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ELDER ABUSE IN MALAYSIA

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The purpose of this research is to formulate a legal framework to resolve the issue of elder abuse which is a malicious act prevalent in the Malaysian society, which people do not know how to recognise. The methodology employed is library based research. The focus of this research is to analyse the different types of elder abuse and to identify the ways in which society can be educated in the matter and to find out the most suitable solution to this problem. It is argued here that like child abuse, elder abuse is also a problem in our society where attention must be given and the victims of this 'crime' must also be given protection and the offenders must be punished. The Islamic point of view in this matter will also be discussed. The outcome of this research is to devise a legal framework to legally recognise this as a crime and to find solutions to remedy this problem particularly in Malaysia, by referring to the laws of other jurisdictions which have already formulated laws regarding the matter.

INTRODUCTION

Elder abuse is a malicious act prevalent in our society, which people do not recognise as a crime. People consistently talk about child abuse, but neglect the helpless elderly citizens in the society who also need to be protected. Like children, they need to be heard and given due care. Elder people need to be respected and treated with dignity in the society. They should not be treated as garbage or a doormat.

In simple words, elder abuse is the act of doing something or failing to do something that result in harm to an elderly person or to put a helpless elderly person at risk of harm. This includes either inflicting physical, sexual or emotional abuse, neglecting or deserting an elderly person or taking or misusing an elderly person's money or property. Elder abuse can happen within the family. It can also happen in settings such as hospitals, nursing homes or in the community. Elder abuse is a serious problem in this country and in the world.

Elder abuse has been compared with other forms of intra-familial violence. Despite obvious age and status differences, elder **parents** and young children exhibit similarities that make the linking of elder and child abuse compelling. However, the difference in the nature of child-to-**parent** and **parent**-to-child relations and in the social and legal status of adulthood versus childhood argues against a facile linking of the two problems.

The objective of the paper is to analyse the importance of enacting a law in Malaysia to prevent this problem. Presently in Malaysia, we do not have a specific law or any explicit provision in a legislation to stop this. In short, the law is silent about this vital matter; but the truth is that this problem is ever growing in the society which no one is paying any attention to. We do not even know how to identify this problem, even if it happens in front of our naked eyes. This is the danger of this crime.

It has been estimated that every year in the world, from 1% to 5% of the elderly population will become the victims of elder abuse (Kurst-Swanger, K and Petcosky, JL, 2003, *Violence in the Home: Multidisciplinary Perspectives*, Oxford University Press: New York at p 152). United Nations reported the following with respect to elder abuse in developing countries:

In developing countries, where most of the world's older persons live -- most of them poor -- there have not yet been any studies or systematic collection of statistics done. Even so, there is ample evidence from crime records, news reports filed by journalists, social welfare records and some small studies, that elder abuse -- physical, emotional and financial -- is widespread (United Nations, *Elder abuse widespread and unreported, says new report by Secretary-General*, 2002).

Although there is no precise law prohibiting elder abuse in Malaysia and people are unaware of this crime, it is imperative to create a legal framework to bring the matter under the shade of the law, before the matter goes out of hand and to make the public aware of this cruel crime which is happening in front of them, but still which they do not see. Most importantly, such legal framework should be created to hold people in the society responsible for their elders when they become weak and helpless.

ELDERS IN MALAYSIA

The actual age used in the definition of 'senior citizens' or 'elderly' has differed among researchers and writers. However, the United Nations World Assembly on Ageing which was held in Vienna, 1982, used '60 years and over' as the cut off age in deliberating ageing trends. Consequently, Malaysian policy makers have adopted this demarcation and it is officially used in planning for senior citizens (Rabieyah Mat and Hajar Md Taha, Department of Statistics, *Socio-Economic Characteristics of the Elderly in Malaysia*, 2003, 21st Population Census Conference: Tokyo). Hence, this definition will be adopted here to define elders in Malaysia.

