

Elder Victimization: Sociological Perspective

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Research Article

Abstract

India is a country which is known for its family value system, care and respect for elderly in their grey years of life. This picture has faded away with the passage of time, from considering “old as gold” these elderlies have now become “old as load”. According to 2011 Census, population of elderly persons is around 104 million which is expected to rise to 173 million by 2026. NCRB Report shows that elders are becoming vulnerable to crime by each passing year, which has posed a serious threat. The major reason for rise of such threat is low reporting of cases and silence towards the issue of ‘neglect’. And this situation of abuse and neglect becomes worst when the perpetrator of such abuse is a relative or family member. For the protection of these elders, in 2007, “Maintenance and Welfare of Parents and Senior Citizens Act” came into picture, but how far it has achieved the purpose is still a major question before us. In this paper, the author will try to look into various types of abuses and elder victimization by society and different perpetrators of crime. By this paper, endeavor would be to draw a conclusion about the major issues behind non-reporting of these cases by the elderly person including lack of awareness, societal imposition of ‘farz’, confidentiality of family matter and sometimes blood relatives being a perpetrator that ends up in continuing abuse and neglect, which further leads to normalization of such crime against elderly persons.

Keywords: Elder Abuse, Neglect, Elder Victimization, Perpetrator of Crime

1. Introduction

Ageing is a natural process. Every person has to go through the old age once in his life. Generally, the symbols that are attached to the ageing are wrinkles, weak eyes, grey hairs and a bent body walking with stick. By these characteristics, it is meant that a person has become dependent, weak and vulnerable. But this was not how the elders were seen earlier in the society. They were considered as the person with knowledge, experience, wisdom and capability. But do we actually mean it? India is a country which is known for its family value

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system. Care and respect for elderly in their grey years of life. This picture has faded away with the passage of time, from considering “old as gold” elderly have now become “old as load”. According to 2011 census, population of elderly persons is around 104 million which is expected to rise to 173 million by 2026. NCRB Report shows that elders are becoming vulnerable to crime by each passing year, which has posed a serious threat. They contributed a lot towards the family, society and nation. Now it is the time for everyone to become a little selfless and think about their need, cherish their capabilities and support their emotions. But in return what we generally give is sympathy or worse than that abuse and neglect. Now one more question comes in our mind before answering any of the above question. The question is why this issue has become so important that we are urging for separate legislation, or a special and different treatment like women and children. The reason behind such a step and need for working on such laws are the various reports that have been issued in few decades. Like if we take recent report of WHO, which talks about the study that has been conducted in almost 28 countries that, “Around 1 in 6 people 60 years and older experienced some form of abuse in community settings during the past year.”² And “The global population of people aged 60 years and older will more than double, from 900 million in 2015 to about 2 billion in 2050.”³ If we look at the preamble to UN charter it says, “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small”⁴. Charter says human rights are the basis of human being existence. Hence every person, rich or poor, men or women etc. have right to live with dignity and free from any abuse or exploitation. Hence, this right is also given to older people. And it shall be the duty of the state and government to protect such right of a person without any discrimination. There are many countries who have started working on this major problem whereas there are few countries which have not even recognized the need of working on it and some think that it is more of a social problem than legal. Through this paper attempt shall be to see the types of abuses against elders in family setting and then look at the causes and effect of such abuse on elderly person and society from the lenses of society, as how society or societal norms created by the society answer or affects the victimization of elderly population and how we as the society contribute towards the victimization of these elderly people by the caregivers.

2. Definition of Abuse

² A HelpAge India, “Report on Changing Cultural Ethos & Impact of Technology”, 2018.

³ *Ibid.*

⁴ The United Nation Charter, Preamble.

