

Elder abuse and its legal provisions in India

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Abstract

In a world full of hatred and crimes, one such crime that hardly came in the notice is Elder Abuse. This dishonorable and atrocious crime has few legal provisions with even fewer reliefs provided to the victims. With the increasing crime rates in our society, this paper is a way to provide some consolation to the victims of Elder Abuse. This research paper will explain this heinous crime and its existence in our society as well as provide the information regarding various reliefs that have already been enacted by law and how some other forms of reliefs should in order to aid the victims of the crime.

Keywords: elder, abuse, maintenance, neglect, crime

Introduction

There is a great saying, "It always a blessing to learn the wisdom from elderly people." Elders are the most experienced people in our generation. It always motivates everyone listening to their stories and gain knowledge from them. But still, there are cases where they are abused and neglected by their own blood.

Elder Abuse came in the notice on a global level as an issue in 2002 by the World Health Organization. In 2006 the International Network for the Prevention of Elder Abuse (INPEA) designated June 15 as World Elder Abuse Awareness Day (WEAAD), and rising numbers of occurrences are taking place around the world today to promote awareness of the abuse of the elderly and to emphasize ways to challenge this abuse ^[1].

Elder Abuse involves impacts from individuals the elderly knows or has a bond with, like a spouse, companion, or member of the family; a colleague or neighbor; or individuals the elderly depends on for healthcare. Since they are undertaken by members of the family, many aspects of elder abuse are identified as kinds of domestic abuse or family violence. Also known to prey on their elderly patients were paid, caregivers.

Even though elders with Alzheimer's or mental disorder usually make false claims of theft and other forms of abuse by caregivers or members of the family, it is necessary to examine all allegations of abuse.

But before discussing it any further let's look into the definition of the term.

Definition

Who is Elder?

Merriam Webster defines elder as "a person who born earlier or of greater age" or "One living in an earlier period." or "One who is older".

As per census-

Elders are people who experienced life before us. The elder people have different and more life experiences than us. They are grown people with wise minds. They are people

who gave their support to their loved ones when they needed and now are dependent upon those people or caregivers.

Elders are just people who need love and care and have shared love and care to their loved ones.

Who is Abuser?

The abuser in this particular crime is their own child or members of the family or paid caregivers. At first, it was noticed that Son are the main abuser as son lives with them for their lifespan but as the years passed by other aspects also came in notice of this particular crime.

What is Elder Abuse?

The term Elder abuse has been used as an all-inclusive word sometimes used to portray physical violence. So that implies there are distinctions in the interpretation of the abuse of the elderly.

"Elder abuse is an intentional act or failure to act, by a caregiver or another person in a relationship involving an expectation of trust that causes or creates a risk of harm to an older adult ^[2]."

Sadly, elder abuse has been:

- 1) badly or inaccurately specified;
- 2) ambiguously defined to represent the peculiar statutes or situations present in particular places; or
- 3) ambiguously defined for research purposes.

As an outcome, there are no proper definitions that are generally accepted. But the abuses are mainly of different forms and not just physical.

Kinds of Elder Abuse

When the term 'Abuse' is added to a noun, it unconsciously makes us think about physical abuse, but actually, there are various forms of abuses. Elder Abuse includes:-

- Physical Abuse
- Emotional Abuse
- Elder Financial Abuse
- Sexual Abuse

¹ International Network for the Prevention of Elder Abuse, accessed April 15th, 2019.

² <https://www.cdc.gov/violenceprevention/elderabuse/definitions.html>

- Neglect ^[3]

Physical Abuse

Physical Abuse as its name implies, it is physically harming the person. This abuse includes beating, burning, false confinement, etc any kind of harm which is visible on the body or causes major bodily harm is physical abuse. As per the result of the findings, almost 11% of elders in India faces abuse under which 5.3% is physical abuse only.

Emotional Abuse

Emotional Abuse is harming a person's mental state of mind. This abuse is of 2 kinds of verbal and non-verbal. Humiliating, criticizing, blaming, etc are verbal abuse while shunning, silence, etc is non-verbal abuse. Around 8.2% of verbal abuse on elder has been observed.

These abuses come as emotional abuse as this abuse harms the victims emotionally.

Elder Financial Abuse

This is one of the most common kinds of abuse most of the elders had faced. This issue covers misappropriation of financial means by members of the family, caregivers or acquaintances or to use finance as a medium to control or manipulate the person or do any other kind of abuse related with financial means. In a few countries like the USA, it also covers if a victim isn't able to receive proper financial support for their maintenance. As per the statistics, 10.4% of elders face this abuse.

Sexual Abuse

Pressuring an individual to indulge in any sexual contact without his or her approval, like pressuring him or her to engage in sexual interactions against his or her will; may also include circumstances where a person can no longer consent (dementia).

Neglect

To denude an individual of appropriate medical care, groceries, heat, garments or comfort or important prescription and to deprive an individual of the facilities needed to force certain types of financial and other actions. The act of neglecting includes abandoning an elder unsupervised at-risk (i.e. risk of falling).

