Elder Abuse in Indian Families: A Socio-Legal Analysis

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Abstract: Senior citizen population faces a number of problems and adjusts to them varying degrees. These problems range from an absence of secure and sufficient income to support themselves and their ill-health, absence of social security, loss of social role and recognition and the non-availability of opportunities for creative use of free time. The needs and problems of the senior citizens vary significantly according to their age, socio economic-status, health, living status and other such background characteristics. Older persons are considered as most revered members of the society in our country but treated otherwise when it comes to practical behaviour with older people. Old age is a stage of life that every human being ultimately reaches and it is inevitable. In this time people dread old age but what the youth should be aiming is to create a world where people do not fear old age as a phase which they consider an inescapable prison but look forward to it as a phase of vacation where they can enjoy and have their loved ones to care of them after decades of having worked so hard and showered their loved ones with care and love. This aim cannot be achieved through administrative means only this requires the people of the society to understand the severity and urgency of the situation to be made known to the masses. The real solutions are not new laws and provisions, the real solution lies with the people themselves. If they start treating the old aged people as they deserve to be treated with respect and love then this problem will cease to exist.

Introduction

A community is known by the way it treats vulnerable sections of the society as the elderly. Traditionally, in India, it has been a part of our culture, for society and the family to take care of older persons. Senior Citizens are held in high esteem and are given priority and respect in all matters. A majority of people would well desire to live life this way, but it is sad to know that only a few fortunate ones do live and die in this manner. Old age is said to be a period full of gold and glory, provided the elderly are helped and not left alone to perish. Ageing is a natural process, which inevitably occurs in human life cycle. It brings with a host of challenges in the life of the elderly, which are mostly engineered by the changes in their body, mind, thought process and the living patterns.1 Ageing refers to a decline in the fundamental capacity of the organs of the human body, which occurs mostly due to physiological transformation, it never imply that everything has been finished. The senior citizens constitute a precious reservoir of such human resource as is gifted with knowledge of various sorts, varied experiences and deep insights. May be they have formally retired, yet an overwhelming majority of them are physically fit and mentally alert. Hence, given an appropriate opportunity, they are in a position to make significant contribution to the socio-economic development of their nation.2

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Objectives of the Study

The following are a set of specific objectives that have been framed to undertake a research on the conditions of the older persons in the study area:

1. To study the existing condition of senior citizens.
2. To identify various problems of senior citizens.
3. To study the constitutional and legal framework for the senior citizens in India.

Hypothesis

- There is lack of legislation that provides financial as well as social security to the senior citizens of India.

Research Methodology

This study covers doctrinal as well as empirical research method. The universe of this study is the State of Punjab. From Punjab Researchers have chosen two districts i.e., Jalandhar and Ludhiana.

Diagram: 1

Diagram 1 shows that the researchers have chosen two districts from the State of Punjab, further from these two districts researchers have chosen three old age homes. From Jalandhar district Pingla Ghar, Bawa Swarup Senior Citizens Home and Apahaj Ashram. From Ludhiana district Nishkam Sewa Ashram, Swami Vivekanand Ashram and Red Cross Senior Citizen Home.

Legislative Framework Regarding Elder Abuse in India

The Government of India has made a lot of laws regarding elder abuse. Government has taken many steps by making rules and providing different schemes for the old people who has become prone of the elder abuse.

Constitutional Framework

In order to protect the interest of the most valuable assets of the country i.e. elderly people, our Constitutional framers have inserted certain provisions on this subject under Part IV of the Constitution as Directive Principles of State Policy. Furthermore, although not explicitly stated as a Fundamental Right, the judiciary reads the rights of the elderly as a facet of Article 21 of the Constitution. Although Directive Principles are not enforceable unlike Fundamental Rights, it is an accepted norm that they must be taken into account while framing the state policy. Article 41 of the Constitution provides that, “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.” It places obligation upon the State to provide job opportunities and other help to the elderly so that they can earn and live a respectful and independent life. Article 38(1) enjoins the State to strive to promote welfare of the people by securing and protecting as effective as it may a social order in which justice social, economic and political shall inform all institutions of the national life.³

**Salient Features of the Senior Citizen Act 2007**

Senior Citizens are an integral part of society. Their vast experience and teachings have always enriched families and societies. Since time immemorial presence of senior citizens in families have made relations healthier and stronger. However, recently there have been endless incidents when senior citizens have been boycotted by their very own families and have been deprived of even basic necessities of life. Many senior citizens have also been forced to leave their own homes and seek shelter in old-age homes. In view of such adversaries, legislature had formulated the law **Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (Senior Citizen Act)** and the Judiciary has also in the recent times passed verdicts which further strengthen their rights and position in society.