The number of senior citizens in Malaysia almost doubled over 20 years from 1970-1991 from 546,000 persons in 1970 to 1.03 million persons. The numbers have increased by another 35% over the last ten years to 1.4 million persons or 6.3% of the total population in 2000. Based on population projections, the number of senior citizens is likely to increase more than double to 3.4 million in the next 20 years. The following diagram illustrates this.

Table 1: Population of senior citizens

Year	Number of senior citizens ('000)	Per cent of total population	Growth rate of:	
			Elderly population	Total population
1960	386.6	4.8	-	-
1970	546.1	5.2	3.5	2.6
1980	745.2	5.7	3.1	2.3
1991	1,032.3	5.9	3.0	2.6
2000	1,398.5	6.3	3.4	2.6
2010	2,134.9	7.4	4.2	2.2
2020	3,439.6	9.9	4.8	1.9
2030	4,933.4	12.0	3.6	1.7

Source: Department of Statistics, Malaysia (2000)

The sex ratio among senior citizens in Malaysia was 91.4 in 2000. Sex ratio among the elderly in 1970 (108.4) reflects the ageing of the male dominated immigrant population that was characteristic in the pre-World War II era in Malaysia and thus shows a higher male bias due to the presence of early migrants among senior citizens. However, a greater balance in the sex ratio had taken place by the time of the 1991 Census. Interestingly, a trend towards higher ratios is indicated among the young-old and it is possible that higher life expectancy among males is a contributory factor, whereas among the old-old, women still live longer. The following diagram illustrates this.

Table 2: Population Density of senior citizens

Age group	1970	1980	1991	2000
Total (60+)	108.4	97.2	89.6	91.4
60-74	112.4	98.2	91.7	94.7
75+	89.5	93.4	82.2	79.2

Source: Department of Statistics, Malaysia (2000)

CONCEPT OF ELDER ABUSE

There are no exhaustive definitions for elder abuse. It is most often defined as an action by a person in a position of trust which causes harm to an elder person. Harmful actions by strangers are usually not considered as elder abuse.

All agreeable definitions of elder abuse include two key ideas; that the elderly person has suffered wrong, dispossession or superfluous danger, and that a specific other individual (or individuals) is responsible for causing or failing to prevent it.

The World Health Organization ('WHO') defines elder abuse 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' (Krug, et al, 2002, *World Report on Violence and Health*, World Health Organization: Geneva at p 93).

The United States of America ('US') National Academy of Sciences has defined elder abuse as:

intentional actions that cause harm or create a serious risk of harm (whether or not harm is intended), 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.

Abuse of elders can take many forms. There are a number of different types of abuse that happen to older people. Sadly, abuse occurs far too often. Relatives, friends, caregivers as well as professionals can all be responsible for the abuse of elders and the vulnerable. Elderly people who experience abuse are unable to care for themselves and require assistance with their care.

Before the types and forms of elder abuse are discussed, it is also imperative to know who the victims of this crime are. Elder abuse can happen to anyone, although elders who have mental or physical disabilities are at a greatest risk. More women than men live to be elders, but both sexes are equally at risk for abuse. Some elderly people are abused by their spouses; others are abused by their children or caregivers in institutions. As with other types of abuse, those who abuse elders usually keep their victims socially isolated.

The National Centre on Elder Abuse ('NCEA') of the US categorises elder abuse as follows:

- (1) *Physical abuse*: Physical abuse is the act of actual causing or intimidating to cause corporeal hurt or harm to a defenseless elder. The example of this includes physical hitting or punching the responsible elders for any reason.
- (2) *Sexual abuse*: Sexual abuse is the act of making of any type of sexual advancement to the responsible elderly without their consent. If the elderly victim is living with the abuser, it would be hard to detect and help the victim.
- (3) *Emotional and psychological abuse*: Emotional and psychological abuse is the causing of mental suffering and pain to an responsible elderly through words or conduct. It would be hard to detect this type of abuse as signs of it cannot be evident to the naked eyes of the observers.
- (4) *Financial or exploitative abuse*: Financial or exploitative abuse is unlawful possession or hiding

