GRAY MATTERS:
ELDER SUPPORT IN INDIA AND THE U.S.

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Introduction

Shri V.B. Pachnanda had never seen a member of Parliament break down in tears on the floor of the Lok Sabha before. So when he saw four legislators weeping during the debates on the “Maintenance and Welfare of Parents and Senior Citizens Bill,” he was surprised. Indeed, the members of Parliament were so moved by the plight of India’s elderly that they unanimously enacted the bill into law—to Pachnanda’s knowledge, India’s first bill to ever pass unopposed.¹

As Indian society, economy and culture westernize, the nation’s traditional multi-generational family structure has been breaking down. Under longstanding custom, multiple generations of an Indian family would share the same home. The patriarch would earn and allocate finances for raising children and caring for aged parents. It was understood by all that as the younger generations reached adulthood, they would assume responsibility for supporting their parents, thus continuing the cycle of communal give and take. But with modern-day economic opportunities expanding, young men and women have been leaving their villages to find lucrative jobs and more comfortable lifestyles available in Indian cities—and abroad. Left behind without caretakers or income, much of India’s elderly population now faces harder times.

The Maintenance and Welfare of Parents and Senior Citizens Act (the “Act”) came about as an attempt to remedy the problem. The government bureaucrats who wrote the Act said that while India lacks the resources to enact a Social Security program like America’s, they believe this bill can achieve financial support through social engineering.² Specifically, the Act has two main goals. First, it seeks to protect elders from poverty, abuse, and neglect by reinforcing traditional norms of intergenerational support. Second, it aspires to preserve those values within the modernizing Indian society. The most salient provision of the Act creates local tribunals

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¹ Interview with Shri V.B. Pachnanda and his assistant. (Drafters of the bill) Ministry of Social Justice and Empowerment, Delhi. (3/17/08).
² Id.
where a senior citizen can bring a case against his or her children for non-support. Children found in violation of the support law face hefty fines and jail time.

The challenge of supporting an elderly population is not unique to India. Comparing the Indian and American responses to the shared problem of elder maintenance reveals telling differences about the countries’ cultures, social and family values, and ideas about what role government should play in private life. In Part I, this paper will explore the historical background relevant to the Indian and American responses to supporting their elderly, unemployed populations. Part II compares these proposed solutions, and sets forth hypotheses about what the responses manifest about each culture’s respective policymaking and values. Despite obvious and significant differences between India and America, this paper argues that India’s experience over the past fifteen years has paralleled that of America during its period of industrialization in the early 20th century. Part III proceeds to argue that although the Act is well-intentioned, it will not improve the lives of Indian seniors. At the same time, we must be cautious in deeming the Act a “failure.” At a minimum, its existence communicates to the Indian elderly that the government is concerned about their emerging struggle. We conclude by proposing solutions that the Indian government and NGOs could employ to actually improve the lives of their seniors. Part III also considers how Indian’s attempted solution would be received on American soil as the Social Security system approaches potential insolvency.
Part I. The Problem and The Solutions: India and the United States

A. India

The Elderly in India

Soaring life expectancies have made senior citizens a large, growing segment of the Indian population. In 1986, the average Indian male could expect to live 58 years, up from just 42 in 1951. Statisticians project that life expectancy will climb to 67 years by 2011, nearly a 60 percent increase in 60 years. Furthermore, India has attained the United Nations’ definition of an “aging” country. In other words, the proportion of its 1 billion citizens over the age of 60 has exceeded seven percent, and this proportion is expected to surpass 12 percent by 2025. The country already has the second largest number of senior citizens in the world, and by 2030, a projected 198 million people over the age of 60 will live in India. Presently, 75 percent of Indian citizens over 60 live in rural villages. Although the thriving economy will likely benefit the elderly members of the middle-class, who may take advantage of wealth management retirement planning, many more elderly persons are illiterate, and most rely exclusively on their families to sustain them. Ninety percent of the Indian workforce retires without any pension or

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4 See NPOP at 2.
5 See NPOP at 2.
8 See NPOP at 2.
10 See NPOP at 6.
retirement benefits. Without a national social security system in place the question of how to provide for the needy senior citizens looms large.

Traditional Support Systems give way as India Shines

In India, family members have traditionally cared for their elderly. Most Indians consider the institution of family to be more important than the individual and historically, most elderly Indians have lived in multi-generational homes with their children and their other family members. Stay-at-home mothers took care of elderly family members while husbands worked outside the home to produce income. Indeed, family is the most cherished social institution there and “the most vital non-formal social security for the old.”

The country’s governing documents are structured to support the family and the elderly. The Constitution of India states that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to public assistance in cases of old age. Despite these platitudes, government does little to support the elderly and relies on private family support systems to shoulder the burden. Although family still plays a very important role in caring for the elderly, Indian experts all agree that society is undergoing a profound change.

In sharp contrast with traditional expectations, today eleven percent of India’s elderly live outside of the intergenerational home, and on their own. By 2025, an estimated 25 percent will

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12 Interview with Sailesh Mishra, 3/27. ARDSI, Bombay.
14 See NPOP at 16.
16 See “Responses” section below.
be living independently. Every one of our interviewees asserted that this change had occurred rather suddenly, during the course of the last ten to fifteen years. Indeed, the time period between 1993 and 2008 correlates with India’s period of rapid economic development. Within this timeframe, India has experienced intense growth, and struggled to maintain its social mores through the ensuing transformation.

