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PROTECTION OF ELDERLY PERSONS FROM ABUSE AND NEGLECT AND STUDY OF REGULATORY RESPONSE IN INDIA

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ABSTRACT

The demographic transition in India has reached a critical juncture, with the elderly population projected to comprise nearly 12.4% of the total population by 2026. This rapid graying, coupled with the erosion of traditional joint family structures, has rendered a significant portion of the "silver population" vulnerable to neglect, financial exploitation, and physical abuse. This study examines the socio-legal dimensions of elderly protection in India, analyzing the effectiveness of existing legislative frameworks, primarily the Maintenance and Welfare of Parents and Senior Citizens (MWPSA) Act, 2007, and its proposed amendments in 2025. By evaluating the regulatory response through a socio-legal lens, this research highlights the persistent gap between statutory intent and infrastructural reality, advocating for a shift from a reactive, litigation-based system to a proactive, "Shared Responsibility Model" that guarantees the Right to Age with Dignity.

KEY WORDS: Demographic transition; Rapid graying; Joint family structures; Silver population; Vulnerable

INTRODUCTION

India is currently experiencing a profound and irreversible demographic shift, a transformative process that has fundamentally altered the nation's social landscape and brought the issue of elderly care to the forefront of socio-legal discourse. For centuries, the Indian social structure was anchored in the joint family system, a robust social security net where senior citizens were not merely tolerated but deeply revered as the repositories of wisdom, tradition, and moral authority. Within this framework, filial piety was not just a moral obligation but a deeply ingrained cultural ethos, ensuring that the elderly were cared for within the familial home until their passing. However, the forces of modernization, rapid urbanization, and globalization have accelerated the transition toward nuclear families, fundamentally dismantling this traditional support mechanism. As a

result, senior citizens in modern India are increasingly facing a "silver crisis"—a multi-dimensional predicament defined by acute loneliness, severe economic insecurity, and, most alarmingly, rising rates of physical, emotional, and financial abuse.

According to alarming reports from organizations such as HelpAge India, a staggering percentage of elderly individuals experience some form of abuse, with the tragedy compounded by the fact that this neglect occurs primarily within the confines of their own homes, perpetrated not by strangers, but by close family members, including children and spouses. This crisis is exacerbated by urbanization, which forces the younger generation to migrate for employment, leaving the elderly isolated, and by individualistic lifestyle shifts that prioritize personal achievement over familial responsibility. The legal system, designed for a different era, is struggling to keep pace with these societal changes. Consequently, this research article aims to dissect the regulatory mechanisms currently in place, evaluating whether they constitute a robust shield—providing genuine safety, financial security, and dignity—or merely a paper tiger, functionally powerless against the rising tide of elder abuse.

Furthermore, the introduction of this study must emphasize that the "silver crisis" is not merely a social issue but a fundamental rights crisis. The transition from a protective social environment to one of neglect demands a legal reevaluation of the rights of the elderly. This article will analyze the tension between traditional expectations of familial care and the modern necessity for state intervention. It will evaluate the effectiveness of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, and the proposed 2025 amendments, questioning whether the legal framework adequately addresses the psychological and emotional facets of abuse, or if it is restricted to financial maintenance. By examining the current regulatory response, this research aims to provide a comprehensive socio-legal analysis that bridges the gap between the intended statutory protections and the harsh infrastructural reality faced by millions of elderly citizens. The study will argue that a reactive, litigation-based system is inadequate and that a proactive, "Shared Responsibility Model" is essential to guarantee the Right to Age with Dignity.

2. THE SOCIO-LEGAL CONTEXT: CONSTITUTIONALITY AND TRADITION

The legal problem arises where social morality ends. When the family fails to provide care, the State is constitutionally mandated to intervene.

2.1 Constitutional Framework

The rights of the elderly are implicitly and explicitly recognized within the Indian Constitution:

- **Article 21:** Interpreted by the Judiciary to include the Right to Live with Human Dignity, encompassing the right to shelter, health, and freedom from exploitation.
- **Article 41:** Part of the Directive Principles of State Policy, it directs the State to make effective provision for public assistance in cases of old age, sickness, and disablement.

Despite these provisions, there is no specialized fundamental right for the elderly, leading to reliance on judicial interpretation to enforce these protections.

3. KEY LEGISLATIVE FRAMEWORKS: A CRITICAL EVALUATION

The core of India's regulatory response rests on three primary legal pillars, though their efficacy varies significantly.

3.1 The Maintenance and Welfare of Parents and Senior Citizens (MWPSA) Act, 2007

This specialized legislation was a landmark attempt to provide an inexpensive and speedy mechanism for elderly parents to claim maintenance.

