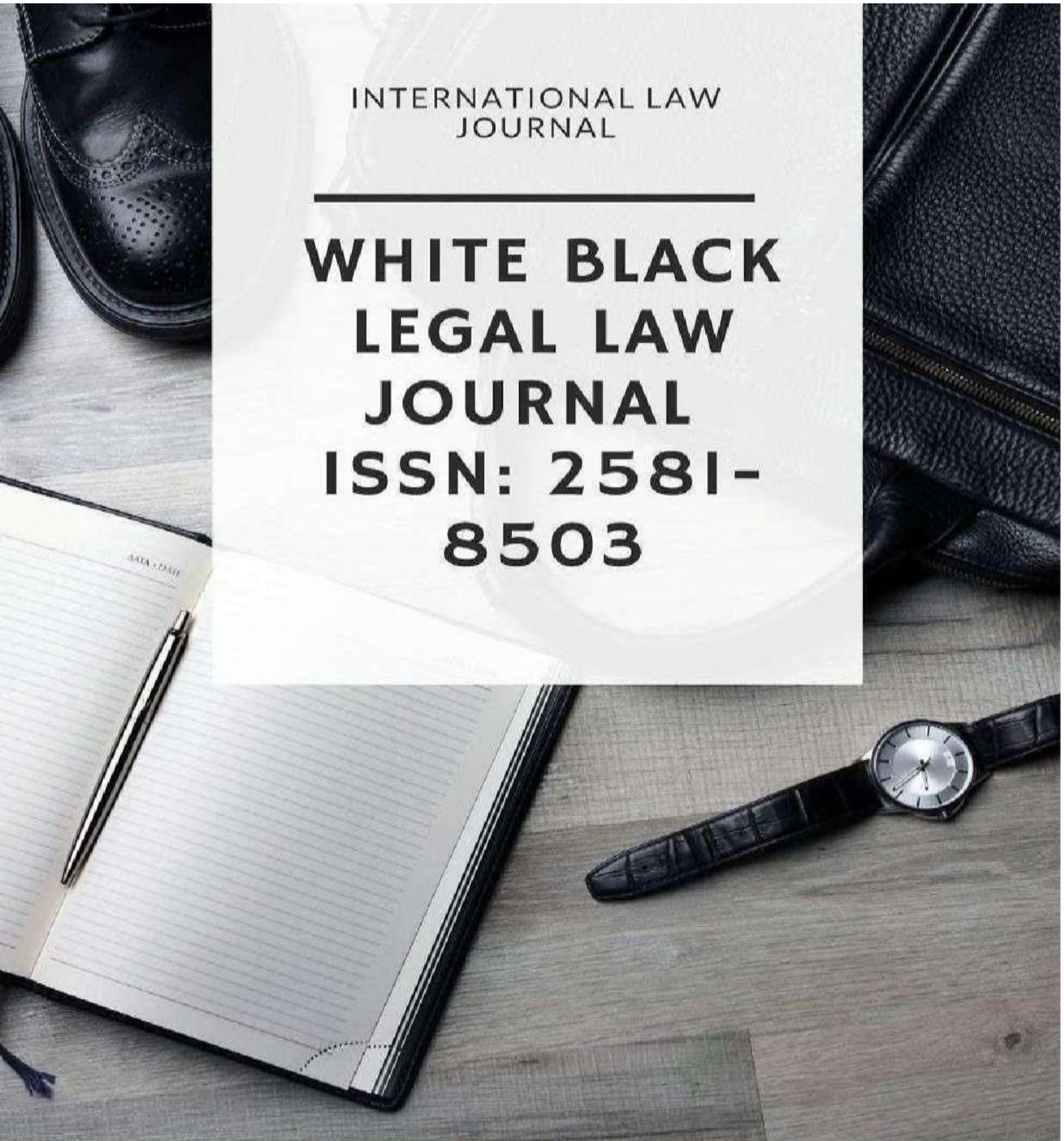




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LEGAL DIMENSIONS OF DOMESTIC ELDER ABUSE: CHALLENGES AND REFORM PERSPECTIVES IN THE INDIAN LAW

