Two Disadvantages, One Pension: Anti-Cumulation, Intersectionality and the Right to Social Security of India's Disabled Elderly

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ABSTRACT:

India does not lack a pension for its disabled elderly. It maintains three, for old age, widowhood and severe disability, and pays only one. This article asks what that exclusivity costs and whether it is lawful. Using the bare text of the Rights of Persons with Disabilities Act, 2016, the National Social Assistance Programme (NSAP) rate structure, State eligibility rules, and official statistics from the Census, the National Sample Survey, the Longitudinal Ageing Study in India and the Household Consumption Expenditure Survey, the study reconstructs the rate architecture and tests it against domestic and international standards. Three findings follow. First, the marginal central assistance attached to severe disability is Rs 100 per month between the ages of 60 and 79, and nothing at all from 80, when all three rates converge at Rs 500. Second, that convergence places the scheme outside the proviso to section 24(1) of the 2016 Act, which requires assistance to persons with disabilities to be at least twenty-five per cent higher than comparable schemes. Third, the disability pension reaches about 8.33 lakh persons of all ages, against roughly 5.6 million elderly persons with disabilities recorded in 2011 alone. The design is single-axis in the sense identified in Patan Jamal Vali v. State of Andhra Pradesh: it requires a claimant to elect one identity and forfeit the rest. Restoring the differential to elderly claimants already identified would cost between Rs 144 crore and Rs 636 crore a year, or 1.5 to 6.6 per cent of the NSAP budget.

Keywords: social security; intersectional discrimination; disability law; old-age pension; India.

1. Introduction

India does not lack a pension for its disabled elderly. It maintains three, and it pays one.

The National Social Assistance Programme (NSAP) runs separate non-contributory pensions for old age, for widowhood and for severe disability. A woman who is seventy-two, widowed and blind satisfies the conditions of all three. She will be enrolled under one of them. The sorting is done quietly, by eligibility conditions of a familiar administrative kind. In Delhi, an applicant for old age assistance and an applicant for the disability allowance must each satisfy the identical requirement that she "must not be receiving any pension/ financial assistance from Central Govt/ State Govt/ other governmental local bodies or any other source"

(Government of NCT of Delhi, 2026). In Odisha, a claimant under the Madhu Babu Pension Yojana must not be in receipt of any other pension from the Union Government, the State Government or any organisation aided by either (District Administration Angul, 2026). Central assistance under NSAP is released sub-scheme wise against a beneficiary cap fixed separately for each sub-scheme and each State (Comptroller and Auditor General of India [CAG], 2023), so a claimant occupies one row of one register. The architecture asks which single thing she is.

This article argues that the resulting deprivation is architectural rather than fiscal, and that it is unlawful on the face of the governing statute. Indian social assistance treats old age, widowhood and disability as competing classifications between which an official must choose, rather than as concurrent disadvantages whose costs accumulate in one body. Three drafting choices produce that result and can be examined separately. The first is the exclusivity condition just described. The second is the rate structure: central assistance is Rs 200 per month for old age between 60 and 79 and Rs 300 for severe disability, so the marginal value of a certified eighty per cent disability is Rs 100 per month, and at the age of 80 all three rates converge at Rs 500, so the marginal value of that disability becomes zero (Ministry of Rural Development [MoRD], 2025). The third is the severity filter: the disability pension is available only at eighty per cent disability and above, a threshold twice the benchmark of forty per cent that the Rights of Persons with Disabilities Act, 2016 uses for almost every other entitlement, and one that a Union Minister for Rural Development publicly described as needing revision more than a decade ago (Deccan Herald, n.d.-a).

The price that Indian law places on a second disadvantage is therefore Rs 100 a month, which is Rs 3.29 a day, until a person turns eighty, and nothing after that. The claim advanced here is not the familiar one that the amounts are too small, although they are. It is that the scheme contains an intelligible principle about disability, namely that disability generates additional and continuing cost, and then abandons that principle at exactly the age at which the evidence says the cost is highest and the population is growing fastest.

That claim can be tested, and Parliament has supplied the instrument for testing it. The proviso to section 24(1) of the Rights of Persons with Disabilities Act, 2016 requires that the quantum of assistance to persons with disabilities under schemes framed by the appropriate Government "shall be at least twenty-five per cent. higher than the similar schemes applicable to others". Section 24(2) requires the appropriate Government, in devising such schemes, to give due consideration to the diversity of disability, gender, age and socio-economic status. Read together, these are among the very few provisions in Indian law that convert an intersectional intuition into a mandatory and arithmetically verifiable standard. Applying the proviso to the NSAP rates is a matter of two calculations. Between 60 and 79 the disability rate exceeds the old-age rate by fifty per cent and the proviso is satisfied. From 80 it exceeds it by nothing, and the proviso is not.

