How can the existing legal framework with regard to the maintenance of parents and protection for the elderly from neglect and abuse be reformed?

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HOW CAN THE EXISTING LEGAL FRAMEWORK WITH REGARD TO THE MAINTENANCE OF PARENTS AND PROTECTION FOR THE ELDERLY FROM NEGLECT AND ABUSE BE REFORMED?

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I. Introduction

1. Before answering the above question, it will be profitable to set out the key definitions that will be utilised in this paper.

A. Definition of “elderly”

2. ‘Elderly’ has traditionally been defined as persons 65 years and above in Singapore.¹ It is noted that the United Nations has adopted a broader view of elderly, by extending the definition of elderly abuse to include situations where there is “an older person” in a relationship where there is an expectation of trust.² However, the main focus of this paper will be on persons 65 years and above.

B. Definitions of “elderly abuse” and “neglect”

3. Elderly abuse is defined by the United Nations (“UN”) to be “a single or repeated act, or lack of appropriate action occurring within any relationship where there is an expectation of trust, which causes harm or distress to an older person”.³ On a related note, neglect is defined as “a deliberate failure to meet basic needs”.⁴ These two concepts are interlinked — “a deliberate failure to meet basic needs” would fall

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³ Ibid.
squarely within “a lack of appropriate action which causes harm or distress to an older person”.

4. According to the above definitions, the failure to provide of financial resources and/or related resources for sustenance would be a clear instance of such abuse/neglect. Consequently, securing adequate maintenance of parents is a crucial element in preventing such abuse/neglect.

II. The situation in Singapore

5. Given the Government’s flat rejection of the idea of a “welfare state” and the firm belief that welfare is the anti-thesis of a competitive meritocratic culture,\(^5\) the approach towards elderly abuse has been one centred primarily on family responsibility and filial piety with the government playing the role of last resort. More recently however, this approach seems questionable in light of the developments identified below.

A. The breakdown of the traditional family unit

6. Globalisation has resulted in the convergence of four factors: 1) nuclear families, 2) low birth rates, 3) later marriages, and 4) higher number of divorces.\(^6\) These developments point to 1) a lower working adult-elderly ratio, 2) less children support and 3) a more individualistic society, which eventually leads to a breakdown of the traditional family unit on which the government has traditionally been reliant on for elderly care.\(^7\) The problem is further exacerbated by the fact that elderly numbers are increasing over the years, with rising life expectancies and the median age rising by about five years every decade.\(^8\)

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\(^7\) Iris Chi, *Long-Term Care in the 21st century: Perspectives from around the Asia-Pacific rim* (Haworth Press, 1991) at p 185.

\(^8\) *Supra* n 1 at p 10 & 12.
7. Therefore, the increasing failure of the traditional family unit as a coping strategy, coupled with the rapidly increasing number of elderly persons, is likely to render ineffective the traditional governmental stance as abovementioned.

III. Existing laws and proposed reforms

8. Existing laws can be grouped into two distinct categories: 1) those preventing financial neglect and 2) those dealing with other forms of elderly abuse and neglect e.g. violence and the omission of necessary care. Many of the existing laws are centred on the family, reflecting the state’s belief in “family as the basic unit of society”.

IV. Prevention of financial neglect of the elderly

A. Self-reliance

9. The starting point of financial provision after retirement is via Central Provident Fund (“CPF”) savings. Singapore’s current retirement age is 62. However life expectancy today is 79.6 for males and 84.6 for females and the retirement age of 62 would mean potentially an average of 20.1 years in retirement. As a result, CPF savings may be insufficient to meet retirement needs fully and the elderly may have to resume or continue working to provide for themselves.

10. Should the elderly person be unable to maintain himself adequately, the next source of funds would be from his children. Here, parental maintenance in Singapore is largely voluntary and is regulated via the CPF Act and the MPA. This reflects Singapore’s belief in the virtue of filial piety and the moral obligation of children to support their elderly parents.

