically those with a passive involvement of the abuser (McCullum, J., 1993). The easiest and most obvious type of abuse is physical abuse, while other types of abuse are less obvious and require further investigation and examination, an example of which being financial abuse (Wu, 2010).

Abuse of the elderly is not a new issue, it has been occurring for centuries (WHO 2002). Elder abuse has been recorded since the 19th century, and highlighted in the 1980's. Mistreatment of older people – referred to as ‘elder abuse’ – was first described in the British scientific journals in 1975 under the term ‘granny battering’ (Baker, 1975; Burston, 1975). However, there is no universally accepted definition of elder abuse although in general, it is understood to include actions of violence or mistreatment committed intentionally or unintentionally, physically or emotionally arising from physical abuse or through forms of neglect (Hudson, 1999). According to the National Centre on Elder Abuse (NCEA, 2008), elder abuse is a term referring to any knowing, intentional, or negligent act by a caregiver or any other person that causes harm or a serious risk of harm to a vulnerable adult.

In form, elder abuse may be intentional (active) or unintentional (passive) (Wolf, 1997). Physical abuse is only one among many subtypes of elder abuse, others being psychological abuse, financial abuse, sexual abuse, and neglect. Although these subtypes are discrete entities, they are often closely related and interdependent. Studies conducted have shown that neglect was the most common form of abuse, followed by psychological abuse, financial exploitation, physical abuse, abandonment, and sexual abuse (Sherman, Rosenblatt and Antonucci, 2008).

3. Strategies existed in Bangladesh

The rights of the elderly are provided for in the Constitution of the People's Republic of Bangladesh. The rights to social security through public assistance in cases of undeserved want arising from ‘old age’ along with unemployment, illness or disablement, or suffering by widows or orphans or in other such cases are to be found in the Article 15(d) entitled ‘Provision of Basic Necessities’ of Part II of the Constitution entitled ‘Fundamental Principles of State Policies’. The provision of basic necessities for all citizens such as food, clothing, shelter, education and medical care; the right to work and employment at a reasonable wage and right to reasonable rest, recreation and leisure are mentioned in Clauses 15(a), 15(b) 15(c) respectively in Article 15 of the Constitution. The Directive Principles in Article 15 are not enforceable by any court of law but ‘shall be fundamental to the governance of Bangladesh’ and

‘shall form the basis of the work of the State and of its citizens’. But the Fundamental Principles of State Policies impose positive obligations on the State on what it should do. These Principles have been declared to be fundamental in the governance of the country and the State has an obligation to apply them in making laws. It is to be noted and emphasised that it has always been said that the courts cannot enforce a Directive Principle directly as it does not create any justiciable and enforceable right in favour of an individual claimant. On its own, a Directive Principle is unenforceable. However, judicial creativity and activism saved the day in India for Directive Principles even though the constitutional scheme is the same in India. The Indian Supreme Court does not interpret the Directive Principles literally. In the circumstances, the Indian Supreme Court’s dynamic interpretation of the same is most useful and enlightening. The Indian judicial stance is very clear-- that Fundamental Rights and Directive Principles in the Constitution are complementary and supplementary to each other. The courts must bring about synthesis and harmony between the two constitutional schemes so that they become integrated and co-equal.

Part III of the Bangladesh Constitution makes provisions for fundamental rights among which some may be applicable to the elder people. For example, equality before law and equal protection of law (Art.27), principle of non-discrimination (Art.28) and protection of right to life and personal liberty (Art.32). Here right to life includes also right to livelihood. The term livelihood is a broad expression comprehending all the necessities of life which enables a person to live with human dignity. The prohibition of forced labour is enshrined in Art. 34. This may also impact on the rights of elder people. However, all these fundamental rights are enforceable only against the state. But, the Supreme Court of India had held that fundamental rights are also applicable against a private entity, e.g. a company, hospital and an organisation (Challa, 2008).