The doctrinal frame for this analysis is not novel; its application is. In Patan Jamal Vali v. State of Andhra Pradesh (2021), the Supreme Court, considering the rape of a blind Scheduled Caste woman, held that oppression must be assessed through an intersectional lens because multiple sources of disadvantage operate cumulatively rather than sequentially. The Court traced the difficulty to legislative technique, observing that as liberation movements were translated into law, the law itself developed into "mutually exclusive terrains of different statutes addressing different marginalities" (para 19). That description was offered of the criminal law. It fits the NSAP register better than it fits section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, because a criminal statute at least allows a prosecutor to plead in the alternative, whereas a benefit scheme with an exclusivity clause compels an election and enforces the forfeiture in cash every month.

The literature has not made this connection. Indian scholarship on old-age income security examines the Indira Gandhi National Old Age Pension Scheme largely in terms of quantum, coverage and fiscal federalism, treating the beneficiary as an undifferentiated poor elderly person. Disability scholarship since 2016 has concentrated on employment, reservation, accessibility, legal capacity and certification, and has treated the disabled subject as a person of working age. The intersectionality doctrine recognised in Patan Jamal Vali and the indirect discrimination test formulated in Lt. Col. Nitisha v. Union of India (2021) have been applied to criminal law, to the armed forces and to service jurisprudence, but not to the design of social assistance, where the cumulative disadvantage they describe is priced explicitly and can be read off a rate table. The gap is analytical rather than empirical: the numbers are public, and nobody has put them next to the proviso.

The article accordingly pursues five objectives: to reconstruct the rate architecture of NSAP and the operation of the exclusivity condition; to quantify the disability differential and test it against the section 24(1) proviso and against the available international estimates of the extra costs of disability; to estimate the coverage of the disability pension against the population of elderly persons with disabilities; to evaluate the design against Article 14 of the Constitution, the 2016 Act, Article 28 of the Convention on the Rights of Persons with Disabilities and the standards of the International Labour Organization; and to cost specific reforms so that the argument cannot be dismissed as unaffordable without a counter-calculation.

2. Methodology

Design: The study is a doctrinal legal analysis combined with quantitative analysis of secondary official data, and is best described as a convergent mixed design in which the legal and statistical strands address the same question from different directions. The legal strand asks whether the design of NSAP conforms to the standard set by section 24 of the Rights of Persons with Disabilities Act, 2016 and to the constitutional guarantee of equality as it has been construed in cases of indirect and intersectional discrimination. The quantitative strand asks what the design does in rupees to a person who occupies more than one protected category at once. Neither strand is subordinate: the arithmetic supplies the premise on which the doctrinal argument turns, since the proviso to section 24(1) is expressed as a percentage.

Materials: Primary legal materials comprise the bare text of the Rights of Persons with Disabilities Act, 2016 as published by the Legislative Department, the Code on Social Security, 2020 and its commencement notification, the Convention on the Rights of Persons with Disabilities, and the reported judgments discussed. Scheme materials comprise the NSAP sub-scheme parameters as recorded in the performance audit of the Comptroller and Auditor General (2023) and in the Ministry of Rural Development backgrounder of November 2025, together with the published eligibility conditions of the Delhi and Odisha schemes, which were selected because both publish full eligibility text on official portals and because they sit at opposite ends of the top-up distribution. Statistical materials comprise the Census of India 2011 as summarised in the official statistical profile of persons with disabilities, the seventy-sixth round of the National Sample Survey on persons with disabilities, the first wave of the Longitudinal Ageing Study in India, the Household Consumption Expenditure Survey 1344-1358, the India Ageing Report 2023 and the World Social Protection Report 1344-1358.

Procedure: The scheme parameters were extracted provision by provision and tabulated by age band, so that the central rate payable to a hypothetical claimant could be read for each combination of age, widowhood and certified disability. The exclusivity condition was traced from the State eligibility rules to its effect on the central register. The section 24(1) proviso was then applied as a test with two limbs: the identification of the "similar scheme applicable to others", which for a person aged sixty and above is the old-age pension, and the computation of the actual differential as a percentage of that comparator. Coverage was estimated by comparing the reported caseload of the disability pension with the estimated stock of elderly persons with disabilities. Costing was performed by scenario rather than by point estimate, because the number of elderly persons with disabilities currently drawing an old-age pension is not published.

Data analysis: The analysis is descriptive and deterministic; no inferential statistics are used and none would be appropriate, since the quantities of interest are administered rates rather than sampled variables. Three operations are performed. Ratio analysis expresses each rate as a percentage of monthly per capita consumption expenditure, using both the all-India rural average and the average for the poorest five per cent of the rural population, the latter being the closer proxy for the consumption of a household containing a pension claimant. Benchmark testing compares the observed differential with the statutory twenty-five per cent floor and with published estimates of the extra costs of disability. Scenario costing computes the annual fiscal implication of three reform options under stated prevalence assumptions, expressed as a share of the 1344-1358 NSAP allocation of Rs 9,652 crore. All computations are the author's own and the inputs are given in the tables so that each may be recalculated.

