

## **ARE SOCIAL SECURITY LAWS INCLUSIVE OF THE DISABLED?**

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### **ABSTRACT**

*The recent statistics indicate a rise in the disabled population in the country where legislation and related instruments such as the PWD Act, the National Trust Act, the Rehabilitation Council Act, and the UN Declaration of Rights for Persons with Disabilities are in place to provide social assistance and security for the upliftment of the disabled community as enshrined in the Constitution of India. The pressing issue in the realm of disability laws today is that the disabled people who are unemployed or are of limited skill do not fall under the ambit of any of the existing social security legislation, like the Employees' Compensation Act, 1923, which guarantees income maintenance and support only for disability caused in the course of employment and neglects the unemployed. The paper seeks to analyse the social security needs and impediments in policy implementation while briefly venturing into the US model of Social Security for disabled on a comparative basis. Beneficial directives to formulate a disabled-specific social security legislation ensuring economic independence of the disabled through employment generation, soft-skill training, healthcare facilities and education is suggested along with providing assistance for social inclusion and rehabilitation through awareness and community building programmes. Conclusively, a universal legislation bringing all categories of disabled persons under one umbrella is recommended*

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## INTRODUCTION

The recent statistics of the 2011 Census indicates a population rise among the disabled in India, showing an increase of 22.4% from the 2001 Census.<sup>1</sup> However, the various social security programmes in India cater towards the disabled only when such disability ensues in the course of employment. The International Labour Organisation (ILO) upholds social security as the protection conferred by the society upon individuals and households, which ensures that healthcare and guarantee of income security is obtained in cases of old-age, unemployment, sickness, invalidity, work injury, maternity or loss of a breadwinner. International instruments adopted by the ILO and the United Nations affirm that every human being has the right to social security.<sup>2</sup> In the Declaration of Philadelphia (1944), the International Labour Conference recognised that ILO's obligation envisaged the extension of social security measures to provide basic income to all in requirement of such protection and comprehensive medical care.<sup>3</sup> In India, the National Commission on Labour has endorsed the ILO definition to accept that social security demands the safeguarding of members of the society by collective action against social risks, which create undue deprivation of livelihood and income to individuals whose principal resources are seldom adequate to cure the deprivation.<sup>4</sup> It is observed that there is inadequate coverage of persons belonging to the unorganised sector owing to factors such as inability to collect contributions from them. These persons are unable to part with the payment as it does not meet their priority needs.

In India, the informal economy comprises more than 90 percent of the work force, if agriculture is included; thus, reflecting poor growth in wage employment and large-scale migration to cities in search of stable income. Informal economy cannot be a sector alone as it is a phenomenon prevalent in all sectors and encompasses categories of employees, self-

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<sup>1</sup>Comparison of data from the 2001 census and the 2011 census <<http://enabled.in/wp/census-of-india-2011-disabled-population>> accessed 1<sup>st</sup> February 2017

<sup>2</sup>Facts about Social Security (ILO) <[http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms\\_067588.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_067588.pdf)> accessed 1<sup>st</sup> February 2017

<sup>3</sup> Social security: Issues, challenges and prospects (International Labour Conference, 89th Session (2001)) <<http://www.ilo.org/public/english/standards/relm/ilc/ilc89/pdf/rep-vi.pdf>> accessed 1<sup>st</sup> February 2017

<sup>4</sup> S.C. Srivastava, *Social Security and Labour Laws* 7 (Eastern Book Company, 1<sup>st</sup> edn, 2005)

employed people, home workers, unpaid family workers, etc.<sup>5</sup> The state has an obligation to provide social assistance schemes within its economic capacity in cases of unemployment, old-age, sickness and disablement, and in other cases of undeserved want.<sup>6</sup>

## **SOCIAL SECURITY NEEDS**

Ideally, as envisaged by the ILO, social security measures should provide assurance to individuals and families that their standard and quality of life will not diminish by social or economic eventuality by providing for medical care, sickness, unemployment, old-age, employment injury, family, maternity, invalidity and survivor benefits to counter the defined contingencies.

