

ELDER ABUSE IS OFTEN A SILENT CRIME

Written by *Dr Koneru Anuradha*

*Associate Professor, SVD Siddhartha Law College, Kanuru, Vijayawada, Krishna DT, AP
State, India*

“A Society that does not value its older people denies its roots and endangers its future. Let us strive to enhance their capacity to support themselves for as long as possible and, when they cannot do so anymore, to care for them.”

- Nelson Mandela

INTRODUCTION

Nobel Laureate Mr. Kofi Annan rightly stated that, “Trees grow stronger over the years, rivers wider. Likewise, with age, human beings gain immeasurable depth and breadth of experience and wisdom. That is why older persons should be not only respected and revered; they should be utilized as the rich resource to society that they are”.ⁱ In fact the old age is an indispensable stage of life which a man cannot escape unless untimely death occurs. By recognizing this on 14th December 1990, the United Nations General Assembly designated 1st October as ‘the international day of Older persons’. As per the available information the composition of the world population has been increasing dramatically in recent decades. Globally, there were 703 million persons aged 65 or over in 2019. In India, 8% of the population was recorded 60 years and above in 2011 census and it is expected to increase its share to 12.5% to 20% by 2026 and 2050 respectively.ⁱⁱ Unfortunately, with increase of elder population the offences against elderly have been increasing. It is the glaring reality that the human society is gradually criminalized. Best example for that is in contemporary world the elder people are no more synonymous to love but they are seen as a burden that nobody wants to care.ⁱⁱⁱ

In fact, India is a place where traditionally parents are treated as a pious form of God and children feel that maintenance of their parents as contribution to God and having an elder at

home is a blessing for the family. Unfortunately, the conditions of the elders are deteriorating with the changing times. Now a day elders are considered as a burden and family members look at them as a curse. Elders became one of the most vulnerable members of the society, who sadly have to depend on their families or relatives or some other person for essentials and support. Elder abuse is often used as a general term that includes physical, sexual, and psychological abuse, neglect and financial exploitation. In elder abuse victims may face increased risk of death, physical or psychological injury, and financial ruin. As a result abuse and neglect of the elders often violate one or more criminal laws and also become a common social problem internationally and even in India. So, there is a big question as to elder's safety and security. Even though there are some legal frameworks for the older people protection, there is a need to rethink about these existing legislations. Work should be done for a strong mechanism which can help to reduce the growing abuse against the elders and protect the elder people interests and rights.

WHAT IS ELDER ABUSE?

It is fact that there has no specific definition or meaning to describe elder abuse. However, it is extremely important to understand, what is elder abuse? the nature and varying types of such abuse to be able to recognize such a heinous crime and protect vulnerable senior citizens from abuse. It may be defined as the “knowing, intentional, or negligent act by a family member, caregiver or any other person that causes harm or a serious risk of harm to an elder people.” according to World Health Organization, elder abuse can be defined as “a single, or repeated act, or lack of appropriate action, occurring within any relationship, where there is an expectation of trust, which causes harm or distress to an older person”.

So, it can be sums up to all the bad behaviour, mistreatment, ignorance, negligent, abusive language, talking rudely, and men handling with elders which results in injury, unnecessary suffering, loss, pain or violation of human rights and affects on the quality of life for the elder people can be termed as elder abuse. It is more heartening them that they are abusing by their own family members, caretakers or close ones on whom they have more trust and they were depending.^{iv}

WHAT ARE THE DIFFERENT KINDS OF ELDER ABUSES?

Such abuse can be of the following categories

1. Negligence on elder or elder neglect

Either by themselves or by caretaker failure to take necessary care and fulfil requisites of the elder either be intentional or unintentional can be called elder neglect. It is pertinent to note that neglect constitutes more than half of all reported cases through different surveys and news papers. Elder persons family members or their own caretakers or their close ones on whom elder persons are depending are big abusers on elder. It is also important to consider the ground fact that self neglect amongst elders is also a growing issue now a day like, living in unsanitary conditions, the incapacity to maintain hygiene in one side and on other side the inability to pay bills and improper management of their medication etc.