Limitations: Four limitations bear on the findings and are stated here rather than buried. The disability data in the Census are fifteen years old and, on the Ministry's own record, a Parliamentary Standing Committee has questioned whether the figure of 2.68 crore reflects the present position. Prevalence estimates diverge sharply by instrument: the Census reports 2.21 per cent of the population as disabled and the seventy-sixth round of the National Sample Survey reports 2.2 per cent, while the Longitudinal Ageing Study reports that twenty-four per cent of persons aged sixty and above have at least one limitation in activities of daily living. These measure different things, and the article uses the administrative measure for coverage arithmetic and the functional measure for need arithmetic, marking each. The NSAP management information system does not publish age-disaggregated data on disability status within the old-age pension caseload, so the population that would benefit from cumulation is estimated rather than counted. Finally, no Indian study estimating the extra costs of disability by the standard-of-living method was located, and the benchmarks used are drawn from European and South-East Asian estimates and are therefore illustrative of magnitude rather than probative of the Indian figure.

Ethical considerations: The study involves no human participants, no interviews, no fieldwork and no personal or identifiable data, and accordingly required no institutional ethics approval; all sources are published, aggregate and publicly accessible, and are cited with digital object identifiers or uniform resource locators. Two substantive ethical commitments nonetheless shaped the writing. The first concerns representation. Research on disability and old age carries a standing risk of constructing its subjects as objects of pity whose claims rest on incapacity, a habit the Supreme Court warned against in Patan Jamal Vali when it declined to stamp a disabled witness with the badge of helplessness. The argument here is grounded in cost and in entitlement, not in vulnerability, and no individual case narratives are reproduced. The second concerns terminology: the article uses the vocabulary of the 2016 Act and of the Convention, refers to persons with disabilities rather than to the disabled where the sentence permits, and retains scheme names as they appear in the official record even where those names have not aged well.

3. Results

3.1 The rate architecture and the exclusivity condition

NSAP comprises five sub-schemes, of which three are pensions. Their parameters, as audited by the Comptroller and Auditor General and as restated by the Ministry of Rural Development in November 2025, are set out in Table 1.

Table 1. Central assistance under the pension sub-schemes of the National Social Assistance Programme, 2026

Sub-scheme	Eligibility	Rate, 60 to 79	Rate, 80 and above	Beneficiaries
IGNOAPS	Below poverty line, aged 60 and above	Rs 200	Rs 500	221 lakh
IGNWPS	Below poverty line widow, aged 40 and above	Rs 300	Rs 500	67 lakh
IGNDPS	Below poverty line, aged 18 and above, disability of 80 per cent and above	Rs 300	Rs 500	8.33 lakh

Note: Rates are central assistance only; States and Union Territories add top-ups ranging from Rs 50 to Rs 5,700 per month, producing an average total pension of about Rs 1,100 in many States. Sources: CAG (2023); MoRD (2025)

Three features of Table 1 do the work of this article. The first is that the three sub-schemes are described by status rather than by contingency. A person is enrolled as elderly, or as a widow, or as disabled. The second is that the rates converge. Between 60 and 79 the disability and widowhood rates exceed the old-age rate by Rs 100; at 80 they are identical. The third is the caseload: the disability pension accounts for 8.33 lakh of the 3.09 crore NSAP beneficiaries, which is 2.70 per cent of the programme, and for Rs 290 crore of the Rs 9,652 crore allocation for 1344-1358, which is 3.00 per cent (MoRD, 2025).

Exclusivity is not stated as a proposition of central policy so much as built into the machinery. Central assistance is released sub-scheme wise against separate caps, and each beneficiary is recorded once. At the point of application, the State rules do the rest. Delhi's old age assistance and its financial assistance to persons with special needs are governed by the same negative condition, that the applicant must not be receiving any pension or financial assistance from any government source, and Delhi's disability allowance is in any event confined to persons aged between zero and fifty-nine years, so that a person with a disability who reaches sixty ceases to be eligible for it and must transfer to old age assistance (Government of NCT of Delhi, 2026). The consequence in that Union Territory is arithmetically perverse. The disability allowance is Rs 2,500 per month and old age assistance is Rs 2,000 per month for a beneficiary aged 60 to 69. A person with a benchmark disability who has drawn Rs 2,500 for years therefore loses Rs 500 per month on her sixtieth birthday, and the entire disability-related component of her income support disappears at the moment her disability is most likely to be compounded by the ordinary attrition of age.

It should be recorded that the same department knows perfectly well how to write a cumulation clause when it intends one. Delhi's scheme for persons with benchmark disabilities having high support needs, which pays Rs 6,000 per month, provides expressly that the amount "will be in addition to" any sum already payable under the disability allowance; and the notified table under the State's COVID-19 family assistance scheme records that a widow may receive the widow pension "in addition" and that parents may avail old age pension "in addition" (Government of NCT of Delhi, 2026). Additivity is thus a drafting option that the administration exercises when it wishes to. Where it is withheld, the withholding is a choice, and choices are reviewable.

3.2 The price of a second disadvantage

Table 2 states the differential and applies the statutory test.

