

# Elder Abuse A Case of Human Rights Violations

Vivek Khatkar<sup>1\*</sup>, Dr. Sayyad Ismail Nasir<sup>2</sup>

<sup>1</sup> Research Scholar, NIILM University

<sup>2</sup> Assistant Professor, NIILM University

**Abstract - A complicated public health problem is elder abuse. This study's objective is to give a succinct summary of elder abuse in India among individuals 60 and older at the national and state levels. The major goal of this study is to analyse the frequency and causes of elder abuse in light of the most recent data available, with a focus on older individuals' employment status. We also look at the relative significance of unique elements that contribute to the gender differences in elder abuse. Additionally, this study offers some solutions for the issue of elder abuse. Although the overall prevalence of elder abuse in India is very low (5.22%), data from the 2020 Longitudinal Ageing Study in India show that there are significant state-level variances. In comparison to men, women, working older persons (particularly working women), people under the age of 70, people with more household assets, people who aren't married, people who live in rural regions, and those who aren't in good health have significantly higher odds of being abused. To stop abuse, income and education must both reach a crucial point. The gender discrepancy in the prevalence of elder abuse is only 10% explained by differences in economic conditions.**

**Keywords - Elder Abuse, Human Rights Violations**

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## INTRODUCTION

The term "ageing" refers to a loss in the ability of the body's organs to operate, which mostly results from physiological changes. Ageing is a natural process that presents a variety of difficulties for senior individuals, most of which are brought on by changes in their bodies, minds, mental processes, and behavioural patterns. Ageing is the term denoting a loss in the functional ability of the human body's organs, which mostly results from physiological change; it never denotes that everything has been completed. Senior folks make up a priceless pool of human resources that are endowed with a variety of knowledge, experiences, and profound insights. Although the vast majority of them are in good bodily and mental health, they may have officially retired. They are thus in a position to significantly contribute to the socio-economic growth of their country if given the right opportunity.

In India, there are almost 77 million old people who still live in instability, injustice, and cruelty. And in the following 25 years, this number is projected to increase to 177 million.

Nearly 30% of India's elderly are the victims of abuse or neglect by their relatives, according to many polls conducted around the country. And barely 1 in 6 of the elderly who have been mistreated disclose the wrongdoing. Adult carers, partners, or family members are responsible for 47.3% of cases of abuse, and

48.7% of all abuse cases involve physical, financial, or emotional abuse as well as neglect of an aged person.

## PROBLEMS FACED BY SENIOR CITIZENS:

**Economic problems** : which include issues like job loss, a lack of income, and financial instability.

**Physical and physiological problems** : Including issues with diet, sufficient shelter, and other health and medical issues.

**Psycho-social problems** : covering issues such as the problem of elder mistreatment, their psychological and social maladjustment, etc.

## EFFORTS TO TACKLE ABUSE

### International Efforts:

On Argentina's proposal, the topic of ageing was first discussed at the UN in 1948. Malta brought up the subject once more in 1969. The General Assembly requested in 1971 that the Secretary-General compile a detailed report on the aged and provide recommendations for both national and international action. A world conference on ageing was planned to be held in 1978 by the assembly. As a result, from July 26 to August 6, 1982, the World Assembly on Ageing was place in Vienna, where an international plan of action on ageing was approved. The Plan's

main objective was to increase each nation's capacity to deal with population ageing while taking into consideration the unique requirements and concerns of the elderly. The Plan aimed to increase awareness of the social, economic, and cultural effects of ageing, as well as of linked humanitarian and contemporary challenges. The General Assembly adopted the International Plan of Action on Ageing in 1982, and in the years that followed, the Assembly urged states to continue putting its recommendations into practice.

On December 16, 1991, the United Nations General Assembly established 18 principles, which are grouped into 5 clusters: independence, participation, care, self-fulfillment, and dignity of the elderly. Following are some of the guiding principles:

- ▶ The chance to work and choose when to retire from the workforce.
- ▶ to continue being a member of society and actively take part in the creation of policies that affect their well-being.
- ▶ must have access to healthcare so they may keep their physical, mental, and emotional health at its highest possible level.
- ▶ to have access to the socially available resources for education, culture, spirituality, and enjoyment, and to be able to seek possibilities for the full development of one's potential.
- ▶ To be free from exploitation and physical and emotional abuse, to be able to live in safety and dignity. Additionally, the United Nations General Assembly designated 1999 as the International Year of Older Persons. Likewise, "1st October" was designated as the International Day of Older Persons.

## NATIONAL EFFORTS:

### (1) Constitutional Protection:

**Art. 41 : Right to work, to education and to public assistance in certain cases :** Within the bounds of economic capability and growth, the State should provide adequate provisions for safeguarding the right to labour, to education, and to public assistance in circumstances of unemployment, old age, illness, and disability, as well as in other cases of unjustifiable poverty.