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9 Educational & Outreach Division, National Heritage Board, Singapore’s Shared Values http://mystory.sg/content/1570/Singapore_s_Shared_Values.html (accessed 19 June 2012).
10 Retirement and Re-employment Act (Cap 274A, 2000 Revised Ed) s 4.
12 See generally supra n 6 at cols 1675-1834.
B. Reliance on children

(1) Voluntary Central Provident Fund (“CPF”) contributions

11. Under the CPF Act, measures are in place for children to voluntarily top up their parents’ CPF savings. A member can transfer a portion of his CPF savings to his parents\(^\text{13}\) subject to the restrictions\(^\text{14}\). Furthermore, s 77(j) allows the Board to make regulations on the use of a child’s Medisave funds to provide for his parents’ medical expenses.\(^\text{15}\)

12. The above contributions are voluntary in nature. Where the elders are capable of maintaining themselves, there is no obligation on children to provide financial support. Hence, this safety net is clearly inadequate for the elderly to fall back on.

(2) Mandatory contributions under the Maintenance of Parents Act (“MPA”)

13. On the other hand, the MPA is primarily focused on preventing elderly abuse/neglect in terms of financial provision. In a nutshell, the MPA addresses cases where parents are unable to work and children are able but unwilling to support their parents financially.

14. An elderly parent who is unable to provide for himself financially can file for maintenance against his children.\(^\text{16}\) Also, eldercare institutions that face frequent payment defaults can file for a maintenance order against the children to cover the costs of parental maintenance.\(^\text{17}\)

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\(^\text{14}\) Id, at s 77.


\(^\text{16}\) Maintenance of Parents Act (Cap 167B, 1996 Rev Ed) s 3(1).

\(^\text{17}\) Id, at s 3(2).
15. In spite of this, many cases of financial neglect go unnoticed because of the reluctance of elderly parents to bring their children to task.\textsuperscript{18} For instance, residents of eldercare institutions often do not consent to applications for maintenance because it is a shame to be abandoned in nursing homes and if their children had to be forced to pay for their expenses, they will be embarrassed further.\textsuperscript{19}

16. To resolve this problem, MPA was subsequently amended to allow the Commissioner or caregivers of incapacitated applicants to bring a claim on behalf of an aggrieved parent. However, ultimately the amount of financial provision obtainable by the elderly parents remains limited by the earning capacity of the child.

17. Furthermore while the MPA can compel a child to provide financially for his parent, it is unable to compel live-in arrangements.\textsuperscript{20} Increasingly elders are abandoned at nursing homes, such that former Senior Minister Goh Chok Tong has called on Singaporeans not to make this a trend.\textsuperscript{21} This news further supports the contention that measures are needed to ensure that the elderly are not neglected in other ways, especially in light of changing circumstances that might warrant non-family partners playing bigger roles in elderly care.\textsuperscript{22}

18. Although the Bill was intended to be a last resort,\textsuperscript{23} the increasing trend of parents being financially neglected\textsuperscript{24} suggests the growing importance of the MPA in ensuring financial provision for the elderly. However, given the changing nature of the family unit in Singapore, an overreliance on notions of Asian values is dangerous.

\textsuperscript{19} Channel NewsAsia, “Eldercare facilities see more cases of people not paying up” \textit{Today} (21 June 2012).
\textsuperscript{20} Philip Kwek, “Maintenance of Parents Act: Inadequate to ‘just add more teeth’” \textit{Today} (29 March 2010) where it is noted that a doctor shied away from providing for his mother because his wife found it demeaning to provide for a dishwasher mother-in-law.
\textsuperscript{22} \textit{Supra} n 7 at p 188.
\textsuperscript{24} Singapore Parliamentary Debates, \textit{Official Report} (19 August 2009) vol 86 at col 1132. The number of applications filed under the MPA nearly doubled from an average of 100 in 2009 to a present 172 per annum.
C. Proposed recommendations

19. To address new challenges, new legislation will be needed to ensure alternative provisions beyond voluntary financial provision from the family unit. It is proposed that 1) the retirement age be abolished and 2) a long-term care insurance scheme be established to provide for alternative means of financial provision.