According to many, the younger generation has acquired a new attitude of materialism and selfishness as a byproduct of India’s thriving economy. A group of law professors in Mumbai explained that in contrast to ten years earlier, when only two types of cars were available, today dozens of options had given rise to a new competitive social hierarchy. “Everyone wants to buy a nice car, to keep up with the neighbors,” Dr. L.R. Dwiredi. “Then you need appliances and the nice home. Money that traditionally would go to supporting your family is now spent on these luxuries.” Additionally, parents are not only spending their money on daily family living expenses but also more frequently, large tuition debts on behalf of their children, further increasing the financial strain they may later face.

Moreover, the booming economy and its promise of middle-class success has drawn men and women from their rural ancestral homes to the inflating sprawls of Delhi, Mumbai, and Hyderabad, as well as abroad. While the economic growth and “exposure to life styles in developed countries [have brought] changes in values,” parents have found their children less willing to adopt agrarian family businesses as their destiny. Working the land, once a source of intergenerational pride and bonding, has not sustained the interest of new generations, who now

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18 Id.
19 Statement by Dr. L.R. Dwiredi, a law professor at a group interview/discussion we conducted at Shri Ville Parle Kelavani Mandal’s College of Law, Bombay. 3/29/08.
20 Id.
21 See NPOP at 3.
22 Because of this, Mumbai has nearly doubled in size in the last 10 years. By 2020, it should be the world’s largest city. http://news.bbc.co.uk/2/hi/south_asia/1093424.stm.
23 India’s National Policy on Older Persons; See NPOP at 3.
perceive a wider range of options. Moreover, as young men are leaving the fields, Indian women are simultaneously leaving their traditional posts as stay-at-home caregivers in order to join the labor force in far-away locales.\textsuperscript{24} But in most cases elderly parents cannot find work within the new economy, and are left behind.\textsuperscript{25} With fewer family members in the villages to provide caretaking, cooking, and companionship, neglect and ill health have begun to abound.\textsuperscript{26} And indeed, as Indian society has changed over the past fifteen years, incidents of elder neglect, abuse, and non-support have been on the rise.\textsuperscript{27}

Interestingly, Indians appear acutely aware of and greatly troubled by the changes in their own behavior. A report in 2007 by the Standing Committee on Social Justice and Empowerment mourned that “society is witnessing a gradual but definite withering of the joint family system.”\textsuperscript{28} Such conditions led one Indian scholar to argue that his homeland needed to “revive [its] normative structure of the society,” because “the philosophy of ‘individualism’ [had] colonized the mental state of the youths.”\textsuperscript{29}

India’s Responses to the Problem

Notwithstanding its citizens growing consternation, as well as India’s constitutional obligation to support its elders, the country simply cannot afford a comprehensive and robust government-supplied support scheme. However, India has made several discrete attempts to support its seniors, in addition to the Act.

\begin{itemize}
\item \textsuperscript{24} See NPOP at 4.
\item \textsuperscript{25} See NPOP at 4.
\item \textsuperscript{26} On our ride along interview, many elders and doctors spoke of how even when medical care is free, transportation can be a large hurdle to care. Families cannot afford a cab ride or to borrow a car to take an elderly person to a hospital. Interview with HelpAge Van Driver and Doctor, 3/18/08. Helpage India, Dehli
\item \textsuperscript{27} Interview with Anapuma Datta, 3/17/08. Helpage India, Dehli.
\item \textsuperscript{28} On file with group.
\end{itemize}
**Pension Scheme**

In 1995 India created the National Old Age Pension Scheme, which the central government funds but the states implement. Through this initiative, people over age 65 who live below the poverty line are now eligible to receive 200 rupees ($5.00 USD) each month, up from 75 rupees (2.00 USD) when first implemented in 1995. But according to HelpAge, the largest NGO dedicated to the seniors’ cause in India, only one in five of those eligible for the benefit actually receives it. The faulty success rate can be partly attributed to high rates of senior illiteracy and ignorance, as well as the procedural requirement that seniors produce certificates proving their age. Many state governments provide a local pension in additional to the federal money. As one of the most generous providers in India, the state of Goa gives its needy seniors 500 rupees a month to supplement the 200 rupee federal pension.

**National Policy**

In January 1999, India’s Ministry of Social Justice and Empowerment drafted a National Policy on Older Persons, which placed the primary responsibility of caring for the elderly upon their families. The Policy declared it “neither feasible nor desirable for the State alone to attain the objectives of the National Policy . . . individuals, families, communities and institutions of civil society have to join hands as partners.” Indeed, the Secretary of the Ministry reaffirmed before the Lok Sabha in 2007 the notion that “family is the most desired environment for senior citizens [and] parents to lead a life of security, care and dignity.”