These kinds of abuses are acceptable in India but in the U.S. there are 4 more kinds of abuses considered in the case.

The factors that lead to the victimization of elder are discussed next.

Factors leading to Elder Abuse

As we have observed before elder abuse are majorly done by family members, relatives, and friends. Few of the signs can be visible before any kind of abuse occurs like ignorance, being distant with them, not providing them the support they require, etc. All such factors are visible and can be observed at the very first stage. Sometimes the accused background as a childhood plays a major role in the abuse of victim as it comes out as a revenge factor of the accused. Sometimes the greed factor plays a role for the accused to abuse the victim. The victim once observes the starting stage of the abuse i.e., neglect and verbal abuse/ physical abuse should seek relief under some of the legal provisions

provided in different acts.

Legal Provisions regarding Elder Abuse in India

There are several legal provisions provided under various Indian Laws addressing the issue of Elder Abuse in widespread:

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

This Act was enacted mainly for the welfare of the parents and senior citizens. It allocates a maintenance clause for parents and senior citizens under the Constitution.

The Act clearly states that grandparents and parents who are unable to keep themselves from their own income may seek their children's maintenance. Childless senior citizens can also claim a "relative" who is the former's legal heir and is in ownership or will retain their estate after their death ^[4].

If the children or said relatives abuse or refuse to keep the senior citizens, the Maintenance Tribunal may order the former to make monthly allowances not exceeding Rs 10,000 ^[5].

▪ Transfer of Property Act

A considerable provision in the Act deals with the transfer of property that, under certain contexts, can be made void-as if children/relatives decline to provide basic necessities and physical needs for the elderly.

This applies only in instances where the property was moved after the Act commenced-in 2007.

Section 24 ^[6] of the Act addresses abandonment-related crimes. According to this section, anybody who leaves a senior citizen for whom they are liable may be imprisoned for up to 3 months and/or be charged with paying a fine of up to 5,000 rupees.

Statistics of Elder Abuse in India

Elder abuse has been happening since ancient times, it just hasn't come in notice. When India was under the emperor's rule to get the power or throne sons used to kill each other and even their father in the greed of power.

A study suggests that about 85% of the older persons has felt "loved and wanted" by their family members while only about 10% felt that they were being "tolerated", 4% had felt "the need to go to an old age home" while 1% had no comments on the issue ^[7].

Though the ratio is pretty low, but its existence and their respond regarding the issue showcase the little option elders are left with while facing such issues in their life.

Case Study

State v. Manoj @ Saleem ^[8]

Though the case mainly doesn't focus on elder abuse, this particular case is an example of verbal abuse the the elder. The accused in this case has somewhat verbally abused to his father when he tried the complainant and the accused to stop with their arguments. Even though the abuse is there no

⁴ <https://www.thenewsminute.com/article/abused-abandoned-neglected-law-protects-senior-citizens-india-not-many-know-it-59099>

⁵ Maintenance and Welfare of Parents and Senior Citizen Act, 2007.

⁶ Singh, A. (2009). Textbook on the Transfer of Property Act. Universal Law Publishing.

⁷ Shubha Soneja, *ELDER ABUSE IN INDIA*, https://www.who.int/ageing/projects/elder_abuse/alc_ea_ind.pdf.

⁸ State vs. Manoj @ Saleem Etc. on 1 September, 2016. (n.d.). Retrieved from <https://indiankanoon.org/doc/72258110/>

³ https://en.wikipedia.org/wiki/Elder_abuse

such legal provisions focuses on such kind of abuse, the accused was charged u/s 324 of Indian Penal Code ^[9]. But no charges focused on the verbal abuse to the father during a heated argument.

Such cases are examples of the changes that are required in the legal system and provisions, that by the time if any existence of any kind of abuse is seen or observed based on that provisions should be there to provide some kind of relief to the elderly victim.

Conclusion

Elder Abuse is one of the growing crimes in the society. The neglect, physical abuse, verbal abuse, etc play a role that causes harm to the elder victim hasn't been came in much notice. As per the 2011 census 70% of the household have nobody to take care of the elder individual of the house which is an almost a count of 15 million elderly individuals living alone and being neglected by their family members.

The census study and the legal provisions that has been provided doesn't really match up to its consideration. The maintenance act might allow some relief to the elderly individual but if any household member abuses the individual or cause any physical harm to individual there isn't any proper provision to bring justice.

The scrutiny of the trauma in this crime is essential for the Indian justice system. The awareness of this crime should be spread out in a vast number of areas to protect the victim of such crime.

No crime is small or big, each should be given equal notice and awareness. The possibility of any crime occurring is low but the existence of the crime should be given attention. Justice system is there to provide protection to the victim and spread awareness to avoid any occurrence of the crime, this crime might be given a few attention by the media but the protection under this crime is quite lower than it should be. Three months of imprisonment if the elder is left with abandonment won't be enough for the victims who have been abandoned for years. "Elder Abuse is a Sin, Don't be an Irredeemable Sinner."

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