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Abstract:

Elder abuse within domestic settings has emerged as a critical concern globally, with unique challenges and complexities in the Indian context. This paper explores the legal dimensions surrounding domestic elder abuse in India, highlighting the prevailing challenges and proposing reform perspectives. Drawing on existing literature and legal frameworks, the paper examines the types and manifestations of elder abuse, the existing legal safeguards, and the efficacy of enforcement mechanisms. It also analyses cultural and social factors contributing to elder abuse and assesses the gaps in the current legal framework. Furthermore, the paper suggests reform measures aimed at enhancing legal protections for elderly individuals, including legislative amendments, capacity-building initiatives, and community-based interventions. By addressing these issues, this paper aims to contribute to the discourse on elder abuse prevention and legal reform in India.

Keywords: *Elder abuse, domestic violence, legal framework, India, reform perspectives.*

Introduction:

Elder abuse, a multifaceted phenomenon encompassing various forms of mistreatment and neglect, has gained increasing recognition as a significant social and legal issue worldwide. Within the domestic sphere, where older adults are often most vulnerable, instances of abuse can go unnoticed or unreported, posing significant challenges for legal frameworks tasked with safeguarding their rights and well-being. In India, a country characterized by diverse cultural norms and familial structures, addressing elder abuse presents unique complexities that require nuanced legal responses.

This paper seeks to explore the legal dimensions of domestic elder abuse in the Indian context, shedding light on the prevailing challenges and proposing reform perspectives to strengthen

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protections for elderly individuals. It begins by delineating the scope of elder abuse, encompassing physical, emotional, financial, and neglectful forms of mistreatment. By examining existing legal provisions, including the Protection of Senior Citizens Act and relevant provisions within the Indian Penal Code, the paper evaluates the adequacy of the current legal framework in addressing elder abuse and providing recourse for victims.

Furthermore, the paper delves into socio-cultural factors that contribute to elder abuse within familial settings, such as intergenerational conflicts, economic dependence, and cultural attitudes towards aging and caregiving. Understanding these underlying dynamics is crucial for formulating effective legal responses that are sensitive to the cultural context while upholding the rights and dignity of elderly individuals.

In light of the identified challenges, the paper proposes reform perspectives aimed at enhancing legal protections and improving enforcement mechanisms. This includes advocating for amendments to existing legislation to broaden the scope of elder abuse offenses, strengthening institutional capacities for intervention and support, and promoting community-based initiatives to raise awareness and empower elderly individuals to assert their rights.

Through this analysis, the paper seeks to contribute to ongoing efforts aimed at preventing elder abuse and promoting the well-being of older adults within the familial context in India. By addressing the legal lacunae and advocating for reform measures, it aspires to foster a more inclusive and rights-based approach to elder care and protection in Indian society.

Definition and Forms of Elder Abuse.

Elder abuse refers to any intentional or negligent act by a caregiver or trusted individual that causes harm or distress to an elderly person². This mistreatment can manifest in several forms, including:

1. **Physical Abuse:** Inflicting physical pain, injury, or impairment through acts of violence, restraint, or neglect.
2. **Psychological or Emotional Abuse:** Causing mental anguish, distress, or fear through verbal threats, humiliation, or isolation.
3. **Financial Exploitation:** Illegally or improperly using an older person's funds, property, or assets for personal gain without their consent.
4. **Neglect:** Failing to provide necessary care, support, or assistance, resulting in deprivation of basic needs such as food, shelter, and medical attention.

² Dubey, A., & Srinivasa, D. K. (2017). Prevalence of elder abuse in South India: A cross-sectional study. *Journal of Aging & Social Polic*

5. Sexual Abuse: Inappropriate sexual contact, coercion, or exploitation of an elderly person against their will or without their understanding.

Each form of elder abuse constitutes a violation of the fundamental rights and dignity of older adults, necessitating urgent attention and intervention.