34 Interview with Sailesh Mishra, 3/27. ARDSI, Bombay.
35 See NPOP at 6.
36 See infra n. 28.
Policy pledged to “endeavor to strengthen integration between generations…and strengthen bonds between the young and the old.”37 Specifically, the Policy, which sought to assure the elderly “that their concerns [were] national concerns,”38 advocated developing informal community support structures in order to improve “the capacity of families to take care of older persons” and allow elderly to continue to live with their families.39

**Precedent Legislation**

Abandoning one’s parents is a crime in India. Namely, Section 125 of India’s Criminal Procedure Code recognized a needy parent’s right to bring charges against his children, where they had failed to support him, although they had sufficient means.40 However, enforcing the law would entail procedures both cumbersome and expensive.41 Within the civil arena, laws had addressed parents in need for over 50 years. The earliest, the Hindu Adoptions and Maintenance Act of 1956, considered familial support a right of elderly parents, but offers no provision for enforcement.42 More recently, the Indian state of Himachal Pradesh passed the Maintenance of Parents and Dependents Act in 1996, a law quite similar to the federal Maintenance Act that passed in 2007.43 The Himachal Pradesh Act similarly permitted senior citizens to bring “cases” against their children for financial support. In spite of these developments, India had not implemented publicly funded programs to support the values it had persistently espoused in the aforementioned initiatives. Without more, each would remain largely aspirational, merely

37 Id.
38 See NPOP at 5.
39 See infra n. 28.
41 See infra n. 28.
suggestions for change. In point of fact, India suffers from a “relative absence of special
government programming for old people.”

The Act

The recent passage of the Maintenance and Welfare of Parents and Senior Citizens Act
exhibits the most progressive action on behalf of the elderly by the Indian government to date.
By invoking its protections, elders can demand financial support from their children before a
government tribunal. The drafters of the Act at India’s Ministry of Social Justice and
Empowerment consider it a fitting response to the country’s elder care crisis.

In 2007, members of the Ministry of Social Justice and Empowerment decided that the
time had come for “the moral obligation of children to look after their parents in their old age . . .
to be backed by a legal obligation.” They drafted the Act as a comprehensive response to
eroding familial support of the elderly through three key mechanisms. First, the Act granted
adults over the age of 60 the right to apply to local maintenance tribunals to seek a monthly
allowance from their children or heirs. The seniors would have a right to appeal a decision
denying relief, however the children would have no right to appeal a grant of relief.
Interestingly, attorneys are prohibited from participating in tribunal proceedings. Second, if
children or heirs fail to pay the required monthly allowance, they may be fined up to 5,000
rupees, sentenced to three months jail time, or both. Lastly, the Act urged state governments to
establish old age homes but stopped short of a mandate.

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44 John van Willigan at 110.
45 See infra n. 28.
46 Interview with Shri V.B. Pachnanda and his assistant. (Drafters of the bill) Ministry of Social Justice and
Empowerment, Delhi. (3/17/08).
B. United States

The Elderly in America

Like India, America faces a growing elderly population. While the aged may compose 12 percent of India’s population by 2025, in America, they currently form 12 percent, and are expected to reach 20 percent by 2025. Notwithstanding these high numbers, the elderly in America have enjoyed a relatively low poverty rate in the recent past, based on inflation-adjusted, American standards of living. While in 1959, 36 percent of the elderly lived in poverty, these rates have steadily declined since that time. In 2006, less than ten percent of the American aged were considered poor. Most academics attribute this decline almost entirely to the advent of Social Security.

Nevertheless, some of America’s elderly still suffer greatly due to poverty. In 2001, 2.2 percent of the senior population lived in “severe poverty,” a category demarcating persons living at least 50 percent below the poverty line. Furthermore, elderly persons of minority background, elderly women, those living in rural areas, and those living alone are more likely than other groups to live in poverty. Indeed, Hispanic and black women living alone have the

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48 Id.
50 Travelling to India, however, manifests the stark reality that poverty is a relative term. What Americans may consider poverty could be considered comfortable in India. Note that American poverty thresholds differ by the size and makeup of a household. For a person 65 and over, and living alone, the threshold is $9,600. See http://www.msnbc.msn.com/id/9130342/.
52 In 1959, the poverty rate for the elderly was 1.75 times the poverty rate of the general population as a whole, but in 2003 the poverty rate for the elderly was 20 percent lower than the general population. Id.

highest rate of poverty among the elderly (40.5 percent and 37.5 percent, respectively). A final, sobering statistic—American seniors between the ages of 60 and 90 possess a 40 percent chance of falling below the poverty line for at least one of those years of their lives.

For those elderly persons fortunate enough to live above the poverty line, the American Social Security system is a primary buoy keeping them afloat. While Social Security payments only constituted 37 percent of the aggregate income for all the elderly, it constituted over 90 percent of the income for 34 percent of Social Security beneficiaries. Of the unmarried aged population, over 40 percent received at least 90 percent of their income through social security benefits.

Unlike in India, most of the elderly in America do not live with their children. Approximately half of non-institutionalized American seniors continue to live with their spouses, while about 30 percent live alone. Because on average women live longer than their male spouses, many more old-aged women live alone—38 percent, as compared with just 19 percent of older men. According to a 1994 study, only 7 percent of elderly men and 17 percent of women lived with a relative.

**America’s Responses to the Problem**

In addition to the Social Security system, the United States government has encouraged a culture of retirement planning and investment through tax breaks and other incentives. Through

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57 Id.
58 Id.
59 Id.
60 Id.
the aid of these resources, retirement in America has been grounded in individual responsibility, requiring little or no help from the family.

