

ABUSE IN MALAYSIAN PRIVATE ELDERLY CARE CENTRES; IMPROVING THE PREVENTIVE MEASURES

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ABSTRACT

Elderly should benefit the same rights as other citizens in the country. They deserve to have equal potential to live a wholesome and fulfilling life. While Malaysia is turning to an ageing society, protection of the elderly in private elderly care centres need for improvement. While the laws which preserve and protect the rights and benefits of the elderly are scattered in several legislations and thus not providing clear guidance of protection of elderly in Malaysia, the protection conferred for elderly especially from elder abuse in private elderly centers confined just in Care Centres Act 1993 and Penal Code. There is no specific provision in Malaysia dealing with elder abuse in private care centers and thus criminalizing the act of elder abuse. The methodology of this study is based on library research. The purpose of this paper is to examine whether the laws protecting elderly in Malaysia from elder abuse in private care centres are inadequate and thus need further improvement. Thus, this study analyses text and documents relating to elderly law and elder abuse. It is suggested in this paper that a comprehensive legal framework to be enacted in order to provide holistic protection for the elderly from abuse in private care centres by strengthening the preventive measures available in Care Centres Act 1993 and a specific law penalizing abuser of elderly in private care centres.

Keywords: Elderly law, ageing society, elder abuse, Care Centres Act 1993.

Introduction

According to the definition adopted in World Assembly on Ageing 1982 organized in Vienna by the United Nations, elderly or senior citizens are defined as persons aged 60 years and above. This is also the recommended age proposed by the Ministry of Health (Social Welfare Department, 2016). The increasing of older people population aged 60 years and above can be seen from 1.5 million in 2000 to 2.0 million in 2009. It is expected that the numbers will increase to 3.4 million by the year 2020. Malaysia is moving towards ageing nation with more than 15 per cent of the population of the country is the elderly (Jamaluddin, Chuan, & Taher, 2015). From a newsletter written by the Department of Statistics Malaysia in August 2017 (Department of Statistics Malaysia, 2017), majority of the elderly in Malaysia were females. Perak was considered as the most ageing state followed by Perlis. Meanwhile Chinese ethnic was reported as most ageing ethnic followed by Indians.

In leading a quality life of an elderly, adequate care and facilities are needed by the elderly. This could also encourage healthy ageing of the older people in surviving living in this new millennium (Abbas & Saruwono, 2012). Therefore, what are the rights and protections especially under the purview of law that are prepared for the good well-being of the elderly in Malaysia? As far as right of protection of elderly is concerned, although there is no specific Article mentioned on the rights of elderly in Malaysian Federal Constitution, their rights are well preserved under Article 8 (1) which states that "All persons are equal before the law and entitled to the equal protection of the law." Therefore, the word 'persons' in this Article includes the elderly to be protected under the law. There shall be no discrimination in treating the elderly as they too have rights under the law.

In addition to the protection of right as enshrined under the Federal Constitution, the government also provides some aids for the betterment of elderly life. Through the Ministry of Women Family and Community Development (MWFCD), monetary aid is provided for the elderly as living allowance upon certain conditions. Amongst the terms are they are 60 year and above, without source of income and living alone without any family members or their family members are incapable to provide any financial contribution for them (Social Welfare Department, 2016).

With regard to the formal institutional care homes in Malaysia monitored under MWFCD, there are three types of institution cares which are state-run. The first category is the Residential Care Home for the Elderly, secondly Nursing Care Home for the Elderly and Day Care Centre for the Elderly. For the first category which is Residential Care Home for the Elderly, this is known as 'Rumah Seri Kenangan' which provides care, treatment, shelter for the poor elderly aged 60 years and above. Meanwhile, the second category of institution care is better known as 'Rumah Ehsan' which caters elderly who are incapable of managing themselves due to their illness and need for non-intensive treatment. The third category is the Day Care Centre which is known as 'Pusat Aktiviti Warga Emas' (Lim Wen Xin, Sulaiman, & Baldry, 2014). In this institution, they run activities to assist the elderly feel occupied with quality activities in their daily life.