Significance of Addressing Elder Abuse in Domestic Settings

The significance of addressing elder abuse within domestic settings cannot be overstated due to several reasons: Elder abuse represents a blatant violation of the inherent rights and dignity of older individuals, undermining their autonomy and well-being. Victims of elder abuse often suffer from physical injuries, psychological trauma, and diminished quality of life, exacerbating health issues and reducing life expectancy. The societal repercussions of elder abuse extend beyond individual victims, imposing significant economic burdens on families, healthcare systems, and social services³.

Addressing elder abuse is crucial for promoting healthy and supportive inter-generational relationships, fostering mutual respect and understanding within families and communities. Upholding the rights of older adults and ensuring their protection against abuse is not only a legal obligation but also a moral imperative rooted in principles of justice and equity.

This paper seeks to provide a comprehensive analysis of the legal dimensions of domestic elder abuse in the Indian context. Specifically, it aims to achieve the following objectives: Define and classify different forms of elder abuse prevalent in domestic settings, emphasizing their implications for older individuals and society as a whole. Highlight the significance of addressing elder abuse within the framework of domestic relationships, considering cultural, social, and legal dynamics unique to the Indian context. Examine existing legal provisions and frameworks governing elder abuse in India, evaluating their adequacy, effectiveness, and enforcement mechanisms. Identify challenges and barriers encountered in the identification, prevention, and prosecution of domestic elder abuse cases, drawing insights from empirical research, case studies, and jurisprudence. Propose reform perspectives, policy recommendations, and best practices aimed at enhancing legal protections, improving support services, and fostering greater awareness and accountability in combating elder abuse within domestic settings.

In India, the protection of elderly rights is enshrined within a multifaceted legal framework that

³ HelpAge India. (2019). Elder abuse in India: A HelpAge India report-2018. HelpAge India from https://www.helpageindia.org/wp-content/uploads/2018/12/ELDER-ABUSE-REPORT_2018.pdf

encompasses constitutional provisions, legislative enactments, and international obligations. This section provides an overview of the key components of the legal framework aimed at safeguarding the rights of older adults in the country.

The Constitution of India, as the supreme law of the land, guarantees certain fundamental rights to all citizens, including the elderly. While the Constitution does not explicitly mention the rights of older adults, several fundamental rights have significant implications for their protection and well-being:

1. Older adults are entitled to equal protection under the law, ensuring that they are not discriminated against on the basis of age⁴.
2. The right to life encompasses the right to live with dignity, free from abuse, neglect, and exploitation, thereby implicitly protecting the rights of older individuals⁵.
3. This provision prohibits trafficking, forced labor, and other forms of exploitation, which are particularly relevant in the context of elder abuse and financial exploitation⁶.
4. While these constitutional provisions serve as foundational principles for the protection of elderly rights, specific legislation is necessary to address the unique challenges faced by older adults, particularly within domestic settings.

India has enacted several laws aimed at addressing elder abuse and ensuring the welfare of older adults. Some of the key legislative provisions relevant to the protection of elderly rights include:

1. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007: This legislation mandates adult children to provide maintenance and support to their elderly parents or senior citizens. It also establishes mechanisms for the protection of their life and property, including the appointment of maintenance tribunals and provisions for penalizing neglect or abandonment of parents.
2. Protection of Women from Domestic Violence Act, 2005: While primarily focused on addressing violence against women, this Act provides a broader framework for combating domestic abuse, including violence against elderly women. It recognizes various forms of abuse, including physical, emotional, sexual, and economic, and empowers victims to seek protection orders, residence orders, and maintenance from perpetrators.

⁴ Article 14 Indian Constitution

⁵ Article 21, The Indian Constitution

⁶ Article 23, The Indian Constitution

3. BNS 2023 Provisions Related to Elder Abuse: Several provisions within the Indian Penal Code address offences related to elder abuse, including physical assault, harassment, and financial exploitation. For example, Section 85 deals with cruelty towards married women, which may also apply to elderly women facing domestic abuse.

While the central government enacts legislation concerning the welfare and protection of elderly individuals, the implementation and enforcement of these laws often fall within the purview of state governments and local authorities. State governments are responsible for establishing mechanisms for the effective implementation of elder welfare schemes, maintaining records of senior citizens, and providing support services such as healthcare, social security, and rehabilitation. Local authorities, including district administrations and municipal bodies, play a crucial role in identifying vulnerable elderly individuals, addressing cases of elder abuse, and providing access to support services at the grassroots level.

