

DOMESTIC VIOLENCE AGAINST SENIOR CITIZENS WITH REFERENCE TO THE SENIOR CITIZENS ACT, 2007

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ABSTRACT

“To Care for those who once cared for us is one of the biggest honours”. – Tia Walker

These words are one of the most quoted on ‘World Elder Abuse Awareness Day’ on June 15th. But like rest of the world, we Indians do not seem to care about elders as much as we claim. The cases of crimes against senior citizens have risen considerably over past years, and the redressal mechanism is not up to the mark to tackle cases of elder abuse, there is a lack of awareness in the present legal system. Thus, senior citizens do not know about their legal rights and redress available to them. According to a report only 11% of elders know about the existence of Maintenance and Welfare of Parents and Senior Citizens Act, 2007. Furthermore, present Legislation miserably fail to recognise physical abuse as a crime as it only incorporates provisions for pecuniary maintenance of the senior citizens and fail to constitute an effective redressal mechanism for their redressal. Current legal system is sluggish, long and painful for the advancing age of senior citizens. Thus, it needs immediate upgrade to make redressal mechanism more effective and usable for senior citizens considering their advancing age. This paper constitutes a systematic study to answer the following: types and reasons for violence against senior citizens, redressal available in the present legal system and lacunae in the present legislation that should be amended.

Keyword: Senior Citizen, Physical Abuse, Awareness, Access to Justice, Lacunae

1. INTRODUCTION

Crimes against senior citizens are rocketing the sky by day. In the year 2019, 27,696 cases of crime against senior citizens were reported in India, which increased from 24,349 and 22,727 cases in the preceding years. The trend shows that there is a constant increase in the number of cases registered for elder abuse in India. According to a report around 60% of senior citizens confirmed that Domestic Violence is prevalent in our society. Although only 18% of them confirmed that they have attempted to report the violence. The major reason is the lack of awareness in the society about rules and regulations. Senior citizens don't know what and how should they report the crime. Only 11% of senior citizens know about “The Maintenance and Welfare of Parents and Senior Citizens Act, 2007”. This act mainly focuses on the maintenance and welfare of senior citizens. According to section 2(k), “‘welfare’ means provision for food, health care, recreation centres and other amenities necessary for the senior citizens”. “Protection of Women from Domestic Violence Act, 2005” is an enactment that also aims to lower domestic violence. Although, it covers the violence committed against females it fails to consider the

male senior citizens, which is a big lacuna in the present legislation.

This study aims to create awareness in the society to believe that there is a need for a robust system where senior citizens could seek redressal for violence inflicted against them. The objective of this study is to present facts and quantitative data about violence against senior citizens, in a way that by end of this paper one would have a better knowledge about domestic violence against senior citizens as a whole; their kinds; reasons and cure. This study is divided into systematic parts to communicate its point clearly to the readers. In the first part it defines domestic violence against senior citizens and ends with the types of crimes committed against senior citizens. Second Part consist of reasons of crimes against senior citizens. Third part consist of the legal actions available to the senior citizens, it explains the provisions of MWPSA Act, 2007. Furthermore, it tries to explain different nuances and jurisprudence of the act with the help of various case laws. In the last part it, explains the lacunae in the present legislation that should be amended. This paper sums up with conclusion and suggestions.

2. DOMESTIC VIOLENCE AGAINST SENIOR CITIZENS

Domestic violence against senior citizens can be defined as the mistreatment of older member of the society, by family members, relatives or close acquaintances by hurting them either emotionally or physically. According to section 2(h) of 'The Maintenance and Welfare of Parents and Senior Citizens Act, 2007' (MWPS Act, 2007), "'senior citizen' means any person being a citizen of India, who has attained the age of sixty years or above". So, for this paper and better understanding senior citizen means any person who is above 60 years of age. WHO defines elder abuse in the following words, "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"?

India is a land of rich culture and heritage, where the elders hold a sacred place. Coming from that background it is all the more shocking that India is placed among one of the most abusing countries. According to a report, in 2015, India registered 20,532 cases of Crime against Senior Citizens, in 2019, this number increased to 27,696 cases, and the numbers are increasing day by day. Country Capital, Delhi, is among top 8 cities where most cases of elder abuse are reported, Maharashtra being on top with 6,163 cases registered in 2019.

