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STANDING COMMITTEE ON FINANCE

(2010-11)

FIFTEENTH LOK SABHA

Ministry of Finance
(Department of Financial Services)

THE PENSION FUND REGULATORY AND DEVELOPMENT AUTHORITY BILL, 2011

FORTIETH REPORT

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LOK SABHA SECRETARIAT
NEW DELHI

August, 2011/ Bhadra, 1933 (Saka)

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Presented to Lok Sabha on 30 August, 2011

Laid in Rajya Sabha on 30 August, 2011

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* ***Not appended in cyclostyled copy***

COMPOSITION OF STANDING COMMITTEE ON FINANCE – 2010-11

Shri Yashwant Sinha - Chairman

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3. Vacant**
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5. Shri Harishchandra Chavan
6. Shri Bhakta Charan Das
7. Shri Khagen Das
8. Shri Gurudas Dasgupta
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18. Shri Manicka Tagore
19. Dr. M. Thambidurai
20. Shri Anjankumar M. Yadav
21. Dr. Kavuru Sambasiva Rao*

RAJYA SABHA

22. Shri S.S. Ahluwalia
23. Shri Raashid Alvi
24. Shri Vijay Jawaharlal Darda
25. Shri Piyush Goyal
26. Shri Moinul Hassan
27. Shri Satish Chandra Misra
28. Shri Mahendra Mohan
29. Dr. Mahendra Prasad
30. Dr. K.V.P. Ramachandra Rao
31. Shri Y.P. Trivedi

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* Nominated to this Committee w.e.f. 28.01.2011 vice Shri Y.S. Jagan Mohan Reddy, ceased to be a member of the Committee on his resignation from Lok Sabha.

** Shri Sudip Bandyopadhyay, MP ceased to be the Member of the Committee w.e.f 12.07.2011 consequent upon his induction to the Union Council of Ministers

INTRODUCTION

I, the Chairman of the Standing Committee on Finance, having been authorized by the Committee, present this Fortieth Report on the Pension Fund Regulatory and Development Authority Bill, 2011.

2. The Pension Fund Regulatory and Development Authority Bill, 2011 (PFRDA Bill, 2011) introduced in Lok Sabha on 24 March, 2011, was referred to the Committee on 29 March, 2011 for examination and report thereon, by the Speaker, Lok Sabha under rule 331E of the Rules of Procedure and Conduct of Business in Lok Sabha. The Standing Committee on Finance had earlier examined the Pension Fund Regulatory and Development Authority Bill, 2005 and presented report on the same in the Parliament on 26 July, 2005. However, the said Bill (PFRDA Bill, 2005) could not be passed in the Parliament due to the lapse of 14th Lok Sabha.

3. The Committee obtained written information on various provisions contained in the PFRDA Bill, 2005 from the Ministry of Finance (Department of Financial Services).

4. The Committee, at their sitting held on 21 July and 18th August, 2011 took evidence of the representatives of the Ministry of Finance (Department of Financial Services).

5. The Committee, at their sitting held on 29 August, 2011 considered and adopted the draft report and authorised the Chairman to finalise the same and present it to the Parliament.

6. The Committee wish to express their thanks to the officials of the Ministry of Finance (Department of Financial Services) as well as the officials of Pension Fund Regulatory and Development Authority for appearing before the Committee and furnishing the requisite material and information which were desired in connection with the examination of the Bill.

7. For facility of reference, the observations/recommendations of the Committee have been printed in thick type in the body of the Report.

New Delhi;
29 August, 2010
07 Bhadra, 1933(Saka)

YASHWANT SINHA,
Chairman,
Standing Committee on Finance.

REPORT

I. Background

Pension reforms in most countries initially are driven by the budgetary difficulties of supporting a public pension system, the longer-term problems of ageing of the population and social change, including breakdown of traditional family support for old age income security, are equally important factors. However, in India, in the absence of a country-wide social security system (formal pension coverage being about 12% of the working population), while the ageing and social change are important considerations for introducing pension reform in the unorganised sector, fiscal stress of the defined benefit pension system was the major factor driving pension reforms for employees in the organized public sector (Government employees). In this regard, there were series of Budget announcements starting from 2001-02 and in the years 2002-03 and 2003-04, Government underlined the need for pension reforms for both Central Government employees and the workers in the unorganised sector. To implement these announcements the Government had introduced the New Pension System (NPS).

2. The New Pension System (NPS) is based on the concept of defined contribution pension system. The Government approved in August 2003 the proposal to implement the budget announcement of 2003-04 relating to introducing a new restructured defined contribution pension system for new entrants to Central Government service, except to Armed Forces, in the first stage, replacing the then existing system of defined benefit pension system. The new system would also be available, on a voluntary basis, to all persons including self employed professionals and others in the unorganised sector.

