

## ELDER ABUSE: A HARSH REALITY OF CONTEMPORARY TIMES

—Malay Pandey\*

*Abstract—The problem of elder abuse has always been a part of cultures around the world, at any given time. However, for the majority of the time frame societies failed to accept elder abuse as a problem. It was only in the late 20th century that the problem of elder abuse was taken note of by the system. Elder abuse can happen in many forms it may be physical, emotional, sexual, or financial the studies that have been conducted around the world suggest and are indicated that the population of old age faces elder abuse in one form or another, and the number of victims is on the rise be it a developed country like the United States of America or a developing legal system like India. Globalization, the Withering away of value systems, the rise in the tendency of materialism, and the decline of moral values all have a role to play when it comes to elder abuse, along with many other reasons. In 2007, for the first time, the Indian government legislated an Act, The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 exclusively to cater to the need of the elderly population of the country which provides and deals with issues pertaining to basic needs of the elderly population and provides for the Protection of their constitutionally guaranteed rights. Since 2007 the act has been amended twice, improving the reach and remedies provided for in the act for elders. However, much needs to be done on the grassroots level before our system can properly address the issue of elder abuse.*

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**Keywords:** Elder Abuse, Children, Senior Citizen, Parents, Grandparents, The Maintenance and Welfare of Senior Citizens Act.

## I. INTRODUCTION

Elder abuse is not a new problem, and it has been reported since ancient times. However, it saw a resurgence in the latter half of the 20th Century, with the emergence of phrases like “granny battering” and “granny bashing.”<sup>1</sup> Elder abuse was first described in the scientific literature in 1975. Although many scientific or other societies tried to define the concept of abuse of people of old age or mistreatment, there is a lack of consensus on the definition of elder abuse. One of the most accepted definitions was developed by Action on Elder Abuse in the United Kingdom. This definition was later adopted by the International Network for the Prevention of Elder Abuse and according to this “Elder abuse is 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.”<sup>2</sup>

NCRB data of 2019 paints a gloomy picture of offences committed against senior citizens in India<sup>3</sup>. According to reports, more than 10% population above 60 years of age face elder abuse<sup>4</sup> which equated to around 10 million victims in 2010, if we presume that these findings represent the state of affairs at the national level. The actual number of sufferers of elder abuse may be much higher than these presumptive figures as a substantial number of cases go unreported due to varied personal/social/administrative reasons.

The abuse can be seen in the form of physical abuse, psychological or emotional abuse, sexual abuse, financial abuse, and neglect. Elder abuse can be intentional or unintentional.<sup>5</sup>

These are various kinds of abuse that an elderly person may go through:

<sup>1</sup> Mysyuk Y, Westendorp RG, Lindenberg J, Added Value of Elder Abuse Definitions: A Review, *Ageing Res Rev*, 2013; 12:50–7; Burston GR, Letter: Granny-Battering, *Br Med J*, 1975; 3:592; Baker A, Granny Battering, *Modern Geriatric*, 1975; 8:20–4; Walshe-Brennan K, Granny bashing, *Nurs Mirror*, 1977; 145:32–4.

<sup>2</sup> <http://www.who.int/news-room/fact-sheet/detail/elder-abuse>, (last visited on April 22, 2022).

<sup>3</sup> <https://ncrb.gov.in/en/crime-in-india-table-content>, (last visited on Apr. 24, 2023).

<sup>4</sup> <https://bmcpublikealth.biomedcentral.com/articles>, (last visited on Apr. 24, 2023).

<sup>5</sup> Hudson MF, Elder mistreatment: A Taxonomy with Definitions by Delphi. *J Elder Abuse and Neglect*, 1991; 3(2): 1–20.

1. **Physical abuse:** Elder physical abuse is the intentional use of force against an elderly person that leads to physical harm, ranging from physical pain to death.
2. **Emotional abuse:** Psychological and emotional abuse are intentional acts that inflict mental pain, fear, or distress on an elder. It may include insulting, isolation, humiliation, intimidation, and name-calling.
3. **Sexual abuse:** Elder sexual abuse is non-consensual sexual intercourse with an elder. Some of the symptoms of sexual abuse may include bleeding from the anus or genitals, newly transmitted sexually transmitted diseases, the pain in anus or genitals, pelvic injuries, etc.
4. **Financial abuse:** Elder financial abuse is the non-authorized use of an older individual's resources by someone in a trusting relationship with that individual. This kind of abuse can take place with people who are unable to understand their financial statements or conditions because of old age.
5. **Neglect:** Elder neglect happens when the person responsible for the care fails to protect an elder from harm or meet an elder's needs in a way that results in or risks serious injury. Neglect is not an honest accident it is the result of carelessness or a lack of regard for the well-being of an elder. It may include depriving elders of basic needs like- shelter, clothing, health upkeep, or nutrition needs.