Types of Crimes Committed against Senior Citizens

A report published by Help Age India, an NGO working to help senior citizens shows the following trends in the prevalence of elder abuse committed against senior citizens: -

- **Disrespect** – This is the most common abuse experienced by Senior Citizens. They are not given the reputation and authority they deserve in the family. Out of senior citizens who have experienced abuse, 51% experienced disrespect as an abuse.
- **Physical Abuse** – Physical Abuse include slapping, beating, hurting in which both simple hurt and grievous hurt are common to be used as abuse. 20% of senior citizens have experienced physical abuse.
- **Verbal Abuse** – Verbal abuse include name-calling, condescension, degradation, manipulation, accusations, threats to kill, suicide etc. 42% of senior citizens have experienced verbal abuse. Verbal abuse also results in emotional and psychological abuse in most cases which leads to depression.
- **Economic Exploitation** – It includes not giving means for maintenance and welfare to the senior citizens in

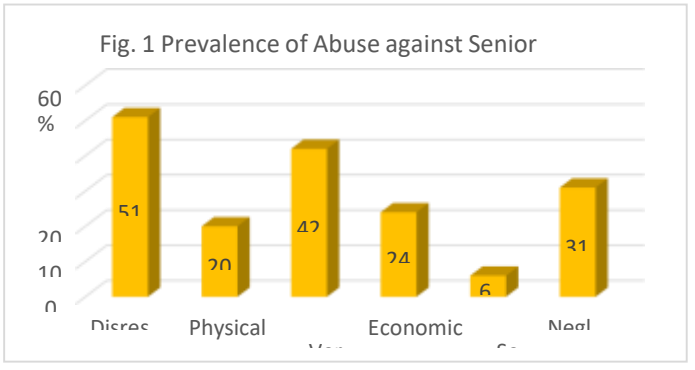
the house or denying amenities like medicine, food, water, room etc. 24% of senior citizens have experienced Economic Exploitation as abuse.

- **Sexual Abuse** – Unwarranted sexual abuse is the scarcest abuse that has been experienced by the elderly in Indian society but it is not nil. 6% of senior citizens have experienced unwelcome sexual contact.
- **Neglect** – Neglect is the negligence of the caregiver in taking care of the senior citizen and protecting them from harm that results in injury. 31% of senior citizens have experienced Neglect.

Figure 1, shows the graphical representation of the prevalence of abuse against senior citizens in India.

Reasons of Crimes against Senior Citizens

Reasons for increased criminal activities against senior citizens are complex and multifaceted. It cannot be defined in one solid definition. Reasons are a bag of factors that cumulatively contribute towards crimes and violent actions against senior citizens in India. These factors vary in social, legal, cultural, moral, physical, medical and psychological aspects. As per the data shown and different published reports following could be the reasons for crimes against Senior Citizens: -



- **Property Issue** – This is one of the most common factors for senior citizen abuse in joint families. Siblings fight over the estate of the parents, aggrieved victims quoted that their children want them to die so that they can distribute the estate among themselves for their respective interests. Elders' physical health also contribute to this, as in the advanced age they are unable to do their chores and are dependent on their children for their basic needs like and food, washroom breaks, medicine etc. In that condition, interest of estate is the only binding force that keeps them with their family.
- **Intergenerational Conflict** – As human beings grow older their physical capacity to do certain things gets

affected severely leading to the dependency on younger members of the house, the problem arises when young members lack consideration to take care of them in this vulnerable age. One thing young member always forget is that elders have only lost their physical capabilities. When elders give their advice in the house matters, young members don't like their interference in the matter. In most cases, it is women who are aggrieved which oftentimes may take violent turns.

- **Financial Dilemma** – According to a report around 30.1% of senior citizens have pension as their main source of income, apart from that 8.2% have marginal to no income at all and they are completely dependent on their families for their maintenance and welfare. This financial dependence creates mental tension between adults and senior citizens of the family. The financial dilemma is a bigger problem in the middle to lower class families.
- **Lack of robust legal mechanism** – Cases of elder abuse is increasing day by day, in 2019 out of 27,696 cases registered while only 2,319 accused have been convicted which is only 8.37% conviction rate, that too with negligent punishment awarded to them. Furthermore, 28% of the senior citizens believe that the lack of severe legal deterrents available is the reason behind increasing cases of crimes against senior citizens while 34% of senior citizens do not know how to approach redressal forums which is an absolute failure of the system.

Legal Actions available to Senior Citizens – MWPC Act, 2007

The Right to get access to justice and legal equality is a fundamental right of every citizen under article 14 and 21 of The Constitution of India. Senior Citizens also have this fundamental right however they often face challenges to get justice due to constraints and restrictions of their advancing age. But legislators, executors and Govt. of India have provided various tools to ensure their fundamental right and we are going to discuss them in detail in this section.