Apart from institutions run by the state which commonly cater the poor elderly, there is also another type of institution care operated by the Non-Governmental Organizations and private sector. It appears that, though the numbers of the institutional care both run by the state, NGOs and private sector are increasing, the quality of this institution care still need for further enhancement (Wagiman, Mohidin, & Ismail, 2016).

There are two main laws that governed elderly private care centre which are the Care Centre Act 1993 (CCA 1993) and Private Aged Healthcare Facilities and Services Act 2018 (PAHFSA 2018). CCA 1993 regulates care centres including elderly care centre while PAHFSA 2018 regulates nursing homes for those needing high care needs and the bedridden for instance. This paper will focus on CCA 1993 in discussing the elderly care centres which take care of elder residents with lesser care needs. The preventive measures available in curbing the problem of abuse among elderly in private care centres is the focus of this paper.

It is claimed that, the existing law is inadequate to regulate care centres and nursing homes as there is no one specific law governing elderly legal protection. Furthermore, the division of the responsibilities of these centres and family are not clearly defined (Aged Care Group, 2015).

Significant of Study

The issue of elder abuse is not being given limelight though elderly too deserved to be protected and be treated with high level of care. This study contributes to catalyst the awareness for the stakeholders mainly the government, authorities, licensing agencies, and public as a whole as to the importance of preserving the rights of the elderly to have a quality life and what more protecting them from abuse and neglect. The legislative approach in combatting the cases of elder abuse should be reviewed and improved as to provide a proper and better protection for the older persons in Malaysia. This is in line with the proposal of the government to legislate law in protecting the welfare and rights of the elderly (Babulal, 2018). The urgency on the need to have specific law dealing with elderly matters and prohibiting elder abuse from happening in domestic and institutions may be highlighted when there are more studies analyzing the necessity of urgent protection of the elder from abuse. This study therefore focusing on private elderly care centres illustrates that it is essential to set-up holistic legal framework in combatting elder abuse in private elderly care centres.

Brief Summary of Laws and Regulations on Elderly Care Centre In Malaysia

Although there are care centre services prepared by the government in catering the elderly needs, there are segments of responsible members of society who voluntarily set up elderly care centres with their own initiative. There are also companies which establish private elderly care centres for profit making purposes. Therefore, there is a need to have a safeguard in ensuring that these elderly care centres are of good high quality especially in terms of conducive accommodation, balanced nutritional dieting scheme, health treatment and quality daily activities. Thus, CCA 1993 comes into picture as a legislative effort in upholding the welfare of the elderly placed in these elderly care centres. This Act governs various types of care centres and does not specify its provisions to just monitoring elderly care centres. However, the scope of this paper is to focus on its application towards elderly care centres.

As stated in the preamble of CCA 1993, this Act was enacted '*to provide for the registration, control, and inspection of care centres and for matters connected therewith*'. It is appropriate for the Act to highlight the importance of registration, control and inspection of care centres as the prime aim of the Act. However, in terms of licensing type of legislation, the objective should be beyond these issues to include the aim to ensure the welfare of the elderly are well taken care. Besides that, continuous quality improvement should be also highlighted in the aims of the Act so that elderly care centres are ready to improve and enhance their quality of care from time to time. Therefore, these aims, and objectives should be the solid foundations for the operators in establishing elderly care centres and for the authorities to enforce the provisions in this legislation

The Scenario of Mistreatment and Violence in Malaysian Elderly Care Centre

Elderly need to be well protected and loved as they are the vulnerable generations who need extra care and attention. Nevertheless, unfortunately although seldom highlighted in prime media on cases of mistreatment, abuse or violence against elderly, elderly abuse is not uncommon in Malaysia. This phenomenon is deteriorated with the establishment of unregistered or illegal elderly care centres all over Malaysia. It is reported that, there are less than 250 registered care centres and less than 20 registered nursing homes in Malaysia in 2012. In Kuala Lumpur and Selangor, it is claimed that there are hundreds unregistered care centres and nursing homes (Aged Care Group, 2015). It is reported that the data and information on elder abuse in Malaysia are scarcely can be found (Aishath Muneeza, 2010). From the observation of the World Trade Organization on National Report on Violence and Health Malaysia 2006, it is stated that there is no proper record available on statistics of elder abuse in Malaysia.