Until 2007, there were no special or separate legislation exclusively addressing the elderly population. The Directive Principles, although mentions rights of the elderly, they were not applicable towards private citizens. With the passing of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 that a specific legislation for the protection of senior citizens came into force in India. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 seeks to make it a legal obligation for children and heirs to provide sufficient maintenance to senior citizens, and proposes to make provisions for state governments to establish old age homes in every district. The Act places an obligation on children and relatives to maintain a senior citizen or a parent to the extent that they can live a normal life. The definition of senior citizen includes both Indian citizens aged over 60 years, and all parents irrespective of age. This obligation applies to all Indian citizens, including those residing abroad.⁴

**Punishments under the Act:**

Abandoning a senior citizen in any place by a person who is having the care or protection of such senior citizen is a criminal offence and such person shall be punishable with imprisonment for a term which may extend to three months or fine which may extend to Rs.5,000 or both.

**Judicial Framework Regarding Elder Abuse:**

- **Assault:** Where a person knowingly assaults an individual over the age specified in a state’s elder abuse laws (usually 65 or older), the assailant may receive an enhanced sentence if convicted. Under elder abuse laws, the state must prove that the defendant knew that the victim was within the protected age group.
- **Neglect:** The statutes covering neglect of elderly persons cover treatment by those with a duty to care for the elderly person. Elder abuse laws define what degree of neglect is required for a conviction of elder abuse.

**Judgments on Welfare of Senior Citizens in India:**

In the case of **Dattatrey Shivaji Mane v. Lilabai Shivaji Mane and others⁵**, the Bombay High Court while 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

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³ Retrieved from [http://nhrc.nic.in/sites/default/files/Project%20Report%20on%20the%20Rights%20of%20the%20El derly_NUALS.pdf](http://nhrc.nic.in/sites/default/files/Project%20Report%20on%20the%20Rights%20of%20the%20Elderly_NUALS.pdf) (last visited on Nov 2, 2019)

⁴ Maintenance and Welfare of Parents and Senior Citizens Act, 2007

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 such as eviction under Section 4 of the Act not only against his children but also the grandchildren”.

In the case, “the respondent mother had filed a complaint against the petitioner her son inter alia praying for maintenance and eviction of the petitioner on various grounds. The Tribunal passed an order directing the petitioner and his other family members to evict themselves from the said tenement under Section 4 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007” (Senior Citizen Act). “It would be relevant to mention here that the impugned premises exclusively belonged to the Respondent mother. Aggrieved by the aforesaid order, the Petitioner instituted writ petition before the High Court of Bombay contending that since the petitioner has been allegedly maintaining the respondent no.1 for last several years, no order of eviction could be passed by the tribunal under Section 4 of the Senior Citizen Act. The High Court directed the petitioner and other occupants such as his wife, son and daughter hand over the vacant possession to Respondent within 2 weeks.”

In the case of Senior Citizen Welfare Organization & another v. State of Uttarakhand and others, “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. In the case, the Petitioner is a registered Society who has instituted this petition with the object to protect the rights of the senior citizens as per the provisions of the Maintenance and Welfare of the Parents and Senior Citizens Act, 2007”.