2. Physical Abuse

It includes an intentional act of infliction of an injury or pain or physical coercion or physical restraint etc.

3. Emotional Abuse or Psychological

It includes mental torture or causes pain to the emotions or humiliation, habitual blaming, scapegoating, talking or scolding rudely by calling their names or as old, ignoring, isolating etc.

4. Material Abuse or Financial Abuse

This is caused by stealing the elderly individual's property, money, pension, jewellery, things, forging the signature of elders or improper use of the financial resources or funds of the elders or misuse of elder person's bank details etc.

5. Sexual Abuse

It is one of most heinous crime in present civilized world. However, it is the dark reality that elder people are facing sexual abuse like contacting an elderly person without their consent or showing an elderly person pornographic material, forcing the elders to undress etc. ^v

6. Abuse in the name of healthcare

As we know during elder age there are so many health complications but instated of taking care many cases were reported that there are unethical practices carried by medical practitioners such as improper healthcare services or overmedicating or under medicating or unnecessary or fraudulent treatments or overcharging for medical services etc.

7. **Abandonment**

Now a day maximum families are being small families or middleclass or self-centred they are either intentionally or unintentionally abandoning their old parents on streets.

8. **False imprisonments**

Some cases are reported in different surveys that abandoning elders were imprisoned in many cases without any fault or guilty as they were unable or afford to defend themselves.^{vi}

9. **Isolating** etc.

Today's generation had an opinion that they are moderates, more civilized and living in advanced world so they feel that old people are orthodox, uncivil, cultureless, boring, extra luggage etc.

WHAT ARE THE ISSUES FACED BY THE ELDERS OR OLDER CITIZENS?

As we know our whole life generally is being divided into three stages like, childhood, middle age and old age. Among these stages childhood and old age is the helpless and depending stage on others. At this moment they require physical, psychological, social as well as social support for which family mainly should be taken care of with all love, affection and emotions. But in reality they have been feeling lonely, helpless, the most vulnerable, ignored and also overlooked and being faced elder abuse, because of which they fell completely disowned. Commonly there are some issues, which are being faced by the elder when they are unable to take care of themselves.

1. **Family challenges**

Ageism causes the generation gap between family members. So, generally leads to conflicting views in the family as the old people are outdated stereotypes and intolerable. In older age the lost sense of purpose and their behaviour like child at this stage younger generation fail to understand the needs and want of the old people and neglects them. It causes a feeling of loneliness among the older even though they are in family. In some cases, older people left at old age homes. Because of which they lost their family and feels like, they are lonely.

2. **Health complications**

Either because of age or negligence from family and society older people requires different medical cares like, psychological or physical or both kinds of treatments especially for those who are struggling with long term conditions. But maximum cases they are left untreated, unattended and also uncared.

3. **Economic problems**

Maximum older people do not have sufficient means of livelihood, which forces them to undergo the predicament of work and earn even after retirement or declining years. On other side many elderly people are able and willing to work even after retirement, but the opportunities are not there. From the different reports it came to know that the economic dependency of senior adult females is higher in India. In addition, managing regular finances and managing financial resources is being difficult for them as now a day everything online, which is somewhat new for them and they are becoming victims of online and offline frauds and scams.

4. **Social challenges^{vii}**

Elder people knowledge and experience is so precious, which is so vital for the development of society. Insisted of, utilizing it family and society members neglecting them. In the place of socialization they have been keeping in isolation.

5. **Legal issues**

As older people also belong to human community they are all entitle to enjoy all the legal rights what a young men can. In fact, they have more rights and protections than young person. However, many a time they are unaware of their legal rights, protections and the mechanism to get the remedy. There are so many Central and State government policies and schemes for the welfare of senior citizens. But many of the older citizens are unknown to them.

LEGAL PROTECTION AGAINST THE ELDER ABUSE UNDER INDIAN CONSTITUTION

There is some few legal protection to safeguard the rights of elders and prevent their abuse at national and international level. It is important to have acquaintance with those provisions to curb elder abuse.