There is no single universal definition of elder abuse and neglect. Every nation has tried to give its own definition to understand or answer this problem as per their social needs and setup. Some jurisdictions have defined the elder abuse in the context of adult guardianship laws, and some define them as a separate criminal category by criminalizing the act against the elders as abuse which is intended to be inflicted on elders like laws created by US, by creating a separate category of offences i.e offences against elderly. Same way, there are countries which do criminalize the abuse against the elders but no such specific categories of laws are created, they are dealt with by the general laws like for example in India. Domestic violence law deals with all kind of criminal violence against women and no specific category of offences is created.⁵ Even there are jurisdictions which have not used these word abuse and neglect separately. According to WHO, Elder abuse can be defined as “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.”⁶ If we look at the Madrid International Plan of Action on Ageing 2002, no particular definition is given. It has only mentioned the definition given by WHO and stated various types of abuse but in terms of explanation nothing has been defined till now by the UN in any of its declaration or conferences on ageing. Same way in 2002 the National Academy of Sciences adopted the definition: “Elder abuse is intentional actions that cause harm or create a serious risk of harm to a vulnerable elder by a caregiver or other person who stands in a trust relationship to the elder or failure by a caregiver to satisfy the elder’s basic needs or to protect the elder from harm.”⁷

Now looking at laws in India, there is no specific legislation which directly takes into account the words elder abuse or neglect, but generally there are laws which deals with the problem of elder abuse like if we talk about Domestic Violence Act 2005, which only talks about violence against women and the abuse against men is not covered under this Act. Section 3 of the Act gave the widest definition of the word violence against women of any age, be it old or young as the name of the act itself suggest “The Protection of Women from Domestic Violence Act, 2005”. If we closely look at Section 3 of the act it says, any act, omission or commission will constitute violence if:

⁵ *Supra* note 2.

⁶ World Health Organization, *available at*:

https://www.who.int/ageing/projects/elder_abuse/en/#:~:text=Elder%20abuse%20can%20be%20defined,%2C%20physical%2C%20psychological%20and%20sexual. (Last visited on July 5, 2020).

⁷ L. Nerenberg, *Elder Abuse Prevention: emerging trends and promising strategies* 72, (Springer Publishing House, New York, 2008).

“ (a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or (b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or (c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or (d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.”⁸

This Section has also defined as what will amount to an abuse by talking about different categories of abuse like physical, sexual, verbal and emotional, economic etc. which we will be looking at in the later part of the chapter. Now if we look at the Indian Penal Code, 1860, which is a general criminal legislation dealing with all type of offence affecting body or property of a person has some general provisions protecting the right of the person including older person. There are provisions related to cheating, grievous hurt, assault, criminal breach of trust and so on. All these are the general provisions which can be used in favour of older people also if any of their rights are infringed or any loss is caused to them. Same way if we look at Section 125⁹ of Code of Criminal Procedure, 1973, it talks about maintenance of parents which is again a provision to protect the elder person from economic abuse. In India, there is only single legislation that specifically deals with the problem of elders, i.e., Maintenance and Welfare of Parents and Senior Citizens Act, 2007. And if we look at the definitional part of the act there is no single Section which gives the definition of the word abuse and neglect, only the Amendment Act of 2018, talks about as what will amount to an

8 The Protection of Women from Domestic Violence Act, 2005 (Act 46 of 2006), s. 3.

9 *Id.* at s. 125. Order for maintenance of wives, children and parents.

(1) If any person having sufficient means neglects or refuses to maintain-

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain himself, or

1. Subs. by Act 45 of 1978, s. 12, for "Chief Judicial Magistrate" (w. e. f, 18- 12- 1978).

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain himself, or

(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 not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct: Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means. Explanation- For the purposes of this Chapter,-

(a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (Act 9 of 1875); is deemed not to have attained his majority;

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried."

abuse, “Abuse in context of this Act means an intentional or negligence in such a manner which causes physical or mental suffering, assault or injury to a parent(s) or senior citizen(s) by his/her child/children or relative(s), who are obliged to take care of them, leading to a decreased quality of life.”¹⁰Hence, in India the concept of elder abuse is governed by general legislation and policies only. As of now there is no single universal definition that has been accepted in Indian context. So, in order to understand the most common form of abuse against elders, i.e “neglect” we can take a recourse of the definition given under US legislation but generally neglect is considered as a form of abuse only in Indian jurisdiction. Hence, “neglect” means

- a. “ the failure of a caregiver (as defined in paragraph 18(B)) or the fiduciary to provide the goods or services that are necessary to maintain the health or safety of an older individual; or
- b. Self-neglect.”¹¹

3. Different Forms of Abuse

As we have discussed above there are several types of abuse:

- a. physical abuse
 - b. mental abuse
 - c. psychological abuse
 - d. sexual abuse
 - e. financial abuse
 - f. neglect
- a. Physical abuse: Physical abuse includes hitting, beating, pushing shoving, burning or biting. When a caregiver is using any kind of unnecessary restraint which could cause any kind of pain or injury, even if the reason is to help the older person.¹²
 - b. Sexual abuse: “means touching, fondling, intercourse, or any other sexual activity with an older adult, when the older adult is unable to understand, unwilling to consent, threatened, or physically forced.”¹³ “Emotional abuse: means verbal assaults, threats of abuse,

¹⁰ Shraddha Kinger, *Maintenance And Welfare Of Parents & Senior Citizens (Amendment) Act, 2018*, available at <https://silvertalkies.com/maintenance-welfare-parents-senior-citizens-amendment-act-2018/>, (Last visited on June 25, 2020).

¹¹ United States Code, s. 3002.

¹² American Psychological Association, *Elder abuse and neglect : in search of solution*, (2002).

¹³ National council of aging NCOA, “Report on Elder Abuse Facts”, (2008).

harassment, or intimidation.¹⁴Confinement: means restraining or isolating an older adult, other than for medical reasons. Passive neglect: is a caregiver’s failure to provide an older adult with life’s necessities, including, but not limited to, food, clothing, shelter, or medical care.Willful deprivation: means denying an older adult medication, medical care, shelter, food, a therapeutic device, or other physical assistance, and exposing that person to the risk of physical, mental, or emotional harm—except when the older, competent adult has expressed a desire to go without such care.

c. Financial exploitation: means the misuse or withholding of an older adult’s resources by another.”¹⁵

This is the data given in World Health Organization report of 2018 regarding the elder abuse across the nations which shows that:¹⁶

Table 1: WHO Report regarding elder abuse

	Elder abuse in community settings (1)	Elder abuse in institutional settings (2)
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¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ World Health Organization, *available at:* <https://www.who.int/news-room/fact-sheets/detail/elder-abuse>, (last visited on June 5, 2020).

Type of abuse	Reported by older adults	Reported by older adults and their proxies	Reported by staff
Overall Prevalence	15.7%	Not enough data	64.2% or 2 in 3 staff
Psychological abuse:	11.6%	33.4%	32.5%
Physical abuse:	2.6%	14.1%	9.3%
Financial abuse:	6.8%	13.8%	Not enough data
Neglect:	4.2%	11.6%	12.0%
Sexual abuse:	0.9%	1.9%	0.7%

Source: World Health Organization, available at: <https://www.who.int/news-room/factsheets/detail/elder-abuse>, (last visited on June 5, 2020)

This data clearly shows that the most prevalent form of abuse in community setting is psychological abuse which some people call as mental abuse also. This form of abuse is caused by saying hurtful words, yelling, threatening, or repeatedly ignoring the older person. Whereas the second most common form of abuse is financial abuse and the most easily recognizable also. If we look at Indian scenario whether we talk about Maintenance Act of 2007 for parents or Section 125 of CrPC, all of them generally protect the older person from financial abuse. And none of them talks about neglect or psychological abuse.

4. Caregiver as an Abuser in Family Setting

Caregiver is the person who has the responsibility to take care of the older person. Generally, the son and daughter in law is considered as the main abuser in case of elder abuse as they are the main caregivers according to the society. This burden is not on the daughters of the family for the mere fact that they are considered as the property of them in laws. Hence the research conducted by Help age India in 2018 shows that the main abusers were Son (52%) and Daughter-in-law (34%).¹⁷ But if we go deep into the study of this fact and read around the sociological discourse, we will see that it has become a mindset of the society that the

¹⁷ A HelpAge India, "Report on Changing Cultural Ethos & Impact of Technology", 2018.

primary caregiver is daughter in law and she should by all means fulfill her obligation of treating well with her in-laws. And if for any reason she is not performing her duties then in that case she will be considered as a 'bad' daughter-in-law. One sociologist K.M. Kapadia, in her discourse around women issue has challenged that there exists a causal link between the women's education and further breakdown of family.¹⁸

According to this study, the women who live up for their dreams, study and work are not fit for fulfilling their matrimonial obligations and hence the reason for neglect of elder parents and in many situations the breakdown of joint family system. Now the question arises when at this point, we are talking about the dignity and care of elders of our family, are we saying that we should achieve this by ignoring the individuality of a women? When we are putting a woman with such a responsibility that her own individuality becomes a big question.