Investing and Planning: Government Tax Breaks and Incentives

Since the passage of Social Security, the American government has taken an increasingly active role in incentivizing individuals’ to engage in retirement planning. In 1974, Congress passed the Employee Retirement Security Act (ERISA) to regulate corporations’ pension plans. The law also created Individual Retirement Accounts (IRAs), in which employers receive tax deductions for their contributions to employees’ accounts, which are in turn invested on securities markets. The employees themselves do not pay any income tax on their own contributions, nor on the accumulated growth their funds realize, until receiving distributions after age 59-and-a-half.\(^2\) Congress has since broadened the options available, adding the Roth IRA, among other 401 plans,\(^3\) to the federal tax code, thereby further encouraging individuals to allocate funds to their retirement. Most recently, President Bush has advocated that employees should be permitted to privately invest a portion of their payroll taxes currently funding Social Security.\(^4\)

Social Security: Yesterday and Today

America installed the modern-day Social Security system under the leadership of President Franklin D. Roosevelt during the Great Depression of the 1930s. At that time, Roosevelt noted that America had transitioned from an agrarian to an industrial society, and asserted that the subsequent decline in the extended family structure necessitated Social Security. Although over the years, Social Security has become an accepted institution, upon its creation

\(^2\) See 26 USC § 219 and 26 USC § 408.  
\(^4\) However, Bush’s proposal met with large resistance and is not likely to be enacted.
the new system seemed highly revolutionary, and sparked extended national debates about society’s obligations to individuals and to its elderly.

Early American settlers carried with them the English mentality that poverty should be deterred rather than ameliorated, and indeed, this attitude has proven to die hard. The Poor Laws created in colonial America and England granted support to the indigent through tax revenue, but required that people receiving social assistance would remain worse off than the worst off employed person. In addition, those receiving assistance might have had their rights of citizenship stripped. Some were even required to wear a “P” in public (possibly scarlet). In the eighteenth and nineteenth centuries, almshouses and poor houses became the primary means by which the government addressed poverty. The prevailing American attitude was that other forms of financial support would encourage poverty and therefore should be avoided. During the Great Depression many states enacted ineffective state run pension plans to address the fact that so much of the aged population could not financially support itself. Notwithstanding those attempts, many elderly persons simply refused to participate in the state pension plans. Indicative of the persisting American attitude, these men and women feared the stigma attached to “going on welfare.” Indeed, Frances Perkins, chairwoman of the group responsible for writing the law creating Social Security, stated that while a need had existed for Social

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67 Id.
68 Id.
69 Id.
70 Id.
71 Ms. Perkins was Secretary of Labor and the Chairwoman of the President’s Committee on Economic Security.
Security prior to the Great Depression, “nothing else would have bumped the American people into a social security system except something so shocking, so terrifying, as that Depression.”72

While it seemed revolutionary to Americans in the 1930s, the philosophy behind Social Security was not new. In the late eighteenth century, Thomas Payne described a scheme in which taxes would provide a small stipend to all people over the age of 50 in his pamphlet titled *Agrarian Justice*.73 But the concept first gained traction in Germany in the late nineteenth century. Germany’s social insurance system implemented at that time signaled the transformed mindset that various social factors outside the individual’s control may have caused his poverty.74 On these grounds, the German social insurance system protected people from certain defined risks, including those associated with old-age and disability, taking into account the broader interests of society beyond an individual level.75 And thus, this form of public assistance became accepted as an insurance policy rather than mere charity. By 1935, 35 countries had installed social insurance programs similar to Germany’s.76

But in Depression-era America, the passage of Social Security remained a tenuous matter. Numerous interest groups began lobbying for various forms of governmental support for the elderly, including a pension system known as the Townsend Plan, which attracted 2.2 million supporters. Such lobbyists played a significant role in pressuring for passage of the Social Security bill.77 At the same time, widespread public resistance to the adoption of any welfare plan continued. Even the name of the committee that drafted the Social Security law, the

73 See supra, n. 72.
74 See supra, n. 72.
76 See supra, n. 73.
77 Id.
Committee on *Economic Security*, suggested Americans’ underlying trepidation for encouraging idle poverty.\(^{78}\)

Once passed, the Roosevelt administration stressed that this “insurance” law was not a handout. Indeed, Social Security was to be system basing recipients’ benefits upon the amounts they actually *contributed* into the program through their hard-earned payroll tax dollars.\(^{79}\) But while the Roosevelt administration emphasized that the system was not welfare, many beneficiaries ultimately would collect much more than they would contribute. In point of fact, the payroll taxes of the working generation would fund the social security benefits paid out to retirees.\(^{80}\)

Interestingly, President Roosevelt justified the Depression-era American need for social insurance as arising out of a phenomenon similar to that occurring in present-day India— the decline of the extended family. In Roosevelt’s words, while in earlier times “security was attained…through the interdependence of members of families,” as well as support structures within small communities, “the complexities of great communities and of organized industry make less real these simple means of security.”\(^{81}\) Roosevelt asserted, therefore, that the changed environment required government to provide a new form of Social Security for citizens in need.\(^{82}\) Indeed, the cause of the declining multigenerational family in early twentieth century America has been attributed to younger persons moving from rural areas into cities, as well as

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\(^{78}\) The committee originally had the word “social” in it, but President Roosevelt insisted the word “social” be taken out because that meant “the dole” (handouts). Apparently, there was not the same resistance when they named the program for the elderly “Social Security.”


\(^{79}\) Id.

\(^{80}\) Id.

\(^{81}\) See supra, n.73, citing Franklin D. Roosevelt: *Message of the President to Congress*, June 8, 1934.

\(^{82}\) See supra, n.73, citing Franklin D. Roosevelt: *Message of the President to Congress*, June 8, 1934.
life expectancies increasing. In essence, America’s extended family disappeared because of the same forces that now pose threats in India. But in contrast to the modern Indian legislators who enacted their bill with the undisguised purpose of social reengineering, Roosevelt insisted that the newly implemented “greater measure of welfare and happiness does not indicate a change in values. It is rather a return to values lost in the course of our economic development and expansion.”