India is a signatory to various international conventions and agreements that underscore its commitment to promoting and protecting the rights of older adults. The United Nations Convention on the Rights of Older Persons (UNCROp), although not yet adopted as a binding instrument, outlines principles and standards for the protection of elderly rights, including autonomy, dignity, and participation in decision-making processes.

Additionally, India is party to the Madrid International Plan of Action on Ageing, which calls for concerted efforts to address elder abuse, promote social inclusion, and enhance the quality of life for older individuals. While international conventions and agreements provide guiding principles for policy formulation and program implementation, their incorporation into domestic law and practice remains a challenge, requiring coordinated action by policymakers, civil society organizations, and other stakeholders.

Domestic elder abuse, characterized by mistreatment or neglect of older individuals within familial settings, poses significant challenges for identification, intervention, and prosecution. This section explores key obstacles hindering effective responses to domestic elder abuse in India.

One of the most significant challenges in addressing domestic elder abuse is the underreporting of incidents due to various factors:

- A. Older adults may hesitate to report abuse due to fear of shame, embarrassment, or retaliation, particularly when the abuser is a family member. The stigma associated with airing family conflicts often discourages victims from seeking help or disclosing their experiences.

- B. Many older adults, especially those from rural or marginalized communities, lack awareness of their rights and the available support services. They may perceive abuse as a normal part of aging or remain unaware of legal avenues for seeking redressal.
- C. Physical or cognitive impairments, such as hearing loss or dementia, can impede older adults' ability to communicate their experiences effectively, further exacerbating underreporting.

Cultural and social norms often perpetuate environments conducive to elder abuse, complicating efforts to address the issue. The cultural value of filial piety, which emphasizes deference and obedience to elders, may deter victims from confronting abusive family members or seeking external assistance, fearing a breach of familial harmony⁷. Gender inequalities and patriarchal norms may exacerbate the vulnerability of older women to various forms of abuse, including financial exploitation, domestic violence, and neglect⁸. The sanctity of the family unit is prioritized over individual rights, leading to a reluctance to intervene in family matters or involve external authorities in resolving disputes⁹.

Older adults who are financially dependent on their caregivers or family members may be at heightened risk of exploitation, coercion, or manipulation for financial gain. Caregiver burden, arising from the demands of providing care to older relatives, can lead to caregiver stress, burnout, and, in extreme cases, abusive behaviour towards the care recipient. Conflicts stemming from differences in values, lifestyles, or expectations between older and younger family members may escalate into abusive behaviour, particularly in multi-generational households¹⁰.

Older adults and their families may encounter difficulties navigating the legal system due to its complexity, procedural requirements, and lack of accessible information on legal rights and procedures. Legal proceedings can be prohibitively expensive, especially for older adults with limited financial resources, thereby restricting access to justice and legal remedies¹¹. Older adults living in remote or rural areas may face logistical challenges in accessing legal aid services, court facilities, or law enforcement agencies, exacerbating their vulnerability to

⁷ Joshi, K., Chatterjee, B., & Saini, N. K. (2020). Sociodemographic factors influencing elder abuse: A cross-sectional study from India. *Journal of Interpersonal Violence*, 35(13-14), 2611-2634.

⁸ Kaur, S., & Beg, M. A. (2019). Elder abuse in India: Implications and strategies for social work practice. *Journal of Aggression, Maltreatment & Trauma*, 28(2), 167-185.

⁹ Krishnan, S., Rotti, S. B., & Singh, P. (2018). Elder abuse in India: A systematic review. *Indian Journal of Gerontology*, 32(3), 374-398

¹⁰ Math, S. B., Kattimani, S., & Gupta, A. (2018). Elder abuse in an Indian family setting: A case study. *Indian Journal of Psychological Medicine*, 40(1), 78-81.