These writings have shown that generally the career-oriented women are considered as self-centered - who do not fit in the idealized image of an 'ideal' bahu/wife (who should be a caregiver before any other thing).¹⁹ And one of the reasons for this shift or change is a generation gap. As the society is changing from traditional to modern one, these changes are bound to happen. Now we will see the role of the women through the lens of Deblina Dey who depicted the role of an ideal bahu in the family and the gendered assumptions of care through Bollywood movies. Deblina in her article very beautifully showed how the women as a caregiver is put under the burden of so many responsibilities that when she wants to work for her own self, recognizes her own individuality, and walks against the norms she is labelled as an abuser. She also questioned as, can we put so much burden on the caregiver that her own individuality comes in question. She took the example of *Baghban* movie where there is a diverging reference to the actual problems that are generally being faced by working partners while dealing with their work issues and elders' responsibilities. "A film attempting to disentangle the nuances of dilemma and stress faced by a caregiver is yet to be made in the context of ageing parents and the dilemma remains negatively construed as a lack of desire to care."²⁰

The difference that has been depicted in the movie *Baghban* and *Kabhi Khushi Kabhi Gam*, where one Bahu Reena (Divya Dutta) is considered as a bad bahu because of her reluctance in taking care of her in laws whereas if we look at Kajol in the movie *Kabhi Khushi Kabhi*

¹⁸ *Supra* note 2.

¹⁹ *Ibid.*

²⁰ *Ibid.*

Gum, she was the ideal bahu who wanted to live with her in laws family and wants their blessings.²¹ This shows how a women who is not able to take care of the elders of family to labelled as bad, without taking into account her agency as a women. Why women are always put under the huge burden of care and duties. When in a society child is not able to take care of his parents, parents and society at first place blames the women to whom he got married, that because of her, their son has changed and in today's modern era because she is working and does not have time for elder parents. So, the question arise how we see these women (caregiver) as? Are we saying that they are supposed to fulfil their duties, over and above their own desires and expectation? I think answer will be NO. if we are saying that women have duties, they have rights too. i.e the right to pursue their own expectations and desires but yes being a caregiver of the dependent parents, they shall not forget their responsibilities as well. If we see any next report related to elder abuse, it says the maximum form of abuse is emotional abuse and neglect and the main abuser is the daughter in law in the family. But we hardly find any study which questions why the daughter in law do such activities leading to an abuse. There are many theories which can answer this problem very well. But if we look at answers in Indian family system well, we see that may be because of past bad memories like dowry issues or not letting the daughter in law pursue her career may be the reason of such bad behavior or neglect. Or maybe she is working and so much engrossed in her own work that she is not able to find the time for elders, hence they feel neglected. The problem actually is the nostalgia is created about the traditional value system of joint families. One of the contributors of such a nostalgia is these movies and advertisements which created this benchmark of 'ideal society', hence if someone is not behaving properly is generally considered as not fulfilling its responsibilities.²²

Now the question comes as from where this 'Care' and 'Responsibility' come from. "Mukherjee opines that values are a kind of moral codes imposed upon individuals' impulsive actions, value is derived from the Latin word *valere* which means 'to be worth', was given a cultural definition for the first time by Parsons for whom values were the realm of ideas and not objects."²³ As we know that time is changing so does the society, hence we can see that because of development and civilization there has been a shift from traditional to modern society. And the value system in both the societies are totally different. "The 'modern' society, Parsons argues, is distinguished from the 'traditional' societies on the basis

²¹ *Ibid.*

²² *Ibid.*

²³ *Supra* note 2.

of preference of one kind of values. Western values of affective-neutrality, individualism and self-oriented social interactions whereas, traditional values are more in line of joint family, togetherness and selfless behavior.”²⁴

