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# LEGAL RESPONSES TO POPULATION AGEING: ANALYSING ELDER CARE LAWS AND POLICIES IN INDIA, JAPAN, AND THE UNITED STATES

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## ABSTRACT

This paper presents a comparative analysis of the elder care laws of India, Japan, and the USA. It examines how each country's legal system is shaped by its socio-cultural values, economic capacity and demographic realities. India relies on a maintenance-based framework emphasising family responsibility, and the government has also taken initiative through various schemes and policies. India enacted a dedicated legislation, the Maintenance and Welfare of Parents and Senior Citizens Act 2007 (hereinafter MWPSA Act); however, its implementation is minimal due to low public awareness, social perception and weak institutional framework. At the same time, Japan addresses its ageing challenges through long-term care, community participation and other legal measures such as the Elder Abuse Prevention Law. The USA also developed a specialised legal system for elder care and preventing elder exploitation and abuse, such as the Older Americans Act, and the Family and Medical Leave Act that support elder autonomy and community-centred services. Although structural differences exist in all three countries, they face similar challenges, such as rising demands for elder services, ensuring financial viability and strengthening support for caregivers. The paper also emphasises that India could enhance its elder care mechanism by drawing insights from Japan and the USA, primarily through collaborative efforts and institutional improvements.

**Keywords:** Elder Care Laws, Maintenance, Ageing, Healthcare, Financial Exploitation

## Introduction

The ageing population is a vital segment of society, contributing valuable knowledge and experience. As global life expectancy increases, their unique needs also become essential.

Population ageing refers to the growing proportion of persons aged 60 and above within a population. This phenomenon is a unique demographic shift projected to accelerate in the 21<sup>st</sup> century. It is primarily driven by a decline in mortality rates, followed by a decline in fertility rates.<sup>1</sup> As of 2022, the global elderly population aged 60 and above stood at approximately 1.1 billion, accounting for 13.9% of the world's total population of 7.9 billion. This demographic shift is projected to double to 2.1 billion by 2050, comprising 22% of the global population. The growth of the elderly population will be continuously visible across both developed and developing countries. In more developed countries, the share of older adults is projected to rise from 26% in 2022 to 34% by 2050. Similarly, in less developed countries, this share is anticipated to increase from 11.5% in 2022 to 20% by 2050, with the absolute number rising from 772 million to 1.7 billion.<sup>2</sup>

India, home to the world's largest population, is also experiencing a rapid demographic shift towards an ageing population. As of 1 July 2022, the country had about 149 million individuals aged 60 and older, accounting for 10.5% of the population. This proportion is expected to double by 2050, reaching 20.8%, and the absolute number is projected to rise to 347 million.<sup>3</sup>

This rapid and unprecedented increase in the ageing population will have far-reaching implications on the healthcare infrastructure, economy and social structures. Addressing these challenges requires a robust legal framework and proactive planning. Developing relevant policies and programmes to support current and future elderly persons has become an urgent priority for the government and other key stakeholders.<sup>4</sup>

Traditionally, the duty to support ageing parents and senior citizens has fallen on their children, a practice deeply embedded in cultural and legal customs. This responsibility can be traced back to Roman Law, which laid the foundation for filial piety. In Extended families, multiple generations such as grandparents, children and even other near relatives live together and

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<sup>1</sup> International Institute for Population Sciences (IIPS), "Longitudinal Ageing Study in India (LASI), Wave 1, 2017-18, Executive Summary" (IIPS, in collaboration with NPHCE, MoHFW, Harvard T.H. Chan School of Public Health [HSPH] and University of Southern California [USC], Mumbai, 2020).

<sup>2</sup> International Institute for Population Sciences and United Nations Population Fund, "India Ageing Report 2023: Caring for Our Elders – Institutional Responses" (UNFPA, New Delhi, 2023).

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

maintain close and interdependent relationships. This structure naturally facilitated family solidarity because resources, care, and responsibilities were shared equally among the family members. The elderly member also makes their contribution by doing household duties and childcare.<sup>5</sup>

However, in the 15<sup>th</sup> century, these family values started to decline, and this trend gravely weakened in the 19<sup>th</sup> and 20<sup>th</sup> centuries when the joint family system began to disintegrate into the nuclear family system. This disintegration of extended families and the rise of atomic families weakened the traditional mechanisms of family solidarity, and it necessitated a proper legal framework to ensure children's obligations towards their elderly.<sup>67</sup> Later, this legal obligation was formalised in the Code Napoléon, an attempt to maintain intergenerational solidarity amidst societal changes.<sup>8</sup>

The legal obligation to maintain family solidarity became a very effective way to prevent elderly neglect and abuse; however, this also will lead to unintended consequences such as financial strain and or resentment within families.