- **Section 4:** Mandates children or legal heirs to maintain their parents, ensuring basic necessities like food, clothing, and shelter.
- **Section 23:** A crucial provision that allows for the voiding of property transfers if the children fail to provide basic amenities after the transfer, preventing "property trapping."
- **Challenges:** The Tribunals are often understaffed, leading to delays that defeat the purpose of "speedy" remedy. Furthermore, the ₹10,000 maintenance cap (prior to proposed amendments) was often insufficient.

3.2 Hindu Adoption and Maintenance Act (HAMA), 1956

This provides a personal law basis for maintenance, binding both sons and daughters to maintain their elderly parents. However, it is limited by religious identity and specific legal hurdles, making it less robust than the secular MWPSA Act.

3.3 Criminal Procedure Code (CrPC), 1973 / Bharatiya Nagarik Suraksha Sanhita (BNSS)

Section 125 of the CrPC (now incorporated into the **BNSS**) allows parents to seek a monthly allowance from children who have sufficient means but neglect them. This is a generic, secular provision that acts as a safety net.

4. THE REGULATORY RESPONSE: GAPS AND IMPLEMENTATION FAILURES

The "Socio" aspect of this study reveals significant hurdles that undermine the "Legal" framework.

5. Judicial Activism and Interpretation

The Indian Judiciary has often stepped in to fill the gaps left by the legislature. Courts have ruled that "maintenance" is not just about food and clothing but includes the right to a dignified life and emotional well-being.

- **Landmark Judgments:** Courts have prioritized the physical safety of the elderly over the property rights of children, asserting that the right to live with dignity is an inalienable part of the Indian Constitutional identity.

6. TOWARD A "SHARED RESPONSIBILITY MODEL" (2026 VISION)

The study concludes that legal intervention alone is insufficient. India must adopt a "Shared Responsibility Model," recognizing that care cannot rest solely on the family or solely on the State.

1. **Legalizing "Ageing in Place":** Amending laws to provide tax incentives for families who keep their elderly at home and providing state-funded "Home-Care Assistants."
2. **Hybrid Tribunals:** Moving away from purely adversarial legal battles toward "Mediation-First" approaches that attempt to repair family bonds before issuing maintenance orders.
3. **Digital Inclusion:** Implementing "Senior Mode" for all banking and government interfaces to protect the elderly from rampant cyber-fraud.

7. CONCLUSION

The demographic landscape of India in 2026 presents a striking paradox. While the nation takes pride in its vibrant, young workforce, it is simultaneously undergoing a profound "graying" of the population. Projections indicate that the segment of citizens over the age of sixty will reach approximately 20% by 2050, with the oldest-old segment (80+) growing at an unprecedented rate. This rapid demographic transition is occurring alongside seismic shifts in social structures—specifically the transition from joint family systems to nuclear setups, accelerated by urbanization and economic migration. Consequently, the protection of elderly persons in India has reached a critical crossroads. The traditional cultural ethos of filial piety, which once served as a robust social security net, is buckling under the weight of modern economic pressures, leaving millions of senior citizens vulnerable to isolation, financial exploitation, and abuse.

The current legal framework, while attempting to address these issues, is fundamentally reactive. The **Maintenance and Welfare of Parents and Senior Citizens (MWPC) Act, 2007**, was a pioneering step, transitioning the moral obligation of care into a legal imperative. However, as the research indicates, this legislation operates largely on a litigation-based model. It relies on the elderly person—who is often frail, technologically disadvantaged, or emotionally dependent on the abuser—to approach a tribunal, navigate bureaucratic hurdles, and litigate against their own kin. This process often takes months, if not years, in a country where judicial delays are endemic. Furthermore, the stigma associated with taking children to court often leads to underreporting of abuse, rendering the law a "paper tiger" in many rural and urban households.

To move beyond this reactive approach, the legal system must undergo a radical evolution toward a proactive, rights-based framework that guarantees the "Right to Age with Dignity." This evolution requires legal rigor paired with profound social empathy. The 2025 amendments to the MWPC Act began this transition by replacing the antiquated term "normal life" with "life of dignity," expanding the definition of maintenance to

include healthcare, safety, and psychological well-being. However, statutory changes are insufficient without corresponding infrastructural implementation. A proactive approach demands the establishment of standardized, state-funded geriatric care institutions in every district, eliminating the dependence of frail seniors on abusive caregivers for basic necessities.

Furthermore, the legal framework must move away from the purely adversarial litigation model. The implementation of "Hybrid Tribunals" that prioritize mediation and family counseling over punitive measures is essential to repair familial bonds rather than severing them entirely. Legalizing "Ageing in Place"—providing tax incentives and state-funded home-care assistance for families who retain their elderly members at home—can effectively reduce caregiver burnout and, consequently, elder abuse. This proactive vision also includes digital security, mandating "Senior Modes" in banking and government portals to protect the vulnerable silver population from cyber-fraud. The protection of the elderly in India is not merely a matter of social welfare; it is a fundamental human rights challenge that demands a re-engineered social contract for a rapidly aging republic.

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