(1) Abolishing the retirement age to ensure gainful employment amongst the elderly

20. Currently, the RRA provides that employers have the right to adjust the salary of an employee upon him reaching 60 and if the salary cannot be agreed upon, the employee can be retired.

21. To encourage more elderly persons to be self-sufficient, the retirement age can be done away with. This would be in line with approach in other jurisdictions such as the United Kingdom (“UK”) where the retirement age has been abolished. Presently employees have the right to continue to work for as long as they wish, making retirement their choice rather than one in the hands of their employers. However it is also stressed that aged workers are not to be granted special treatment and employers can still make choices based on a worker’s capability.

22. In Singapore where the services sector comprises the bulk of the economy, many occupations do not rely on strength and agility and there is no reason for a 60-year-old employee to get reduced benefits given that his productivity may be even higher than before.

26 Supra n 6 cols 1819-1822.
27 Supra n 10 at s 6.
Therefore it is proposed that the RRA be revamped where the concept of re-employment is not based on age but based on one’s productivity. More recently, companies are moving to a performance-based wage system instead of a seniority-based one. This would achieve two objectives. First, elderly workers will be employed for as long as they are willing and able to do the job, giving them added ability to contribute to their CPF savings and ensure that they have enough for retirement. Second, it would give a purpose and meaning to elder workers, reducing the incidence of them being neglected upon retirement.

(2) 3% deduction for the maintenance of parents

To address maintenance of parents, the CPF Act can be amended to provide for 3% of a child’s income to go towards his parents’ CPF accounts on top of the existing contributions. This is in addition to the existing provisions.

More than 95% of children agreed or strongly agreed that they should care for their parents, showing that a majority of children want to provide for their parents but only 66% of senior citizens receive regular cash contributions from their children. This suggests that while children have the intention to be filial, they often lack the discipline to provide financially for their parents.

Thus to ensure that such children fulfil their moral responsibilities on a regular basis, it is proposed that a provision be added to the CPF Act for automatic deduction of 3% of a child’s salary to be equally shared by both his parents. Such an automatic deduction has been lauded as a concrete and practical measure and will amount to $59.70 per month based on the median income of $1,990. Should this amount be deemed to be insufficient, a higher amount can be determined based on actuarial studies from amounts awarded via the MPA.

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32 Supra n 6 col 1675.
33 Supra n 6 cols 1807-1808.
27. Such a proposal could raise complications in the face of rising divorce rates, parents re-marrying and abusive parents. Nevertheless this does not have to be absolute and provisions can be made for a child to opt-out or reduce his contribution should a parent be deemed undeserving.

28. The advantages are three-fold. First, a minimal level of parental maintenance would be ensured, with children free to contribute more should they wish to do so. Second, the MPA would be rendered largely redundant since all children by default would have to contribute to their parents’ retirement funds. Third, it would enable such contributions to be started over a longer period of time, enabling retirement funds to be built up with smaller regular contributions. For low-income earners, the government can top up insufficient contributions to a minimum sum each month to ensure that a child is encouraged, not discouraged from discharging his parental duties and the state continues to ensure the well being of elders in their later years.

(3) Establishment of a long-term care insurance scheme

29. Presently, the CPF scheme provides for retirement needs through:

CPF Life: To provide a lifelong income for Singaporeans;
Medisave: A savings account for medical expenses. Money from Medisave can be used to purchase Medishield and Eldershield for hospital and disability insurance respectively;
MediShield: A low-cost catastrophic illness insurance scheme;
Medifund: A social safety net to help needy Singaporeans.

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35 Supra n 6 at cols 1819-1822.
36 Supra n 13 s 27K.
It is noted that the present schemes do not encompass plans for long-term care, unlike Japan where a Long-Term Care Insurance Scheme has been implemented since early 2000.\textsuperscript{40} Such an insurance scheme pays for a conditioned set of entitlements, which the clients are free to choose from, and has the ability to shape the long-term care market by capping entitlements as well.\textsuperscript{41} However the scheme is funded by the Japanese government, which the Singapore government seeks to avoid through its policy of self-reliance. It is proposed however that the administration of such a scheme can be used in Singapore, subject to necessary modifications.