According to estimates by the World Report on Disability 2011, the cumulative survey from 59 countries representing 64% of the world's population was used to understand the prevalence of disability of the world's adult population aged 18 years and older. This was derived from the World Health Survey as 15.6% (some 650 million people of the estimated 4.2 billion adults aged 18 and older in 2004). In developing countries, owing to their poor healthcare, poor nutrition, unsafe living conditions and inadequate prenatal care, children become more vulnerable to serious diseases, leading to higher incidence of disability among children and youth. Even in the case of prevalence of disability among people aged 60 years and above, the lower-income countries showed 43.4%, compared with 29.5% in higher-income countries.<sup>7</sup>

We need to understand that the family has been the primary creator of welfare much before the concept of welfare state came into picture, since family resources were pooled in to provide for the individuals, including extended family members. The concept of pooling

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<sup>5</sup> Social Security: A New Consensus by International Labour Organisation. <[http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---soc\\_sec/documents/publication/wcms\\_209311.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---soc_sec/documents/publication/wcms_209311.pdf)> accessed 1<sup>st</sup> February 2017

<sup>6</sup> Constitution of India Article 41

<sup>7</sup> 'World Report on Disability : Summary', (WHO 2011) <[http://www.who.int/disabilities/world\\_report/2011/report.pdf](http://www.who.int/disabilities/world_report/2011/report.pdf)> accessed 1<sup>st</sup> February 2017

public resources came into existence when the individual was unable to take care of his/her own needs and the society realised the importance of protecting the individual and his/her family.<sup>8</sup> The joint family system that existed earlier used to ensure that all the members of the family were taken care of and it provided for social security to the weaker section- the disabled. But as time progressed, the onus of providing social security fell on the states and it has been a political necessity to produce and distribute welfare for the vulnerable groups in the society. When the families are not in a position to take care of the livelihood and existence requirements, it becomes important for the state to step in and provide social security. Moreover, the respective state government is to make policies for the implementation of various schemes in place. In India, only a few states have implemented them; states such as Kerala, Tamil Nadu and West Bengal have comprehensive social security schemes, although the benefits accrued through the same are only modest.<sup>9</sup>

Disability brings about many types of economic costs to the disabled individual, their family, employer, insurance companies and society. First of all, the family with a disabled member goes through extra expenses to meet the medical or equipment needs of a disabled family member. Secondly, the disabled individual contributes minimal amounts or nothing to the family resources owing to lowered productivity due to the disability. They are also subjected to complete loss of job or reduction in the number of working hours due to the said disability. Thirdly, the disability of the individuals can have many negative effects on their employers, insurance companies and society in terms of lost profits, higher medical expenses and maintenance of transportation systems and building infrastructure required to accommodate the disabled.

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<sup>8</sup> P MadhavaRao, 'Social Security for Persons with Disabilities in India' (2004) <[http://www.eldis.org/fulltext/Rao\\_PM020804.pdf](http://www.eldis.org/fulltext/Rao_PM020804.pdf)> accessed 1<sup>st</sup> February 2017

<sup>9</sup>PrahbatPatnaik, 'For a Universal Pension' *The Hindu* (May 10, 2012)

## **LEGISLATION DEALING WITH THE DISABLED: DUTY OF THE STATE TO PROVIDE SOCIAL SECURITY**

India has an efficient system of promotive and protective social assistance legislation in places which aim to enable the disabled. A person with disability is defined<sup>10</sup> as a “person suffering from not less than 40% of any disability, as certified by a medical authority – the disability being (a) blindness (b) low vision (c) leprosy-cured (d) hearing impairment (e) locomotor disability (f) mental retardation (g) mental illness.

In 2007, India became a signatory to the United Nations Convention on the Rights of Persons with Disabilities (CRPD), thus becoming obligated to make laws harmonious with it. The existing legislations such as the Fatal Accident Act 1855, the Employees’ Compensation Act 1923, the Employees State Insurance (ESI) Act, 1948 follow a medical model of disability which means that the provisions could be availed of only if an otherwise able-bodied individual suffers from a loss of earning or utility in lieu of a disability incurred in the course of employment, accident, etc. Thus, the aspect of social security for persons with disabilities is covered only under the disability legislation in the country, whereas the social security laws contain provisions for employment-related disability.<sup>11</sup> The Rights of Persons with Disabilities Act, 2016 has attempted to cure the deficiencies of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) (hereinafter referred to as the PWD Act, 1995) which was previously the main statute providing disability rights. The new Act widens its definition of disability to include conditions such as autism, cerebral palsy, haemophilia, etc., and provides for inclusive development through education, skilled training and employment without being subjected to discriminatory practices. The Act upholds equality and right to access public places and imposes penalty on violators of the provisions. This ambitious legislation was pending in the Parliament for a long time as there was ambiguity as to whether it was appropriate for the Parliament to impose legal and financial obligations on states and municipalities with regard to disability, which is a State List subject and whether the punishable obligations imposed are wide-ranging without having any existing institutional structure, for example, making all polling booths accessible to the

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<sup>10</sup>The Persons with Disabilities (Equal Opportunities, Protection of Right and Full Participation) Act, No. 1 of 1996, § 2.