Table 2. The disability differential in central assistance and compliance with the proviso to section 24(1), Rights of Persons with Disabilities Act, 2016

Age band	Old age rate	Disability rate	Differential	Uplift achieved	Rate required by proviso
60 to 79	Rs 200	Rs 300	Rs 100	50.0 per cent	Rs 250 (satisfied)
80 and above	Rs 500	Rs 500	Rs 0	0.0 per cent	Rs 625 (not satisfied)

Note: Author's computation from the rates in Table 1. The shortfall from 80 is Rs 125 per month, or Rs 1,500 per year, per beneficiary.

The result is counter-intuitive enough to be worth stating twice. Indian law recognises that severe disability warrants more money than age alone, and prices that recognition at Rs 100 per month, which is Rs 3.29 per day. It then withdraws the recognition entirely at the age of eighty. The withdrawal is not an omission from an old scheme that nobody has revisited; the Rs 500 rate for the eighty-plus band was introduced deliberately as an enhancement for the oldest old, and its effect was to raise the old-age rate to the disability rate and thereby to abolish the differential. An enhancement for one protected group operated as an extinguishment for a group that belongs to both.

The timing of that extinguishment is the opposite of what the demographic evidence would suggest. The India Ageing Report 2023 projects that the population aged eighty and above will grow by about 279 per cent between 2022 and 2050, with a predominance of widowed and highly dependent very old women, and that the elderly share of the population will double to over twenty per cent by 2050, with a current decadal growth rate of forty-one per cent (United Nations Population Fund [UNFPA] India, 2023). The eighty-plus band is thus the fastest growing, the most feminised, the most likely to be simultaneously widowed and disabled, and the only band in which Indian law says that disability is worth nothing.

3.3 Adequacy: what the rates buy

The differential must be read against consumption. Table 3 expresses each rate as a percentage of monthly per capita consumption expenditure from the Household Consumption Expenditure Survey 1344-1358.

Table 3. Central assistance rates as a percentage of monthly per capita consumption expenditure, 1344-1358

Monthly amount	All-India rural MPCE (Rs 4,122)	All-India urban MPCE (Rs 6,996)	Poorest 5 per cent, rural (Rs 1,677)
Rs 200 (old age, 60 to 79)	4.85 per cent	2.86 per cent	11.93 per cent
Rs 300 (disability or widowhood)	7.28 per cent	4.29 per cent	17.89 per cent
Rs 500 (all schemes, 80 and above)	12.13 per cent	7.15 per cent	29.82 per cent
Rs 100 (the disability differential)	2.43 per cent	1.43 per cent	5.96 per cent
Rs 1,100 (average with State top-up)	26.69 per cent	15.72 per cent	65.59 per cent

Note: Author's computation. MPCE figures are estimates without imputation for items received free under welfare programmes. Sources: Ministry of Statistics and Programme Implementation [MoSPI] (2024) for MPCE; MoRD (2025) for rates and the reported average total pension.

Two comparisons follow. The first is that the entire central old-age pension for a person aged 60 to 79 amounts to 4.85 per cent of average rural per capita consumption, and 11.93 per cent of the consumption of the poorest five per cent of rural India, which is the stratum from which the below poverty line caseload is in principle drawn. The second, and the one specific to this article, is that the disability differential of Rs 100 amounts to 2.43 per cent of average rural per capita consumption. Whatever the extra cost of living with a severe disability in India may be, it is not two and a half per cent of average consumption.

No Indian estimate of that extra cost using the standard-of-living method was located, and the systematic review by Mitra, Palmer, Kim, Mont and Groce (2017) confirms that such estimates are scarce for low- and middle-income countries, while finding that costs are sizeable, vary with severity and stage of the life cycle, and are highest among persons with severe disabilities and those living alone or in small households. That combination describes the very old with precision. The available international estimates give a sense of magnitude. Morris and Zaidi (2020) estimate that European households containing adult receiving disability benefits require somewhat under thirty per cent more income, and those containing an adult reporting a work-related disability about forty-four per cent more, to reach the same standard of living. Morciano, Hancock and Pudney (2015) construct equivalence scales specifically for the older population in Great Britain and find that disability materially raises the income an older household needs. Table 4 applies these ratios to Indian rural consumption, not to assert an Indian figure, but to show what the differential would have to be to belong to the same order of magnitude as the problem it addresses.

Table 4. The disability differential against extra-cost benchmarks applied to rural monthly per capita consumption

Extra-cost benchmark	Implied extra need per month	Met by Rs 100	Met by Rs 300
19 per cent (lowest reviewed estimate)	Rs 783	12.8 per cent	38.3 per cent
30 per cent (Europe, benefit recipients)	Rs 1,237	8.1 per cent	24.3 per cent
44 per cent (Europe, work disability)	Rs 1,814	5.5 per cent	16.5 per cent

Note: Author's computation applying published extra-cost ratios to all-India rural MPCE of Rs 4,122. The ratios are drawn from non-Indian studies and are illustrative of magnitude only. Sources: Mitra et al. (2017); Morris and Zaidi (2020); MoSPI (2024).