The dearth of data collection on elder abuse may illustrate the lack of awareness and attention on the seriousness of elder abuse in Malaysia. It is believed that many abuse cases gone unreported due to various reasons such as lack of awareness and facilities to reporting (Aishath Muneeza, 2010). This paper focuses on abuse cases involving senior citizens who are placed in these centres.

Elder abuse in care centres in Malaysia is not uncommon (The Star, 2016). An example of elder abuse case was reported in elderly care centres in Klebang Besar, Melaka known as All Mighty Old Folks Home in the year of 2016. The caretaker abused an elderly woman by grabbing the back of her shirt and slapped her repeatedly. The man was also recorded to scold an elderly man and smacked him. This abuse acts have gone viral in social media and sparks the public concern (Koh, 2016). The caretaker has been charged under Section 323 of the Penal Code for voluntarily causing hurt and Section 5 (2) of CCA 1993 for not registering the centre. He was fined with RM 4000 after pleading guilty for both charges (Salberi, 2016). The elderly care centre was then ordered to be closed by the State government of Malacca (Ziaidan & Zainudin, 2016).

In another case happened in 2015, an illegal elderly care centre in Jitra, Kedah was raided by the authorities. It was found that fifteen elderly men were locked up in a single-storey premise. It was claimed by one of the rescued that they were brought to the place by two men who claimed themselves as police. They were deprived from proper meals and were beaten up if they were to disobey the orders from the person in charge (Lai, Meinaloshiyani, & Aravinthan, 2015).

Another case involving elder abuse in elderly care centre happened in 2014 in Kuala Lumpur where the elderly has been left in squalid conditions without running water for over two months. They were reported to have been living among piles of rubbish, old clothes, discarded boxes, strewn plastic bottles and a broken toilet. When rescued by the neighbours, there were weak, dehydrated and malnourished (Meiking, 2014).

The issue arises is whether the legislative effort in combating abuse cases amongst elderly are adequate or below the acceptable standard. The preventive measures safeguarded through the governance of CCA 1993 shall be reviewed especially in the aspect of terms and conditions of licensing and registration of the centres. The monitoring and inspection process should also be given attention. In addition, laws dealing with abuse cases which are mainly dealt under the Domestic Violence Act 1994 should also need to be given review as it is claimed that the laws protecting the elderly in Malaysia still need for further enhancement (Bidin & Mohd Yusoff, 2015a).

The unregistered elderly care centres contribute to the lower quality of the centres in Malaysia. These illegal centres are not well monitored by the authorities and thus there is not safeguarded to ensure that the important quality features in terms of health and safety, fitness and propriety of the operators and caregivers, qualification of the staff are being given proper attention by the operators. The proof of these inadequate safeguards of involving illegal elderly care centres can be seen when these centres involved with unwanted incidents and accidents which harm the elderly's safety and cause detriment to their welfare. One of the disastrous effects of not registering the care centres is the lack of monitoring especially in terms of safety. This can be seen in a case involving a nursing home located in Sungai Long, Kajang which is reported in 2017. This centre which was claimed not to have any licence was burnt down and caused the death of five residents (Asyraf, 2017).

Elder Abuse; Legal Redress Available

Scholars have not agreed on unanimous definition or universal meaning of elder abuse (Bidin & Mohd Yusoff, 2015a; Jamaluddin et al., 2015). However, there is definition developed by Action on Elder Abuse (AEA) which is adopted by the World Health Organization (WHO) and the International Network for the Prevention of Elder Abuse (INPEA). Elder abuse is 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 (Ahmed et al., 2016; Bidin & Mohd Yusoff, 2015a). Meanwhile, National Centre on Elder Abuse refers elder abuse as '*any knowing, intentional, or negligent act by a caregiver or any other person that causes harm or a serious risk of harm to a vulnerable adult*' (Jamaluddin et al., 2015). In addition, in understanding the concept of elder abuse, abuse could be a positive act or active involvement of an act. Abuse could also be in a form of omission by neglecting the elderly. There are several types of abuse which include physical abuse, financial abuse, psychological abuse, sexual abuse and neglect (Dong, 2015).