Many studies have evaluated the prevalence of elder abuse across different countries. Studies from the United States of America (USA) suggest that about 10% of the elderly experience abuse;<sup>6</sup> Data from European countries suggest the prevalence of elder abuse to be 61.1%<sup>7</sup> and that from countries such as Peru suggests a prevalence figure of 79.7%.<sup>8</sup>

A person of old age may face a varied range of abuses ranging from physical to psychological and the same can lead to chronic health issues both physically and mentally<sup>9</sup>. A high level of elder population maltreatment has been found across Asia Pacific countries. A study conducted in Chennai(n=400) revealed more than 13% of cases of elder maltreatment which included abuses ranging from financial to physical.<sup>10</sup> In another report (N=1000) more than 4% of the old population cited physical abuse.<sup>11</sup>

<sup>6</sup> Washington, DC: The National Academies Press; 2002. Institute of Medicine. *Confronting Chronic Neglect. The Education and Training of Health Professionals on Family Violence.*

<sup>7</sup> *Ibid.*

<sup>8</sup> Cooper C, Selwood A, Livingston G, The Prevalence of Elder Abuse and Neglect: A Systematic Review, *Age Ageing*, 2008; 37: 151–60.

<sup>9</sup> Collins KA: *Elder Maltreatment: A Review*, ARCH PATHOL LAB MED, 2006, 130: 1290-1296.

<sup>10</sup> Peck MD: *Epidemiology of Burns Throughout the World. Part II: Intentional Burns in Adults*, BURNS, 2012, 38: 630-637.

<sup>11</sup> *United Nations: Building a Society for All Ages, 2002.*

In the face of such a drastic set of data, it is unfathomable that India does not yet have a specific law intended for the protection of elders from such abuse. The current framework is evidently insufficient to curb this menace.

## II. TRENDS OF LIVING ACCOMMODATIONS OF ELDERLY IN INDIA

In India, while children pursue education and other career-building activities and adults and middle-aged engage themselves in earning a livelihood, the elderly lead a retired life. In the same household three generations, namely, children, parents, and grandparents reside side by side harmoniously. The elderly receives care, support, and comfort from their children and grandchildren. With the advent of modernity and globalization and the accompanying phenomena such as industrialization, urbanization, and migration the conventional living style has been undermined. The number of nuclear families is increasing and more and more elderly are now living alone. This trend is gaining momentum with an increase in life expectancy. The percept of regarding maintenance of the elderly as a pious obligation is also wearing off. Because of these changes, the elderly are feeling isolated and they are facing numerous other privations. They have become easy targets of criminals and elder abuse has become a social menace.

All over India, members of the family look after their aged by way of their moral responsibility. Because of adherence to the principle of moral responsibility of looking after elderly members of families, a strong need for non-family institutions for the provision of social security has not been felt in India in the past. However, in recent times, due to globalization and growing materialistic values, society is witnessing a gradual but definite withering of the joint family system and a decline of such moral values. As a result, their children are not maintaining a large number of parents. Because of these changes, the union legislature has enacted the Maintenance and Welfare of Parents and Senior Citizen Act, 2007.<sup>12</sup> This law makes taking care of the elderly by their children mandatory besides directing the state governments to provide adequate medical facilities to older persons and take steps for the protection of their life and property. This law also makes provision for the setting up of old age homes.

A large number of elderly (12 percent) live alone. Their number is increasing day by day. They live alone for a variety of reasons including a lack of support from children (33 percent) and children living in other cities (20 percent).<sup>13</sup> These elderly present soft targets to criminals. In a survey, it was

<sup>12</sup> Maintenance and Welfare of Parents and Senior Citizens Act, 2007, <https://www.indiacode.nic.in/bitstream/123456789/6831/1> (last visited Apr. 12, 2022).