3.4 Coverage: who is not on the register

The Census of India 2011 recorded 2.68 crore persons with disabilities, being 2.21 per cent of the population, of whom over one fifth were aged sixty and above (MoSPI, 2021). Applying that share to the Census total yields approximately 5.4 to 5.6 million elderly persons with disabilities in 2011, which implies a recorded disability prevalence of about 5.4 per cent among the 60-plus population of that year. Holding prevalence constant and applying it to the official population projections, the corresponding figure for 2026 is of the order of nine million. Against that stock, the disability pension carries 8.33 lakh beneficiaries of every age from eighteen upwards.

Even on the heroic assumption that every single beneficiary of the disability pension is elderly, the scheme would reach under fifteen per cent of the elderly disabled population as counted in 2011, and under ten per cent of the projected figure for 2026.

Table 5. Estimated population of elderly persons with disabilities against the disability pension caseload

Measure	Estimate	Basis
Persons with disabilities, all ages (2011)	2.68 crore	Census 2011
Of whom aged 60 and above	5.4 to 5.6 million	Over one fifth (MoSPI, 2021)
Implied prevalence among the 60-plus	5.42 per cent	Author's computation
Elderly persons with disabilities (2026)	about 9.0 million	Constant prevalence, GoI projections
Persons aged 60 and above with at least one limitation in activities of daily living	24 per cent of the 60-plus	LASI Wave 1
IGNDPS beneficiaries, all ages 18 and above	8.33 lakh	MoRD (2025)
Ratio of elderly disabled (2011) to IGNDPS caseload	6.8 to 1	Author's computation

Note: Author's computation. The Census and the survey measures are not interchangeable: the former is an administrative and self-reported count of specified disabilities, the latter a functional measure. Sources: MoSPI (2021, 2019); Perianayagam et al. (2022); MoRD (2025).

Two filters explain the shortfall, and both are legal rather than budgetary. The first is severity. The disability pension requires disability of eighty per cent and above, whereas the 2016 Act fixes the benchmark for its principal entitlements at forty per cent. A person with a fifty per cent locomotor disability is a person with benchmark disability for the purposes of reservation, free education and priority in treatment, and is no one at all for the purposes of income support. A Union Minister for Rural Development told the Rajya Sabha, during the tenure of the United Progressive Alliance Government, that the existing rates were inadequate and that the eighty per cent criterion should be replaced by forty per cent, adding that the task force headed by Mihir Shah had recommended universalisation, the lowering of the widow pension age and the indexation of pensions to inflation (Deccan Herald, n.d.-a). More than a decade later the threshold stands where it was, and the rates stand where they were.

The second filter is certification. The seventy-sixth round of the National Sample Survey found that only 28.8 per cent of persons with disabilities held a certificate of disability and that 21.8 per cent had received any aid or help from Government (MoSPI, 2019). A certificate is the entry ticket to the disability pension, and the barriers to obtaining one fall most heavily on precisely the population this article concerns: an eighty-year-old woman with a locomotor impairment must travel to a district hospital and appear before a medical board in order to establish that she cannot easily travel. Reporting from Karnataka records that beneficiaries of the disability pension in that State fell from 89,650 in 1344-1358 to 44,825 in 1344-1358 against a Census disabled population of over thirteen lakh, with disability rights advocates attributing the fall to documentation requirements and inaccessible processes, and the State department observing that persons with disabilities may opt for either the State or the central scheme (Deccan Herald, n.d.-b). That official observation is the exclusivity rule stated in plain administrative English.

A third and quieter observation may be recorded. Against a caseload of 8.33 lakh, releases under the disability pension in 1344-1358 were Rs 243.74 crore, which implies an average of about Rs 2,926 per beneficiary for the year, or Rs 244 per month against a nominal rate of Rs 300 (MoRD, 2025). Several innocuous explanations exist, including caseload movement within the year and the timing of releases against instalments. The figure is reported because the gap between the notified rate and the implied average is the kind of thing that a scheme with an annual life-certificate requirement and an Aadhaar authentication layer should be able to explain, and because the burden of explanation properly lies with the administration rather than with the claimant.

3.5 What the States do

Central assistance is a floor, and the States build on it unevenly. The Ministry records top-ups ranging from Rs 50 to Rs 5,700 per month, producing an average total pension of about Rs 1,100 in many States (MoRD, 2025), and the Comptroller and Auditor General records that thirty-three States and Union Territories operate their own pension schemes alongside NSAP (CAG, 2023). Odisha now pays Rs 3,500 per month to beneficiaries aged eighty and above and to persons with disability above eighty per cent under both NSAP and the Madhu Babu Pension Yojana (Press Trust of India, n.d.). Karnataka pays a graduated disability pension, a lower rate above forty per cent disability and a higher rate above seventy per cent, demonstrating that severity grading is administratively feasible within a State pension system; the State has also relaxed the central severity criterion to forty per cent for its own schemes, and reports that central assistance met about four per cent of the Rs 11,831 crore it spent on social security pensions across two financial years, covering 14.14 lakh beneficiaries against 82.57 lakh under State-funded schemes (Deccan Herald, n.d.-c). Rajasthan has gone further than any other State in legal form, guaranteeing a minimum pension of Rs 1,000 per month with an annual increment of fifteen per cent to elderly, disabled and widowed persons by statute under the Rajasthan Minimum Guaranteed Income Act, 2023.