**Art. 46 : Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections:** The State is required to safeguard the weaker groups of the population from social injustice and all sorts of exploitation while also promoting their economic and educational interests, particularly those of the Scheduled Castes and Scheduled Tribes.

However, these provisions are part of the Indian Constitution's Chapter IV, or Directive Principles. In accordance with Article 37, no court has the authority to enforce the Directive Principles. However, Directive Principles place affirmative responsibilities, or what the state should do, on it. The Directive Principles have been deemed essential to the nation's government, and the state is required to use them while enacting legislation. A Directive Principle, however, cannot be enforced by the courts because it does not grant any individuals any justiciable rights. It is really regrettable that the state has not passed even one law directly affecting senior citizens.

### (2) The Code Of Criminal Procedure:

Before 1973, the code did not provide a mechanism for parent maintenance. However, the Law Commission opposed the creation of such a clause. Its report states that the Cr.P.C. is not the appropriate venue for such a provision. In a swift process of this nature, it will be very difficult to divide the amount of support given to parents among the children. It would be best to let civil courts handle the resolution of this issue.

However, the clause was originally included in Section 125 of the Code of Criminal Procedure in 1973. Additionally, it is crucial that the parent proves that the other party has the resources to support them while neglecting or refusing to support the parent, who is incapable of supporting himself. It is crucial to remember that the Cr.P.C. 1973 is a secular law that applies to people of all faiths and groups. Even married daughters have a responsibility to care for their parents.

### (3) Hindus Laws:

Even in the earliest writings, sons of Hindus were expected to support their elderly parents who were unable to do so on their own out of their own earnings and property. And the holding of family property was not a condition or a qualification for this responsibility in any manner. It was a contract that the state or the sovereign might execute against an individual. The Hindu Adoption and Maintenance Act, 1956, Section 20, contains the legislative provision for parental maintenance in Hindu personal law. This Act is the first personal law act in India to require children to support their parents financially. As is clear from the section's phrasing, females also have an equal responsibility to their parents. Sons are not the only ones who have this duty. It's vital to remember that only parents who are unable to support themselves financially on their own may request maintenance under this Act.

### (4) Muslim Law:

Even according to Muslim law, children have a responsibility to care for their elderly parents.

- (a) Children who live in comfortable circumstances must support their poor parents, even if they may be able to make a living for themselves..
- (b) Even under difficult circumstances, a son must support his mother if she is destitute, even if she may not be ill..
- (c) A son who, while being in poverty, makes some money must help support his non-working father.

### **Efforts By The Government:**

1. On January 13, 1999, the Indian government established the National Policy for Older Persons in an effort to speed up welfare initiatives and give the elderly more control over their lives. The following crucial actions were part of this policy: :

- (i) the establishment of a pension fund to provide security for people who have worked in the unorganised sector,
- (ii) construction of nursing homes and daycare facilities per three to four districts,
- (iii) creation of resource centres and reemployment offices for those over 60,
- (iv) Concessionary rail/air prices are available for travel inside and between cities, with Indian Airlines offering a 50% discount and a 30% discount respectively..
- (v) passing legislation to make geriatric care required at all public hospitals.

2. A National Council for Older Persons named the agewell Foundation will be established, according to a statement from the Ministry of Justice and Empowerment. In order to make their lives simpler, it will ask the elderly for their opinions.

3. Attempts to sensitize schoolchildren to working and living with seniors. A 24-hour assistance line is being established, and measures are being done to prevent elderly people from being socially isolated.

4. In order to protect the superannuated from any problems, government policy supports quick settlement of pension, provident fund (PF), gratuity, etc. Additionally, it promotes making taxation policy age-sensitive.

5. Additionally, the policy places a strong focus on their medical requirements..

6. The Income Tax Act's Sections 88-B, 88-D, and 88-DDB provide tax breaks for the elderly..

7. The Life Insurance Corporation of India (LIC) has also been offering many programmes, including as

the Jeevan Dhara Yojana, Jeevan Akshay Yojana, Senior Citizen Unit Yojana, and Medical Insurance Yojana, for the benefit of older people.

8. 'Annapurana Yojana' was also introduced by the former prime minister A.B. Vajpayee for the welfare of senior citizens. Unattended elderly people are provided 10 kg of food each month through this yojana.

9. It is suggested that elderly people be given easy loans for 10% of the homes built under government programmes for the urban and rural lower income sectors. The policy mentions:

The design of the housing colonies will take into account the requirements and way of life of the elderly, ensuring that there are no physical obstacles to their movement, that they are assigned to the ground level, and that they may engage socially with other senior members of society.

Despite all of these initiatives, it is necessary to remind the elderly of the necessity to adapt to their changing circumstances and make every effort to coexist peacefully as long as possible with the younger generation.