The International Endeavour's for Protection of Senior Citizens

For the first time the United Nations Organization in the year 1948 addressed the issue related to ageing and elderly. Later, the same discussed by Argentina's invitation and Malta discussion in the year 1969. In 1971, the UN general assembly had taken a big step for protection of elderly and asked the Secretary – General to prepare a detailed report on problems of elderly and how they can be protected. It also suggested preparing a blue print to develop guidelines for national and international cooperation to address elderly people. In the year 1978, UN General Assembly also decided to support a “World Conference on Aging” to discuss on international plan of action on aging. Because of this, in July and August of 1982, the “World Assembly on Aging” was held in Vienna and there they adopted an “International Plan of Action on Aging”. In this conference they also encouraged the UN Secretary – General to continue working on this plan of action to strengthening world countries to address these elderly issues. In 1990, UN also passed a resolution declaring 1999 to be the “International Year of the Elderly” and also to draw the attention of the world regarding problems and safeguards about elderly October 1st was declared as ‘International Day for the Elderly’.

Statutory Provisions under Indian Laws

It well known that India is a traditional society, where mythology says parents are visible Gods and they have pious obligation to serve them. In fact, this is the culture prevailed in our society since long time. But due to several reasons this moral duty gradually declined. To replace this moral duty with legal duty several legal provisions were added for the protection of parents under different laws.

i) Constitutional Safeguard

In addition to part III ‘Fundamental Rights’ under part IV titled ‘Directive Principles of State Policy’ of the Indian Constitution stipulated several provisions for elderly. These Directive Principles place constructive responsibilities on the State.^{viii}

Under Article 38 (1): “the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice social, economic and political, shall inform all institutions of the national life”. It also further stipulates that the State should endeavor to minimize the inequalities in status, facilities and opportunities.

Under Article 39(e): the State to secure that, “the health and strength of workers, men and women and children of tender age are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their area of strength”.

As per Article 41: “The State shall, within the limits of its economic ability and growth, make effective provision for securing the right to work, to education, and to public assistance in cases of unemployment, old age, illness and disablement, and other cases of undeserved want”.

Article 46 says that, “State should work for promotion of the educational and economic interests of..... and other weaker sections: The State shall promote with particular attention the educational and economic interests of the weaker sections of the people.....and shall protect them from social inequality and other types of exploitation”. etc

However, unfortunately these are non judiciable rights. But governments as welfare schemes some of these rights were implementing.

ii) Under Personal Laws

a) The Hindu Adoption and Maintenance Act, 1956

This Act empowers elderly people with a legal right to claim maintenance from their children. Under this Act it is clear that “A Hindu male or female is bound to maintain his or her legitimate/illegitimate minor children and aged/infirm parents. Aged or infirm parent (which includes childless stepmother) or unmarried daughters have to be maintained if they are unable to maintain themselves.^{ix} Moreover, under this Act, even the heirs of a deceased Hindu are bound to maintain his/her “dependants” out of his/her estate inherited by them.^x However, it is important to note that the said law is applicable to Hindus only.

b) Slamic Law

In Muslim law, the word "maintenance" is referred to as "nafaqa," which means "what a person spends over his family." Hedaya describes ‘maintenance' as all that is needed to sustain life, such as food, clothing, and lodging.