Two conclusions follow from this variation, and they pull in opposite directions. The first is that the inadequacy of central assistance is partly repaired in some States and not at all in others, so that the practical content of the right depends on domicile. The second, and more important for the present argument, is that variation in quantum does not disturb the finding on structure. Odisha's enhancement equalises the eighty-plus and the severely disabled at the same Rs 3,500, which reproduces at a higher level exactly the convergence identified in Table 2. Rajasthan's statutory guarantee is expressed as a single minimum pension for all three categories. The States have raised the floor; none of the schemes examined has abandoned the premise that a person is to be counted once.

4. Discussion

4.1 A single-axis architecture

The findings show a benefit system that is intelligible only on the assumption that disadvantage arrives singly. That assumption has a name in Indian constitutional law since April 2021. In Patan Jamal Vali, the Supreme Court adopted the intersectional analysis developed by Crenshaw (1989, 1991) and held that a legal framework which requires a claimant to attribute her injury to one ground erases those who are injured by several at once. The Court preferred a systems-based to an identity-based conception, directing attention to co-constituted structures of disadvantage rather than to the multiplication of categories, and it located the source of the problem in legislative technique: as movements for the protection of particular groups were translated into statutes, the law developed into mutually exclusive terrains addressing different marginalities (paras 14 to 19). The Court was speaking of section 3(2)(v) of the 1989 Act, whose defect was evidentiary, requiring proof that the offence was committed on the ground of caste when caste, gender and disability had operated together. The transposition to social assistance is exact, and the consequences are worse. A criminal statute drafted on a single axis produces failures of proof. A benefit scheme drafted on a single axis produces a monthly deduction. The claimant is not asked to prove which disadvantage caused her poverty; she is asked to choose which disadvantage she wishes to be paid for, and the choice is enforced by an eligibility condition and by a register that has room for one entry. Where the criminal law at least permits the prosecution to plead alternative grounds, the benefit scheme forecloses the alternative by making receipt under one head a disqualification under the other. Nor is this a case in which the legislature has failed to notice the problem. Section 24(2) of the 2016 Act directs the appropriate Government, when devising schemes under section 24(1), to give due consideration to the diversity of disability, gender, age and socio-economic status. That is an instruction to design intersectionally, expressed in four words that name precisely the axes at issue here. Section 5(2)(b) requires community support services to be provided with due regard to age and gender. Section 96 provides that the Act is in addition to, and not in derogation of, any other law in force. The statutory logic is cumulative throughout. The scheme logic is substitutive. Where a statute and the executive instrument made in its shadow proceed on opposite premises, it is the instrument that must yield.

4.2 The proviso as a justiciable standard

The proviso to section 24(1) deserves closer attention than it has received. It is unusual in Indian social legislation in fixing a quantified differential rather than a direction to endeavour, and it is not obviously defeated by the opening words of the sub-section, which qualify the obligation to formulate schemes by the limit of the appropriate Government's economic capacity and development. The structure of the provision is that economic capacity conditions whether and how far schemes are formulated; the proviso governs the quantum of assistance under schemes that have in fact been formulated. Once the appropriate Government has decided to pay Rs 500 to a person aged eighty and above, the proviso speaks: the quantum for a person with a disability under a similar scheme is to be at least twenty-five per cent higher. A government that pleads want of resources against the proviso is in the awkward position of having already found the resources for the comparator group.

Two objections are available and neither is fatal. The first is that the old-age pension and the disability pension are not "similar schemes" within the meaning of the proviso, so that no comparator exists. This is unpersuasive on the facts: the two sub-schemes sit within the same programme, are administered by the same ministry, are funded from the same budget head, use the same below poverty line test, are disbursed through the same mechanism and are recorded in the same management information system. If these are not similar schemes, the proviso has no application anywhere and the drafting was pointless. The second objection is that the comparison should be made at the level of total pension including State top-up rather than central assistance. That objection concedes the argument in principle while relocating it, because the proviso binds the appropriate Government, which under section 2(b) of the 2016 Act means the Central Government in relation to matters within its domain and the State Government in relation to its own. Each is answerable for its own quantum, and the observed State practice is to equalise rather than to differentiate, as Odisha's Rs 3,500 for both categories shows. The proviso is also the answer to the objection that cumulation invites duplication. A supplement is not a second pension. If the disability component were restructured as an addition to whichever primary pension a claimant receives, rather than as a rival to it, the anti-duplication concern would fall away entirely, because there would be nothing to duplicate: one pension, one register entry, one supplement calibrated to a certified condition. That is precisely the drafting technique Delhi already uses for its high support needs allowance, which is expressed to be payable in addition to the disability allowance.