<sup>11</sup> ‘CRPD Monitoring Report, Civil Society’s Zero Draft’, (India, 2013) <<http://www.dnis.org/FINAL-MONITORING%20CRPD%20-%20ZERO%20DRAFT%20REPORT.doc>> accessed 1<sup>st</sup> February 2017

disabled. The Bill was published in the Official Gazette on 28<sup>th</sup> December 2016<sup>12</sup> and continues to be inconsistent with the penalty meted out to a person outraging the modesty of a disabled woman as against S.354 of IPC.<sup>13</sup> The official amendments to the Bill did not include the standing committee recommendations to provide basic social security free of cost and without any income ceiling or below poverty line criteria to the disabled.<sup>14</sup>

The state and the local governments are responsible for procuring social security for the disabled within their economic capacity as envisaged under Sections 66 to 68 of the PWD Act. The aspects emphasised in the sections are financial support to Non-governmental Organisations (NGOs), formulation of rehabilitation policies, framing of insurance schemes for employees and unemployment allowance for the disabled. States were requested by the Ministry of Disability Affairs to formulate a policy for the rehabilitation of the disabled, since ‘relief of disabled’ features under the State List. Some states such as Bihar and Karnataka already have this policy whereas some do not.<sup>15</sup> The social security needs are met by protective, preventive and promotional schemes and programmes such as social insurance, social assistance, employer’s liability, national provident funds and universal schemes for social security. The predominant legislation covering disability are The Rehabilitation Council of India Act, 1992, The PWD Act, 1995, The National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 and the National Policy for Persons with Disabilities, 2006. The Rehabilitation Council under the provisions of the Rehabilitation Council of India Act is a statutory body, mandated to monitor and train professionals for disability rehabilitation, to standardise syllabi and to maintain a Central Rehabilitation Register of the workforce in the field of Rehabilitation and Special Education whereas, The National Trust Act is for implementing various

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<sup>12</sup>See, The Right of Persons with Disabilities Act, 2016;<<http://www.disabilityaffairs.gov.in/upload/uploadfiles/files/RPWD%20ACT%202016.pdf>> accessed 1<sup>st</sup> February 2017

<sup>13</sup> ‘The Rights of Persons with Disabilities Bill, 2014’, (Legislative Brief, 2014) <<http://www.prindia.org/uploads/media/Person%20with%20Disabilities/Legislative%20Brief%20-%20Disabilities%202014.pdf>> accessed 1<sup>st</sup> February 2017

<sup>14</sup>‘Comparison of the Rights of Persons with Disabilities Bill, 2014, the official amendments and the recommendations of the Standing Committee’<<http://www.prindia.org/uploads/media/Disability/Comparison%20of%20the%20Bill,%202014%20with%20official%20amendments%20and%20the%20SC%20recommendations.pdf>> Accessed on: 1<sup>st</sup> February 2017.

<sup>15</sup>‘Review of the functioning of the National Institutes working in the field of disability’ (February 21, 2014) <[http://164.100.47.134/lsscommittee/Social%20Justice%20&%20Empowerment/15\\_Social\\_Justice\\_And\\_Empowerment\\_45.pdf](http://164.100.47.134/lsscommittee/Social%20Justice%20&%20Empowerment/15_Social_Justice_And_Empowerment_45.pdf)> accessed 1<sup>st</sup> February 2017

schemes/programmes for the welfare of persons suffering from autism, cerebral palsy, mental retardation and multiple disabilities. This envisages health insurance, care-giver training, preventive intervention, awareness and scholarship assistance schemes.

Social security for the disabled in India is achieved best through social assistance. The disabled population, for obvious reasons form the weaker section of the society and are in need for more care and support than healthy persons. The ILO defines social assistance scheme as one that provides benefits to persons of small means granted as of right in amounts sufficient to meet a minimum standard of need and financed from taxation.<sup>16</sup> This can be interpreted as if the invalid people, disabled or aged persons are not receiving social insurance benefits because they were not compulsorily insured and whose incomes do not exceed a prescribed level, they should be given special maintenance allowance at prescribed rates by the state.<sup>17</sup> This model of social assistance empowers people to be independent and upholds the spirit of equality and democracy as well. Centrally funded National Social Assistance programme such as the Indira Gandhi National Disability Pension Scheme (IGNDPS), is a non-contributory pension scheme, which provides central assistance of Rs. 300 per month per beneficiary to persons with severe or multiple disabilities in the age group of 18-79 years belonging to a household living below poverty line. In addition, the states are also requested to contribute proportionally to increase the assistance amount for a disabled person.<sup>18</sup>

It was only in 2009 that the umbrella scheme called the National Social Assistance Programme included disabled people. Central funding allocated in the Financial Year 2013-14 was Rs. 9,541 crore catering to 2.10 crore beneficiaries in all to effectively secure social security to the poorer and weaker sections of the society. The coverage of IGNDPS is seen to have significantly improved since 2009 with 85 percent of the approved beneficiaries being covered in 2011 as against 45 percent in 2009.<sup>19</sup> Currently, the physical coverage of IGNDPS

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<sup>16</sup> Dr. V G Goswami, *Labour and Industrial Laws: Social Security Legislations in India* (Central law Agency, 9<sup>th</sup>edn, 2011).