### **Law relating to elder care in India**

Under the Indian Constitution, the fundamental rights available to people do not specifically provide for the rights of older persons in India. However, by judicial interpretation, the Supreme Court occasionally interpreted Article 21. The understanding of Article 21 includes essential aspects for human existence, such as the right to live with dignity, a healthy environment, health care, emergency aid, livelihood, and social security. This extended interpretation also includes the right to shelter, free legal assistance, speedy trial and protection against inhuman treatment.<sup>9</sup> The concept of life under Article 21 signifies more than mere biological survival. The right to live with dignity, as incorporated under Article 21, holds particular significance for elderly citizens who may face social isolation, neglect and various other forms of abuse. However, the constitutional framers at the time of framing the

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<sup>5</sup> Jean van Houtte and Jef Breda, "Maintenance of the Aged by Their Adult Children: The Family as a Residual Agency in the Solution of Poverty in Belgium" 12(4) *Law & Society Review* 645–664 (1978).

<sup>6</sup> Leopold Rosenmayr, "Family Relations of the Elderly" 30(4) *Journal of Marriage and Family* 672–685 (1968).

<sup>7</sup> Van Houtte and Breda, *supra* note 5.

<sup>8</sup> *Ibid.*

<sup>9</sup> Suravi Ghosh, "Constitutional Rights of Senior Citizen and Maintenance and Welfare of Parents and Senior Citizen Act" (Legal Service India) available at: <https://legalserviceindia.com/legal/article-1703-constitutional-rights-of-senior-citizen-and-maintenance-and-welfare-of-parents-and-senior-citizen-act-2007-an-analysis.html> (last visited on April 12, 2025).

constitution knew of the rapid societal change. Therefore, they included directive principles of state policy under the Indian constitution under Part IV and imposed a duty on the state to effect these directive principles whenever they have adequate financial resources. Thus, India's constitutional provisions were designed with sensitivity towards each section of the society, including its ageing population. Article 38(1) directs the state to minimise inequality. Also, it directs that the state endeavour to foster the well-being of its people by establishing a societal framework wherein the social, economic, and political interests can be safeguarded.<sup>10</sup> Article 39(e) casts a duty upon the state to protect the citizens' health and strength, and they should not be employed in work unsuited to their health and age.<sup>11</sup> Article 41 of the Indian Constitution is a key element in this direction, which obligates the state to make effective policies for public assistance in cases of unemployment, sickness and old age.<sup>12</sup>

In India, several laws and policies address their needs, with the most significant being:

### **The Maintenance and Welfare of Parents and Senior Citizens Act, 2007**

This is the primary legislation specifically focusing on elder care in India. The government of India enacted the Act to ensure welfare, maintenance and protection of elderly persons and parents who are being neglected by their children or heirs who are to inherit the property. The act imposes a moral and legal obligation on the children and relatives to support their ageing family members. It establishes a legal framework to ensure such support is dignified and efficient. Its key objective and provisions include:

**Maintenance and Financial Support:** Senior Citizens and parents are entitled to claim maintenance from children or relatives who will inherit the property. A special tribunal resolves such issues in a simplified and lawyer-free process.<sup>13</sup> Authorised representatives or NGOS can file complaints. And in case of abandonment or neglect, the tribunal can also award interim relief. The act also emphasises that the process should be completed in a time-bound manner.

**Old Age Homes:** The Act directs the State Government to establish at least one nursing home in each district to accommodate 150 indigent senior citizens. However, the act does not

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<sup>10</sup> Dr Vipin Bihari Pandey and Subhash Chandra Das, "Constitutional and Legal Framework of Senior Citizens" 5(12) *International Journal of Advances in Engineering and Management* 50–53 (2023).

<sup>11</sup> *Ibid.*

<sup>12</sup> Baljinder Singh and Gaurav Chaudhary, "A Global Perspective on Aging: A Comparative Study of Old Age Policies in India and the West" 3 *International Journal of Human Rights Law Review* 33 (2024).

<sup>13</sup> Thomas Gregor Issac et al., "Maintenance and Welfare of Parents and Senior Citizens Act 2007: A Critical Appraisal" 43 *Indian Journal of Psychological Medicine* 107S–112S (2021).

mandate or hold the authorities accountable for implementing it, which reduces its effectiveness.