While the Social Security legislation of the 1930s represented a liberal shift in greater American attitudes, the national sentiment has remained strongly grounded in the notion of individual responsibility. For example, during the 1960s the federal government increased funding for education and job training programs for the poor. In the 1990s, welfare reform laws required recipients to work, and to this day most forms of public assistance continue to stir controversy.

Indeed, new issues loom large on the horizon. President Bush has repeatedly named Social Security reform as placing among his top priorities. Indeed, while the system has become the single greatest expenditure in the United States’ federal budget, experts anticipate that it will pay out more in benefits than it will receive in payroll taxes by the year 2017. Faced with the prospect of Social Security’s impending bankruptcy, the United States once again must consider its values on elder support.

83 See supra, n. 73.
Part II. Comparing the Indian and American Systems

Comparing India’s and America’s responses to the shared problem of elder maintenance reveals significant differences about each countries’ social and family values, as well as their contrasting ideas about governmental involvement in private life. Despite considerable differences between these nations today, in the last fifteen years India has followed a path toward development paralleling America’s in the early twentieth century. In essence, as India gains in wealth and development, it has become increasingly analogous to modern America, a country which confronted the same problems nearly a century earlier.

A. Cultural, Social and Family Values

*Individualism v. Communalism*

While America’s Social Security system and its encouragement of private investing both reflect the nation’s distinctive preferences for individualism and personal independence, India continues to rely on the communalist family unit as a primary support structure. *See Section I infra.* Social Security allows most elderly Americans to live above the poverty line with minimal aid from children or the extended family. *Id.* Conversely, the Indian Act preserves and reinforces responsibilities among multigenerational family members. *Interview with Shri V.B. Pachnanda and his assistant. (Drafters of the bill) Ministry of Social Justice and Empowerment, Delhi. (3/17/08).* Although in many ways, India and America currently exhibit dissimilar and idiosyncratic values, glancing at history exposes that similarly to the Indian experience over the past fifteen years, “industrialization and economic development and expansion” *See supra, n.73, citing Franklin D. Roosevelt: Message of the President to Congress, June 8, 1934.* led to the nuclear family replacing extended family living situations in early twentieth century America. In both contexts, these periods of change sparked insecurity among the elderly and social instability. But unlike the Indian response, which

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87 *See Section I infra.*  
88 *Id.*  
89 Interview with Shri V.B. Pachnanda and his assistant. (Drafters of the bill) Ministry of Social Justice and Empowerment, Delhi. (3/17/08).  
90 *See supra, n.73, citing Franklin D. Roosevelt: Message of the President to Congress, June 8, 1934.*
attempted to shore up the traditional extended family, America’s nascent Social Security laws gave rise to a relationship between the individual and government, so as to enable independence from the extended family.\(^91\)

Our own family situations reflect gradations of this typically American identification with independence, and the concomitant “self-made man” ideal. Frances Kent expressed sadness and much resistance to the idea that her daughter Christine might one day be responsible for her care and support.\(^92\) In light of their own trying experiences with caring for their aged Parent’s,\(^93\) Mrs. Kent and her husband Paul said that they have carefully planned and saved to ensure their own self-sufficiency and, to the greatest extent possible, avoid becoming a financial or emotional drain on their four daughters.\(^94\) Similarly, Jill Frisch said she is “terrified” of becoming such an encumbrance on her two sons.\(^95\) Having witnessed her own mother’s admittance to a nursing home, Mrs. Frisch appreciates the difficulties that a disabled elderly family member can present. As a result, Mrs. Frisch has purchased long term care insurance and does not anticipate relying on her children for support.\(^96\) Furthermore, Mr. and Mrs. Browne would “never” ask their

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\(^91\) However, it should be noted that Social Security did reinforce traditional views of family life. Women generally only qualified for insurance through their husbands or their children. Mink, Gwendolyn. The Wages of Motherhood: Inequality in the welfare state, 1917-1942. Ithaca: Cornell University Press, 1995. p. 126-7.

\(^92\) Discussion with Fran Kent, on 4/4/08.

\(^93\) After receiving near-daily financial and administrative assistance from Mrs. Kent over the course of ten years, Mrs. Kent’s mother suddenly decided to revoke Mrs. Kent’s power of attorney. She then cleared her bank accounts and moved out of state to live with another daughter, effectively cutting Mrs. Kent out of her life. While Mrs. Kent’s mother suffered from diminished capacity at the time of those actions, Mrs. Kent remains devastated by the “abandonment” and shocked by her mother’s lack of appreciation for her tireless and well-intentioned efforts for so many years. Mr. Kent had different, but perhaps equally heart-wrenching experiences. As the sole financial provider and supervisor of care for his own parents during their fifteen-year decline, Mr. Kent finally lost his mother in June, 2007, and then his father in April, 2008. He recently expressed his shock regarding the new “void” in his life, as the massive amount of mental energy he had dedicated to caring for his ill and highly temperamental parents had so suddenly ceased to exist. Both parents lamented the notion that they might cause similar forms of anguish for their daughters, and pledged to do all possible to prevent that eventuality.

\(^94\) Id.

\(^95\) Discussion with Jill Frisch on 4/6/08.