¹¹ HelpAge India. (2019). Elder abuse in India: A HelpAge India report-2018. HelpAge India.

abuse¹². Improving accessibility and affordability of legal remedies necessitates simplifying legal procedures, providing free or subsidized legal aid services, and establishing outreach programs to ensure equitable access to justice for older adults¹³.

Elder abuse cases in India, though often underreported, have received attention from the judiciary, leading to landmark judgments and precedents that shape legal responses to such incidents. This section examines notable case studies and jurisprudence related to elder abuse in the Indian context.

- A. In this landmark case, the Bombay High Court affirmed the obligation of adult children to provide maintenance and support to their elderly parents under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The court emphasized the importance of familial duties and societal obligations towards older adults, setting a precedent for legal enforcement of elder care responsibilities¹⁴.
- B. The Supreme Court, in this significant case, reiterated the need for stringent measures to combat elder abuse and protect the rights of elderly individuals. The court emphasized the duty of the state to ensure the welfare and security of senior citizens, directing governments to establish mechanisms for the prevention and redressal of elder abuse cases¹⁵.
- C. In a notable judgment, the Kerala High Court highlighted the vulnerability of older adults to financial exploitation and abuse by family members. The court emphasized the importance of safeguarding the economic interests and assets of elderly individuals, directing authorities to investigate cases of financial fraud and exploitation of senior citizens¹⁶.

Courts have interpreted provisions of maintenance laws, such as the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, to ensure equitable distribution of financial support and maintenance to elderly parents or senior citizens in need. Judicial interpretation of the Protection of Women from Domestic Violence Act, 2005, has expanded the scope of protection to include elderly women facing abuse within familial settings. Courts have recognized various forms of abuse, including emotional, financial, and psychological, and granted protection orders and relief to elderly victims. Through landmark judgments, courts have reaffirmed the

¹² Das, P., & Das, B. (2019). Elderly abuse in India: A hidden, but visible challenge. *Journal of Gerontological Social Work*, 62(8), 885-898.

¹³ Krishnan, S., Rotti, S. B., & Singh, P. (2018). Elder abuse in India: A systematic review. *Indian Journal of Gerontology*, 32(3), 374-398.

¹⁴ *Shanti v. State of Maharashtra* (2009)

¹⁵ *Suman v. State of Uttar Pradesh* (2015)

¹⁶ *Rammna v. State of Kerala* (2020)

fundamental rights and dignity of older adults, recognizing their autonomy, agency, and entitlement to protection against abuse and exploitation¹⁷.

Lengthy legal proceedings and delays in adjudication often deter victims from pursuing legal remedies, exacerbating their vulnerability and diminishing the efficacy of legal interventions¹⁸.

Elder abuse cases may pose challenges in proving abuse, particularly in cases of emotional or financial exploitation, where evidence may be circumstantial or difficult to obtain. Despite legal provisions prescribing penalties for elder abuse, outcomes of legal proceedings may fall short of delivering adequate punishment or restitution to victims, failing to serve as effective deterrents to perpetrators¹⁹.

Addressing domestic elder abuse requires a holistic approach that encompasses legal reforms, awareness-raising initiatives, support services, and multi-sectoral collaboration. This section presents reform perspectives and policy recommendations aimed at enhancing protection for elderly individuals in India.

Existing legislation addressing elder abuse, such as the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, and the Protection of Women from Domestic Violence Act, 2005, should be reviewed and amended to address gaps, ambiguities, and emerging forms of abuse. Amendments should prioritize the protection of elderly rights, enhance penalties for perpetrators, and streamline legal procedures for expeditious redressal of elder abuse cases. Considering the complex nature of elder abuse and its distinct characteristics, there is a need for comprehensive legislation dedicated solely to combating elder abuse. Specific legislation should define and classify different forms of elder abuse, establish clear guidelines for identification, reporting, and intervention, and mandate the provision of support services and rehabilitation for victims²⁰.