- the elderly person's property, to take any kind of benefit from it.
- (5) *Neglect as abuse*: Neglect of abuse is the intentional omission of giving the responsible elders food, shelter, healthcare or protection. This type of abuse is easy to detect as dirty surroundings and poor personal hygiene can be seen.
 - (6) *Abandonment*: Abandonment is when a person who has been given the charge for care or guardianship of an elder abscond or leave them. In simple words, abandonment constitutes the desertion or wilful forsaking of an elder by any person having the care and custody of that elder, under circumstances in which a reasonable person would continue to provide care or custody.

MYTHICAL FALLACIES ABOUT ELDER ABUSE

People have misconceptions about elder abuse. Whenever the phrase 'elder abuse' is mentioned, people tend to presume that elder abuse will only occur in nursing homes or retirement homes. They also perceive that elder abuse would not happen in well off or affluent families. It is also believed that if abuse has taken place, there would be visible signs of bruise or distress. There is also a presumption that the victims of elder abuse are primarily women.

The truth is that family members are by far the greatest perpetrators. The victim usually loves, trusts and depends upon the person hurting him or her. The majority of the victims are psychologically incompetent. In fact, most victims are relatively proficient in making their own decisions. Their bodies may be feeble or disabled, but they discern what is going on. They linger unspoken because of trepidation, ignominy or a misguided credence which gives the abuser a motive to ill treat them. Elder abuse crosses socio economic and cultural lines. Many elderly people are harmed in invisible ways. They are stripped of their savings, forced to sign over their homes and possessions, threatened, humiliated, intimidated or simply neglected by a caregiver on whom they depend. Women do suffer the greatest physical harm, but men are by no means immune to beating, exploitation and forcible confinement. Any elderly person can be a victim.

IS ELDER ABUSE A CIVIL OR CRIMINAL WRONG?

There is a growing trend to treat elder abuse as a criminal offence with enhanced penalties and sentences. Elder abuse statutes provide a range of criminal punishments from misdemeanour to felony, fines, and/or jail time. A special classification for the elderly may be included in a broad range of criminal statutes including those that proscribe assault and battery, sexual assault and property crimes such as theft and fraud. A few states have even included the elderly in their 'hate crime' statutes.

Statutes may create special penalties for those who defraud elderly consumers such as double or treble damages. In some states, minimum sentencing ranges may be set for criminals convicted of committing crimes against the elderly. Sentencing schemes may be enhanced when the victim of the crime is an elderly person, ie, the victim's status as an elderly person may be an aggravating factor to be considered in imposing the sentence. There may be a separate penalty scheme for entities and workers who abuse the elderly in institutional settings. In some states, nursing homes and other institutional caregivers and their work are subject to penalties including the loss of licence, censure and fines.

Some states' elder abuse statutes provide for civil redress of elder abuse and allow for compensatory and punitive damages, costs, and attorney's fees.

ELDER ABUSE IN MALAYSIA

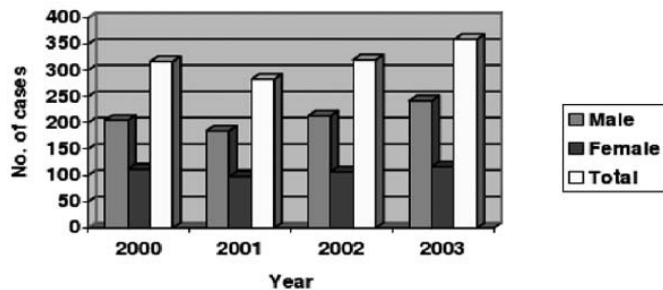
Elder abuse per se is not an offence in Malaysia. This is because there is no law explicitly dealing with this. In other words, the crime of 'elder abuse' is unknown to Malaysia. However, some types of elder abuse are covered under the Penal Code and other laws such as the Domestic Violence Act 1994. But why is this?