<sup>17</sup>Id.

<sup>18</sup>'FAQ on National Social Assistance Programme' <[http://nsap.nic.in/nsap/FAQ\\_ON\\_NSAP\\_NEW.pdf](http://nsap.nic.in/nsap/FAQ_ON_NSAP_NEW.pdf)> accessed 1<sup>st</sup> February 2017.

<sup>19</sup>AvaniKapur, 'Budget Brief: NSAP, GOI, 2013-14' <[http://accountabilityindia.in/sites/default/files/nsap\\_2013-14.pdf](http://accountabilityindia.in/sites/default/files/nsap_2013-14.pdf)> accessed 1<sup>st</sup> February 2017.

is 41.84lakh<sup>20</sup> and in terms of the state-wise implementation of IGNDPS in 2011-12, Maharashtra, Karnataka, and Odisha had covered all approved beneficiaries. However, coverage was low in Jharkhand, Kerala, and Punjab (45 percent each), Tamil Nadu (32 percent), West Bengal (31 percent), and Rajasthan (21 percent).<sup>21</sup>

## DISABLED WOMEN

The CRPD requires States to take appropriate measures to protect and guarantee all human rights and fundamental freedoms to women and girls with disabilities and guarantees adequate standard of living and social protection which further entail social security for disabled girls. It's the first binding international provision which recognises that disabled women and girls are at greater risks in the society and, hence, need social security.<sup>22</sup> There are instances where disabled girls are raped and harassed and this is not merely a physical violence, but an act of exploitation of her disabled condition. A survey in Orissa, India, found that virtually all of the women and girls with disabilities were beaten at home, 25 per cent of women with intellectual disabilities had been raped and six per cent of women with disabilities had been forcibly sterilised. Research indicates that violence against children with disabilities occurs at annual rates at least 1.7 times greater than for their peers without disabilities.<sup>23</sup> Various social and physical barriers disallow girls with disabilities to be beneficiaries of schemes and programmes meant for them. A biased attitude in the society restrains girls from educational opportunities and the stigmatic perception of disability ostracises them from social affairs.<sup>24</sup> Nearly 10% of the disabled females are out of school and more illiterate than males.<sup>25</sup> The World Bank reports that female illiteracy is 64% as

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<sup>20</sup>'NSAP Report of the Task Force: Annexure 1', (Ministry of Rural Development, 2013) <[http://nsap.nic.in/nsap/Report\\_Task\\_Force\\_Comprehensive\\_NSAP.pdf](http://nsap.nic.in/nsap/Report_Task_Force_Comprehensive_NSAP.pdf)> accessed 1<sup>st</sup> February 2017.

<sup>21</sup> Supra Note 16

<sup>22</sup>Dr.SharmilaGhuge, Dr. P. K. Pandey& Dr. SukantaSarkar, *Social Security*, (A.P.H Publishing Corporation, New Delhi, 2013) 78-92

<sup>23</sup>'Disability Statistics: Facts & Statistics on Disabilities & Disability Issues' <<http://www.disabled-world.com/disability/statistics/>> accessed 1<sup>st</sup> February 2017

<sup>24</sup>Supra note 20

<sup>25</sup>Philip O'Keefe, World Bank, 'People with Disabilities in India: From commitments to outcomes' (May 2007) <<http://siteresources.worldbank.org/INDIAEXTN/Resources/295583-1171456325808/DISABILITYREPORTFINALNOV2007.pdf>> accessed 1<sup>st</sup> February 2017

against disabled male illiteracy of 43%.<sup>26</sup> It is pertinent to reiterate that social security laws giving only employment-related benefit do not cover girls disabled at birth, who are unemployed. Despite the 3% reservation mandated by the PWD Act, the disabled persons are unsuccessful in gaining employment due to their poor knowledge of English, computers and general knowledge.<sup>27</sup> There are no special programmes designed for disabled girls who may not be employed but undoubtedly require social security.<sup>28</sup>

Inclusive social security programmes which provide access to information and education are instrumental in ensuring independence among disabled women. Social assistance for access to education, public places, vocational and skill training are necessary to ameliorate their conditions. The state through social security programmes must provide special allowance and incentives to the parents of the disabled girls for covering the costs of education, transport, equipment, etc. Similarly, awareness programmes should be organised to protect disabled girls against violence, physical, mental and sexual abuse, exploitation, harassment, and gender discrimination in urban and rural areas.<sup>29</sup>