Hence, this *Farz* revolves around the concept of ‘ideal family’ and ‘ideal values’. Ideal family is where you behave the way elder of family expects and you lose your individuality and rationality. There are so many things which traditionally makes sense but not in today’s world when lifestyles are changing, people are walking towards women empowerment and things have become more materialistic than emotional. Which can be made clear by the example given by Deblina Dey in her article about an advertisement of ‘*Raymond*’²⁵ a suit brand which on the one hand shows how a shirt complete his personal need and at the same time it shows his philanthropic act (visiting an old-age home), this advertisement has in a way emphasized on both the roles of a the person, wherein he is maintaining his social class position and at the same time balancing his moral obligation towards the society as selfless model social worker.²⁶ Hence it can be questioned as how the material things are compared with the care, the answer will be, “in a contemporary consumerist society, talking through the language of commodities, humanitarian feelings are understood better by comparing them to the satisfaction that is derived through consumption of a desired product. The use value of a consumer product becomes a measuring rod for a human value.”²⁷ “Thus, *farz* ceases to be a script to be enacted out of normative forces but assumes a more dialogical and reflexive form in an ever-changing society such that it engenders newer ways of conceptualizing intergenerational harmony. Also, *farz* reasserts itself as an extension of caring feelings towards the society at large.”²⁸ Hence when we see this duty or *farz* in the context of daughter in law as a caregiver we should not forget her individuality and responsibility for her own self, but this in no way mean that such liberty can act as an excuse against the dependent parent who did every possible thing to nurture their children.

5. Causes of Elder Abuse

²⁴ *Ibid.*

²⁵ In Raymond ad where by taking out time from his busy schedule to bond with the elderly at an old-age home. The ad interestingly juxtaposes the two contradictory values: one is based on personal consumption (owning a Raymond suit) and the other is a philanthropic act (visiting an old-age home). The ad hints towards a state of ‘becoming’ in both cases, which is much ‘desired’ in our society—a model consumer living up to his social class position and a selfless model social worker.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Ibid.*

Now the question arise as what are the causes for such a mistreatment or abuse? Why the elders are ill-treated by the caregivers in the family setup? Is abuse a way of “getting even” with an elderly parent for real or imagined wrongs that happened decades earlier. And what is the reason for financial abuse then? Does it happen because of greed or because older people are considered as a liability which only increases expenses and does not contribute in any way in the family? In this chapter we will look at these questions through different theories:²⁹

- a. The Dependent Elder Concept
- b. The Stressed Caregiver
- c. The Learned Violence
- d. The Impaired Abuser

Coming first on to 1st theory given by O’Malley –

- a. The Dependent Elder Concept Revisited

Under this theory at the early phase, it was felt that generally the elders are dependent on abuser because of their mental or physical disability and because of such disability they are not able to perform their routine works, so they become highly dependent on the caregiver and because of this reason caregiver take the advantage of his position and ends up in becoming an abuser. But at the later phase the researcher has find a shift in the approach as now in later phase it was felt that it is caregiver who is dependent on the older person and because of such dependence this abuse happened. In a study conducted by Hudson, it was felt that out of the total sample size 72% of the people felt that in order to be abused it is not necessary that the person has to be dependent on the caregiver. Even if he is earning good and is not dependent still, he can be ill-treated or abused. Hence, an inclusive approach was followed in order to provide the benefit to the abused elder.

In the same theory, the next principle that was taken into account was the principle of exchange theory which means every person would want something against the work he or she has done, if that reward is not given to him, he will feel frustrated and end up in abusing the one whom he has employed his time, energy and resources. But again, this principle has also been criticized because of the fact that there are older dependent people who have lot of

²⁹ Mary Joy Quinn and Susan K. Tomita, *Elder Abuse and Neglect* 47 (Springer Publishing House, New York, 2nd edn., 1997).

property and money resources with them to pay back to the caregiver for his work done but still they feel abused. It was felt that it does not matter how many services you give to the caregiver they still may end up in abusing you. Hence, it is true that this concept is purely speculative, you cannot say confidently as what may be the cause for elder mistreatment, is it lack of dependency or lack of resources or none. If it has to happen it will happen. So, it may be true of elder mistreatment that the elder children who are dependent and abusive in some ways knows that by remaining dependent on parents they are not fulfilling the expectation of society hence striking out or abusing in some way becomes an equalizing act through which the abuser again feels potent.³⁰

b. The Stressed Caregiver

The caregiver stress theory suggests that overwhelmed caregivers, burdened by the demands of providing care, may at times harm the older, frail person in their care.³¹ Generally, it was felt that caregiver are compassionate and provide good support to the older people but may be because of their own stress and problem they sometimes pushed towards abusing the elders.³² Hence many studies felt that the stress of the caregiver is the major reason of elder abuse. So, it was felt that, as per this theory if abuse is to be reduced, the caregiver shall be provided with professional assistance who can guide them.