“The Petitioner in the case alleged that as per Section 19 of the Act old age homes is to be established in each district of the State of Uttarakhand. Section 19 ordains the State Government to establish and maintain such number of old age homes at accessible places at least one in each district to accommodate minimum 150 senior citizens who are indigent. However, the Respondent State has established only two old age homes.” The Two-Judge of the Uttarakhand High Court while taking a strong note of the prevailing situation made the following observations in the case:

That according to the language of Section 19, the State Government is required to establish old age homes in each district and also to prepare a Scheme as per Section 19(2) of the Act, 2007. That the State Government should establish the old age homes at its own level instead of relying upon NGOs or Societies. The State Government has to discharge the burden placed on it under Section 19 of the Act, 2007 and it cannot be permitted to pass on the responsibilities upon the NGOs for better management of the old age homes. That it is the duty of the State Government to provide beds for all senior citizens in government aided hospitals. There is requirement of separate queues for senior citizens. The facility for treatment of degenerated diseases is required to be extended to senior citizens. Every senior citizen has a fundamental right to live with dignity. It is the duty cast upon the State Government to protect the life, liberty and property including dignity and decency of senior citizens. They cannot be permitted to be left unattended in the twilight of their lives. Ours is a welfare and socialist state and it is expected that every senior citizen should live in a dignified manner with the assistance to be provided by the State Government.”

Elder Abuse in Indian Families- Case Study

CASE 1 (Pingla Ghar, Jalandhar)

Mr. Viky Bhalla, Aged 71 belonged to a highly educated and rich family who was staying in the old age home of Jalandhar from last 8 years. He had stayed in Canada for almost 4 to 5 years. He had worked as a bank manager for almost 10 years. He has a son who is married and running his own business. His daughter-in-law made him feel like a stranger in his own house. He used to face a lot of taunts by her just because he was not earning anything. She used to serve him food as if she was doing any favor to him. Just to avoid the fights in the house and not to become a

burden any more he decided to leave his own house and started staying in the old age home so that his son and daughter-in-law can stay happy. During conversation with him about the government policies and schemes he said all those schemes are useless and just a trick of government to earn more votes. The system is so corrupted that they don’t get the actual benefit of the schemes only the government agents sitting on high position are taking benefits out of it.

**CASE 2 (Pingla ghar, Jalandhar)**
Mrs. Simranjeet kaur , Aged 66 widow from last 4 years, mother of two sons and who has worked as journalist for 6 years was staying in a old age home just because of the reason that her two sons were not able to (actually don’t want to) take care of their mother and misbehaved with her. So just to maintain her pride and self respect she chose to leave the house and started staying in the old age home.

Even her brother requested her to stay with him but she didn’t want to be a burden on them as well so just to live with Dignity she decided to stay away from all of them in a old age home. According to her the main reason for most of the old people for leaving there house is the fight between the mother-in-law and daughter in law.

**CASE 3 - (Bawa Swarup Senior Citizen Home, Jalandhar)**
Mrs Saroj Singh, Age 68, was staying in old age home from last 6 years. She was a mother of 3 children who were busy in their own life. Her husband died 8 years ago. She felt lonely and neglected after her husband’s death. Her children were ready to support her financially but not emotionally.

**Findings**
There Researchers met with the senior citizens of Punjab, who were handicapped and abused by their families. After that Researchers went to the managing committee of the ASHRAM, they said that seniors are not suffering from any type of serious disease or physical disability.

**CASE 4- (Apahaj Ashram, Jalandhar)**
Researchers went to an old age female senior citizen, Smt. Sheela Devi from Jalandhar was abused by her daughter-in-law and her son .She was Paralyzed who was thrown out by her daughter-in-law and her son, she was considered to be a curse for them. She told that she was suffering from TB since a long time but no attention was paid by her family, she was not capable to fulfill her needs sometimes she was beaten by her daughter-in-law on the absence of his son but she was not able to say these matters with her son because he was also involved in throwing herself from the house. She also convinced that sometimes she continuously keep sleeping in the lawn even she was not having sufficient food as a result she stayed hungry many times after the death of her husband. The behavior of her son was totally changed even property was given to him that is why he does not care about her, before the marriage of her son, behavior was good. She was not capable of getting her clothing as well as her other daily needs, she was tortured mentally as well as physically. Researchers also observed that her friend gave some own clothes to her so that she could go outside .