**Protection of Life and Property: Section 23<sup>14</sup>** The Act also incorporated the provision for protecting the life and property of the Senior citizens. Suppose a senior citizen transfers his property on the condition that he will be provided with basic amenities and care from that child or relative, and later on, the child or relative fails to uphold their responsibility. The transfer can be legally revoked, and the property will revert to the senior citizen. This is also a key safeguard against financial exploitation and emotional neglect. However, if this transfer happened under the sale consideration, this provision would not apply, and the person cannot reclaim that property.

**Maintenance Officer: According to Section 18<sup>15</sup>** The Act also requires the State Government to appoint a Maintenance officer, typically a social welfare officer or an officer of equivalent rank. The maintenance officer represents senior citizens during proceedings before the maintenance tribunal, provided the individual desires such representation. They ensure that the rights of older people are protected during legal processes. Thus, this provision ensures that older people and parents have access to professional support during tribunal proceedings.

**Medical Support: Section 20<sup>16</sup>** The Act obliges the State Government to ensure adequate healthcare support for elderly people. It mandates that government and government-funded hospitals, fully or partially, allocate beds specifically for senior citizens whenever possible. Additionally, separate queues are required to facilitate their access to medical services. The Section also calls for promoting research on ageing and diseases affecting the elderly population.

### **Bhartiya Nagarik Suraksha Sanhita 2023**

Section 144 of the BNSS, 2023 ensures financial stability for elderly parents by allowing them to claim maintenance from their children. However, to claim maintenance under this law, the parents must prove that they are neglected and lack sufficient income to support themselves.<sup>17</sup>

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<sup>14</sup> Maintenance and Welfare of Parents and Senior Citizens Act, 2007, s. 23.

<sup>15</sup> Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (Act No. 56 of 2007), s. 18.

<sup>16</sup> *Id.*, s. 20.

<sup>17</sup> Pandey and Das, *supra* note 10 at 51.

## **The Hindu Adoption and Maintenance Act, 1956**

The Act provided for elderly care for parents under section 20. The section imposes a statutory obligation on children to provide maintenance to their elderly parents who cannot sustain themselves.<sup>18</sup> Maintenance includes providing essential items such as food, clothing, shelter and other necessities to ensure a dignified life for parents. The section applies to both sons and daughters, reinforcing the traditional values of filial piety in Indian society. It reflects an attempt to codify moral duties into legal obligations, ensuring that elderly individuals receive the care and support they need.<sup>19</sup>

## **Other Policy Initiatives by the Government**

The government has also taken other policy initiatives, such as the integrated programme for older persons (IPOP), which encompasses various welfare schemes to enhance the quality of life for older adults, and the Rastriya Vayoshri Yojna, which offers free assistive devices such as wheelchairs, walking sticks, and hearing aids to senior citizens who are living below the poverty line.<sup>20</sup> Another significant scheme is the Indira Gandhi National Old Age Pension Scheme, which provides financial assistance to elderly individuals lacking a steady income. Additionally, pension Schemes like the Varishtha Pension Bima Yojana and Pradhan Mantri Vaya Yojana ensure economic stability and offer fixed interest returns.<sup>21</sup>

## **Law relating to elder care in Japan**

As Japan is experiencing rapid demographic shifts due to its ageing population, its implications are significant, such as a shrinking workforce, increased healthcare demands and rising social security costs. Japan is currently facing a demographic crisis as its population is ageing rapidly, and at the same time, it is also facing a declining birth rate. This demographic shift also created a health crisis as the demand for healthcare and welfare needs is skyrocketing.<sup>22</sup> According to a cabinet office report of the Government of Japan published in 2023, over 29% of Japan's population is 65 and older, the highest proportion of developed nations. The Tokyo-based

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<sup>18</sup> SMA Legal, "The Legal Framework for Protection of Senior Citizens in India" (SMA Legal) available at: <https://www.smalegal.in/home/the-legal-framework-for-protection-of-senior-citizens-in-india> (last visited on April 13, 2025).

<sup>19</sup> *Ibid.*

<sup>20</sup> Singh and Chaudhary, *supra* note 12, at 33-50.

<sup>21</sup> *Ibid.*

<sup>22</sup> Al Jazeera, "Japan's Elderly Population Rises to Record 36.25 million" (16 September 2024) available at: <https://www.aljazeera.com/economy/2024/9/16/japans-elderly-population-rises-to-record-36-25-million> (last visited on April 8, 2025).