## **PERSONS WITH DISABILITY**

Persons with disability face social exclusion and stigma which adversely affect the opportunities of the disabled people for full integration in social and economic life, often even within their own families.<sup>30</sup> Section 33 of the PWD Act, 1995 envisages three percent reservation for persons with disability in identified posts in government establishments. It is reported that the employment rate of disabled in the private sector was as low as 0.28% and in multinational companies, it was 0.05%<sup>31</sup> and under the Scheme of Incentives to the Private Sector for Employment of Physically Challenged Persons, the government provides the employer's contribution for Employees' Provident Fund and Employees' State Insurance for three years, for employees with disabilities, including visually impaired persons employed in

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<sup>26</sup>Shenoy M, 'Persons with disability and the India labour market: challenges and opportunities' (December 2011) <[http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new\\_delhi/documents/publication/wcms\\_229259.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/publication/wcms_229259.pdf)> accessed 1<sup>st</sup> February 2017

<sup>27</sup>Id.

<sup>28</sup>Supra note 22

<sup>29</sup>Id.

<sup>30</sup>Supra note 25

<sup>31</sup>Supra note 26

the private sector on or after April 2008, with a monthly salary of up to Rs. 25000. The National Handicapped Finance and Development Corporation (NHFDC) provides subsidised credit to PWDs for taking up revenue-generating activities for self-employment. For the financial year 2013-14, NHFDC had released Rs.70 crore to 12,840 PWDs and skill training for 860 of them. Its performance was rated excellent in 2011-12 and also showed that it turned in profits due to better management of funds and increase in disbursement of loans.<sup>32</sup> The adults of rural households are guaranteed employment under the MGNREGA which includes disabled persons. Under Deendayal Disabled Rehabilitation Scheme, NGOs provide financial aid for various initiatives which provide education, vocational training and rehabilitation for disabled persons.<sup>33</sup>

Furthermore, there are seven national institutes to develop the disabled manpower through education and skill-based training. There are five Composite Rehabilitation Centres, four Regional Rehabilitation Centres and 120 District Disability Rehabilitation Centres imparting rehabilitation services to persons with disabilities. In addition, certain state government institutions are also equipped with the same. Besides, 250 private institutions organise training courses for rehabilitation professionals.<sup>34</sup> The number of these establishments is woefully insufficient to cater to 26,810,557 disabled people in the country, especially when a 22.4% increase in the decadal growth was surveyed.<sup>35</sup>

## **DISABLED IN THE COURSE OF EMPLOYMENT**

In the instances where a gainfully employed person meets with an event that renders him/her disabled to generate income, the social security laws covering the organised sector shall apply. To improve the welfare of workers who lose jobs due to disability, a self-financed publicly provided social disability insurance programme that taxes the workers while in good

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<sup>32</sup> 'Department of Disability Affairs signs MoU with NHFDC' (29 April 2013) <<http://pib.nic.in/newsite/mbErel.aspx?relid=95289>> accessed 1<sup>st</sup> February 2017

<sup>33</sup> 'Welfare Measures for Persons with Disabilities' (7 August 2013) <<http://pib.nic.in/newsite/PrintRelease.aspx?relid=97806>> accessed 1<sup>st</sup> February 2017

<sup>34</sup> 'National Policy for Persons with Disabilities' (2006) <<http://www.socialjustice.nic.in/hindi/nppde.php?format=print>> accessed 1<sup>st</sup> February 2017

<sup>35</sup> 'Census of India, 2011, Office of the Registrar General & Census Commissioner' (*Data on Disability, 2011*)<<http://www.languageinindia.com/jan2014/disabilityinindia2011data.pdf>> accessed 1<sup>st</sup> February 2017

health and working and pays benefits when a worker becomes disabled and loses his/her job would be greatly beneficial. The Employees' Compensation Act, 1923 covers contingent accidents and bestows liability on the employers to compensate in cases of total or partial disability incurred for a period exceeding three days, by a personal injury in the course of employment. It covers death of a workman and compensates his/her dependants. This is a classic piece of social security legislation, catering to the financial needs of the disabled workman and his/her family when his/her earning capacity has been compromised, thereby not leaving him/her and their family destitute.<sup>36</sup> Section 46(1)(c) of the ESI Act, 1948 provides for periodical payments to an insured person suffering from disablement as a result of employment injury sustained as an employee under the Act and certified to be eligible for such payments by an authority specified in this behalf by the regulations. Section 51(b), as amended, says that subject to the provisions of the ESI Act, 'a person who sustains permanent disablement, whether total or partial, shall be entitled to periodical payments at such rates and for such periods and subject to such conditions as may be prescribed by the Central Government.' If we are to look into the social security laws for the disabled in other countries, the US model could prove to be one which we could adopt or take from in terms of framing policies to reach a larger number of the disabled persons.