**CASE 5- (Apahaj Ashram, Jalandhar)**
In this case Mrs. Jaswinder Kaur aged 74, District Hoshiarpur, Punjab, researchers observed that sometimes elders hide the injustice suffered by them by their families or relatives. They do so only to protect the reputation of their families, they do not want to show to the public what they had suffered from, as we were asking from them questions they were ignoring us and trying to hide their beaming faces whether from fear or by their own will.

Researchers observed that she was not capable to talk with us because of her physical condition her age was seem to be as 100 years above. She told that she was a beggar, she had no family since she born as a result she did work in the shops as a sweeper and now in her old age she is dependent on begging due to the bad condition of her health she kept sleeping on the public road from a long time. That is why she had only one option to come in the ASHARM.
CASE 6- (Apahaj Ashram, Jalandhar)
Researchers observed the bad condition of Nagraj Rawat aged 81 migrated from Himachal Pradesh to the Kapurthala district of Punjab. His wife had already died, he had only son who was still unmarried aged 33 years. He was addicted by alcohol, drugs and gambling, he was usually beaten by the people for illegal works like Stealing and Robbery etc.
Mr. Nagraj was unable to maintain himself because of the habits of his son, every time there were disputes between father and son, he was unable to get his basic needs like foods and clothing, in his old age he cannot go for the earning money to fulfill the needs of his father as well as his owns.
In the age of 81 years he tried to maintain himself by earning some money by polishing the shoes of the people in public but hardly had he got 50 rupees in a day. So he was even not able to get food as a result he left this work and in spite of suffering from many physical and mental problems. So, he decided to go to the APAHAZ ASHARM with his friend, who was also suffering some problems created by his relatives.
He stated that he is in this Ashram since 3 years but his son never came to see him, whether he is alive or died. No medical treatment was given to him.

CASE 7- (Apahaj Ashram, Jalandhar)
Further, researchers went to an old lady aged 76 named Smt. Roopa Devi from Ludhiana district of the Punjab was suffering from Myopia and Tuberculosis. She didn’t get any medical treatment. She was also considered as a burden on the family, so she was thrown out by her grandson and her own daughter. They were not willing of take care of her. She kept lying on the lawn and on the floor, sometimes she was treated badly by her owns even by her daughter .No one asks her about her health or appetite even no one was intended to give her one glass of the water.
She was unable to get medical treatment and her daily needs, because of her daughter she was staying in the ASHARM since 2013. She was psychologically tortured by her daughter and grandson and they left her in the APAHAZ ASHARM Jalandhar so that they could get rid of their responsibilities.

Findings
Researchers observed that seniors are not aware about the programmes initiated by the Government of India and the constitutional provisions. During our research researchers found that they are not even aware about the pensions for old age people. They are facing a lot of health and financial problems. However old age homes are providing all necessary facilities to them. Most of the elders were abused mentally.

CASE 8 - (Pingla Ghar, Jalandhar)
Mr. Kuldeep Choudhary, 58 a Business Man have a son and her wife died when he was at the age of 45. After her wife died they both live alone in the house and his son was got married to a girl after 5 years of his mothers’ death. After his son’s marriage he give his business to his son because he was old and not able to take care of business, so his son is taking care of the business and he is in home in his old days. After he gave the business to his son his daughter-in-law is started to showing him some attitudes to Mr. Kuldeep Choudhary (old man) and she is not giving him food properly and whenever he says something she used to shout at him and she gave lot of mental torture to him, so he suffered a lot because of her daughter-in- law and undergone mental illness. He was not able to tell this to anyone because of fear of the break of relationship with his son.
So one day the old man told about everything that he suffered in house because of her daughter-in-law to his son about misbehavior, but his son said you have to adjust with her otherwise she will shout like this only, if you don’t want to live here then I will send you to the old age home. After that he decided to live in old age home and he transferred all his property in the name of old age home and now he is living happily in the old age home with his new friends.
CASE 9 - (Pingla Ghar Jalandhar)
Mrs. Rhamath Beevi, 65 mother of two sons. She is working as a maid from the past 25 years after her husband left her and married another woman for money. Because of that she left alone and took care of the family. She has an elder son aged 20 years at that time so he also started to work for the sake of family, and her second son is studying in school at that time.
Her elder son is an auto driver and he is alcoholic and he started to abuse his mother after coming to home and her younger son is completed polytechnic and he is working outside the town. Behaviour of both the son’s was changed slowly they started to lead their life on their own way. She was working in others houses to lead her life and after sometime her elder son is got married and they built a house in their land but his son is not allowed her inside the house. But his son makes a small tent on the terrace for her and she started to live. She is not allowed inside the house and her daughter- in- law even didn’t like to see her face whenever she comes in front of her she used to abuse her mother- in- law.
But she still lives there only because she doesn’t want to live alone without seeing her son in her last days of her lifetime. She emotionally attached to her sons although they didn’t care about their mother. Still she is going for job as a maid because both of them are not helping her. She cooked there and used to eat alone and live alone in the small tent only