Organisations concerned with the welfare of the elderly have long fought for a National Policy on Ageing (NPA). The Ministry of Social Welfare of Bangladesh has finalized the National Policy on Ageing 2006 for the well-being of the elderly people. It is formulated in line with MIPAA’s policy (Country Report of Bangladesh, 2007). People aged 60 years and above are defined as the elderly citizens of the country in this policy. Protection includes matters on social security, health care services, financial security, national awareness program and coordination between older persons, but there is insufficient strategy for caring support for the elderly in future (Islam and Nath, 2012). It is obvious that currently the impact of this policy on the actual lives of older persons is still minimal.

Under the Contract Act, 1872 and the Law of Torts any mistreatment and failure in caring may be subject to a civil suit. The cause of action may be taken against the management of an institution for a breach in contract to care, even though there might not be a written contract; and damages can be claimed for the wrong done (Shankardass, 2008). Institutions which are providing care towards fulfilling the needs of older persons have not so far been brought under legal purview; however in the effort to alleviate elder abuse there is a need to seriously take cognisance of this relevant provision in the Penal Code under which a breach of contract may attract criminal liability (Bakshi, 2000). One of the challenges in implementing these measures arises from the fact that it is difficult to conduct proper investigations and to prove the intent to abuse and maltreatment. However, challenges in the investigative processes may further prevent the elderly from making the decision to report the abuse (Shankardass 2008).

Elder abuse is also regarded as domestic violence. In Bangladesh, the Domestic Violence (Prevention and Protection) Act, 2010 recognizes violence toward older persons, and defines it as a breakdown in social relations between an older person and his or her family. While this legislation stands out as an important adult protection law it, nonetheless, loses out as an enforcement mechanism, thus limiting its utility as an intervention into adult abuse cases. The law enforcement agencies especially ‘police’ seldom regard that domestic violence as a crime; rather they always perceive such violence as part and parcel of the culture and society. Thus, even though, the government has enacted the Act but the application of this Act is not strongly visible in the society (Biplob, 2012). Moreover, only older women may take action under this Act and lodge a report. However, even then no case has ever been filed by any older woman under this Act.

The most significant Act to ensure the wellbeing of the elders in Bangladesh is the recently enacted Parents' Maintenance Act, 2013. This is the first legislation of its kind which not only recognises the right to maintenance of the parents but also the grandparents in the absence of parents from both father and mother side. Under the Act, male and female children are equally responsible to maintain their parents and if there is more than one child they can ensure maintenance by consultation among themselves. Further, if any child does not provide maintenance to his/her parents without any reasonable ground or compels them to live in any parents care or any other place they will be punished under this Act.

The Act is considered a significant improvement to ensure the wellbeing of the elders and prevent them from abuse especially financial abuse but, the existing situation suggests that the Act is not fully successful due to some inherent loopholes. The Act does not specify the amount of maintenance. This creates problems and confusion in the society like Bangladesh where the economic discrimination and income disparity is too much. The Act only states reasonable amount but did not explain the term reasonable. Further, in section 8 it is mentioned that the court may send the complaint to the chairman or member of the local Union Parishad and the Mayor or Counsellor of the City Corporation to resolve the complaint by mediation. But if the mediation fails, then what will happen is not mentioned in the Act. Section 9 of the Act empowers the government to formulate necessary rules for effective enforcement of the Act but rules have yet to be formulated. Additionally, the awareness program about this Act is relatively sparse. As a result no complaint under this Act has yet been filed and resolved.