National Institute of Population and Social Security Research has projected a 34.8 per cent elderly population by 2040<sup>23</sup>. And because of this, Japan could face a dire need

of the working population of 11 million by 2040 due to its shrinking population, according to the Recruit Works Institute, a Japanese-based think tank organisation.<sup>24</sup>

The ageing population has led to growing concerns over elder care, including financial insecurity, social isolation, elder abuse, and long-term care needs. However, Japan has also taken legislative and policy initiatives to tackle these growing concerns. Japan has implemented several legislative measures to create an integrated care system supporting older individuals' dignity and independence. The purpose of these laws is not only to provide social security but also to actively integrate into society, safeguarded from harm and supported in fostering connections with younger generations.

Here is a brief introduction to the various legislation introduced by Japan for the protection and welfare of older adults –

### **Long Term Care Insurance Act 1997<sup>25</sup>**

This is the fundamental legislation for elderly care in Japan and was implemented in 2000. According to this legislation, Articles 9 to 13 outline the eligibility for long-term care<sup>26</sup> The long-term care insurance system mandatorily covers individuals aged 65 and over, as well as persons aged 40 to 64 with age-related diseases. The system is jointly funded by the premiums from the insured and taxes from national and local governments.

Chapter III of the Long-term Care Insurance Act 1997 deals with the certification process. According to this chapter, a certification committee will be established in the municipality to determine who needs long-term insurance care.<sup>27</sup>

Chapter IV of this act deals with insurance benefits and provides types of benefits and their coordination with other laws. It also provides provisions for certificate renewal and any

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<sup>23</sup> National Institute of Population and Social Security Research, “Population Projections for Japan (2023 revision): 2021 to 2070” (2023) available at: [https://www.ipss.go.jp/pp-zenkoku/e/zenkoku\\_e2023/pp2023e\\_Summary.pdf](https://www.ipss.go.jp/pp-zenkoku/e/zenkoku_e2023/pp2023e_Summary.pdf) (last visited on April 8, 2025).

<sup>24</sup> Recruit Works Institute, “*Future Predictions 2040 in Japan: The Dawn of the Limited-Labor Supply Society*” (Recruit Co., Ltd., 2025) available at: [https://www.works-i.com/english/item/FuturePredictions2040\\_JP.pdf](https://www.works-i.com/english/item/FuturePredictions2040_JP.pdf) (last visited on April 8, 2025).

<sup>25</sup> Japan, Long-Term Care Insurance Act 1997 (Act No. 123, 17 December 1997) available at: <https://www.japaneselawtranslation.go.jp/en/laws/view/3807/en> (last visited on April 8, 2025).

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

changes to it. Under this chapter, provisions are made for in-home and institutional care. It also focuses on those services that will prevent the long-term care needs of older adults. If there is a need for additional benefits, then the municipality can also provide those extra benefits. This chapter also provides some conditions in which insurance benefits can be limited.<sup>28</sup>

Chapter V covers the roles and responsibilities of the insurance care service provider, including registration obligations and the designation of the facilities and service providers. Chapter VI deals with community-based initiatives to support elderly individuals, such as preventive care and local welfare projects run by community members. Chapter VII states that long-term care service plans should be tailored to individuals' needs. Chapter VIII deals with expenses. According to this chapter, a fund should be established to ensure the system's financial stability and impose an obligation on medical insurers to contribute to that fund. Chapter IX deals with regulating and managing the funds related to long-term care insurance. Chapter X addresses the role and responsibilities of National Health Insurance Associations in managing long-term care projects. Chapter XI establishes the committee to review and resolve benefits expense disputes. Chapter XII of the Long-Term Care Insurance Act is titled Application for Examination. It outlines the procedures for individuals to appeal the decisions made by the municipalities or other administrative bodies regarding their eligibility certification or benefits under the long-term care insurance system. Further on, Chapter XIII dealt with the Miscellaneous provisions which ensures the effective implementation of the Act. And finally, chapter XIV provides penalty provisions for violating the Act, such as fraudulent claims, misuse of funds, etc.<sup>29</sup>

### **The Basic Act on Measures for an Ageing Society**

The act was enacted in 1995 to comprehensively and systematically promote policies in response to Japan's rapidly ageing society. Its objective is to provide a holistic policy approach by establishing a national-level framework to plan and implement ageing-related measures across multiple sectors, such as healthcare, welfare, employment, housing, etc.