Elder abuse can be categorized into domestic abuse and institutional abuse (Bidin & Mohd Yusoff, 2015b). In Malaysia, protection of domestic elder abuse is often dealt under Domestic Violence Act 1994 (DVA 1994) although there is no specific provision on elder abuse in DVA 1994. However, the scope of DVA is confined to cases occurred in domestic settings and not in institutional settings as stated under Section 2 of DVA 1994. Thus, DVA 1994 shall not be a proper legal mechanism in dealing with abuse cases in elderly care centres. It is claimed that DVA 1994 is inadequate to curb the elder abuse happening in domestic settings (Bidin & Mohd Yusoff, 2015a; Jamaluddin et al., 2015). Therefore, while having a provision on elder abuse in DVA 1994, still this strategy is not effective in reducing elder abuse in domestic settings, what more in institutional settings where there is no provision except for the general Penal Code as to penalize the abusers in private elderly care centres.

Elder abuse in Malaysia is not regarded as crime as there is no specific provision criminalising the act of elder abuse. Therefore, Penal Code may be used physical abuse to any person as a crime in penalizing the abusers (Aishath Muneeza, 2010). For instance, the action may fall under several sections such as Section 323 for punishment for voluntarily causing hurt or Section 325 for punishment for voluntarily causing grievous hurt. The other legal redress the victim of elderly may seek is from infliction of harm from tort law.

Thus, there is no specific law available prohibiting elder abuse (Aishath Muneeza, 2010) especially in private elderly care centres. Comparing to abuse of children in child care centres, specific provision can be found under Section 31 (1) (a) of Child Act 2011 which after the amendment made in 2006, the punishment was increased from RM 20 000 fine to RM 50 000 fine and from maximum ten years imprisonment to 20 years imprisonment. Thus, it is suggested for specific Act governing elderly matters to be enacted very soon as elder people too deserves equal treatment and protection under the law. The enactment of such

Act catering the matters of the elderly especially on the provision of combatting elder abuse shall also be a preventive measure in curbing elder abuse as this may act as a deterrent for the abuser. The society need to be informed and educated that it is a serious offence to abuse elderly not just in domestic settings but also in institutional settings.

Conclusion

In a nutshell, the legal protection of elderly especially from abuse in care centres should start from preventive measures through better enforcement and revision of the Care Centre Act 1993. The preventive measures involve the expansion of the aim and objectives of the Act to include the aim to protect the welfare, well-being of the elderly as well as continuous quality improvement of the centres through time.

In addition, the terms and conditions of registration of care centres as enshrined under Section 7 of CCA 1993 may be reviewed for improvement and enhancement in coping with the new millennium today. The emotional requirement of the vulnerable people of elderly for instance may be inserted as condition to be fulfilled by the operators. The examples from practices from other countries may be an indicator or benchmark for Malaysia to improve the quality of care centres especially the elderly care centres in Malaysia. Research and investment on improving the elderly care settings should be expanded involving various stakeholders including the government, the licensing agency, the authorities, researchers, law and policy makers and NGOs.

In addition, the reactive measures available for the elderly in protecting them from abuse in elderly care centres should be strengthened by having specific provisions for elderly abuse. There are still rooms for improvements in the provisions dealing with elder abuse by having specific Act dealing with elderly matters. The strategies in combatting the elder abuse through legislative effort therefore whether by strengthening the preventive measures or reactive measures need for further attention.

It is important for the efforts to start from now since Malaysia is paving towards having a larger population of ageing society which will in need of increasing numbers of elderly care centres in future. This is to ensure that the older generation who are full of vast experience and knowledge are well treated and protected in ensuring their comprehensive growth not just in terms of their health and safety but also their general wellbeing. The solution to elder abuse need a proper legal framework as being reactive through ad-hoc basis or case by case basis shall not be the effective way in curbing elderly abuse in Malaysia especially in elderly care centres. The last phase of the elderly life should be beneficial with productive activities that may directly result to quality of their personal life and indirectly towards the productivity of the nation.

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