One of the tools available to the senior citizens is to file a case under The Indian Penal Code, 1860 or The Code of Criminal Procedure, 1973 and go through the general process of justice delivery that is by filing a First information report or complaint. One may also file a petition for maintenance under section 125 of The Code of Criminal Procedure, 1973 but all these are lengthy process which may even take years to complete, some of

the senior citizens may even die of old age before they can get any redressal. Thus, there was a need for a better legal mechanism that could redress the complaints of senior citizens faster. With this view parliament has passed 'The Maintenance and Welfare of Parents and Senior Citizens Act, 2007' (MWPC Act, 2007), it is passed to provide older citizens of India, faster redressal of the problems they face due to their advancing age and neglect by the family members.

MWPC Act, 2007 defines maintenance and welfare in the following words, "maintenance includes provisions for food, clothing, residence and medical attendance and treatment; welfare means provision for food, health care, recreation centres and other amenities necessary for the senior citizens". This act mainly focuses on providing shelter, food and medications to senior citizens. Aggrieved senior citizens who are unable to maintain themselves are entitled to get maintenance under section 4 of this act, they can make an application for maintenance under section 5 which provides for the 'Application for Maintenance.' Application after admission will be carried in a summary manner. Section 21 of this act makes a provision that require state govt. to take measures to promote and aware the general public about the provisions of this act through public media, campaigns etc. However, only a few states have complied with this section. According to section 23, if any senior citizen has made any transfer of property by way of gift or otherwise, with a condition that transferee will provide for the maintenance and welfare to him, and transferee fails to provide for the same, then such transaction will be considered to be made with coercion and fraud, and such transaction will be void on part of the transferor i.e., senior citizen. This provision is made for the protection of senior citizens against unconscionable transactions. All proceedings are carried out in a summary manner and the tribunal have the power of civil court while taking evidence on oath and ensuring attendance of any witness for justice delivery. This act aims to provide relief to the aggrieved as quickly as possible, this act also provides for interim relief to the aggrieved until the final order is passed. On the effectiveness of this act, senior citizens are so far happy with the results, more than 60% of senior citizens have confirmed that The MWPC Act, 2007 has benefitted them. Around 40% of elders said that this act provides social protection to the senior citizen and meant for their welfare.

Case laws under MWPC Act, 2007

Kalpna Pal v/s State of W.B. and Ors. In this case, the son and daughter in law harassed and abandoned mother-in-law, they didn't let her in the house and refused any kind of maintenance. The judge laid down guidelines for the police while recording a complaint made by parents against their children in case of abuse; that it shall be the duty of the police to record the case when they are approached by an aggrieved senior citizen; aggrieved senior citizen shall be advised to take action under MWPC Act, 2007 to every extent it is possible; if the aggrieved senior citizen have taken any recourse under MWPC Act, 2007, the police shall not do any further enquiry into the case and let the court take appropriate action.

K. Narayanaswamy vs The District Collector, in this case, K. Narayanaswamy, an 80-year-old man was thrown out of his own house by his daughter-in-law. He had 2 sons and 5 daughters. After the marriage, the younger son left to work abroad, as soon as he left, his wife started abusing her father-in-law. Father has settled his property in the favour of his younger son earlier. Now he has no place to live and no means to maintain himself. The court held that the father would be awarded maintenance under section 9 of the MWPC Act, 2007, and the same could be carried out in the manner prescribed under section 8 of the same act.

Here, on a side note, for better understanding, the property settled earlier in the favour of his son, could also be annulled under section 23 of the MWPC Act, 2007.

G.S. Manju v. K.N. Gopi, in this case Kerala High Court applied the principle of natural justice that is embedded in the MWPC Act, 2007 under section 23, the court held that to rescind the transfer of property it must be tested on two grounds, it must be made with a condition to provide maintenance after transfer and when the condition is not fulfilled it must fall under the category of the transaction by fraud, coercion or undue influence.