### **THE US MODEL**

In the United States, social security for the disabled through the Social Security Administration (SSA) Department falls under two schemes, viz, the Social Security Disability Insurance (SSD) and the Supplemental Security Income (SSI). SSD pays benefits to the disabled person and certain members of the family if the person is 'insured,' meaning that he/she has worked long enough and paid social security taxes. SSI pays benefits based on financial need. A medical report is called for and then on the basis of that, if the person is permanently disabled only then he/she is allowed to get the benefits from the schemes among other requirements.

In case when the person has been disabled for a year or it is such that the disability will result in his/her death, or he/she cannot do the kind of work the person was engaged in

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<sup>36</sup>PiyaliSengupta, 'Personal Injury Under Employee's Compensation Act, 1923 – Judicial Interpretation', <<http://docs.manupatra.in/newslines/articles/Upload/6807BA7A-13F4-4CB6-9345-BF4D1086DC6B.pdf>> accessed 1<sup>st</sup> February 2017

before the onset of disability, or if the concerned authorities in the department of SSA decide that the person cannot adjust to other work because of his/her condition, then the benefits under the scheme is provided. America does not provide social security cover if the person is temporarily disabled. The SSI provides for monthly payments to people who have low income and few resources. The amount to be fixed for SSI is decided nationwide and is uniform. However, the states may provide for extra payments in addition to the SSI provided by SSA. A majority of the American states have a provision to provide for the extra amount in addition to the SSI.<sup>37</sup> The U.S. model is, thus, a good example and can help India achieve a stronger and better social security system. Schemes such as SSI will provide a source of income to many, who are in dire need of money, especially the disabled population who are unemployed. Of late, there has been the concept of temporary pension which is coming up through a few Organisation for Economic Cooperation and Development (OECD) countries such as the Netherlands, Germany, etc. The disability benefits are lucrative as they come with a permanent beneficiary status. Very few people leave the disability benefits before attaining the statutory pension age and even fewer go back to work. With a view to prevent this, the countries have started providing temporary benefits or time-based disability benefits. The countries have various checks in place such as regulations on benefit duration and retesting of disability benefit entitlements to ensure the success of this policy.<sup>38</sup>

## ISSUES IN IMPLEMENTATION

The Report of the Census of India has admitted that there are a few difficulties in defining and measuring disability and, therefore, has used its own definitions of disability. Disability is the umbrella term for impairments, activity limitations and participation restrictions, referring to the negative aspects of the interaction between an individual (with a health condition) and that individual's contextual factors (environmental and personal factors).<sup>39</sup> The reasons for differences will be clear if we explore the definitions individually. The Census of India considers disability as being completely blind or having blurred vision

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<sup>37</sup>'List of states which provide don't provide additional amount', <<https://www.ssa.gov/ssi/text-benefits-ussi.htm>> accessed 1<sup>st</sup> February 2017

<sup>38</sup>OECD, *Sickness, Disability and Work- Breaking the barriers* (2010) <[http://ec.europa.eu/health/sites/health/files/mental\\_health/eu\\_compass/reports\\_studies/disability\\_synthesis\\_2010\\_en.pdf](http://ec.europa.eu/health/sites/health/files/mental_health/eu_compass/reports_studies/disability_synthesis_2010_en.pdf)> accessed 1<sup>st</sup> February 2017

<sup>39</sup>'World Report on Disability', (WHO and World Bank 2011) <[http://www.who.int/disabilities/world\\_report/2011/report.pdf](http://www.who.int/disabilities/world_report/2011/report.pdf)> accessed 1<sup>st</sup> February 2017

even with the help of spectacles. Impaired vision in only one eye is also treated as visual disability. A person who has not tested but still has blurred vision through spectacles is treated as visually disabled. NSSO, on the other hand, treats a person as visually disabled if the person does not have any perception of light in both the eyes even with spectacles or contact lenses. Night blindness is not considered as a disability. Thus, the NSSO estimate is lesser as compared to the Census estimate; the former has a narrower definition of disability. The lack of a clear-cut definition for the disabled that falls under the various definitions makes it even harder to implement the policies to the fullest. When it comes to the definitions of locomotor disability, there is a clash between the two. The NSSO definition is broader and includes a person who lacks the normal ability associated with his/her own movement or movement of objects from place to place in the category of the disabled. It is not mentioned clearly whether a person with dysfunction of joints due to arthritis is also included and it is possible that such persons are also included in the list. The lack of a single definition has further led to problems relating to the smooth implementation of programmes and even policy making.

Provisions of education of disabled children, preventive care such as the universal coverage of polio vaccinations and the improvement of pre-natal care are areas where the disability policy has tried to cover in order to cater to the disabled children in India. Howsoever useful the policies are on paper, the implementation of the same has been unsatisfactory as there is no sign of reduction in disability incidence rates over the years.