The Japanese government must formulate a basic plan to promote comprehensive and systematic policies for an ageing society. However, the act does not explicitly provide for any revision of this plan; the government generally updates it every five years.

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<sup>28</sup> *Ibid.*

<sup>29</sup> *ibid.*



## **The Act on the Prevention of Elder Abuse, Support for Caregivers of Elderly Persons and Other Related Matters**

In 2005, Japan implemented the Act on the Prevention of Elderly Abuse, Support for Caregivers of Elderly Persons, and Other Related Matters. The Act provided a comprehensive definition of Elder Abuse and mandated that health professionals, welfare workers, and other related personnel report suspected cases of elder abuse to municipal authorities.<sup>30</sup> The Act also hold managers and staff of long-term care facilities accountable for preventing abuse within their institutions.

### **Healthcare measures by Japan**

As the global population ages, living in good health free from significant health issues becomes a critical challenge for building a resilient society. Early detection and treatment are crucial in treating any disease. For this, a dedicated and comprehensive healthcare system is needed. To tackle these challenges, in 1961, a universal health care system was established in Japan to provide all citizens with equal healthcare.<sup>31</sup> Before this, around 30 million people, who constitute approximately one-third of Japan's population, were outside the purview of health insurance coverage, which results in significant health disparities. By introducing this system, people can contribute to the premium according to their income and cover some medical costs, thereby enhancing healthcare accessibility.<sup>32</sup>

As Japan faces an ageing problem, the working population (aged between 20 and 64 years) has shifted dramatically. In 1990, there were 5.1 working-age persons for every elderly, which is now estimated to have declined to 1.8 to 1, indicating a substantial demographic shift. As the demography shifts, the demand for advanced medical treatments and long-term care also increases rapidly. Consequently, the national health care expenditures have risen significantly from approximately 30 trillion yen in 2000 to over 46 trillion yen in 2022. To address these challenges, Japan introduced several initiatives to improve the healthcare system and provide equal healthcare access. Japan introduced a data health plan in 2013 to analyse the healthcare

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<sup>30</sup> Noriko Tsukada, "Japan's 10-Year Legislative Experience, Current Status and Future Challenges in Preventing Elder Abuse" in Mala Kapur Shankardass (ed), *International Handbook of Elder Abuse and Mistreatment* (Springer, Singapore 2020) available at: [https://doi.org/10.1007/978-981-13-8610-7\\_26](https://doi.org/10.1007/978-981-13-8610-7_26) (last visited on April 14, 2025).

<sup>31</sup> Naoko Tochibayashi and Mizuho Ota, "How Japan is Building a Resilient Society through Equitable Healthcare" (World Economic Forum, 7 April 2025) available at: <https://www.weforum.org/stories/2025/04/japan-building-resilient-society-through-equitable-healthcare/> (last visited on April 9, 2025).

<sup>32</sup> *Ibid.*

expenditure and health data. This Data Health Plan aims to optimise health services to cater to specific health interventions' needs by identifying needy elderly persons.<sup>33</sup>

### **Law relating to elder care in the United States of America**

In the United States of America, elder law developed as a distinct legal practice in the late 1970s and early 1980s. The driving factors of this development were demographic shifts, policy concerns and market demands.<sup>34</sup> Besides this, some landmark cases also played a role in developing this law as a separate field of practice, such as the *In re Quinlan*, which raised awareness for health and end-of-life planning.<sup>35</sup> In this case, Karen Anne Quinlan in the 1970s involved her parent to petition before the Supreme Court to remove her from artificial ventilation as she was in a persistent vegetative state. The court accepted the request, and the case raised awareness regarding the importance of end-of-life care planning and other legal tools such as durable power of attorney and advance directives. This highlighted the patient autonomy and ethical consideration concerning life-sustaining treatment.<sup>36</sup>

The US ageing policy is being implemented in three stages: at the federal, state, and local levels. Federal policies such as Social Security, Medicare, and the Older Americans Act in the USA form the cornerstone of elder care services. They provide income security, healthcare coverage, and community-based services.

In 1965, the US Congress enacted two significant legislations to support older Americans: The Older Americans Act (OAA) and Title XVIII of the Social Security Amendments 1965. The OAA established the National Ageing Network, which allocates funding for nutrition programs, home and community-based support systems, health promotion, disease prevention and other related initiatives.<sup>37</sup> Under the OAA, persons aged 60 and above cannot be prevented from taking advantage of the programs established by this act.