\textit{(4) Amendment of the CPF Act}

30. It is proposed that the CPF Act can be amended to provide for the administration of a long-term care insurance scheme. Since such a scheme pertains to daily living, it is proposed that premiums for this scheme can be paid via the Special Account via an opt-out scheme, since the Special Account is designated as a savings account for old age. This would mean that all CPF members would by default be under the scheme, which can operate on a cost-recovery model. This would be in addition to the CPF Life plan, which was established in 2009.

31. The proposed insurance plan would be used to pay for all schemes administered under a proposed Elderly Care Authority (“ECA”), which would encompass both public and private providers like the Japanese model. Under this plan, the ECA would be responsible for assessing the person’s ability to pay and proposing different plans to him. This would enable subsidies to go towards the most neglected and needy elderly, who will be assigned the government-subsidized nursing homes or be granted a concessionary rate for other elderly care initiatives.

32. Apart from government subsidies, the government can also assist the low-income in providing for their ageing needs. Besides re-training and staying employed as well as Workfare, the government can top-up the premiums, which these people have to pay for the insurance scheme. These subsidies can be funded through the taxing of ostensible goods, for instance increasing tobacco, alcohol and gambling

\textsuperscript{40} Supra n 7 at p 21.
\textsuperscript{41} Id at p 25.
taxes as well as an additional 10% tax on Certificates of Entitlement for cars above 1600 cc.

33. Such an insurance scheme would enable elders to have a source of funds that they can turn to should they wish to use such facilities and reduce the need for state subsidies. Funding top-up schemes through increasing ‘sin’ taxes and luxury goods would also place the incidence of taxes on the rich and on consumers of goods with negative externalities, thus providing for the low-income while discouraging consumption of such goods.

V. Prevention of physical and psychological abuse of the elderly

A. The Penal Code and Women’s Charter

34. Physical abuse is defined as “infliction of physical pain and injury”, while emotional abuse is defined as “verbal aggression”. The Women’s Charter and Penal Code have been cited as safeguards that prevent physical abuse of elderly. Part VII of the Women’s Charter pertains to the protection of the family, with the term “family member” being sufficiently broad enough to encompass aged relatives and the term “family violence” addressing most cases of physical and emotional abuse through overt acts. In non-familial contexts, Chapter XVI of the Penal Code lists various offences under which an abuser can be charged. These offences deal mainly with physical abuse.

35. However these laws have their limitations in protecting the elderly. It is noted that the definition of ‘family violence’ under the Women’s Charter does not expressly prohibit neglect, which is defined as ‘a deliberate refusal to meet basic needs’. Neither does Chapter XVI of the Penal Code expressly prohibit ‘neglect’,

\[\text{\textsuperscript{42} Supra n 4.}\]
\[\text{\textsuperscript{43} Ibid.}\]
\[\text{\textsuperscript{44} Singapore, Elder Abuse in Singapore, Law Gazette, October 2002(4).}\]
\[\text{\textsuperscript{45} Women’s Charter (Cap 353, 2009 Rev Ed) s 64.}\]
\[\text{\textsuperscript{46} Penal Code (Cap 224, 2008 Rev Ed) Chapter XVI; see also PP v Vitria Depsi Wahyuni [2012] SGHC 49.}\]
\[\text{\textsuperscript{47} Supra n 45 at s 64.}\]
\[\text{\textsuperscript{48} Supra n 4.}\]
which may manifest in situations where children fail to provide basic care to incapacitated elderly parents.

36. Parents are also generally reluctant make a police report against their children or to file for protection orders, resulting in numerous cases of parental abuse going unreported and if reported, difficulty in prosecuting errant children. The growing incidence of non-family caregivers also points to a growing irrelevance of the Women’s Charter, which is targeted mainly at acts of violence against a family member.  