Findings
In both of the above cases the elders were abused by their own family members. They underwent lot of sufferings because their family members didn’t gave respect to them. They both were not aware about any government policies and pension Scheme. In the first case Mr. Kuldeep took stand for him and went to old age home, but in the second case sufferer is still silent. That’s why elder abuse is not so concerned topic in society because elders remain silent for the sake of society and emotional attachment with their family.

CASE 10 – (Swami Viveknanda Ashram), Ludhiana, Punjab
Mrs. Abhimani Thapa, aged 78 belonged to the Nepal but settled in Ludhiana, Punjab due to family commitments. Her husband had died due to cancer. She was left with only two sons and one daughter. After some time daughter has been married in Nepal and she has been busy with their life and her elder son died in the accident. Younger son left the old lady to the old age home so that he can live independently. Younger son has not been coming to meet her for almost 4 months. She is eagerly waiting to meet him atleast once so that she could see him. On the question being asked about the Government Scheme from the lady, she replied that Government Scheme is for the sake of name only. It hardly reached to sections of the society. Management of NGO is not that much competent to bring all the facilities to the people who are actually living in the ASHRAM.

CASE 11 Ludhiana, Punjab (NISHKAM SEWA ASHRAM)
Mrs. Susheila devi aged 68 belonged to Gorakhpur, Uttar Pradesh. She was abused by the daughter- in-law. She has got the education till 12th standard and was working in the anganwadi teacher after the retirement, Daughter- in- law asking her to do the job if she has to stay in the house. She was mentally tortured to get her out of the house. On the question being asked about the son, she said he is not able to think what is right and what is good for me and on the insistence of daughter- in- law he asked me to leave the house because according to her son she (Susheila devi) is the only one who creates trouble in the family and son decided to leave her at the ASHRAM, So that they can live happily.

CASE 12 – Ludhiana, Punjab (RED CROSS SENIOR CITIZEN HOME)
Mrs. Balwinder kaur aged 80 from Ludhiana, Punjab. She is a college graduate and having the good family background. She has only son and he is married but after his marriage on the insistence of her (Daughter in law), son asked his mother to transfer all of her properties. Son treated his mother like the stranger one and she is left with no hope and has got no economic support from the son. She started feeling helpless in her own home and she had to ask for every basic needs, she felt alone and neglected and decided to part away with her son and started living in the old age home.
Findings
In the above case Researchers found that elders were mostly mentally abused and tortured by their family members and they are still silent. Their family members left them in old age homes and they are in hope that their children will come back. They are not even aware about their rights given to them by constitution.

Conclusion
The findings of this study suggest that elderly abuse is prevalent in India. The findings of this study raise a question that in our society whether the families are the safest place for the elderly to live? If they are economically independent and are the owners of their house, then they are respected and get the support of the family. “However, the elderly are slowly struggling to move away from the notions of depending on inter generational reciprocity for their survival”.

Suggestions
1. They should save some money for their old age.
2. They should not transfer their whole property to their children while they are alive.
3. They should be made aware regarding their rights by the government.
4. They should have the knowledge of the government policies and schemes made for them.
5. Every elderly people themselves must be made aware of the legal provisions and take cautionary measures.
6. Various NGOs should work and provide a helping hand to them.
7. Senior citizens cells should be established in each and every district.
8. Government should try to make them economic independent by offering them pensions to the elderly people.