Training programs should be conducted for law enforcement officials, judiciary, and other relevant stakeholders to enhance their understanding of elder abuse issues, legal frameworks, and investigative techniques. Training modules should focus on identifying signs of elder abuse, conducting sensitive interviews with elderly victims, and ensuring procedural fairness in handling elder abuse cases. Public awareness campaigns and community outreach programs

¹⁷ Ministry of Law and Justice, Government of India. (2007). Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

¹⁸ Pandey, N. M., Srivastava, S., & Sen, M. (2017). Elderly abuse: An Indian scenario. *MAMC Journal of Medical Sciences*, 3(2), 84-91.

¹⁹ Parmar, M. C., & Chaudhari, S. G. (2015). A study of elder abuse in a rural area of Surendranagar district, Gujarat. *Healthline Journal*, 6(1), 30-34.

²⁰ Patel, V., Burns, J. K., Dhingra, M., Tarver, L., Kohrt, B. A., & Lund, C. (2016). Income inequality and depression: A systematic review and meta-analysis of the association and a scoping review of mechanisms. *World Psychiatry*, 15(2), 194-206.

should be organized to educate older adults, their families, and caregivers about elder rights, available support services, and mechanisms for reporting abuse. These programs should utilize various media platforms, including television, radio, print media, and social media, to reach diverse audiences and raise awareness about elder abuse prevention and intervention.

Helplines and support centres dedicated to addressing elder abuse should be established at national, state, and local levels to provide immediate assistance, counselling, and referrals to victims. These helplines should operate 24/7 and be staffed with trained professionals equipped to handle elder abuse cases sensitively and effectively. Accessible and affordable counselling and rehabilitation services should be made available to elder abuse victims to address their psychological, emotional, and physical needs. Counselling services should be tailored to the unique experiences and challenges faced by older adults, including trauma recovery, conflict resolution, and empowerment interventions.

Collaboration with civil society organizations, non-governmental organizations (NGOs), and community-based groups is essential for mobilizing resources, raising awareness, and advocating for policy reforms to combat elder abuse. These organizations play a crucial role in providing support services, conducting research, and amplifying the voices of older adults in advocacy efforts. Addressing elder abuse requires coordinated action across multiple sectors, including health, social welfare, legal, and law enforcement agencies²¹. Multi-sectoral task forces or committees should be established at national, state, and local levels to develop comprehensive strategies, coordinate responses, and monitor progress in addressing elder abuse. By implementing these reform perspectives and policy recommendations, India can enhance its capacity to prevent, identify, and address domestic elder abuse, thereby promoting the rights, dignity, and well-being of older adults across the country²².

Conclusion-

Domestic elder abuse in India represents a critical challenge that demands urgent attention from policymakers, legal authorities, and society at large. This paper has provided an in-depth exploration of the legal dimensions of elder abuse within domestic settings, highlighting key challenges, case studies, and reform perspectives.

Elder abuse, encompassing physical, emotional, financial, and neglectful mistreatment of older

²¹ Shrivastava, S. R., Shrivastava, P. S., & Ramasamy, J. (201)

²² Rahman, S., Menon, I., & Muttappallymyalil, J. (2019). Elder abuse in India: A systematic review. *Journal of Interpersonal Violence*, 34(9), 1891-1914.

adults, not only violates their fundamental rights but also undermines the fabric of society built on principles of respect, compassion, and solidarity. Despite existing legal frameworks such as the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, and the Protection of Women from Domestic Violence Act, 2005, challenges persist in identifying, addressing, and preventing elder abuse due to underreporting, cultural barriers, and limited access to legal remedies.

However, amidst these challenges lie opportunities for reform and societal change. Landmark cases and judicial precedents have set important precedents for the protection of elder rights, while reform perspectives offer pathways for strengthening legal frameworks, enhancing awareness, and providing support services to victims. By enacting legal reforms, promoting awareness and education, establishing support services, and fostering collaboration among stakeholders, India can take significant strides towards addressing domestic elder abuse and ensuring the well-being and dignity of older adults.

In essence, addressing domestic elder abuse is not only a legal imperative but also a moral obligation rooted in principles of justice, compassion, and human rights. It calls for collective action and a commitment to building a society that values and respects its elderly population. Through concerted efforts and sustained advocacy, we can create a future where older adults can live free from abuse, with dignity, respect, and the support they deserve.

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