**B. Proposed recommendations**

(1) **Establishment of an Elder Rights Protection Act (“ERPA”)**

37. There is sparse information on the incidence of elderly abuse in Singapore due to a lack of a mandatory reporting system, a lack of in-depth, uncertainty in diagnosis and the reluctance by service providers and victims in reporting such cases. However American research has indicated that in America one in ten older Americans reported being abused or neglected and the National Academy of Sciences has indicated that this is just one in 14. The Department of Justice has also found that 14.1% of non-institutionalized elderly are abused. With the increase in formal care and non-familial caregivers, it is suggested that an ERPA be enacted to broaden the scope of protection beyond the family setting.

(2) **Mandated abuse reporting under the ERPA**

38. Currently, no laws in Singapore mandate the reporting of elderly abuse, giving rise to two problems, 1) the lack of reporting from the elderly and 2) abusers escaping from the consequences of the law. It is proposed that under the ERPA, any person in a medical or care giving position that reasonably suspect the elder person is

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49 Supra n 45 at s 64.
being abused or has been a victim of abuse be obligated to report such to the proposed or the police for follow up action, failing which a penalty shall be imposed on the person. Such a measure has been employed in California under the Welfare and Institutions Code \(^{52}\) where under s 15630(a) the definition of a mandated reporter is set out and different scenarios where mandated reporting is required are set out.

(3) **Grant the proposed Elderly Care Authority ("ECA") investigative powers**

39. The ECA can also be statutorily granted investigative powers to investigate all suspected cases of elderly abuse and neglect as well as to undertake remedial action. Such remedial action has been used in the United States in the form of Adult Protective Services, which protect elder adults from being abused. In Singapore, the ECA can be granted similar powers, where upon completion of investigation, the adult child will be compelled to undergo counselling sessions or attend mediation sessions in a bid to restore harmony within the family. Where this fails, the elder can be placed into institutional care.

40. These measures would first, ensure that elder abuse is captured under a wider spectrum, encapsulating the definition of ‘neglect’ and bringing protection beyond family-based caregiver settings. This would ensure that institutional care providers would also be liable for elderly abuse and neglect, ensuring that the minimum standards to be met are protected via civil liability under the CEL and criminal liability under the ERPA. Second, mandated reporting would ensure that abusers face the full force of the law while investigative and remedial powers granted to the ECA would enable easier investigation into abuse and neglect cases, enabling the high threshold of proof to be easier overcome.

VI. **Neglect of the elderly**

41. There remains a need for alternative modes of elderly care with corresponding minimum standards, given the breakdown of the traditional family unit in Singapore.

\(^{52}\) California Welfare and Institutions Code, Article 3.
This would ensure that the elderly are not neglected and adequate care is administered to them.

A. The Centre for Elderly Living (“CEL”)

42. Initiatives have been underway to provide for a coordinated response on eldercare facilities, such as the CEL being established to coordinate social care services. This may play a role in reducing instances of neglect of elderly. However, the CEL’s powers are limited given that is not granted statutory footing. Furthermore, since the CEL playing a coordinating role and not a supervisory one, it lacks the bite to ensure effectiveness of the scheme.

B. Proposed recommendations

(1) Creation of a supervisory board to oversee elderly care in Singapore

43. It is proposed that an ECA be established and placed on a statutory footing with its scope of responsibilities enlarged so it becomes a supervisory statutory board for elderly care. Such an office is already seen in Kansas, where the Department on Aging administers in-house programs and administers funding to provide services in areas under its jurisdiction.

In the UK, proposals are also being made to simplify the administration of elderly care, and Japan already has such an institution where long-term care is delivered through the community level via local municipalities with local service providers in the quasi-public and private sectors.

(2) Roles and responsibilities of proposed Elderly Care Authority (“ECA”)

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54 See generally Centre for Enabled Living website at http://www.cel.sg.
57 Supra n 7 at p 22.
44. First, the ECA would be in charge of the administration and coordination of elderly care services between both the public and private sectors, including appointing care managers to monitor cases where the elderly person does not have any relatives. Second, it would be in charge of a proposed long-term care insurance scheme as an additional option to the CPF schemes currently being administered. Third, it would be responsible for the reporting of elderly abuse and protection would be under the ERPA.