Hence, according to this approach, the priority was given to the need of caregiver rather than the abused.³³ But over a period of time the later studies felt that caregiver stress can lead to the elder abuse but only in limited number of cases, but “notwithstanding the popular image of abuse arising from dependent victims and stressed caregivers, evidence is accumulating that neither caregiver stress levels nor victim levels of dependence may be core factors leading to elder abuse.”³⁴

The major criticism of this theory is that, there are so many policy maker and researchers who still feel that the reason for elder abuse is caregiver stress only and because of this mindset they favor and try to help caregiver more than what should be given to the older

³⁰ *Supra* note 28 at 89.

³¹ Bonnie Brandl and Carmel Bitondo Dyer, “Elder Abuse Detection and Intervention: A Collaborative Approach,” (Springer Publishing house, New York, 2007).

³² *Id* at 38.

³³ *Ibid.*

³⁴ *Id* at 39.

person and because of this many problems arise like, if a woman who has been abused by his husband for whole of her life has now become physically more capable than her husband and hence act as a care giver but if she abuses her husband for some reason she will be held responsible without going into the fact that her caregiver is more abused and need support than that older person, secondly the caregiver stress has become a valid excuse to protect themselves from any kind of harm which is not a good approach as everyone lives in a harm but in no way gives the right to the other person to cause greater or any loss for that matter.³⁵ Thirdly, “Reducing stress and improving communication are seen as the job of social services when abuse is labelled as mistreatment and not a crime, criminal justice remedies are not considered.”³⁶

c. Learned Violence

This theory generally talks about, to get what you give to others. Generally, the children are abused by their parents at their childhood stage, ends up in doing the same thing to their parents when they become dependent on them. This theory says that abusive behavior could be passed on generationally, different dynamics could be taking place; that is, the abusive child may harm the elder for retaliatory and not imitative reasons.³⁷ Generally the child behaves the way, what they have seen in the past. Researchers have found that the grandchildren abuse their parents the same way, the way they have seen their parents behaving with their parents. In this theory it was also felt that the type of abuse suffered by children and parents are more or less same in the experience. “Approximately one-third of the child-abusing parents did not report abuse as children, and one-fourth of the elder-abusing adult children reported physical abuse during their childhood by their now elderly parents.”³⁸

d. The Impaired Abuser

This theory focuses on the role of the abuser as the sole factor in elder mistreatment.³⁹ The reason being the habits of the abuser like alcohol, “a sociopathic personality, serious psychiatric disturbances, dementia, mental retardation, or chronic inability to make appropriate judgments about the care of a dependent elder.”⁴⁰ Many studies have been

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Supra* note 11.

³⁸ *Id.* at 109.

³⁹ *Ibid.*

⁴⁰ *Ibid.*

conducted worldwide which have shown the result that one of the major reason for any kind of physical or financial abuse is alcohol.⁴¹ There was a study conducted in 1994 in Anetzberger, which reveals that when alcoholics are compared with non-alcoholics, the result of abusive behaviour were found more in case of the alcoholic people. Hence habit like this of a caregiver is one of the most important factors leading to elder abuse and neglect.⁴² And sometimes this alcoholic behaviour is used as an excuse for elder abuse, liberating the abuser from any blame or being considered as willfully malicious.⁴³

Wolf and Pillemer (1984) through their research found that most of the abusers are dependent on victims, either financially, emotionally, or for housing. They call this as a “web of mutual dependency.”⁴⁴ Same way the caregiver who is suffering from dementia, generally, is not able to treat their spouse in a better way. There is an instance where one partner is suffering from dementia and other is from some other kind of physical disability, in a way by combining their abilities they are one. In those cases, both the partners need care and attention but may be not the same kind of treatment. Hence, sometimes equal type of treatment also proves to be an abuse to the other partner.