Shadab Khairi v. State, the high court of Delhi while deciding an appeal posed to them under MWPC Act, 2007 held, tribunal under MWPC Act, 2007 have jurisdiction and that the parents can seek an application to evict the children from self-acquired if they failed to provide for the maintenance and other amenities along with any other welfare within the meaning of this act. The application would be filed under section 32 r/w clause (i) of section 2 of the MWPC Act, 2007

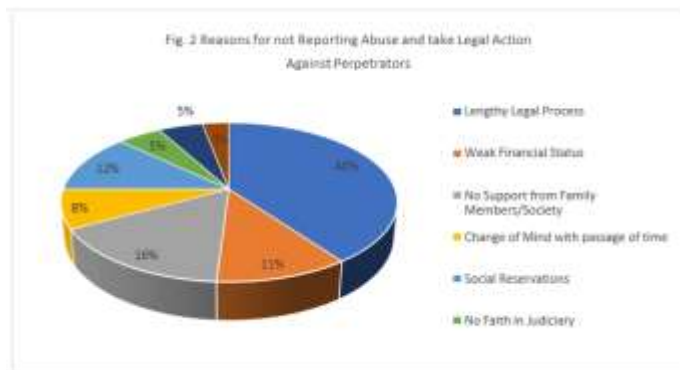
High court of Delhi while making judgements of various cases where aged parents and senior citizens were aggrieved by their daughter-in-law, observed that a daughter-in-law cannot claim the right to live in a property owned by her in-laws or to inherit if her husband has moved out. The court observed that it is not always daughter-in-law who is aggrieved but many times it is in-laws who are at receiving end of daughter-in-law's tantrums. It should be clear that parents and senior citizens have every right to live in peace in their own property and the right to property vested in them could not be used as a tool to harass them.

Uttar Kumar Bhoi v. Surekha Bhoi, the High court of Chhattisgarh observed that "The Act of 2007 has been enacted to provide for more effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognized under the Constitution and for matters connected therewith or incidental thereto". It was also brought to light that the term parent includes step-parents also, under section 2(d) of the MWPC Act, 2007. Thus step-son is obligated to pay the maintenance to the step-mother under this act.

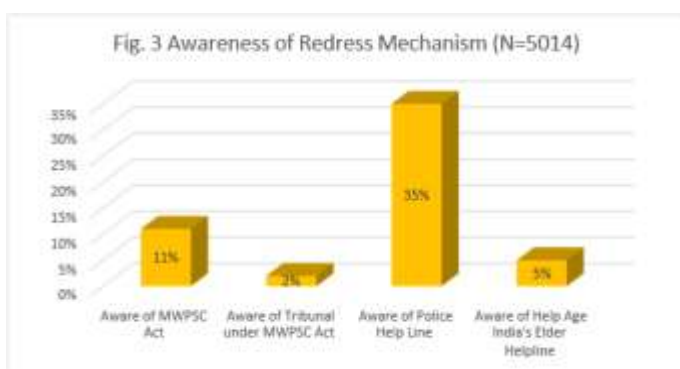
Legal action could also be taken against the perpetrators under 'The Protection of Women from Domestic Violence Act, 2005' in case the aggrieved person is a female. This tool could also contribute to redress half of the complaints, as according to a report among aggrieved senior citizens, female senior citizens are at par with the no. of aggrieved males and in some cases, no. of female aggrieved senior citizens are more than male senior citizens. Punishment and priority given to the matter registered under this act is higher than MWPC Act, 2007 but according to a study, in practice, this act is generally considered for the welfare and protection of younger women and older senior citizen women are neglected under this act. 31

Lacunae in the present Legislation

Even though various steps were taken by the govt. to reduce crimes against senior citizens, there is a lack of awareness and open-mindedness in the society, to take legal action against perpetrators as in most of the cases the perpetrator is someone close in the family or friends. A survey by Help Age India reveals that 10% of senior citizens do not have faith in the current system while more than 50% just wanted to maintain the confidentiality of the family matter for the reason of not reporting the abuse.



In fig.2, we saw that a lengthy legal process is the major reason why no one opt to take legal action against any perpetrator, but we also saw earlier in this paper that 60% of the senior citizen were happy with the results they got from MWPC Act, 2007, then what is the reason people are afraid to take any legal action? A study conducted by Help Age India suggests that only 11% of senior citizens know about the existence of the MWPC Act, 2007, and in another survey this no. is only 14%. The data shown earlier was only of these senior citizens who were aware of this act, and the reason why a lawyer would not tell them about recourse under this act, is the same reason why senior citizens would not take legal action i.e., lengthy process of redressal, lawyers will get the higher payment if the process is lengthy. Figure 3 shows awareness of the senior citizen about different redressal mechanisms available to them.