\(^96\) Id.
daughter Molly for support, in spite of their limited retirement savings.\(^97\)

Compared to the American viewpoint, Indian thought tends to be much more group-oriented and accepting, if not encouraging of interdependence. To illustrate, Mr. Sailesh Mishra, the leader of an Indian non-governmental organization advocating for the elderly, characterized India as “a group society, with family being the most important unit.”\(^98\) Mr. Mishra explained that “retirement planning in India means having lots of children.”\(^99\) Family members are generally “expected to act in the best interests of the entire family, and each person must routinely sacrifice their wants and desires in order to better the family’s situation,” according to Mishra.\(^100\) Anapuma Datta, head of the largest elder issues NGO in India, similarly expressed the belief that her country embodied a “communal” society, where families, villages, and communities were tight-knit places where “everyone would look out for each other.”\(^101\) Ms. Datta stated that cohesive family networks existed even in the lowliest slum as strong sources of support.\(^102\)

While America chose to deal with elders as individuals, the Indian Act represented an attempt both to preserve and harness the power of the family and community values.\(^103\) The Act’s drafters stated that they intended the Act to be a tool for “social engineering”—in other words, as a weapon against the ill effects of westernization.\(^104\) Specifically, legislators said they believed in the positive impact of strong extended family ties, and sought to reinforce such ties

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\(^97\) Mr. and Mrs. Brown started their own company and will not benefit from pensions or 401k plans. The couple possess limited savings due to putting their two children through private primary and secondary education, and caring for their own aged parents. While Social Security and their savings could sustain her parents, Molly aspires to substantially contribute to their retirement.

\(^98\) Interview with Sailesh Mishra, 3/27. ARDSI, Bombay.

\(^99\) Id.

\(^100\) Id.

\(^101\) Interview with Anapuma Datta, 3/17/08. Helpage India, Dehli.

\(^102\) Id.

\(^103\) Interview with Shri V.B. Pachnanda and his assistant. (Drafters of the bill) Ministry of Social Justice and Empowerment, Delhi. (3/17/08).

\(^104\) Id.
as a means of improving social stability, as well as providing the best guarantee of elder support. Thus, the legislators believed that working within the extant family system, both implementing and encouraging communalism, would be the best, if not the only means of achieving such support.

*How Community Pressures Affect the Success of Government Programs*

Due to the relative anomie within the American community, legislators need to account less strongly for the social consequences of implementing governmental assistance than similarly situated legislators in India. First off, America’s prime responses to supporting its elderly do not currently carry a negative stigma, as Social Security and retirement investments are universally available and generally accepted. Furthermore, even if some stigma did exist, the average American lives a fairly private life within a loosely knit community. To illustrate, Christine Kent has never known the names of any of her neighbors at her walk-up apartment building in Chicago, where she has lived for the past three years. Her interactions with neighbors do not extend beyond casual greetings in passing. Molly Browne, Michael Frisch, and Nick Callahan all claim same experiences at their own respective buildings. As a result of these realities, if an average person brought a civil suit against a son or daughter, relatively few people would likely hear of it. Fewer still would likely be able to trace the story back to the actual individuals named. In essence, the personal consequences would likely be less severe than in India, where intimate networks of communication exist to a much higher degree.

Paradoxically, therefore, the close-knit nature of Indian communities may also pose both a boon and an obstacle to the Act’s success. On one hand, the legislators of the Act asserted that the cohesive nature of Indian communities would enable the law to strongly deter elder neglect. They predicted that any son or daughter convicted under the Act would face intense ostracism in
the social and business arenas, since the information would travel pervasively through the unofficial channels of small-community networks.\textsuperscript{105} In turn, from far and wide, peers of the offending children would perceive pressure to avoid such a fate. As one elderly woman put it, “we want a sword hanging over their heads, but we don’t want to use it.”\textsuperscript{106}

The other side of the coin is that India’s tight-knit community structure could prevent a parent from bringing a case in the first place. In particular, the elderly may fear the widespread stigma associated with enforcing the Act against their children. For example, Mr. Mishra explained, “if one grandmother brought a public case against her son, the entire village would know about it. No one wants to admit to their village that their [sic] children do not take care of them…people will not want to use the Act.”\textsuperscript{107} Moreover, while many Indian seniors claimed to think the law was “a good idea” or “a step in the right direction,” the same individuals nonetheless concurred that they would never actually use it.\textsuperscript{108}

\textbf{B. The Relative Roles and Resources of Government}

\textit{Lack of Resources Leads to Innovation, Experimentation and Greater Risk-Taking with Legislation}

Each nation approaches elder care from a different set of circumstances, which may be liberating or confining in unexpected ways. In America, Social Security is known as the third rail of politics—touching the issue is sure to result in political death.\textsuperscript{109} Therefore, although American politicians have long recognized that Social Security is headed for bankruptcy, no one

\textsuperscript{105} Although India is quickly urbanizing, most Indians still live in small, close-knit communities. Interview with Anapuma Datta, 3/17/08. Helpage India, Dehli.
\textsuperscript{106} Interviews with elders at JEEVAN SAURABH, 3/29/08, Bombay.
\textsuperscript{107} Interview with Sailesh Mishra, 3/27. ARDSI, Bombay.
\textsuperscript{108} Interviews with elders at JEEVAN SAURABH, 3/29/08, Bombay.
has successfully proposed a reform of the system.\textsuperscript{110} Since so many people rely on the status quo and so many powerful forces have aligned themselves on either side of the issues, real progress has been prevented. Any suggestion for change is picked apart by lobbyists, aids, and experts. For example, even though President Bush highlighted Social Security privatization as a major objective during his 2004 reelection campaign,\textsuperscript{111} the plan eventually died due to intense opposition from democrats, the AARP and other interest groups.\textsuperscript{112} As a result of the political stalemate, American policymakers are stifled in exploring which plans could actually work.