The simple reason is, though elderly abuse exists in our society, it is hardly ever reported. This problem often remains undetected because of poor public awareness and lack of knowledge among health care personnel (Ebenezer, EG, 'Throw momma from the train', *The Star*, 10 August 2008).

The statistics of elder abuse in Malaysia is difficult to be obtained. This has been observed in the WTO report on National Report on Violence and Health Malaysia 2006. The summary and findings of the report state that

at present, there is no proper record in the occurrence of elder abuse in Malaysia and there is no information available on factors relating to elder abuse and the impacts of elderly abuse in Malaysia. The following statements are quoted from the report:

In Malaysia, information and data on elderly abuse is scarce. At present, no agency keeps proper records of the incidence of elder abuse in the country. The only available data comes from the Department of Social Welfare on the number of older people living in institutions. Figure 6.1 (see below) shows the number of people aged 60 and above admitted to institutions from 2000-2003. Regarding gender distribution, it was reported that, of the cases admitted from 2000-2003, about two-thirds of them were males. However, there could be a possible bias in the data. The higher proportion of males admitted to the institutions could also be due to the fact that elderly males have more difficulty in caring for themselves compared to elderly females.



Source: Department of Social Welfare

Figure 1: Number of 60 year old citizens admitted to institutions

The report has in fact stated that there can be health and economic impact of elder abuse in the society. With regards to the health impact, it states:

The fact that older people are physically weaker and more vulnerable than younger adults means that the impact of abuse on them can be more serious. The complication of injury such as delayed healing and permanent damage are more likely to occur. Regarding psychological impact, the World Health Organization has reported that several studies in developed countries show that a higher proportion of victims of elder abuse suffer from depression and psychological distress (Krug, et al, 2002).

As for the economic impact it states:

At present, information on the economic impact of elder abuse is very hard to come by. There has been no research reported on the assessment of financial losses resulting from elder abuse in Malaysia. Information on the causes of financial loss subsequent to the abuse of the elder people from other countries is also lacking.

As stated earlier, under the current legal framework of the country, elder abuse per se is not a crime. However, physical abuse to any person is a crime under the Penal Code and infliction of harm can be a tort crime too; elder abuse comes under the ambit of the Domestic Violence Act of Malaysia.

However, this would not solve the problem of elder abuse in the country. There is a need to enact a specific section to criminalise this inhuman action. Then only the seriousness of this 'crime' can be acknowledged by the society.

ELDER ABUSE IN OTHER JURISDICTIONS

Elder abuse is not only prevalent in the Malaysian society, but it is widespread in the world. There has been limited research into the nature and extent of elder abuse, and it is often argued that the absence of such data is a reflection of the low priority given to work associated with elderly people. The following is quoted from the WTO report on National Report on Violence and Health Malaysia 2006:

Information on the magnitude of abuse in the elderly population is scanty. Since there has not been adequate awareness on the problem in most developing countries, the available information on the frequency of elderly abuse in domestic settings globally has relied on five surveys conducted in five developed countries (Table 6.2) below. It has been reported that the rate of abuse among older people is 4-6% if physical, psychological and financial abuse and neglect are all included (Krug, et al, 2002). However, the studies were not comparable due to differences in methodologies and timeframes.

Table 3: Prevalence of elder abuse

Prevalence of elder abuse in five developed countries	
Country	Prevalence (%)
USA	3.2
Canada	4.0
Finland	5.4
Netherlands	5.6
United Kingdom	5.0

Source: Clare et al., 2005

In this part of the paper, the manner in which the legislations with regard to elder abuse were formulated in the US would be discussed. This is because by looking at the US alone, we would be able to comprehend how the problem can be curbed by legislating it. The existing legislations for this matter in Canada would also be discussed.

In the US, the problem of elder abuse has been exacerbated to the extent that they have enacted laws to control it. Numerous accounts of maltreatment led policy makers to pass a series of laws intended to protect elderly victims. The passage of the Federal Older Americans Act of 1965 ('OAA') and the creation of the Vulnerable Elder Rights Protection Program in 1992 were instrumental in promoting state laws to address the needs and concerns of the elderly.