<sup>13</sup> Group of Economics & Social Studies, RISING CRIMES AGAINST ELDERLY PEOPLE AND RESPONSIBILITY OF POLICE IN METROS, Bureau of Police Research and Development, Government of India, Ministry of Home Affairs, 2009.

revealed that 51 percent of the elderly did not prefer to live with their children. Instead, they prefer to live nearby their children.<sup>14</sup>

### III. NEED FOR A STRONG FINANCIAL PROTECTION SCHEME

One of the most significant factors which leave the elderly vulnerable to crimes is the withdrawal of financial protection by the state after a certain point. India is a young country in terms of demography but aging gradually. By 2050, every fifth Indian will be a sexagenarian compared with every twelfth now, putting the country in a position similar to today's developed world in terms of the share of the elderly in the population. Hence, it is important that the development of the underpenetrated pension market in India be initiated now when the situation is ripe.

This comes at a time when informal family support – Pillar IV of the five-pillar framework identified by the World Bank as the benchmark pension system in a country – is reducing.<sup>15</sup>

Of the remaining pillars, the government must focus on Pillar III<sup>16</sup> – voluntary pension – targeting the gargantuan unorganized sector. Plans in this pillar faces problems of low coverage, low contributions, and persistence. To address these, the government can look at providing a) flexible payment and withdrawal options, b) monetary incentives for the lower-income strata, c) exclusive pension schemes for women and d) improved financial literacy and intermediation.<sup>17</sup>

Meanwhile, Pillar II, which targets the organized sector, needs to improve its asset allocation. The pension system under this pillar is skewed towards debt, compared with global peers, which are strongly invested in equity. The debt skew is despite the demographic advantage the country has and is expected to enjoy over the long term. The young population has a long-term investment horizon, which calls for greater allocation to a long-term asset class such as equity for wealth creation, to meet the needs in sunset years. Additionally, there is a section of the workforce that is not covered under any form of retirement products. The government can look at auto-enrolment of

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<sup>14</sup> *Ibid.*

<sup>15</sup> *The World Bank Pension Conceptual Framework*, adopted in 2005, A pension pillar is one of five pension formats outlined by the World Bank. The five pillar concept was developed in 2005 and has since been adopted by many economically reforming countries in Central and Eastern Europe, <https://documents1.worldbank.org/curated/en/716871468156888545/pdf/461750NWP0Box334081B01PUBLIC10SP00824.pdf> (last visited on Apr. 23, 2023).

<sup>16</sup> *Ibid.*

<sup>17</sup> *Financial Security for India's Elderly*, (CRISIL), <https://www.crisil.com/en/home/our-analysis/reports/2017/04/financial-security-for-india%27s-elderly.html>, (last visited on Apr. 24, 2023).

people who are part of the ‘employee–employer’ set up but are not covered due to various reasons.

For the elderly below the poverty line, which gets covered under Pillar Zero, the current pension structure under IGNOAPS<sup>18</sup> is sparing and varied across states. The government can thus evaluate a targeted pension scheme for the indigent poor.

In addition, the government should focus on the financial awareness of pension products in the country. Having personal finance and retirement planning a part of the formal education curriculum can aid in achieving the overall objective of financial literacy. Sufficient incentivization of intermediaries can help in increasing penetration. Ensuring consistency across pension products in terms of accounting valuation, taxation, and disclosures, etc, could also aid the growth of the industry.

#### IV. LAWS IN INDIA

The question arises that what are we doing to handle this problem and do we have any provisions regarding the same in our country?

Though Chapter IX Section 125 of the Code of Criminal Procedure, 1973<sup>19</sup> provides for maintenance for parents but the section is not able to meet the needs of the elderly population as the application of the section is restricted and limited in many ways which is apparent from bare reading of the section. The Indian legal system woke up late to the cause of elderly and it was only in 2007 when the government came out with *The Maintenance and Welfare of Parents and Senior Citizens Act, 2007*. This legislative piece consists of 32 sections scattered over 7 chapters<sup>20</sup> and deals with maintenance, medical care, protection of life and property, and establishment of old age homes for senior citizens and parents. It also provides the procedure of trial for offences committed against the elderly population. This legislation is an attempt to take care of the primary needs of the elderly population and make provisions for establishing and managing institutions and services and enforce the constitutional

<sup>18</sup> Indira Gandhi National Old Age Pension Scheme (IGNOAPS). This is a Govt. of India-funded Scheme where the beneficiaries receive Rs.300/- per month under this scheme. Pensioners above 80 years of age are receiving Rs.500/- per month, [https://nsap.nic.in/\(22/4/23 at 8:30 PM\)](https://nsap.nic.in/(22/4/23 at 8:30 PM) (last visited on Apr. 21, 2023).) (last visited on Apr. 21, 2023).