There are three reasons why one person must preserve the other:

i) marriage, (ii) friendship, and (iii) land. The highest level of obligation arises from marriage; the second level arises when one person has "means" and the other is "indigent." It is true that the responsibility to care for one's children is a personal one. The duty to care for one's elderly and infirm parents occurs only when one is in good financial standing and the parents are poor. The duty to retain other relationships occurs only when one is in easy circumstances and the ties are weak, and it only applies to those relations who are beyond the degree of prohibited relationship, and then only in proportion to the share one will inherit from them upon their death.

c) Maintenance Obligation under Christian and Parsi Law

There are no personal laws requiring Christians and Parsis to provide maintenance to their parents. Parents seeking maintenance from their children must file a complaint with the court under Section 125 of the Code of Criminal Procedure, 1973.

iii) The Code of Criminal Procedure, 1973

Irrespective of religion a secular clause as civil remedy with criminal procedure was provided under section 125 of the Code of Criminal Procedure, 1973. It says that "Magistrate may order a person to make monthly allowance for maintenance in a case where any person who despite having sufficient means neglects or refuses to maintain – (i) his legitimate or illegitimate minor child who is unable to maintain himself; or (ii) legitimate or illegitimate major child (not being a married daughter) unable to maintain himself due to any physical or mental abnormality/injury; or (iii) married daughter till she attains majority if her husband is not able to maintain her; or (iv) his/her father or mother who are unable to maintain themselves. This section also makes a provision for maintenance during the pendency of proceedings regarding monthly allowance for maintenance. Also, application for interim maintenance during pending proceedings is to be decided by the Magistrate, as far as possible, within sixty days of the date of service of notice of application to such person. A person who fails to comply with the order of the Magistrate without showing sufficient cause may also be sent to prison. But here it is also a notable point that the order of maintenance passed under section 125 may be altered by the Magistrate on proof of change in circumstances.^{xi} It is notable point hear that by the judicial interpretation It holds that people of all faiths, including unmarried and married daughters along with a son under section 125 CrPC responsible for their parents' upkeep who are unable to maintain themselves.^{xii}

iv) The Maintenance and Welfare of Parents Act, 2007

Until 2007, there is no special legislation in India exclusively addressing issues faced by elders. In the year 2007, “The Maintenance and Welfare of parents Act” came to existence to provide maintenance support to elderly parents and senior citizens. The Act contains 7 chapters and 32 sections. The Act helps cater to their basic needs, adjudication, and disposal of matters in their best interest, establishment, and management of institutions and services and for the rights guaranteed and recognized under the constitution and for matters connected therewith. This Act provides legal obligation for children and heirs to provide sufficient maintenance and care to parents and senior citizens, and proposes to make provisions for State governments to establish old age homes in every district. However, for more effective implementation of the Act in the year 2013 some provisions were amended and in the year 2019 some proposals for amendment.

Non Statutory - National Efforts

For the Welfare and Protection of Senior Citizens Indian nation has provided different policies and schemes. They are

1) National Policy for Older People, 1999

This policy was designed under Article 41 of the Constitution, which mandates the State to look after the well-being of the older person. On January 13, 1999, the Ministry of Social Justice and Empowerment, Government of India approved the National Policy for Older Persons in order to expedite welfare initiatives and motivate the elderly in ways that are beneficial to them.

The following major measures were included in this policy:

- Establishment of a pension fund to provide security to those who have worked in the unorganized sector;
- Every 3-4 districts will have old age homes and day care centers built.
- Resource centers and re-employment bureaus for people over the age of 60,
- Concessional rail/air fares for travel within and between cities, e.g., a 30% train discount and a 50% Indian Airlines discount.
- Enacting legislation requiring all public hospitals to have mandatory geriatric treatment.

2) National Programme for the Health Care for the Elderly

Under the United Nations Convention on the Rights of Persons with Disabilities, National Policy on Older Person adopted by the government of India in 1999 and Section 20 of “The maintenance and Welfare of Parents Act, 2007” dealing with provisions for medical care of Senior Citizen this National Programme for the Health Care for the Elderly programme was articulated. The main objective of this programme is to provide preventive, curative and rehabilitative services to the elderly persons.

3) Indira Gandhi National Old Age Pension Scheme

Under ‘The National Social Assistance Programme’, Ministry of Rural Development of India has introduced Indira Gandhi National Old Age Pension Scheme in the year 2007. Under this scheme central government provides assistance by providing pension of Rs.200/- per month to persons above 60 years of age and Rs. 500/- per month to persons above 80 years of age who belong to households below the poverty line. The respective State governments have been providing benefits as their political policy in addition to Central policy.