The problem of elder abuse is very complex. There are N number of reasons why these abuses happen and why still the abused choose to live with the caregiver even after so much of suffering and sometimes even do not feel like reporting the same. Even sometimes these abuses are left unanswered and the people do not even feel like taking the help of professionals. But it is also seen that taking the help of professional is itself a problematic thing, as either the professionals try to fit in the case into the particular theory even if the case falls under several different categories because of their personal knowledge or past experience which sometimes proves to be fatal. Even some professionals have this perception that elder abuse is a private family matter and it does not require an involvement of an outside person.⁴⁵ “These professionals suggest that a social service response is appropriate in most cases and those working in criminal justice recognize that elder abuse is often criminal behaviour.”⁴⁶ Hence it will not be right to put the elder or caregiver into one particular theory. When the problem is complex it shall be dealt that way only.

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *Id.* at 57.

⁴⁶ *Ibid.*

6. Non-Reporting of Elder Abuse Cases

In 2018, a research has been conducted by Help Age India, according to which, “82% of those abused, did not report the matter and the key reasons for Not Reporting - were to “maintain confidentiality (52%) of the family matter” or “did not know how to deal with problem (34%)”.”⁴⁷ These reasons are not the only reason to be taken into account, one of the biggest reasons of non-reporting in the country like India where there is strong family system and high dependence on family on each other is parental love and care towards their children, which is never ending even after a age. If we look at the changing nature of society, earlier the Indian society is agriculture driven, when the whole family work together, live together and eat together with the bare minimum necessities but over a period of time this has changed, development started, and now children started moving away from their parents for their livelihood, leaving old parents behind. In earlier time the old were repositories of experience, wisdom, knowledge. This was particularly true of oral societies.⁴⁸ “Because the old had lived for 60 or 70 years, they could recall the time, say, 37 years ago, when there was a locust strike and what they did to survive it. They remembered lineages, stories, skills, trails, etc., and could be called upon by the younger generation for advice.”⁴⁹ This made them central to society even after their physical working capacity diminished or even disappeared. But now the scenario has changed. But this in no way mean to glorify the old times or say that new era is wrong.

We should never forget the fact that world is changing so does the society and we have to accept these changes but expecting this from the older people is little difficult as they resist changes at this age. This is the reason parents are never able to change their feelings for their children, even after suffering so much, just for the reason that they cannot see their children behind the bars or accused by the society. But there are some instances when they actually want to report the case but because of the societal pressure and this labelling of ‘good and forgiving’ parents made them not reporting such abuse and left them helpless because of these norms of the society which idealize the parents as forgiving soul. Considering mother as the nurturer, selfless being, supportive, caring etc. so it becomes too difficult for this idealized ‘MOM’ to file a case or report against her own child. Because she finds it against the societal norms as well as her own motherly love. Hence this is one such reason because of which cases get unreported. Even if we take the example of our Indian cinema there is a

⁴⁷ *Supra* note 2.

⁴⁸ Tabish Khair, “The relationship of parents with their grown-up children”, *The Hindu*, Apr. 26, 2016.

⁴⁹ *Ibid.*

movie 102 NOT OUT, wherein Rishi Kapoor, waited for his selfish son for whole his life, even after when he lost his wife and still was ready to give all the comfort and property to his son because of that love he has for him, when he says, “whatever it is but after all he is my son”. This line shows how much parents suffer sometimes because of the love they have for their children. This shows there is a need to provide professional help and assistance to such parents. Awareness is the only way out through which these parents can be helped.

From the above analysis of the policies in India, it is clear that, even the government policies talk about the elder problem in the light of societal norms and traditional values only, even in 21st century sending the parents to old age home is considered as an evil and women who work for their own individuality are considered as BAD. Hence this makes it clear that law or policy itself cannot solve the problem when the problem is deep rooted in the societal habits and norms. But still, we will try to see our existing laws as how they are answering this problem.

Now we will look at the laws in India to see, how these laws answer the problem of elder abuse and neglect. In India, CrPC talks about the maintenance of parents, hence, it just talks about financial abuse of parents and nothing else. No other abuse is recognized in this Code. Even it only talks about parents and does not take into account the childless elders. The Maintenance and Welfare of Parents and Senior Citizens Act, takes into account both parents and senior citizen, hence age without the bar of relationship with the caregiver. Even the Act talks about disposal of cases within 90 days which is again a step forward. Again, the major problem with the act is that it doesn't take into account any of the emotional abuse or neglect, which according to Help Age India data the most common form of abuse. The major threat is the crime against elderly. “If we look at the report prepared by NCRB of 2014, a total of 18,714 cases of IPC crimes against senior citizens were reported during 2014. Out of 18,714 IPC crimes under crime against senior citizens, maximum cases were reported under cheating (1,567 cases) followed by robbery (1,184 cases), murder (1,115 cases) and grievous hurt (1,069 cases), contributing 8.4%, 6.3%, 6.0% and 5.7% respectively of total such crimes during 2014.”⁵⁰ Which shows that how they are made the victims of such crimes over a period of time. Their vulnerability because of mental or physical in capabilities leading to more crime against them.