<sup>19</sup> (1) If any person having sufficient means neglects or refuses to maintain-- (d) 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\* \* \* as such Magistrate thinks fit and to pay the same to such person as the Magistrate may from time to time direct, [https://www.indiacode.nic.in/show-data?actid=AC\\_CEN\\_5\\_23\\_000010\\_197402\\_15\\_17807320555&orderno=147](https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_000010_197402_15_17807320555&orderno=147 (last visited on Apr. 21, 2023)) (last visited on Apr. 21, 2023)

<sup>20</sup> [https://www.indiacode.nic.in/bitstream/123456789/6831/1/maintenance\\_and\\_welfare\\_of\\_parents\\_and\\_senior\\_citizens\\_act.pdf](https://www.indiacode.nic.in/bitstream/123456789/6831/1/maintenance_and_welfare_of_parents_and_senior_citizens_act.pdf (last visited on Apr. 21, 2023).) (last visited on Apr. 21, 2023).

rights of the elderly. In *Jharkhand Senior Citizen Advocates Service Sansthan v. State of Jharkhand*<sup>21</sup> the Jharkhand High Court reiterated that “*there is absolute absence of social security system in our country to take care of the older generation. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 is a step forward for the maintenance and welfare of parents and senior citizens*”. In *Santosh Surendra Patil v. Surendra Narasgopnda Patil*<sup>22</sup> Maharashtra High Court observed, “*the Act enforcing filial responsibility is derived from England’s Elizabethan Poor Laws of 1601, which made blood relatives responsible for the support of their family members including ageing parents. In fact, such a law can be traced back to the third century in Roman Society*”. In *Shadab Khairi v. State*<sup>23</sup> the court observed, “*the Act like other social reform legislations demands a liberal interpretation to achieve the legislative purpose*”.

The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 has been amended twice once in 2016<sup>24</sup> and again in 2019<sup>25</sup>. By virtue of these amendments, provisions of the said act were extended to all individuals who come in the category of dependents, irrespective of their age bracket in other words any individual or guardian who is not able to appreciate issues relating to his tangible/non-tangible assets due to any factor, other than age, would also come within the folds of the act after these amendments of the act. With these amendments, the reach of the act has been extended to both mental and physical health care along with issues relating to shelter. The amendment postulates that it would be obligatory for caregivers, who under any law would inherit the property of the dependent in case of their demise, to take due care of parents or grandparents. Under the act, the punishment for violation of the provisions has been, by virtue of these amendments, enhanced to 5 years or a fine which may be up to 1 lakh or both.

*“Parents under the act include biological, adaptive, and step-parents. For the purposes of maintenance age bracket to which parents belong is immaterial. The definition of grandparents under the act covers the parents of both mother and father. A senior citizen under the act would mean to include a citizen of India who has attained 60 years of age or above Children under the act include son, daughter, grandsons and granddaughters but excludes minors. Issues such as medical treatment, food, and clothing all come within the tenets of*

<sup>21</sup> 2016 SCC OnLine Jhar721: (2016) 2 JLR 137 (HC).

<sup>22</sup> 2017 SCC OnLine Bom 3053: (2017) 2 AIR Bom R (Cri) 869.

<sup>23</sup> 2018 SCC OnLine Del 7626, *Sunny Paul v. State of NCT of Delhi*, 2018 SCC OnLine Del 11640: (2017) 4ADR 257.

<sup>24</sup> <http://164.100.47.4/BillsTexts/LSBillTexts/Asintroduced/3047LS.pdf> (last visited on Apr. 21, 2023).

<sup>25</sup> [http://164.100.47.4/BillsTexts/LSBillTexts/Asintroduced/374\\_2019\\_LS\\_Eng.pdf](http://164.100.47.4/BillsTexts/LSBillTexts/Asintroduced/374_2019_LS_Eng.pdf) (last visited on Apr. 23, 2023).

*maintenance under the act. The only requirement Which the act stipulates for claiming maintenance is that the elder is unable to maintain himself or has no financial support of his own whatsoever”<sup>26</sup>.*

The amendment of 2019 of the Maintenance and Welfare of Parents and Senior Citizens Act further provides for enhanced protection of the elderly population by making provisions for the appointment of nodal police officers in each police station and inculcating provisions relating to special police units at the district level along with helpline for senior citizens in need.

While different religions have various provisions to protect the interests of senior citizens, some are very particular such as the statutory provision for the maintenance of parents under Hindu personal law contained in Section 20 of the Hindu Adoption and Maintenance Act, 1956<sup>27</sup>. Similarly, Muslim laws, Christian laws, and even Parsi laws have such provisions.