4.3 Indirect discrimination and the Article 14 argument

An equality challenge to the design need not assert hostile intent, and would be weaker if it did. In Lt. Col. Nitisha v. Union of India (2021), the

Supreme Court formally recognised indirect discrimination under Articles 14 and 15(1), holding that discrimination may follow from the effects of a facially neutral norm rather than from its purpose, that unconscious bias and existing structures may perpetuate an unjust status quo, and that the enquiry proceeds by asking whether a norm disproportionately burdens a protected group and whether it is justified. The exclusivity condition is facially neutral in exactly the required sense. It applies identically to every applicant, and it says only that a person may not draw two pensions. Its burden falls entirely on the subset of applicants who qualify under more than one head, which is to say on the multiply disadvantaged, and on no one else. A person who is merely old loses nothing by the rule. A person who is old, widowed and disabled loses by it every month. The classification, if it is one, must then be justified. The purposes ordinarily advanced are the prevention of duplicate payment, the containment of fiscal exposure and administrative simplicity. Section 3(3) of the 2016 Act requires that discrimination on the ground of disability be shown to be a proportionate means of achieving a legitimate aim, which imports a structured proportionality enquiry into the statute itself. Prevention of duplication is a legitimate aim but is not rationally served by refusing a supplement to a certified condition, since the supplement does not duplicate anything. Fiscal containment is legitimate, but the costings in section 4.5 below show the sums to be small enough that the means are not necessary in any strong sense. Administrative simplicity is legitimate, and is genuinely served, but it is the least weighty of the three and cannot alone support a rule whose entire operation is to remove money from the poorest claimants in the system.

4.4 The international standards, and what they require

India ratified the Convention on the Rights of Persons with Disabilities on 1 October 2007, and the 2016 Act is expressed in its preamble to be an Act to give effect to that Convention. Article 28(2) of the Convention requires States Parties to take appropriate steps to safeguard the right to social protection, including measures to ensure access by persons with disabilities, and in particular by older persons with disabilities, to social protection and poverty reduction programmes; to ensure access to State assistance with disability-related expenses, including financial assistance and respite care; and to ensure equal access to retirement benefits and programmes. Three features of that text bear on the present question. It names older persons with disabilities expressly, as a group requiring particular attention. It treats assistance with disability-related expenses and access to retirement benefits as separate obligations in separate sub-paragraphs, which is difficult to reconcile with a domestic rule that makes the receipt of one a disqualification from the other. And it locates the disability-related obligation in expense rather than in status, which is the analytical move that the Rs 100 differential fails to make. The transposition dropped the age dimension. The 2016 Act contains a dedicated provision for women and children with disabilities in section 4, a dedicated chapter for persons with benchmark disabilities and another for persons with high support needs. It contains no corresponding provision for older persons with disabilities. Age enters the Act only through the general direction in section 24(2) and the reference to age in section 5(2)(b). The Convention's most explicit intersectional pairing, older persons with disabilities in Article 28(2)(b), has no operative counterpart in the implementing statute, and the scheme architecture examined above is the practical consequence of that silence.

The comparison with international practice is not flattering, but it is also not the whole story. The International Labour Organization reports that 38.9 per cent of persons with severe disabilities worldwide receive a disability benefit and that 79.6 per cent of persons above retirement age receive a pension, leaving 146 million persons with severe disabilities and 165 million persons above retirement age uncovered (International Labour Organization [ILO], 2024). India's headline coverage of the elderly is not the outlier; its treatment of the overlap is. The Social Protection Floors Recommendation, 2012 (No.

202) frames its guarantees by contingency across the life cycle, providing for basic income security for persons of active age who are unable to earn sufficient income, in particular in cases of sickness, unemployment, maternity and disability, and separately for older persons. A floor constructed by contingency is additive by design, because a person may encounter more than one contingency. A floor constructed by status is not.

It is worth noticing that Indian law itself adopts the contingency framing when it is drafting for workers rather than for the poor. Section 2(78) of the Code on Social Security, 2020, which came into force on 21 November 2025, defines social security as measures to provide income security "particularly in cases of old age, unemployment, sickness, invalidity, work injury, maternity or loss of a breadwinner". Old age and invalidity appear in the same list, as distinct contingencies that one person may encounter in sequence or together. The taxonomy of the Code is right; the taxonomy of the scheme is wrong; and the person who falls between them is outside the Code because she is not a worker and inside the scheme because she is poor.

4.5 Convergence, multiplicity and the cost of doing better

There is an irony in the record that should be confronted rather than enjoyed. In Dr. Ashwani Kumar v. Union of India (2019), the Supreme Court, hearing a petition on the rights of the elderly under Article 21, directed that the Government of India have a relook at its schemes and consider overhauling them so as to bring about convergence and avoid multiplicity, and further that the Union and the States revisit the grant of pension to the elderly so as to make it more realistic. The direction was aimed at fragmentation. But convergence has two meanings. It may mean that a claimant deals with one window, one application and one payment, which is an administrative virtue and precisely what the Court appears to have had in mind. Or it may mean that overlapping claims are collapsed into a single benefit at the lowest common rate, which is a substantive loss. The scheme architecture has delivered the second while the Court asked for the first. Avoiding multiplicity of schemes is not the same as avoiding multiplicity of disadvantages, and the second cannot be legislated away.

The alternative is a disability supplement rather than a disability pension: an amount payable in addition to whichever primary pension a claimant draws, calibrated to certified severity, and indexed. Table 6 costs that reform on stated assumptions.