According to a recent survey,<sup>40</sup> there are 17.53 million persons in India who have physical or sensory disabilities, which include visual, speech and hearing, and locomotor disabilities. This comes up to 1.45% of the total population of the country. Because of the prevalence of general unemployment and rampant under-employment in times of unemployment and economic distress, disabled persons are usually the last to be hired and first to be laid off. The actual number of disabled workers employed in either regular or special establishment is far below the number of employable disabled workers.<sup>41</sup>

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<sup>40</sup>Supra note 35

<sup>41</sup>Usha Bhatt, *The Physically Handicapped in India* (Popular Book Depot, 2nd edn, 1963).

There is a lack of job-oriented training facilities. The present system of technical training gives them limited experience in handling the jobs. The curriculum is structured in a pragmatic manner and it gives the trainees some sense of workshop discipline. More often than not it is found that when the trainee goes to the company, the work done there is far from what is imparted through training. Over and top of that it can be seen that other factors such as inaccessible transportation and public buildings are not favourable towards the disabled. Most of the disabled live in rural areas and employment opportunities are scattered in urban areas. This puts the disabled in a situation where they will have to stay in the city or commute by public transport if the distance is not too much. If both housing and transport create a huge issue considering both being acute problems in India, the disabled find it difficult to continue the job for a long time. The environmental conditions in the working place are also not suitable for them. Sanitation, stair-case, ramps, canteens and recreation rooms are not made to suit the special needs of the disabled workers as of now. Another issue is that there is limited education and training facilities even today. Majority of the disabled are illiterate, confined to their homes, totally dependent on their families or special homes, once again dependent on the often- delayed grants-in-aid to be released by the government or the philanthropic gestures of a few, otherwise they must resort to begging.

The Department of Disability Affairs has mentioned on the issue of inadequacy of trained professionals as: “The number of persons trained by the National Institute is inadequate for the disabled population of the country. There is a wide gap between the number of trained professionals and the number of beneficiaries. There is a need to increase the number of trained professionals in all the National Institutes in order to meet the requirement of all disabled persons.”

Most disabled persons are capable of being trained to work of one kind or another. Absence of identification services; lack of special medical boards for the purpose of issuing certificates as regards the disability and their capacity to perform particular duties; inadequate number of Vocational Rehabilitation Centres and Special Employment Exchanges; lack of training of employment officers; lack of an implementing machinery; apathy of the

government officials; and near non-existence of social security benefits are also components of the vicious cycle becoming an a obstacle to the employment policy and process.

## **CONCLUSION**

The legislative framework in India gives an illusion that strong provisions exist to protect the disabled with regard to the provision of social security; however, most of the laws are toothless without effective implementation. The inconvenient delay in passing an Act of great importance such as the Rights of Persons with Disabilities Act, 2016 shows the callous attitude of the government towards the disabled community. Tall promises to make upcoming infrastructure disabled friendly alone would not solve the difficulties faced by the community. There must be an effective mechanism to assess the needs and problems of the community as opposed to relying on a census taken once in ten years being used as the basis to formulate policies. In comparison to social security models present in developed countries such as the US, we can conclude that there are various aspects which are pertinent to enhance social security support like taking into consideration the duration or permanency of the disability, insurance and making the laws uniform while making decisions and policies regarding social security. This would ensure the creation of an inclusive society for the disabled community, while allowing the state to optimally utilise its funds. It is further concluded that greater sensitisation and prompt improvement in environmental and infrastructural facilities will most certainly boost the quality of life of the disabled community which is the ultimate aim of any good social security law.

## **SUGGESTIONS AND RECOMMENDATIONS**

1. More effective large-scale non-contributory social security schemes providing higher amount of assistance should be introduced. For instance, under IGNDPS, 300 Rupees per month for an 80% disabled person is grossly insufficient. Reduction of the disability level from 80% to 40% is recommended while doubling the pension

amount, especially for those with severe or multiple disabilities. This will help to reach an additional 22 lakh disabled persons at an additional outlay Rs.1156 crore.<sup>42</sup>