It is clear from the data produced that only a few senior citizens wanted to take legal action against the perpetrators and far less, knew about the MWPC Act, 2007, which was enacted to protect their rights in this older age. Thus, there has been a lack of awareness and education of the masses to take legal action under this act. It immensely contributes to the failure of legal mechanism and infringement of senior citizens' fundamental right of 'Access to Justice'. This section of the paper explores fallacies and lacunae in the present

legislation as to why senior citizens do not go for redressal under this act or take legal action in general.

- Lengthy Legal Process – as mentioned earlier most of the cases of crimes against senior citizens are filed under IPC, 1860 and Cr.P.C., 1973, under these acts the process is very lengthy which may even prove fatal for the senior citizens seeking redress under these acts, on the top of that there is a massive backlog of the pending cases which could take years to clear. All of these act as a catalyst for the reason of not reporting a crime against a senior citizen.

- Lacunae in the MWPC Act, 2007 – This act only focuses on the maintenance and welfare of the senior citizens and fails to recognise physical abuse as an offence under any head. Senior Citizens suffering from physical abuse have to file a case under IPC, Cr.P.C. the process of which is lengthy as discussed above, and the senior citizens end up with no robust mechanism to take recourse. Further, section 27 of the act states that no civil court will have jurisdiction to take action under this act or to order injunction under this act, which creates great inconvenience in the constituencies where no tribunals are constituted under this act. According to Section 5 of the Act, one shall make an application for recovery of due-amount of maintenance within 3 months, after which no tribunal will have the power to make an order for recovery. The limitation period provided here is quite low considering common health problems and chronic diseases in older age of senior citizens.

In 2019, The Maintenance and Welfare of Parents and Senior Citizens (Amendment) Bill, 2019, was proposed in the parliament by Social Justice and Empowerment Minister. It promises to cover physical abuse along with many other fallbacks in the present legislation, but the enactment of this act is still pending, and one can only tell after seeing its performance in the real world. Till then, senior citizens have to face these issues every day, while taking legal actions against a perpetrator.

- Lack of Awareness – Most senior citizens lose interest in everyday updates that are happening in the world. They are not updated with what all is happening in the legal world. Thus, it becomes all the more important for authorities to aware the senior citizens of their rights and what steps they can take if their rights are infringed. According to a survey, 51.6% of senior citizens do not know about their specific legal rights. Thus, there is a clear need for awareness programs. Awareness can be done through television ads, radio, newspapers, mouth to

mouth publicity, seminars etc. The establishment of various trusts, NGOs, awareness boards, volunteer teams and police helpline can ensure proper awareness in the senior citizen groups. Efforts have to be made at the places where senior citizens meet every day like public parks, temples, community gatherings etc.

Senior citizens who are unable to travel and do their chores are the most aggrieved and most neglected in the legislation, there has to be specific provision for free legal aid of such senior citizens with free transportation services, legal advice, lawyers shall also be provided to such people and priority shall be given to such cases over others in hearing sessions.

3. CONCLUSION AND SUGGESTIONS

Crimes against senior citizens could be one of the most heinous crimes one commits in a country like India, where parents and senior citizens are given a sacred place in the religious culture. The cases of crimes against senior citizens are committed all over India with most of the cases coming from metro cities like Gujarat, Maharashtra, Delhi and Muzaffarnagar, although the inclusion of topics like domestic violence in parliamentary discussion and enactment of special acts is a positive sign, still, there's a lot to be done and a long way to go for effective implementation of the law. The current laws formulated and the amendment proposed is a big step towards reforms to eradicate this problem, yet there are lacunae in the present legislation as well. The guidelines given by Supreme Court and High Courts through judicial activism will not only help lawyers, policemen etc. to help them in dealing with these cases but they are also going to help legislators in amending and enacting new rules and laws. The research was concluded to assess the current position of domestic violence against senior citizens in India and loopholes in the current legislation available i.e., The MWPC Act, 2007 in particular. This paper presented data from various agencies and organisations in a graphical format to show the current position of the crimes against senior citizens and to aware them about their legal rights. This paper makes a sincere effort to show that while there are positive steps taken by the legislators to address this problem there is still a lack of awareness in the elderly to take legal actions against perpetrators. In essence, it could be said that there is a need for further reforms in the system to tackle the problem of crimes against senior citizens. To achieve this, the paper makes the following suggestion - physical abuse shall be included in MWPC Act, 2007 with more rigorous punishments, a thorough study of amendment bill of 2019 shall be conducted,

effective awareness programs shall be carried out, speedy trials shall be promoted to prevent perpetrators from taking advantage of the long and never-ending procedure.

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