The Vulnerable Elder Rights Protection Program legislation promoted advocacy efforts through ombudsmen offices, abuse, neglect and exploitation prevention programs and legal assistance on behalf of older Americans. It also offered federal funding incentives which made it possible for states to develop and maintain programs designed to assist the elderly. In many respects, state elder abuse laws are patterned after legislation designed to address the problem of child abuse and neglect, and, like the response to child maltreatment, often involve the combined efforts of both criminal justice officials and social services staff.

In an effort to deter crimes against elderly victims and to express society's abhorrence toward such offences, many State Legislatures have created special offences involving crimes against the elderly. Laws criminalising abuse of the elderly are in effect in all states and the District of Columbia. Generally, these laws define the conduct which constitutes a specific form of abuse, and may make a distinction between abuses committed in a domestic, as opposed to an institutional setting. At least two states; Massachusetts and North Carolina have laws which subject anyone over the age of 18 years who have sufficient means, but neglects or refuses to support a **parent** who is unable to support him/herself due to age or disability, to a fine or imprisonment.

In some states, elder abuse laws are incorporated into assault, battery, domestic violence or sexual assault statutes and a sentencing enhancement is imposed if the victim is over a specified age. Illinois uses a combination approach, enacting separate crimes for aggravated battery of a senior citizen and for criminal neglect or financial exploitation of an elderly person, but includes the age of the victim as a special classification under its aggravated criminal sexual assault and abuse laws.

One of the earliest legislative trends to assist older victims mandated the reporting of elder abuse. The vast majority of states now require certain classes of professionals to report suspected abuse and neglect. The most common categories of mandatory reporters are medical professionals, health care providers, mental health counsellors, service providers and virtually all government agents who come in contact with the elderly. Most states require such individuals to report evidence that leads them to 'reasonably believe' that

the elderly person in question is the victim of abuse or neglect. A few states have established 24 hour hotlines in an attempt to make the reporting of abuse easier in order to secure the safety of the victim as quickly as possible. While most statutes establish penalties for those who fail to report, many also provide immunity from civil suits or prosecution to those who make reports in 'good faith' even if those reports cannot be substantiated, to further encourage the reporting of suspected abuse.

Although such laws have helped to increase the reporting of elder abuse up to 150% from 1986 to 1996, it is still believed to be widely underreported (National Centre on Elder Abuse, *National Elder Abuse Incidence Study*, Executive Summary, 1996). Training programs to increase public awareness and better preparation to those required by law to report have been implemented in California, Florida and Mississippi in an attempt to further promote the reporting of elder abuse.

Most states empower both social service and law enforcement agencies to investigate reports, to intervene and even to remove elderly victims from abusive circumstances. In some jurisdictions, multidisciplinary teams are being used in combining the knowledge of medical, mental health, social service, legal and law enforcement professionals to better evaluate an elderly victim's needs. Appropriate protective services can then be offered to elder abuse victims. In some states, such as Colorado, a restraining order may be imposed to prohibit further emotional abuse of an elderly victim.

In an effort to further improve intervention mechanisms, Tennessee has created an innovative Victimization Prevention Program, an extension of the Tennessee State University's Center for Aging's program on the prevention and treatment of elder abuse, neglect and criminal victimisation (Tennessee Code, Title 49, Chapter 8, Part 8, 49-8-802). The program is designed to collect data on the problems of elderly abuse, neglect and criminal victimisation, engage in prevention activities through presentations at churches, community centres, schools and senior citizen centres, conduct workshops for government employees and police as well as for the elderly and their families, and implement an advocacy program to assist victims in responding to and recovering from abuse, neglect and criminal victimisation. Hopefully, this program's research findings will provide the basis for the development of stronger assistance and prevention initiatives designed specifically to aid elderly victims.