From this vantage point, India may have a significant comparative advantage relative to America, since its legislators possess the freedom to experiment and to work from a clean slate. For one, no lobbyist group analogous to the AARP exists in India, and formal lobbying itself is only just becoming a common practice.\textsuperscript{113} Thus, since India’s legislators’ ears are presumably more accessible, and the population is not depending on maintaining the status quo of a massive program like Social Security, the freedom to explore different policy options exists. Indeed, the Act’s own passage illustrates the great flexibility available to Indian law-makers attempting to provide for elder support. A stunningly nary amount of study, preparation, and planning informed the drafting of the Indian Act. When questioned why they pursued one avenue over another, the legislators simply insisted that they “thought [the Act] would be a good idea.”\textsuperscript{114}

Even though the federal law was modeled on a statute passed in Hichamal Pradesh,\textsuperscript{115} the legislators made no findings about that law’s track record in H.P., claiming only that it was a

\textsuperscript{110} See infra section I.
\textsuperscript{112} Id.
\textsuperscript{113} Interview with Anapuma Datta, 3/17/08. Helpage India, Dehli, Interview with Shri V.B. Pachnanda and his assistant. (Drafters of the bill) Ministry of Social Justice and Empowerment, Delhi. (3/17/08).
\textsuperscript{114} Interview with Shri V.B. Pachnanda and his assistant. (Drafters of the bill) Ministry of Social Justice and Empowerment, Delhi. (3/17/08).
\textsuperscript{115} See Section I above.
“great success.”116 Similarly, while they estimated that “one case brought to a tribunal would deter 10,000 cases of elder neglect,” the drafters again offered no supporting data. They had not even drawn up a budget for implementation. In essence, these men thought that the Act made good common sense, so they decided to try it. Of course, the Act is riddled with unanswered questions and internal contradictions as a result.117 But considering America’s state of paralysis in regards to Social Security reform, perhaps India’s present ability to freely experiment in this highly-charged area is its best comparative advantage.

“On Paper” v. Reality

Like many of our colleagues on International Team Project, we detected a dichotomy between what existed in theory and what actually happens in India. Ms. Datta of HelpAge India laughed that Indians were “great at passing laws.”118 While she argued that India has “one of the best and most developed constitutions in the world,” as well as “a fantastic body of law promoting equality and justice,” Ms. Datta pointed out the problems with enforcement.119 “Implementation is the problem,” she said.120 This theme was oft-repeated, by the high court justices at Justice Bandari’s home, by NGO officials, as well as by numerous ordinary Indian citizens.121 While American legislators would not likely go to the trouble of amending Social Security only to watch a lumbering bureaucracy ignore the changes, Indians may do just that. In

116 The legislators said that they had been provided with a report on the success of the provincial Act, but we never saw it. Interview with Shri V.B. Pachnanda and his assistant. (Drafters of the bill) Ministry of Social Justice and Empowerment, Delhi. (3/17/08).
117 For example, the Act does not specify how magistrates to head the local tribunals will be chosen, nor does it say how the tribunals will be funded. At the time of the interview, our group felt that the slapdash nature of the Act was a strike against its future success.
118 See Section I above.
119 Interview with Anapuma Datta, 3/17/08. Helpage India, Dehli.
120 Id.
121 Conversation with high court judges at the home of Justice Bandari, Interview with Anapuma Datta, 3/17/08. Helpage India, Dehli; Interview with Sailesh Mishra, 3/27. ARDSI, Bombay.
effect, Indian lawmakers may pass more ambitious and aggressive legislation than may be realistic or feasible to enforce.122

Part III. Conclusions and Solutions

The Act Will Likely Fail

Despite the legislators’ expectations, cultural hurdles will likely prevent the Act from succeeding in tangibly improving the lives of India’s seniors. The legislators wholeheartedly denied the presence of any obstacles to the Act’s success, surmising that there would be “enough cases” and plenty of publicity to create a deterrent effect. In reality, however, not a single state has acted as ordered by the Act to set up tribunals or old age homes. Not one Indian senior citizen claimed that he or she would utilize the local tribunals if the need arose, out of fear for the public embarrassment that would ensue.

Furthermore, very few Indians seemed to know that the Act even existed. Of course, without widespread public awareness, the Act can deter nothing. But the legislators dismissed the suggestion that much of the population could be ignorant to the Act’s passage. According to them, the Ministry of Social Justice and Empowerment had budgeted for the Act’s advertising, and had been using their “powerful media” to spread the word. But while the legislators assured us that everyone already knew about the Act, our own interactions with ordinary young and old Indians alike did not support their optimism. Of the 60-odd elders we met at the elder center, no one had heard of the Act before our visit, and a high-ranking police official interviewed

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122 As India becomes richer and more developed, this dichotomy will likely diminish. A booming economy means more tax revenue, better equipping the government for social programming, and greater ability to achieve the goals of legislation.
mistakenly believed the bill never passed the Lok Sabha.\textsuperscript{123} Indeed, the only people we met who \textit{did} know about the law were the leaders of the NGOs specializing in elder activism.