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<sup>33</sup> IBM Japan Health Insurance Association, "Data Health Plans | Health Activities | IBM Japan Health Insurance Association" available at: <https://www.ibmjapankenpo.jp/eng/member/outline/datahealth.html> (last visited on April 10, 2025).

<sup>34</sup> Nancy J Knauer, "The Development of "Elder Law" In the United States" [2024] SSRN Electronic Journal available at: <https://www.ssrn.com/abstract=4924969> (last visited on April 10, 2025).

<sup>35</sup> *In Re Quinlan*, 70 N.J. 10, 355 A.2d 647 (1976) available at: <https://law.justia.com/cases/new-jersey/supreme-court/1976/70-n-j-10-0.html> (last visited on 10 April 2025).

<sup>36</sup> Kara E Bischoff and others, "Advance Care Planning and the Quality of End-of-Life Care in Older Adults" 61 *Journal of the American Geriatrics Society* 209 (2013) available at: <https://onlinelibrary.wiley.com/doi/abs/10.1111/jgs.12105> (last visited on April 10, 2025).

<sup>37</sup> Knauer, *supra* note 35.

The USA also enacted a Federal law, the Family and Medical Leave Act (FMLA) of 1993, which allows working people to take up to 12 weeks of unpaid job-protected leave to care for newborns, newly adopted children, seriously ill parents, or another family member.<sup>38</sup> Thus, the FMLA also covers situations involving the care of elderly relatives who are experiencing health challenges. It is designed to promote easy leave in case of emergency and protect the employees' jobs during times of family health needs.

### **Comparison of laws and enforcement mechanisms of the laws of India, Japan, and the USA**

The elderly care laws in India, Japan, and the USA are similar but significantly different in scope and comprehensiveness.

In India, the Constitution provides for fundamental rights and directive principles of state policy to safeguard the dignity and livelihood of every citizen, including older adults. However, despite these provisions, judicial interpretation does not change the ground realities of the plight of older adults in India.<sup>39</sup>

In 1990, the US enacted a federal law, the Patient Self-Determination Act.<sup>40</sup> (PDSA), which is part of the Omnibus Budget Reconciliation Act. The purpose of this Act was to encourage Advance care planning, ensure that patients are informed about their rights regarding medical decisions, and execute "advance Directives" for health care and living wills.<sup>41</sup>

The PDSA emphasises patient autonomy and informed consent, especially for end-of-life care. In contrast, India has no specific law dealing with this requirement. However, India has made some progress in this direction by the Supreme Court judgment allowing passive euthanasia and advance directives. In *Common Cause v. Union of India*,<sup>42</sup> The Supreme Court ruled that every person has the right to die with dignity. It also recognised the validity of advance medical

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<sup>38</sup> Pamela Joshi, Maura Baldiga, Rebecca Huber and Dolores Acevedo-Garcia, "The Family and Medical Leave Act Policy Equity Assessment" (*Diversity Data Kids*, January 2020) available at: [https://www.diversitydatakids.org/sites/default/files/2020-01/ddk\\_policyequityassessment\\_fmlla\\_2020\\_2\\_0.pdf](https://www.diversitydatakids.org/sites/default/files/2020-01/ddk_policyequityassessment_fmlla_2020_2_0.pdf) (last visited on April 11, 2025).

<sup>39</sup> Sarasu Esther Thomas, "Law and its Discontents: Ageing and Family Law in India" (2023) *Journal of Social and Economic Development* doi:10.1007/s40847-022-00211-2.

<sup>40</sup> Denise C. Park, Thomas A. Eaton, Edward J. Larson, and Helen T. Palmer, "Implementation and Impact of the Patient Self-Determination Act" 87 *Southern Medical Journal* 971 (1994) available at: [https://digitalcommons.law.uga.edu/fac\\_artchop/506](https://digitalcommons.law.uga.edu/fac_artchop/506) (last visited on 14 April 2025).

<sup>41</sup> AM Capron, "The Patient Self-Determination Act: New Responsibilities for Health Care Providers" 2(1) *The Journal of American Health Policy* (1992) available at: <https://europepmc.org/article/MED/10116481> (last visited on April 14, 2025).

<sup>42</sup> *Common Cause v Union of India* (2018) 5 SCC 1 (SC).

directives (living wills), allowing individuals to specify their medical treatment preferences in case they lose decision-making capacity.<sup>43</sup> The judgment also has significant implications for elder care. It empowers elderly individuals to make autonomous and informed decisions about their end-of-life care, ensuring their dignity is preserved. India's elder care laws, such as the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, primarily focus on familial obligations and financial support rather than detailed end-of-life care. Thus, India's progress in this direction is more fragmented and judicially driven. India needs to integrate the principles of patient autonomy into the elder care system.