In Canada, there are four main types of law to protect elders from abuse and neglect. They are family violence laws, criminal law, adult protection laws and adult guardianship laws. Quebec has a special provision in its provincial human rights legislation which can be used as another way to help abused older adults in some cases. Across Canada, different laws will apply in different types of abuse situations, depending in part on the mental capability of the older adult.

EDUCATING CITIZENS: IS THIS THE SOLUTION?

Educating people about elder abuse might deter the problem; but the truth is that it is not a solution to the problem. However, education about this would help people understand the nature of it. The undetected part of the crime would be resolved. People would know how to identify it and report it to the authorities in charge.

According to Dr Ebenezer (2008), 'the problem often remains undetected because of poor public awareness and lack of knowledge among healthcare personnel. We need to be aware of the many faces of elder abuse in our own society -- perhaps in the broader context of domestic violence'.

Signs and symptoms of elder abuse are often confused with normal age-related changes. Hence the only opportunity for detecting abuse is when the older adult visits a primary care setting or an emergency department. This however is very rare.

In order to intervene, one needs to be aware of normal age-related changes as well as the demographic and social backgrounds of the abused and the abuser. Busy clinicians must not merely focus on physical symptoms alone but also on social history from all elderly patients. Any suspected victim of elder abuse should be interviewed alone to avoid intimidation by the presence of the alleged abuser.

One should be non-judgmental, empathetic and understanding of the whole situation. Detailed history should be obtained on care-giving difficulties, family and social support, recent stressors and financial constraints in meeting the needs of the elderly.

Hence, educating the public is important; but it would not be an adequate solution for the problem.

ELDER ABUSE IN ISLAM

In Islam, elder abuse is indeed prohibited. From the primary sources of Islamic law (following the holy book of the Quran, the Sunnah and the traditions of the Prophet (SAW)), it is clear that the elderly should be respected and treated kindly. There are many rights of elders under Islamic law.

In Islamic countries old folks home are rare to find because of the religious respect given to the **parents** and elderly people in general. The strain of caring for one's **parents** in the most difficult time of their lives is considered an honour and a blessing and an opportunity for great spiritual growth. In Islam, it is not enough to just pray for the **parents**, but they should be treated with boundless kindness, remembering that they were the ones who took care of us with love and mercy when we were helpless children.

In Islam, serving one's **parents** is a duty second to prayer, and it is their right to expect it. It is considered despicable to express any irritation when, through no fault of their own, the elders become difficult. The following verse of the Quran summarises this:

Your Lord has commanded that you worship none but Him, and that you be kind to your **parents**. If one of them or both of them reach old age with you, do not say to them a word of disrespect, or scold them, but say a generous word to them. And act humbly to them in mercy, and say, 'My Lord, have mercy on them, since they cared for me when I was small'.

Surah al-Isra' (17):23-24

Furthermore, the following traditions of the Prophet (SAW) proves how much Islam loves treating the elderly justly and kindly with compassion and empathy, without complain and irritation.

The Prophet (SAW) said:

He is not of us who does not have mercy on young children, nor honor the elderly.

Sunan Al-Tirmidhi

Narrated by Abu Musa al-Ash'ari:

The Prophet said: Glorifying Allah involves showing honor to a grey-haired Muslim and to one who can expound the Quran, but not to one who acts extravagantly regarding it, or turns away from it, and showing honor to a just ruler.

Sunan Abu Dawud

Narrated by Abu Bakrah:

The Prophet said: There is no sin more fitted to have punishment meted out by Allah to its perpetrator in advance in this world along with what He stores up for him in the next world than oppression and severing ties of relationship.

Sunan Abu Dawud

Narrated by Abdullah ibn Amr ibn al-'As:

The Prophet said: Those who do not show mercy to our young ones and do not realise the right of our elders are not from us.

Sunan Abu Dawud

The Prophet said: He does not belong to us who does not show mercy to our young ones and respect to our old ones, who does not recommend what is reputable and prohibit what is disreputable.