### **The Maintenance and Welfare of Parents and Senior Citizens Bill, 2007**

The "Himachal Pradesh Maintenance of Parents and Dependents Act, 2001" was first passed by the State of Himachal Pradesh. And the Act of the Himachal Government served as a major inspiration for this law.

The State government in question will execute the law. The State administration in question will publish a notice in the Official Gazette announcing the date on which the Act will take into effect.

A senior person or parent may request maintenance under Clause 4 of the bill under Clause 5(1) of the bill. If the senior or parent is unable to file for maintenance on their own behalf, any other individual or a nonprofit organisation with their permission may do so. The Tribunal may decide to take notice. *cono motu*.

When a case about a monthly allowance for the senior citizen's maintenance under this section is ongoing, the said Tribunal may order such children or relatives to make a monthly allowance payment for the senior citizen's interim maintenance, including parent. For the purpose of determining on the order for maintenance under Clause 5, the State government must establish Tribunals within six months of the law's (Act) effective date.

In accordance with Clause 4(1), if a senior citizen, including a parent, is unable to support himself from his own wages or from property he owns, he may request for maintenance under Clause 5. One or

more of a parent's or grandparent's primary children may be the target of a maintenance application (the term "children" includes son, daughter, grandson, and grand-daughter). The responsibility of the children to support their parents includes meeting their needs, whether they are the parent's father or mother or both, depending on the circumstance, in order for that parent to live a normal life. On the other hand, a childless senior citizen may file a claim against a relative ("relative" means any legal heir of the childless senior citizen who is a major and is in possession of or would inherit the property after the childless senior citizen's death); property includes rights or interests in such property.

According to Clause 23 (1), if a senior citizen transfers his property to a relative as a gift or in another manner with the understanding that the relative will meet the senior citizen's basic physical and material needs, and the relative refuses or neglects to do so, the senior citizen may choose to have the Tribunal declare the transfer of property void.

The following are a few of the crucial provisions that have been made thus far addressing the legislation in around 12 states:

*Clause 4* guarantees a senior's right to maintenance from a parent who is unable to support themselves..

*Clause 5:* guarantees a senior's right to maintenance from a parent who is unable to support themselves..

*Clause 7* specifies that the State Government may establish one or more Tribunals for each Sub-division by announcement in the Official Gazette, and the Tribunal shall be presided over by an officer not lower than the level of Sub-Divisional Officer.

*Clause 15* provides for the establishment of an appellate tribunal by the state government to be led by a district magistrate-level official..

*Clause 17* states that attorneys are not allowed to take part in any hearings before tribunals and appellate tribunals..

*Clause 19* specifies that the State Government may build old age homes for older residents who are needy in a progressive way.

*Clause 24* specifies that anybody who is responsible for the care or protection of a senior citizen and knowingly abandons such senior is subject to a fine of up to 5,000 rupees or a sentence of up to three months in jail.

## SUGGESTIONS

- ▶ Articles 41 and 46 of the Indian Constitution, which deal with older persons, should be included to the Directive Principles of State Policy in order

to give them the additional teeth they currently lack.

- ▶ The government undertook no significant efforts to include elderly persons in the "Group Health Insurance Scheme" as part of the 2007 law. Senior persons should be given access to appropriate and timely medical facilities. Because it is a human right to have access to the highest calibre of treatment while dealing with a terminal disease.
- ▶ Perhaps because State governments are implementing the Old Age Pension Scheme, the 2007 Bill does not address old age pensions. However, under the aforementioned Scheme, the pension amount and qualifying requirements differ amongst the States. The Bill should have required the State governments to provide substantial and uniform old age pension payments to senior persons everywhere.
- ▶ When crafting the Bill, the government used the word "may" for the word "shall," as in clause 19, which states that the State Government may create old age homes. Therefore, the state governments are not required to create these old age facilities under the current bill.
- ▶ In its current form, this bill will only serve the requirements of parents and older citizens from affluent families, the upper classes, and metropolitan regions. It is unable to meet the demands of parents and older adults from rural or underprivileged backgrounds. The urgent requirement is to raise awareness in order for it to be implemented properly.
- ▶ The government need to offer tax breaks to anyone who look after elderly people, parents, or grandparents. In light of the fact that citizens should get social security benefits from the government as they age if taxes are being collected from them, this is only fair. If the government is unable to fund social security, it should at least offer income tax breaks to encourage citizens to do so.

## CONCLUSION

Senior people' issues require immediate attention and the highest consideration. It is important to change the Constitution to include a separate provision protecting senior citizens and to move it beyond the realm of fundamental rights. The family in current times should not be considered of as a secure place for them due to the deterioration of the joint family structure, dislocation of familiar relationships, and lack of respect for the elderly. Therefore, it should be the State's constitutional obligation to pass legislation for the older citizen's welfare and further protection.



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## Corresponding Author

**Vivek Khatkar\***

Research Scholar, NIILM University