4. Strategies existed in Malaysia

Article 5(1) of the Federal Constitution states that "No person shall be deprived of his life or personal liberty save in accordance with the law." This right is conferred on everyone, and not limited to the citizens of Malaysia only. The right to life has been given a broad and liberal interpretation by the Court of Appeal to include the right to livelihood, the right to health care, water, housing and education, etc, in *Tan Tek Seng v Suruhanjaya Perkhidmatan Pendidikan & Anor* [1996] 1 MLJ 261, (CA). Similarly, it is argued that 'personal liberty' too should be given the same treatment despite the absence of any case law to that effect. It should include freedom of movement and freedom from unlawful physical confinement and restraint. Freedom of movement within the Federation is protected under Art. 9(1) of the Federal Constitution. The narrow and strict construction once taken by the Federal Court in *Karam Singh v Menteri Hal Ehwal Dalam Negeri Malaysia* [1969] 2 MLJ 129, (FC). See also *Government of Malaysia and Ors v Loh Wai Kong* [1979] 2 MLJ 33, (FC) was thing of the past and totally irrelevant in this day and age where fundamental rights are always given a broad and liberal construction. It must be pointed out and highlighted here that the rights guarantees in Art. 5(1) are mostly implied fundamental rights and if the courts were to adopt a narrow and strict interpretation of that provision, there shall be no room or space for implied rights. It must also be pointed out that the recent judicial trends in most common law countries are towards liberalisation and broad interpretation of fundamental rights.

Article 8(1) of the Federal Constitution provides that "All persons are equal before the law and entitled to the equal protection of the law." Article 8(2) prohibits discrimination based on religion, race, descent, and place of birth or gender. Equality before the law and equal protection clause in Art. 8(1) too must be given a broad and liberal construction. It is the fountain of justice, fairness and reasonableness. In other words, in the context of protection of the elders, there shall be no discrimination and unfairness in the treatment of the elders. The combination of these two Articles (*viz.*, Art. 5(1) and Art. 8(1)) guarantees that the elderly should be treated well and protected against abuse, mistreatment and discrimination.

There is another provision in the Federal Constitution which may also impact on the rights of the elders. This is the fundamental right against slavery and forced labour found in Art. 6(1). This constitutional protection is broad enough to protect against any subtle and unjustifiable form of exploitation and modern day slavery. To add further fillip to the aforesaid broad interpretation, it is also argued that international human rights that protect the elderly also form part of Part II of the Malaysian Federal Constitution and could thus be indirectly incorporated into the Malaysian domestic law. This could be done via the broad interpretation of the word 'law' in Art. 160 of the Federal Constitution. It is argued that the definition of the word 'law' in Art. 160 is inclusive, not exhaustive. This is because of the specific use

of the magical word 'includes' therein. In the circumstances, the word 'law' is also capable of incorporating customs of the people. In this context, it is the custom of the Malaysians of all races to respect and care for the elders of their respective families and communities.

Despite the aforesaid empowering constitutional provisions, a note of lament must be entered here. It is the conspicuous absence of Directive Principles in the Malaysian Federal Constitution. Unlike India and Bangladesh, the Malaysian Constitution does not provide for Directive Principles. Express, direct and positive protection of the elderly comes only from the Directive Principles.

The National Policy for the Elderly was first formulated in 1995 and introduced in 1996, and revised in 2011 with the objective of creating a society of elderly people who are contented and possess a high sense of self-worth and dignity, by optimizing their potential and ensuring that they enjoy every opportunity as well as the care and protection of members of their family, society and nation. Specifically, the policy has the objectives of upgrading the dignity and self-worth of senior citizens within the family, society and nation, and to develop the potentials of the elderly so that they remain active and productive in national development and to create opportunities for them to continue to live independently. The policy also encourages the establishment and the provision of specific facilities to ensure the continuous care and protection of the elderly. The strategies contained in the National Policy deal with four matters. These are respect and self-esteem, independence, care and protection and lastly research and development. In the case of respect and self-esteem, the strategies are to ensure that the elderly receive fair and just treatment in all circumstances, to facilitate the accessibility of the elderly to resources including education, culture, spiritual and recreational activities. While in the area of care and protection, the emphasis is on creating facilities for care and protection within the family or in the institutions and to ensure that they enjoy their basic rights to live with dignity. To live free from abuse would be a basic right contained and inherent in the National Policy for the Elderly.