(3) Amendments to the Housing and Development Act ("HDA")

45. Presently, s 17 of the HDA allows the Board to undertake additional functions assigned to it by the Minister. To facilitate administration of elderly care, it is proposed that the HDA be amended to include in s 13 a provision mandating the Board to establish elderly care facilities into the design of all new Housing and Development Board ("HDB") estates, the specifications to be determined by the ECA. Such a proposal is also part of the UK Law Commission’s recommendations, requiring councils to provide basic support for frail and disabled adults and former Minister for Health Mr Khaw Boon Wan has stated that six new subsidized nursing homes are being built planned and constructed. Given that a low number of elderly are presently living in institutions, it is suggested that investment in community and home care facilities is crucial as well.

(4) Administration of elderly care

46. The emphasis on elderly care is especially pertinent in view of the demographic changes abovementioned. However a survey has shown that there is an overwhelming reluctance among the elderly to stay in nursing homes, showing a clear

58 Housing and Development Act (Cap 129, 2004 Rev Ed) s 17.
61 Singapore Parliamentary Debates, Official Report (1 November 2011) vol 87 col 2193
63 Supra n 6 at cols 1819-1822.
preference for alternative options. By incorporating elderly care facilities into HDB estates, the objective of promoting home care as opposed to institutional care can be met, giving the elderly alternatives to traditional options. Minimum standards of care and provision will be mandated under the various types of facilities that must be provided by the CEL for the elderly.

47. Japan’s model divides provider groups into two categories: Home-based and institutional-based, with different types and levels. Citizens are free to choose the level of services required and fees are paid through a long-term care insurance scheme, thus showing the feasibility of ECA establishing a similar model. In addition, function rooms can be built in HDB estates as well to cater to the needs of the well-educated elderly and it is noted that such a proposal is currently gaining traction, with Community Development Councils already assigned the additional responsibility of reaching out to senior citizens via them taking part in elderly activities or organise them.

48. Such a model is advantageous in Singapore’s context. First, more families are moving towards a dual-income household with falling birth rates, which translates to an absence of a caregiver during office hours and the elderly being neglected. Establishing such facilities would enable the elderly to be near to home, yet cared for by a caregiver. It would thus help prevent the elderly from being neglected.

49. Second, the ‘new’ elderly are also likely to be well educated. As abovementioned, such elderly could still continue to contribute to the workforce should they wish to. Nevertheless if they were to retire, it is suggested that while still healthy, these people would demand more socio-recreational services, which are currently administered mainly through Senior Citizens’ Clubs in Community Centres.

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64 Supra n 62.
65 Supra n 7 at p 28.
66 See generally supra n 7 at p 21 to 34.
69 Supra n 7 at p 193.
50. To meet this demand and maintain the availability of Community Centres for other community groups, it is suggested that apart from remedial care facilities, the facilities can also include a function room with priority given to the elderly for their activities. This is also a suggestion that has been touted in Malaysia, where existing self-run community centre initiatives have proven to be promising and the potential of community centres in providing support in the care of family members and utilizing the expertise of the elderly said to be ‘far reaching’.

51. Third, such facilities can be easily added to existing HDB estates and incorporated into new ones during development. It would be a cost-effective measure as opposed to building retirement villages, which would require additional land, more state funds and lower land intensity. It is suggested that in land-scarce Singapore, the incorporation of elderly care facilities into existing facilities is a more viable option both physically and financially.

VII. Conclusion

52. In this paper, it is suggested that while the current legislation has done much to ensure that children support their parents and ensuring the elderly are not abused, more should be done especially in light of changing circumstances which have weakened the traditional family unit through which ageing laws are mostly administered currently. Through the above suggestions, it is hoped that parental maintenance can be improved while elderly abuse and neglect prevented through the enactment of the ERPA and establishment of the ECA.

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70 Supra n 62 at p 292.
71 Ibid.