2. The coverage of pension schemes, which use the BPL method for identifying beneficiaries by including non-BPL individuals based on their annual income or by using a simple exclusion criterion to exclude individuals with government jobs or those owning more than a certain amount of land, should be expanded.<sup>43</sup>
3. To ensure better planning and implementation, schemes should be reviewed on a regular basis. Constant review of the schemes and publishing of reports along with statistics of the beneficiaries will help evaluation and up-gradation of the policies.<sup>44</sup>
4. More stringent penalties should be in place for violating the rights of the disabled women, children and aged who cannot defend themselves, thus, serving as a deterrent against social exclusion and exploitation.<sup>45</sup>
5. Creation of programmes for old-age and survivor benefits in the case of the disabled who cannot be employed or the disabled person who are not employed even after crossing the employable age. Currently, there are no programmes for the disabled, dependent and aged widows except the meagre assistance given by the state governments in the form of pension or otherwise. Enhancing this sum and creating a policy inclusive of these stakeholders would be beneficial.<sup>46</sup>
6. Pro-active identification of beneficiaries with no demand for documentary proof from the applicant is recommended. The Indian Disabled Persons Organisations has emphasised that people with disabilities often do not have the disability certificate they need in order to receive the benefits from the government (National Disability Network, 2011, p. 4).<sup>47</sup> In the case of disability, the government should reach out and make special arrangements for the issuance of disability certificates. Priority should be accorded to SC, ST and minority households fulfilling the eligibility criteria.<sup>48</sup> Pro-active identification will help to overcome problems arising out of the BPL method since in most states, there is no record maintained at the Panchayat or Municipal ward level containing the list of eligible persons entitled to social security

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<sup>42</sup>Supra note 20

<sup>43</sup>Supra note 9

<sup>44</sup>Supra note 8

<sup>45</sup>Supra note 22

<sup>46</sup>Supra note 20

<sup>47</sup> Brigitte Rohwerder, 'Disability inclusion in social protection' (GSDRC, 2014) <[http://www.academia.edu/5953277/Disability\\_inclusion\\_in\\_social\\_protection](http://www.academia.edu/5953277/Disability_inclusion_in_social_protection)> accessed 1<sup>st</sup> February 2017

<sup>48</sup>Supra Note 35

benefits. It is suggested that the money to be distributed through the schemes should be done through the last administrative unit so that it reaches people effectively.<sup>49</sup>

7. It is recommended that social protection floors and social protection systems that include people with disabilities on an equal basis with others needs to be promoted, by taking their specific requirements into account in defining benefits including schemes or programmes that guarantee income security, social health protection and other mechanisms to ensure universal health coverage, as well as schemes and programmes that facilitate their participation in employment.<sup>50</sup>

## NEED FOR UNIVERSALISATION

1. Contributory schemes may burden the exchequer to a lesser extent but they have high maintenance costs and lack in terms of coverage. Further, awareness of these initiatives is also important. In India, proper attention is not paid to disseminate information, spread financial literacy and communicate different aspects of schemes to the public. Therefore, people living in remote areas are largely neglected. A lack of a clear idea about all the aspects of a scheme due to deficient financial literacy can hamper its successful coverage, as people would hesitate to spend their time, money and energy if they do not have proper knowledge of its supposed benefits.<sup>51</sup> It is unfortunate that more than 90% of the households with a disabled member have not heard of the PWD Act in the rural areas of the states of Tamil Nadu and Uttar Pradesh in India.<sup>52</sup>
2. Universalisation of assistive measures and disability law in terms of citizenship, residence, age, etc., and making them tax-financed would make implementation of social assistance more efficient and would ensure that equal benefits are received by the disabled population of different states, like that in welfare-oriented countries.<sup>53</sup>

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<sup>49</sup>Supra Note 35

<sup>50</sup> 'Social Security for All: Building social protection floors and comprehensive social security systems. The strategy of the International Labour Organization' (ILO, 2012) <<http://www.socialsecurityextension.org/gimi/gess/RessFileDownload.do?ressourceId=34188>> accessed 1<sup>st</sup> February 2017

<sup>51</sup>Charan Singh, Dr. AynenduSanyal, Dr KanchanBharati,, *Social Security Schemes: A case for Universalization* (December 2015, IIMB-WP NO. 498) <<https://www.iimb.ernet.in/research/sites/default/files/WP%20No.%20498.pdf>> accessed 1<sup>st</sup> February 2017

<sup>52</sup>Supra note 24

<sup>53</sup>Supra note 35

3. As Contributory schemes are known to lack coverage and lack inclusivity of persons who are unable to contribute but are in dire need of the benefits, it is suggested that through the process of universalisation, this issue can be effectively tackled. This will also enhance economic growth and help eradicate poverty.
4. An umbrella legislation encompassing provisions for eligibility to avail medical care, transportation, assistive devices, etc., using statistically supported data, mentioning the tax exemptions, unemployment allowance and the comprehensive social security scheme for the disabled people would make its outreach and implementation more effective. Currently this burden is placed on the individual states, and there is an absence of equivalent initiative from all the states.<sup>54</sup> It is observed that different states have different amounts dispensed for assistance, which affects the disabled person's right to equal treatment. The formulation of disability pension and unemployment allowance schemes, are not universal in all states, to the extent that only one of the two schemes are available.<sup>55</sup>

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<sup>54</sup>Supra note 34

<sup>55</sup>Supra note 8