Sunan Al-Tirmidhi

Narrated by Abu Hurayrah:

Allah's Apostle said: Let him be humbled into dust; let him be humbled into dust. It was said: Allah's Messenger, who is he? He said: He who sees either of his **parents** during their old age or he sees both of them, but he does not enter Paradise.

Sahih Muslim

Narrated Abdullah ibn Umar:

Allah's Apostle said: The finest act of goodness is the kind treatment of a person to the loved ones of his father after his death.

Sahih Muslim

Narrated by Abdullah ibn Amr ibn al-'As:

The Apostle of Allah said: Do not pluck out grey hair. If any believer grows a grey hair in Islam, he will have light on the Day of Resurrection (Sufyan's version).

Allah will record on his behalf a good deed for it, and will blot out a sin for it (Yahya's version).

Sunan Abu Dawud

Islam advocates a system of social interaction in which juniors are loved and seniors are respected. The Holy Prophet (SAW) explained this cardinal principle of his teachings in the following immutable words:

He is not with us who is not kind to our juniors and shows no respect to our elders.

Sunan Al-Tirmidhi

ELDER ABUSE UNDER THE EXISTING LEGAL FRAMEWORK OF MALAYSIA

The inquisitive question which needs to be answered here is does the existing legal framework cover elder abuse in Malaysia? The answer is very simple. Elder abuse is covered under the Domestic Violence Act 1994. The provisions of this Act are comprehensive enough to cover elder abuse.

According to sub-s (2) of s 1 of the Act, the Act is applicable to all people in Malaysia. Section 2 of the Act defines some of the words. It defines domestic violence as follows:

'domestic violence' means the commission of any of the following acts:

wilfully or knowingly placing, or attempting to place, the victim in fear of physical injury;

causing physical injury to the victim by such act which is known or ought to have been known would result in physical injury;

compelling the victim by force or threat to engage in any conduct or act, sexual or otherwise, from which the victim has a right to abstain;

confining or detaining the victim against the victim's will; or

causing mischief or destruction or damage to property with intent to cause or knowing that it is likely to cause distress or annoyance to the victim,

by a person against--

his or her spouse;

his or her former spouse;

a child;

an incapacitated adult; or

any other member of the family.

The above definition is broad enough to cover some types of elder abuse and it includes both men and women without discrimination. This proves that although elder abuse is not termed as a specific crime under the existing legal framework of the country, it can be considered as specie of domestic violence. This definition is good enough to cover some of the types of elder abuse. The limitation of this definition in relation to elder abuse is that it does not cover financial exploitation, abandonment and neglect of a person. However, physical and sexual abuse is covered under this definition. This is at least a relief.

Section 2 also defines the meaning of an 'incapacitated adult'. According to the Act, it means 'a person who is wholly or partially incapacitated or infirm, by reason of physical or mental disability or ill health or old age, who is living as a member of the offender's family'. This section also defines who is an 'other member of a family', 'relative', 'safe place' or 'shelter' and 'spouse'; but for the purpose of this discussion, these definitions would not be discussed in detail.

The gist is that although two types of elder abuse are covered under domestic violence, the rest do not come within the ambit of it. This is poignant and further gives the opportunity for elder abuse to be camouflaged in the society.

RECOMMENDATIONS

It can be stated here that in Malaysia, there is a need to educate society on the issue, codify the law and then criminalise offenders. Malaysia ought to recognise elder abuse as a specific crime. Prior to this, there is a need to educate and create public awareness on this matter; the recording of proper and accurate statistics would be essential for this. Shelter homes and institutions that protect the elders who are being made victims of this crime must be made available. Indeed, the Department of Social Security of Malaysia can play a vital role in this. As for a proper legal framework to criminalise this, which is the main focus of this paper, there are several suggestions to do this.