In the USA, the working population, especially women, is under a growing burden of elder care due to the unexpected and emotionally demanding nature of caregiving. While the US addresses this through the Family and Medical Leave Act (FMLA), the Older Americans Act, and a robust institutional care network, these policies still fall short in fully supporting caregivers.<sup>44</sup> India primarily relies on the MWPSA Act, 2007, with limited formal care infrastructure and workplace protections. This contrast highlights the urgent need for comprehensive elder care reforms in India.

Maintenance laws related to older persons are shaped by personal laws (such as Hindu and Muslim laws) and secular laws such as the MWPSA Act 2007. Personal Laws in Hindu and Muslim communities traditionally place a duty on children to support their parents. Secular measures such as the MWPSA Act, 2007, seek to create a more uniform legal framework for family members to provide financial support, healthcare, and shelter. Despite these laws, practical challenges such as inefficient enforcement, delays in legal proceedings, and a shifting family structure of nuclear families replacing joint families hinder the adequate protection of elderly rights.<sup>45</sup>

India's elder care laws and policies are riddled with critical gaps stemming from a narrow, maintenance-focused legal definition of care, a lack of institutional care infrastructure, and limited gender sensitivity interventions. Although the MWPSA Act, 2007 also mandates that children and other heirs provide maintenance to parents and elder persons, this act reduces elder care to a transactional notion of "maintenance" by overlooking emotional, psychological,

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<sup>43</sup> Common Cause (A Regd. Society) vs Union of India (2018) available at: <https://indiankanoon.org/doc/184449972/> (last visited on April 11, 2025).

<sup>44</sup> Peggie R Smith, "Elder Care, Gender, and Work: The Work Family Issue of the 21st Century" 25 *Berkeley Journal of Employment & Labor Law* 351 (2004).

<sup>45</sup> Thomas, *supra* note 40.

and relational dimensions of care.<sup>46</sup> These emotional, psychological and relational dimensions severely affect the well-being of childless and single elderly persons. Despite the existence of legislation, policies and different government Schemes, there remains a wide gap between what is legally envisaged and what is practically provided.<sup>47</sup>

The gap in policy is further compounded by the lack of coordination between agencies responsible for overseeing elder care, specifically in elder abuse cases. In elder abuse cases, a robust response system would be required to support the victim of abuse and to reinforce the public policies aimed at combating the Problems. Another challenge is the need for improved research methodologies to identify and screen cases of abuse and neglect, both within families and outside family settings. Besides this, much research in India focuses on family-driven violence against older people, but less on the abuse in residential and institutional environments.<sup>48</sup> Concerns arise when nursing homes increase without proper management and sanitation guidelines.

Japan established a robust system of elder care laws much before India and focused on a shared responsibility between the government and its Citizens.<sup>49</sup>

Japan enacted the Act on Social Welfare for the Elderly in 1963, initially focusing on seniors with low incomes and without family support. The Health and Medical Services Act for Aged Persons was enacted to address health and medical expenses. Japan also introduced the Gold Plan in 1989, a ten-year strategy to build infrastructure for elderly health and welfare services.<sup>50</sup>

Japan has established a highly comprehensive social security net dedicated to elderly care, including universal health coverage, a mandatory long-term care insurance system funded by a combination of contributions and taxes, and specific legislation like the Elder Abuse Prevention Act.<sup>51</sup> To address maltreatment issues. The Japanese Government promotes active ageing through policies encouraging social participation and continued employment

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<sup>46</sup> Dey D, “‘Fragile Body and Failing Memory’: The Construction of Care for the Elderly by the Laws and Policies in India” (Springer, Singapore 2017) available at: [https://link.springer.com/chapter/10.1007/978-981-10-3439-8\\_3](https://link.springer.com/chapter/10.1007/978-981-10-3439-8_3) (last visited on April 12, 2025).

<sup>47</sup> Ravani Ūkti Nayudu, “A Social Perspective on Law and Policy for Senior Citizens in the Present Scenario” 10(2) *EPRA International Journal of Multidisciplinary Research (IJMR)* 88 (2024) doi:10.36713/epra15758.