A variety of other problems exist. For one, the Act relies too heavily upon localities for implementation. No one knows how judges will be chosen, how the tribunals will be formed, how sua-sponte cases will be investigated, or how corruption and bribery will be prevented. Moreover, the Act’s lofty goals are insurmountable. By requiring that children support their elders, the Act seems to buck the rise of the middle class nuclear family, in spite of the relentless forces of economic growth, increased education, opportunity, and urbanization causing the new changes in family structure.

Notwithstanding all of these considerations, the Act has been successful to the extent that it has at least temporarily mollified the concerns of the masses. The elders were clearly pleased that the government had recognized their plight, and seemed generally uncritical of the law.\textsuperscript{124} Likewise, NGO officials seemed happy to see movement on the issue, although they often viewed the Act as flawed.\textsuperscript{125} Responding to the question, “Do you think this is a good law?” many of these officials answered hopefully, “We will wait and see.”\textsuperscript{126}

\textbf{Suggestions for Possible Solutions}

Rather than a complete solution in its own right, the Act could work better as a component of a larger program seeking to advance the status of the Indian elderly in general. To this end, Mr. Mishra suggested that the Indian Government should install a special ministry dedicated to elder issues.\textsuperscript{127} Mishra’s idea makes sense. Such a ministry could promulgate

\textsuperscript{123} Interview with Joint Commissioner of Police, Mumbai Police Office of Policy and Planning. 3/28/08.
\textsuperscript{124} That is, after we told them about the statute and explained its provisions to them. Interviews with elders at JEEVAN SAURABH, 3/29/08, Bombay.
\textsuperscript{125} Interview with Anapuma Datta, 3/17/08. Helpage India, Dehli; Interview with Sailesh Mishra, 3/27. ARDSI, Bombay.
\textsuperscript{126} \textit{Id.}
\textsuperscript{127} \textit{See} www.silverinnings.com.
regulations granting certain forms of special treatment for the elderly similar to the Americans with Disabilities Act, such as separate lines in government hospitals and easily accessible entrances in buildings. Moreover, the ministry could facilitate a much-needed educational initiative to cultivate awareness and understanding of seniors’ special health and emotional care needs among professionals. Through the ministry, government could also sensitively encourage independence and self-reliance among seniors, in light of the modern changes to many Indian families. In addition to the creation of a ministry, the Indian government could assist seniors in their self-care through a variety of other means. For one, Indian legislators should introduce laws granting tax breaks for retirement investing similar to American 401 plans. These breaks would not only protect seniors whose children who had migrated, but also childless seniors. Additionally, as the thriving economy produces more tax revenue, the government should expand its pension scheme, sharing its newfound wealth with its elders. Realizing that many of these programs would involve a serious outlay of personnel, money, and infrastructure, they will have to be implemented slowly and carefully.

**A Parental Maintenance Act in America?**

With America’s Social Security crisis imminently approaching, could a bill similar to India’s be seriously considered in America? First, it is unlikely that Congress has the constitutional power to require children to support their elderly parents. The Supreme Court has found Social Security to be a constitutional exercise of Congress’s taxing and spending powers for the national welfare. However, an Act requiring children to support their elderly parents cannot rely on the same constitutional provisions. For an American version of the Act to pass in America, Congress would need to rely on its Commerce Clause powers, which would likely be

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128 The field of gerontology is not a widely recognized or practiced specialty of medicine in India. Interview with Anapuma Datta, 3/17/08.

insufficient. As the Act regulates private conduct, regulating under the taxing and spending power would similarly be improper. Regardless, Congress has long refused to regulate in areas of family concern, such as divorce, custody, and wills.

Interestingly enough, some states do have “filial” laws on the books. Although not enforced, and virtually unknown to the general public, these laws could be interpreted to require that children support their indigent parents. However, legal scholars question whether such laws could pass a constitutional challenge, alleging violations of the Equal Protections Clause, Due Process, and the Takings Clause of the 14th Amendment.\(^{130}\) The discussion regarding filial laws today mostly concerns preventing seniors from giving assets to their children in order to qualify for government subsidized health care.\(^{131}\) If children do decide to take care of their parents instead of sending them to institutions subsidized by the government, the government saves a lot of money. Medicare costs are further reduced if children take care of their parents. For fiscal reasons, Congress should consider tax incentives to reward families who take care of their parents. Children who take care of their parents may currently qualify for the Child and Dependent Care Tax Credit, but that tax credit does not fully compensate caregivers for their expenses or the amount they save the government.\(^{132}\) By encouraging children to take care of their parents through tax incentives, instead of issuing a broad mandate like India did, Americans’ sense of individuality would not be threatened. However, like India’s Act, such a tax incentive may encourage the same family values.


Conclusion

America and India are two countries searching for their own solutions to a common problem. When faced with the breakdown of the extended family nearly a century ago, America chose a Social Security program, which reflected values prizing independence and individual responsibility. In contrast, India has responded by attempting to coerce the preservation of extended family responsibilities. Perhaps as Indian society continues to modernize, the country may begin to adopt solutions similar to American developments, such as 401 individual retirement investment accounts. But India is not alone in approaching a crossroads in elder care reform—Americans currently hold their collective breath as the doom of the Social Security system approaches. Perhaps when Americans face this reality, the Indian school of thought and pre-twentieth century multigenerational support structures may resurge. To be sure, as the longevity of their populations continues to increase, both nations must devote much creativity and innovation to searching for a balance between promoting family values, and finding a viable means of providing for the elderly. In the mean time, we shall all "wait and see."