4) A central Sector Scheme to improve the quality of life of the Senior Citizens

This scheme object is to undertake various programmes to ensure that the senior citizen gets the basic needs including proper health care. Under this scheme Centre government want to improve the quality of life of the Senior Citizens by providing basic amenities like shelter, medical care, food and entertainment opportunities and by encouraging productive and active ageing through providing support for capacity building of State, Union Territory governments, NGOs, Panchayati Raj Institutions, Local bodies and the community at large. In the year 2018 this scheme was revised to improve the conditions of the elderly.

5) LICs Schemes

The Life Insurance Corporation of India (LIC) has a number of schemes for senior citizens, including Jeevan Dhara Yojana, Jeevan Akshay Yojana, Senior Citizen Unit Yojana, and Medical Insurance Yojana. Etc.,

INDIAN JUDICIARY AGAINST ELDER ABUSE

Due to increase in instances of Elderly Abuse in India, the judiciary has played an important role in protecting the rights of the older parents who are deprived of the maintenance and it has taken some of the remarkable steps to protect the rights of the senior citizens.

Ms. Sujatha D/O Namdeo masram v. State of Maharastra^{xiii}

It is a case where parents made a complaint before the Tribunal under Section 5 of the Maintenance and Welfare of parents and Senior Citizens Act, 2007 that they were being mentally and physically harassed by their son and daughter-in-law and claiming an order for eviction of children from their property.

Court relying on some of the similar cases *Sunny Paul & Anr. v. State NCT of Delhi*^{xiv}, *Dattatrey Shivaji Mane v. Lilabai Shivaji Mane & ors.*^{xv} and *Pramod Ranjankar & Anr. v. Arunashankar & ors.*^{xvi}, the Bombay High Court highlighting the object of the **Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (Senior Citizen Act)** held that the Act permits a senior citizen including parent who is unable to maintain himself from his earning or out of property owned by him and if such senior citizen is unable to lead a normal life to apply for such relief i.e. eviction under Section 4 of the Act not only against his children but also the grandchildren. It means it recognized the right of senior citizen over immovable property and the right of the senior citizens to evict children from their home.

Santhosh Surendra patil v. Surendra narasgopnda Patil^{xvii}

It is a case between old age parents and middle age children. In this case parents approached the Tribunal under Section 5 of the MWPC Act, 2007. Later, it was converting the proceedings into a suit for eviction of children from parent's property. It was challenged before the court of law. However, the High Court held this conversion of proceeding is not wrong a proposition of law. if the senior citizens are harassed and have genuine reasons to perceive that their emotional and or physical well-being and security are under threat, there is no reason to hold that the Tribunal has no power to direct eviction and the son's petition was dismissed. In addition to this court also directed the State government to act as the guardians of the elder citizens and age-old infirm parents.

In *Senior Citizen Welfare Organization & another v. State of Uttarakhand & others*^{xviii} The High Court of Uttarakhand while recognizing the failure of State to maintain adequate old age homes for the senior citizens in the State has issued a slew of mandatory directions and recognized every Senior Citizen has Right to Live with Dignity.

In **Kirtikant D. Vadodaria v. State of Gujarat**^{xix}

In this case Supreme Court held that old and infirm parents are entitled to maintenance under the Hindu Adoption and Maintenance Act, 1956 from children. Here, children means maintenance can claim by parent from their daughter in the same way as from a son.

In *Vijaya Manohar Arbat v. Kashi Rao Rajaram Sawai and Anr.*^{xx}

In this case once again the issue came before the high court that the term ‘children’ includes both sons and daughters or sons only. In this case high court finally decided that a married daughter who is self-sufficient to provide maintenance to the father or mother who does not have any son. In addition to this court also held that even a stepmother is equally entitled to get maintenance from daughter. It was upheld by apex court of India.