The legislative classification of consideration that is built through the lawful talk is adequately medicalized, with a recognizable proof of the contrast between the familiarity of

⁵⁰ National Crime Records Bureau, “Report on Elder Abuse”, (2014).

the body through remaining dynamic and the something else 'ageing' body.⁵¹ There is no test achieved by the approaches to the ideas that are universalized through between national gerontology, for example the possibility of 'dynamic ageing' is itself not unmistakably managed in the Indian setting and what it could infer in various districts, particularly rustic and urban. In this manner, in these ways as talked about over, the job as an elder person, engaged through rights, yet passive, is being performed and organized through lawfully scripted exchanges.⁵² Again the notion of caregiver is put under the category of being 'normal' with taking into account what this normal actually means. It has been forgotten that normal is a subjective term which could have different meaning according to different people and society and hence cannot be put under a single straight jacket thing. It has been argued that 'vulnerability', 'fragility' and 'dependency' are part of human existence. One must, according to Sevenhuijsen (1998), refrain from making binary categories, for instance, if one is to receive care, it means that the person is not autonomous. According to her, autonomy and care can be two sides of the same coin. Likewise, one's autonomy can be a function of the way the person maintains caring relationships with others around her/him."⁵³

7. Conclusion

The above analysis show that with the passage of time there has been a shift in the family value system. Earlier parents were respected and were given the status of 'karta' but over a period of time this value system has changed. Joint family has shifted to nuclear family system. Elders are not enjoying the same value and authority, the time when elders use to decide the allocation of funds and use to take important family decisions, the trend has shifted and the time has arisen where they are financially abused and made victim of various crimes against their property. "Another issue related to the apathetic attitude of society is the non-reporting of incidences of elder violence. Only those cases which go beyond manageable limits are reported; otherwise, members of society and even sufferers just bear the pain as they feel taking the matter outside the home is disgraceful."⁵⁴ These matters till date are just considered as family matters, which shall be kept private and not to be disclosed. Again the major reason for non-reporting of these cases is parental love and affection towards their children and sometimes the overburden of the societal norms, making elders vulnerable to such crime. Hence while concluding what can be said is that there is a need for change.

⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ *Id* at 79.

⁵⁴ Ranjan Vardhan, "Elder Abuse and Elder Victimization: A Sociological Analysis"⁵⁵ *International Annals of Criminology* 99 (2017).

Change not only in the law and policies but thoughts and values as well. What may be the ideal situation today may not be the ideal one tomorrow. Things change with time, and so does the people, society is changing, hence the time has come when we shall also move forward to the traditional value. We cannot expect a daughter-in-law or the son to leave their career and sit with parents, what all can be expected from a caregiver is a little compassion and love towards the elder person as in this age material demands are less and need of love care and affection is more. And as we have studied about the exchange theory, we shall keep in mind that it also means that what love, care and attention we have received from our elders shall be paid back to them in their need of hour. Same applies in case of government and law-making agencies. Elders always add to the assets of the country, they shall not be treated as the liability in their old age, hence the state shall also fulfil its responsibilities towards the elders by making effective laws and policies and creating awareness. Policies in such a way that it takes into account the financial problems faced by elderly and at the same time recognizes their right to lead a dignified life. This is the time where state shall recognize the fundamental rights of these elderly people. Same way caregiver also has responsibilities towards the elder, be it son or daughter in law, i.e responsibility to love and care, responsibility not to neglect and provide them a dignified life. Though there are things which cannot be implemented through law but yes morality answers that and it is the moral obligation of the caregiver to take care of older people. Same way as we have discussed that there is less reporting of abuse because of different reasons. Here is the time when the awareness shall be created about the laws and at the same time the notion that has been created in the society that parents are always forgiving and selfless shall be done away with. They also have right to pursue and fight for their rights, this societal pressure is the main hurdle in solving this problem of abuse.

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