<sup>48</sup> Mala Kapur Shankardass, “Perspectives on Abuse and Neglect of the Elderly in India” in Mala Kapur Shankardass and S Irudaya Rajan (eds), *Abuse and Neglect of the Elderly in India* (Springer Nature Singapore Pte Ltd, 2018) available at: [https://doi.org/10.1007/978-981-10-6116-5\\_2](https://doi.org/10.1007/978-981-10-6116-5_2) (last visited on April 12, 2025)

<sup>49</sup> Adish Vinod Halarnkar and Dr Geeta, “Maintenance and Welfare of Senior Citizens in India and Japan: A Comparative Study” 12(1) *Russian Law Journal* 1471 (2024).

<sup>50</sup> *Ibid.*

<sup>51</sup> Tsukada, *supra* note 31.

opportunities for older people. Community-based integrated care systems have been developed to provide comprehensive support, including medical care, long-term care, and preventive services, enabling elderly persons to live independently in their communities.<sup>52</sup>

In India, there is a strong cultural emphasis on filial piety and children's responsibility to care for their elder parents, and the State's role generally remains supplementary.<sup>53</sup> India's former legal framework for elderly care is relatively new, and in 2007, India enacted a dedicated legislation for elderly care, the MWPSA Act. While India has a strong cultural tradition of respecting elderly persons enshrined in proverbs and religious texts, a specific law addressing their maintenance and welfare was absent until 2007. For elder abuse prevention, India does have some laws like the Protection of Women from Domestic Violence Act, 2005 and the Bharatiya Nyaya Sanhita 2023. Still, there is no specific legislation addressing elder abuse comprehensively.<sup>54</sup>

### Conclusion and suggestions

The comparative analysis of India, Japan, and the United States laws reveals that each country adopted a legal system for elderly care according to their socio-cultural values, economic capacities and demographic realities. India's approach to elderly care is more maintenance-centric, rooted in familial obligation and enforced by both personal laws, such as the Hindu Adoption and Maintenance Act 1956 and secular laws, such as the MWPSA Act, 2007, which legally mandates filial responsibility on the children and the heirs. However, not many people know about this act, and those aware do not take any action because of social stigma, inadequate infrastructure, and a lack of a support system.

With one of the world's oldest populations, Japan adopts a state-centric model and provides an extensive Long-term Care Insurance (LTCI), focusing on long-term caregiving systems, community involvement and medical and social services integration. To tackle elder abuse and the exploitation of older people, it enacted the Basic Act on Measures for an Ageing Society and the Elder Abuse Prevention Law, which forms the backbone of Japan's elder care system.

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<sup>52</sup> Shinichiro Noda and others, "Service Delivery Reforms for Asian Ageing Societies: A Cross-Country Study Between Japan, South Korea, China, Thailand, Indonesia, and the Philippines" 21(2) *International Journal of Integrated Care* 1 (2021).

<sup>53</sup> Asheesh Gupta, "Understanding Elderly Care in India: Cultural and Social Insights" (Samarth Care Blog, 18 January 2024) available at: <https://care.samarth.community/blog/communication/navigating-elderly-care-india-cultural-perspective/> (last visited on April 14, 2025).

<sup>54</sup> Dipti Singh and Dr Bhawna Arora, "Protection of Rights for Senior Citizens in India: A Legal Analysis" 7(3) *International Journal of Law, Management & Humanities* 133–146 (2021).

In the USA, elder law emerged as a distinct field in the late 20th century because of demographic pressures and a robust rights-based approach. Federal laws such as the Older Americans Act, Family and Medical Leave Act, and the Patient Self-Determination Act form a comprehensive legal framework that upholds patient autonomy, promotes community-based services, and supports caregivers, although some gaps still exist.

Although all three countries differ in their legal and policy framework, they are all confronted with some common issues, such as the growing demand for elder care services, the need for sustainable funding for caregivers' support and effective legal remedies against elder abuse and neglect. While Japan and the USA have robust institutional care systems and better elder abuse prevention mechanisms, India's approach focuses on legislative and reactive measures rather than preventive or systemic ones.

Thus, India should recognise older people as a distinct legal category and focus on a comprehensive rights-based framework. It should focus more on the implementation mechanism of the existing elderly care system by increasing funding, expediting legal processes, and training relevant authorities. Taking inspiration from Japan, India should also develop an integrated elder care policy that combines healthcare, social welfare, and legal protection under a unified national framework.

The USA has developed a strong, multidisciplinary approach to tackling elder care challenges. This approach involves professionals from different fields, such as law enforcement, healthcare, and social services, who work together to protect older adults. This Multidisciplinary approach has proven effective and is a valuable model for India.