The Domestic Violence Act 1994 was enacted to deal specifically with spousal abuse. However, it is wide enough to cover also issues dealing with elder abuse in Malaysia. The provisions of this Act must be read together with the Penal Code (Act 574, Revised 1997) and any other written law involving offences relating to domestic violence (Section 3 of the Domestic Violence Act 1994). The Act states that the definition of 'domestic violence' includes physical injury, fear of physical injury, emotional injury, delusion by intoxication, unlawful detention and mischief or destruction to property knowing that it is likely to cause distress or annoyance to the victim. These acts must be a crime under the Penal Code before any action can be taken against the perpetrator. For example, physical injury will fall under either section 323 (punishment for voluntarily causing hurt) or section 325 (punishment for voluntarily causing grievous hurt) of the Penal Code. The said wrongful act is perpetrated by the offender against a spouse, former spouse, a child, an incapacitated adult or any other member of the family (Section 2 of the Domestic Violence Act 1994). An incapacitated adult is defined by the Act to mean a person who is wholly or partially incapacitated or infirm, by reason of physical or mental disability or ill-health or old age, who is living as a member of the offender's family including any person who is confined or detained by the offender.

The Act provides for several remedies for the victim of abuse, such as an Interim Protection Order, prohibiting the person against whom the order is made from using domestic violence against an incapacitated adult or any other member of the family (Section 4 of the Domestic Violence Act 1994). The victim may also apply for a Protection Order which has the effect of restraining the person against whom the order is made from using domestic violence against the incapacitated adult (section 5 of the Domestic Violence Act 1994). Aside from that, the Act also provides for payment of compensation for the injury, loss or damage suffered by the victim as the court¹⁹ deems to be just and reasonable (section 10 of the Domestic violence Act 1994). The court may also order the parties to attend reconciliatory counselling and also psychotherapeutic or rehabilitation counselling, if necessary (section 11 of the Domestic Violence Act 1994).

5. Effectiveness of these strategies

These strategies seem to be ineffective as the abuse of older persons somehow does not receive attention in the society. Elder abuse is a latent and tragic secret for many. Sometimes victims simply do not have the capacity to report it. At other times, victims are unwilling to report the abuse due to fear of rejection or abandonment by the other family members (Jesmin & Ingman, 2011). A victim may be unable to report the abuse because of cognitive impairment or other disability. A mental impairment or effects of medication may also prevent a victim from revealing the abuse. Victims of elder abuse often blame themselves for the violence and neglect they are subjected to. They are often reluctant to report the abuse because they are ashamed of what the family members did to them or embarrassed that they have placed their trust in that person. The elder person may also believe that the abuse was brought on by something which they had done. If the abuse has been a prevalent or typical pattern of behavior in a family, both the abusers and the victims may accept it as normal behavior. For many victims suffering at the hands of an abuser, violence and neglect are simply a way of life (Latha, 2008). Occasional articles on elder abuse in newspapers but not much else. Elder abuse is very much an issue which gets swept ‘under the carpet’, and kept within the four walls of the home. It is grossly underreported and not discussed as the older people themselves do not want to discuss it and relatives and neighbors who are aware of the occurrence do not want to get involved.

6. Conclusion and way forward

It must be reiterated that issues in the prevention of elder abuse in Bangladesh and Malaysia revolve around several key factors. First, detection is a major hurdle. In Asian societies in particular where there is a deep-seated cultural belief and filial obligation to look after one’s elders, any report of abuse by an elder victim amounts to more than a breach of the right to protection under the law. Abuse has emotional and adverse connotations; a shameful act which is to be hidden from public knowledge. Following from this, the second major hurdle is to work against this perception and cultural belief, which require persistent efforts in public education in order to effect the necessary change. One excellent reference and possible starting point in developing effective preventive measures may be to draw from the strategies and activities by, for example, the Ontario Network for the Prevention of Elder Abuse. Both Bangladesh and Malaysia face an uphill task in addressing elder abuse. Pursuant to the Constitution and strategies mentioned, the first priority would be to have a comprehensive legal framework or regime followed and supported by designated agencies or institutions for implementation purposes. In both countries, there must be continuous focused efforts on educating and creating awareness of elderly persons’ needs within the larger society. Formal, non-formal as well as informal methods of public education must be adopted to increase public awareness. All these measures are required on a national scale to effectively ensure that strategies and efforts are put in place for the protection and wellbeing of the elderly.

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