Table 6. Estimated annual cost of a disability supplement payable in addition to the old-age pension

Scenario and prevalence assumption	Beneficiaries	Supplement of Rs 100	Supplement of Rs 300
A. Census prevalence of 5.42 per cent applied to the 221 lakh IGNOAPS caseload	11.98 lakh	Rs 144 crore (1.49 per cent of NSAP)	Rs 431 crore (4.47 per cent of NSAP)
B. LASI functional measure of 24 per cent applied to the same caseload	53.0 lakh	Rs 636 crore (6.59 per cent of NSAP)	Rs 1,909 crore (19.78 per cent of NSAP)
C. Restoring the twenty-five per cent uplift at 80 and above	Per beneficiary	Rs 125 per month, Rs 1,500 per year	Not applicable

Note: Author's computation against the NSAP allocation of Rs 9,652 crore for 1344-1358. Scenario A uses the administrative prevalence implied by the Census; scenario B uses a functional measure and is therefore an upper bound that would require a different certification test. Sources: MoRD (2025); MoSPI (2021); Perianayagam et al. (2022).

The lower bound is the significant number. Paying the existing Rs 100 differential as a supplement to the elderly disabled who are already on the register, already identified, already authenticated and already receiving money every month costs about Rs 144 crore a year, which is one and a half per cent of the programme's own budget and well under one per cent of the sum by which that budget was increased between 1344-1358 and 1344-1358 across the pension sub-schemes. A reform of this size does not need a fiscal argument; it needs a drafting amendment.

4.6 What the argument does not establish

Three qualifications limit the claims made here. First, the coverage estimates rest on a Census that is fifteen years old and on the assumption that disability prevalence among the elderly has remained constant, which is unlikely to be exactly true and could err in either direction: improved survival at older ages raises prevalence, while better nutrition and cataract surgery reduce it for particular impairments. Second, the extra-cost benchmarks in Table 4 are not Indian, and the honest position is that India lacks the study that would settle the question. Commissioning one is itself a recommendation. Third, the argument establishes that the design is unlawful on the face of the proviso and indefensible on the evidence, but it does not establish that a court would grant relief. Section 24(1) opens with the language of economic capacity, and the Supreme Court in Ashwani Kumar was careful to record that revisiting pension quantum depends on the availability of finances. A litigant would have to persuade a court that the proviso operates independently of that qualification. The argument for that reading is set out in section 4.2; it has not been tested, and this article does not pretend that the outcome is obvious.

5. Conclusion

The finding of this study is narrow and checkable. Central assistance under the National Social Assistance Programme attaches Rs 100 per month to a certified disability of eighty per cent or more in a person aged 60 to 79, and nothing at all from the age of 80, when the old-age, widowhood and disability rates converge at Rs 500. That convergence places the programme outside the proviso to section 24(1) of the Rights of Persons with Disabilities Act, 2016, which requires a differential of at least twenty-five per cent, by a margin of Rs 125 per month. The disability pension reaches 8.33 lakh persons of all ages against roughly nine million elderly persons with disabilities, and the exclusivity conditions in State eligibility rules ensure that those who qualify under two heads are paid under one.

Three reforms follow, and each is drafted rather than aspirational. The first is to restructure the disability pension as a disability supplement payable in addition to any primary pension, which removes the anti-duplication objection at its root because a supplement duplicates nothing; the technique is already in use in Delhi's high support needs allowance. The second is to replace the eighty per cent severity threshold with the forty per cent benchmark used throughout the 2016 Act, and to grade the supplement by severity as Karnataka already does, so that the entitlement tracks the statute rather than an inherited administrative convention that the Government itself proposed to abandon in 2012. The third is to restore the statutory differential at 80 and above, at a cost of Rs 125 per beneficiary per month, and to state the differential in the scheme guidelines as a percentage of the primary rate so that it cannot be extinguished again by the next enhancement of the primary rate. The lower bound of the total cost, for beneficiaries already on the register, is about Rs 144 crore a year.

Two questions remain open and are worth naming. The first is empirical: no Indian estimate of the extra costs of disability by the standard-of-living method exists, and until one does, every proposed differential, including the twenty-five per cent that Parliament has already enacted, rests on an intuition rather than on a measurement. The second is doctrinal, and is the more interesting. Patan Jamal Vali diagnosed Indian statutes as mutually exclusive terrains addressing different marginalities, and prescribed an intersectional lens for reading them. Whether that lens can do work outside the adjudication of a completed wrong, and can be turned on the design of a benefit scheme before anyone is prosecuted for anything, is a question the courts have not yet been asked. The rate table set out in this article is a good place to ask it.

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Author Declaration

The author declares that this manuscript is original, has not been previously published and is not under consideration by any other journal. The research involved no human participants, no animal subjects and no personal or identifiable data, and relies exclusively on published statutes, judgments, government reports and peer-reviewed literature; no institutional ethics approval was therefore required. The ethical considerations bearing on the study are set out in section 2 and in the accompanying Materials and Methods file. The author declares no conflicts of interest, financial or otherwise.