Provisions have been made in the Constitution of India to preserve the rights of those aged above 60. Since these articles are part of Chapter IV of the constitution which talks about the Directive Principles, and so they cannot be enforced by a court of law as stated in Article 37, however, they are the basis upon which any legislation is drafted. Article 41 of the Constitution secures the right of senior citizens to employment, education, and public assistance.<sup>28</sup> It also ensures that the state must uphold these rights in cases of disability, old age, or sickness.<sup>29</sup> Meanwhile, Article 46 asserts that the educational and economic rights of the elderly must be protected by the state.<sup>30</sup>

Notable International efforts toward the protection of the rights of the elderly population have come from the side of the United Nations which has been striving towards the health and safety of the elderly since 1982<sup>31</sup> through

<sup>26</sup> <https://socialjustice.gov.in/writereaddata/UploadFile/83211672138255.pdf>, (last visited on Apr. 22, 2023).

<sup>27</sup> S.20(3)-Maintenance of children and aged parents. —(3)The obligation of a person to maintain his or her aged or infirm parent or a daughter who is unmarried extends insofar 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 other property, [https://www.indiacode.nic.in/bit-stream/123456789/1638/1/AA1956\\_78.pdf](https://www.indiacode.nic.in/bit-stream/123456789/1638/1/AA1956_78.pdf), (last visited on Apr. 26, 2023).

<sup>28</sup> Constitution of India, Art. 41, <https://legislative.gov.in/constitution-of-india/>, (last visited on Apr. 11, 2023).

<sup>29</sup> *Ibid.*

<sup>30</sup> Constitution of India, Art. 46, <https://legislative.gov.in/constitution-of-india/>, (last visited on Apr. 11, 2023).

<sup>31</sup> <https://www.un.org/en/conferences/ageing/vienna1982>, <https://www.un.org/esa/socdev/documents/ageing/MIPAA/political-declaration-en.pdf> [https://unece.org/DAM/pau/age/Ministerial\\_Conference\\_Vienna/Proceedings/Chapter1\\_2012\\_Vienna\\_Ministerial\\_Declaration.pdf](https://unece.org/DAM/pau/age/Ministerial_Conference_Vienna/Proceedings/Chapter1_2012_Vienna_Ministerial_Declaration.pdf) (last visited on Apr. 11, 2023).



various strategies and action plans of which the most recent and notable being *UNECE Ministerial Conference on Aging*<sup>32</sup> held in Rome 15-17 June 2022.

## V. CONCLUSION

The majority of societies around the world take pride in the fact that their old and vulnerable population garners respect in society and stands protected by the state<sup>33</sup>, and we as an international order and as an individual legal system have started taking note of the problems of the elderly and have put in place some measures and laws too to deal with it but there is still much to be done before we can say that we are doing justice to the cause of elderly. It's disheartening to note that elder abuse has become a common occurrence across societies. The problem of elderly abuse coming through near and dear ones adds to the agony of the victims.

A higher literacy rate can be a very potent tool as it may decrease the level of dependence elders need and at the same time, it may create awareness amongst the victims of abuse. Further, better education may sensitize the elderly population about the unnecessary pressure they undergo to safeguard the fake family reputation and would create a willingness to share instances of abuse.

While it is not certain that there would be a time when economic growth and development will trickle down to all the members of the society, the same cannot be said about education. Any kind of development would be directly proportional to the policies and choices the state adopts vis-a-vis education. Studies conducted on elder abuse have found no relationship between higher cognitive performance and elder abuse it has been established by many studies that education significantly lowers the risk of elder abuse and those with more than 7-8 years of education are likely to face less abuse in comparison to elders who are uneducated. This gives credence to the fact that as the educational level in India would increase (as has been the case over the last few years) it would result in a decline in cases of elder abuse. Education can improve and help elders in many ways by increasing their economic stability, sensitizing them towards abuse, and increasing their ability to oppose abuse. On the whole, practices, and policies that enhance literacy can go a long way in reducing the instances of elder abuse in India.

<sup>32</sup> UNITED NATIONS ECONOMIC COMMISSION OF EUROPE MINISTERIAL CONFERENCE ON AGING, (Apr., 12:00PM).

<sup>33</sup> Madhurima, *Elderly Widows as Victims of Physical Abuse: A Qualitative Study in the State of Punjab*, INDIAN J.GERONTOL, 2008, 22: 501-514.