One suggestion is that the Legislature amends the Domestic Violence Act and adds a clause pertaining to elder abuse. In addition to this, the Legislature can amend the Family Act and insert a provision compelling children to take care of their **parents**. Failure of this would amount to them being liable to pay a fine, and every month, a certain amount of money would be paid to the court for the maintenance of the elderly **parents**. This suggestion might involve many legal complications and a separate enforcement agency might be needed to carry it out. However, this is not impossible to do. For example, in Maldives, s 57 of the Family Act puts an obligation on children to look after their **parents** and to provide maintenance for them. The section is quoted below:

Every person shall in order that he may act in the manner commensurate with the position ordained by the religion of Islam with respect to **parents**, and to the extent it is financially possible for him, provide his **parents** with adequate food shelter and clothing, attend to their medical needs, meet their other basic needs, and extend other conveniences and amenities they require in life. No person shall treat his **parents** with cruelty or act in a manner injurious to their integrity (Family Act of Maldives, s 57).

Furthermore, s 58 of the Family Act of Maldives states that from amongst matters mentioned in s 57 of the Act, it should be the duty of every male child who has reached 18 years of age to provide his **parents** with sufficient shelter and to be present at matters that necessitate financial expenses. For matters other than providing financial assistance to the **parents**, male and female children who are above 18 years old are equally responsible. Inserting provisions similar to this would indeed give the chance for the children of elders to feel the sense of responsibility and in addition to the moral obligation they have, this will create a **legal obligation** upon them to take care of the elders. Putrefying of morality in the society is forcing the Legislature to crystallise this moral principle in the form of a codified law.

In Malaysia, there is also a need to define terms that are related to elder abuse, such as who is an adult elder and what does a disabled adult means. There is also a need to insert a reporting requirement and investigating procedures of adult abuse cases, similar to what the Legislature had put in the Domestic Violence Act.

Creating an ombudsman to deal with this sort of problem would provide a mechanism to resolve this dilemma instantaneously without going to the courts. Alternative Dispute Resolution ('ADR') methods such as mediation would be much more appropriate to solve problems of this nature. This is because amicably settling the dispute would benefit both parties rather than fighting over the case like enemies. This is the way to achieve peace and harmony in the society.

The most feasible way to avoid the complex jungle in law would be to formulate a comprehensive new legislation to regulate this problem. For example, Malaysia can enact a Maintenance and Welfare of **Parents** and Senior Citizens Act. There can be a provision inserted in this Act that provides that those who neglect their aged **parents** or fail to provide for their upkeep will have to face imprisonment for up to three months or a penalty of not less than RM10,000 or both. In this Act, there is a need to define the meaning of words like 'elders', the types of elder abuse and etc. The procedure of lodging a complaint and the dispute resolution mechanism can also be included in the Act. Ebenezer, EG, 2008 also holds the view that in Malaysia, there is a need to formulate an 'Elder Protective Act'.

CONCLUSION: THE WAY FORWARD

Every one of us, if we are alive, will one day reach the old age. To grow old is to pass from passion to compassion. Hence, the social fabric will tear apart in the societies in which elderly people are mistreated.

The people who mistreat elderly people should be made accountable for their actions and they should be punished for the felony. Equity and justice requires this to be done. In order to do this in Malaysia, the foremost thing that needs to be done is to criminalise it. Without doing this, it would be impossible to recognise the seriousness of the crime.

For the sake of the ageing population in the country, there is a vital need to formulate a comprehensive piece of legislation to address this matter properly. The most effective way to curb the silent cancer of elder abuse is by educating the public. The public would be the mole to detect it. The Domestic Violence Act and the Penal Code in Malaysia are inadequate to punish the perpetrators of this crime. Malaysia needs a law which specifically deals with elder abuse.

By enacting legislation and extending the shade of law to this matter would indeed prove that in Malaysia, elderly people are not vulnerable, but the whole society will stand for them and any abuse against them would be zero tolerated.

There is a need for the government to pioneer a new law to put the fortification of our elderly on the identical status as children, domestic abuse and animals. If we cannot provide shelter and security to our elder citizens, then we have no justification to call ourselves a sophisticated nation. They warrant better than this.