Jharkhand Senior Citizen Advocates Service Sansthan and Another v. State of Jharkhand^{xxi}

In this case an important issue concerning the welfare of the parents and senior citizens in the present society has been raised. Petitioner requested the court to direct the respondent to take immediate steps for establishing “Old Age Homes” in each district of the State with the immediate effect and to arrange separate queues in hospitals and other steps for easement for elderly people while availing medical treatment.

CONCLUSION

Elder citizens are the most experienced people and they are the foundations for our present life. We need to realise their sacrifices. To acknowledge their contribution we should be given a higher status to them in the family and society. In fact, old age is an indispensable stage of life which a man cannot escape unless untimely death occurs. This is the stage where we need to take care of them like children. Unfortunately, because of several reasons in present society we are witnessing horrific instances of neglect, exploitation, crimes, abandonment and several

kinds of abuses towards elder people. It is also true that it is the time to look back and follow the Indian traditional norms and ethical practices to take care elder persons. However, on the other side in this modern and fast moving life the traditional practices and values are getting vanished thereby endangering the base of humanity. So, to replace moral obligation as legal obligation strict legal measures are inevitable. Law should be the weapon in the hands of the State to protect elder people from abuse and to provide safeguards.

“After a lifetime of working, raising families, and contributing to the success of this nation in countless other ways, senior citizens deserved to retire with dignity”.

Charlie Gonzalez^{xxii}

ENDNOTES

ⁱ United Nations’ Secretary-General Kofi Annan- <https://news.un.org/en/story/2002/04/31702-un-forum-madrid-set-tackle-challenges-ageing-world-population>

ⁱⁱ <https://www.helpageindia.org/wp-content/uploads/2018/06/ELDER-ABUSE-IN-INDIA-2018-A-HelpAge-India-report.pdf>

ⁱⁱⁱ 73% Indian youth admit that elder abuse exists : Help page India, Early TIMES e paper, 15th June, 2015. <http://www.earlytimes.in/newsdet.aspx?q=151993>

^{iv} Nipun Manocha, Comparative Analysis On Elder Abuse Laws In India & Other Countries, The Amikus Qriae (online legal awareness platform). <https://theamikusqriae.com/comparative-analysis-on-elder-abuse-laws-in-india-other-countries/>

^v Ms Anjali Dixit and Mr J.P. Srivastava, Elder Abuse in India : An Legal Overview, Intolegalword (online legal corner), Jun 14th, 2020. <https://www.intolegalworld.com/article?title=elder-abuse-in-india-an-legal-overview>

^{vi} Nipun Manocha, Comparative Analysis On Elder Abuse Laws In India & Other Countries, The Amikus Qriae (online legal awareness platform). <https://theamikusqriae.com/comparative-analysis-on-elder-abuse-laws-in-india-other-countries/>

^{vii} What are the biggest challenges for elderly people in our society?, Smith life home care service providers website, posted on 30th August, 2020. <https://www.smithlifehomecare.com/what-are-the-biggest-challenges-for-elderly-people-in-our-society/>

^{viii} Art. 37, The Constitution of India, 1950.

^{ix} Section 20 of Hindu adoption and maintenance Act, 1956.

^x Section 22 of Hindu adoption and maintenance Act, 1956.

^{xi} Section 127 of the Criminal procedure code, 1973.

^{xii} In Vijaya Manohar Arbat v. Kashirao Rajaram Sawai, (1987) 2 SCC 278.

^{xiii} 2021 Bom Writ petition no. 960 of 2020

^{xiv} 2017 SCC OnLine Del 7451

^{xv} *Writ Petition No. 10611 of 2018, Decided On, 26 June 2018*

^{xvi} 2018 SCC OnLine Chh 548.

^{xvii} 2017 All MR (Cri)4065

^{xviii} Writ Petition (PIL) No. 52 of 2013

^{xix} 1996 (3) R.C.R (Criminal)

^{xx} 1987 SCR (2) 331], [1987 SCC (2) 278

^{xxi} AIR 2014 SC 3549

^{xxii} <https://www.quotemaster.org/Senior+Citizen>