3. Accordingly the Central Government operationalised the New Pension System (NPS) from the 1st January, 2004 through a notification dated the 22nd December, 2003. The NPS is mandatory for new recruits to the Central Government services (except the armed forces). The Government had constituted an interim pension sector regulator named as "The Interim Pension Fund Regulatory and Development Authority" through a Government Resolution in October, 2003 as a precursor to a statutory regulator. The Pension Fund Regulatory and Development Authority Bill, 2005 (hereafter referred to as PFRDA Bill, 2005) was introduced in Lok Sabha in March, 2005 to establish a statutory Pension Fund Regulatory and Development Authority. The PFRDA Bill, 2005 was

referred to the Standing Committee on Finance on the 24th March, 2005 for examination and report thereon. The Standing Committee on Finance gave its Report on the 26th July, 2005. The Government proposed official amendments in January, 2009 to give effect to certain recommendations of the Standing Committee on Finance, but the official amendments could not be moved and the PFRDA Bill, 2005 could not be considered and passed and the same lapsed due to dissolution of the 14th Lok Sabha.

II. Rationale for legislation

4. An early legislative mandate was considered necessary as the NPS was already in place without the statutory regulatory mechanism. However, pending the passage of the PFRDA Bill, 2005, the Interim Pension Fund Regulatory and Development Authority has created the institutional arrangement of NPS Trust, central recordkeeping agency, pension fund and a trustee bank. Twenty-Seven State Governments and Union territories have adopted the NPS for their employees and are in the process of extending the NPS to their employees. Sixteen State Governments have already joined the NPS institutional architecture. The NPS has been launched for all citizens of the country including unorganised sector workers, on voluntary basis, with effect from the 1st May, 2009. It has now become necessary to replace the interim arrangements with proper infrastructure under a regulatory framework in order to avoid future complications.

5. On the need for the legislation on the pension sector, Secretary, Ministry of Finance (Department of Financial Services) during briefing of the Committee held on 21.7.2011 made the following oral submission:

> "A large number of employees of the Central Government, State/UT Governments and other entities had joined the NPS since its inception in January, 2004. In order to effectively invest and manage huge funds belonging to a large number of subscribers and to ensure the integrity of the NPS, creation of a statutory PFRDA with well-defined powers, duties and responsibilities was considered absolutely necessary and would benefit all NPS subscribers."

III. Salient features of the PFRDA Bill, 2011

6. In view of the urgency of the matter, the Pension Fund Regulatory and Development Authority Bill, 2011 is being introduced in Parliament to provide for the

establishment of a statutory Pension Fund Regulatory and Development Authority (PFRDA) to promote old age income security by establishing, developing and regulating pension funds, to protect the interests of subscribers of various pension fund schemes and for matters connected therewith or incidental thereto. The Pension Fund Regulatory and Development Authority Bill, 2011 was introduced in the Lok Sabha on 24 March, 2011 and the same has been referred to the Standing Committee on Finance on 29 March, 2011 for examination and report thereon. The Pension Fund Regulatory and Development Authority Bill, 2011, inter alia, provides for:

(*a*) establishing a statutory regulatory body to be called the Pension Fund Regulatory and Development Authority which will undertake promotional, developmental and regulatory functions in respect of pension funds;

(*b*) empowering the PFRDA to regulate the National Pension System, as amended from time to time;

(*c*) empowering the PFRDA to perform promotional, developmental and regulatory functions relating to pension funds (including authorising and regulating intermediaries) through regulations or guidelines, prescribing the disclosure standards, protecting the interests of subscribers to schemes of pension funds;

(*d*) authorising the PFRDA to levy fees for services rendered, etc., to meet its expenses;

(*e*) empowering the PFRDA to impose penalties for any violation of the provisions of the legislation, rules, regulations, etc.

Proposed modifications in the PFRDA Bill, 2011 vis-à-vis the PFRDA Bill, 2005

7. It has been stated in the objects and reasons of the Bill that the Pension Fund Regulatory and Development Authority Bill, 2011 is broadly on the lines of the PFRDA Bill, 2005 as modified by the official amendments proposed to the Bill by the Government in January, 2009. The salient features of the proposed modifications in the Pension Fund Regulatory and Development Authority Bill, 2011 are as under:—

(*a*) the foreign investment policy for pension sector intermediaries, (including the pension funds and central recordkeeping agency) would be determined and notified outside the proposed legislation under the Foreign Exchange Management Act, 1999. This is on lines with the recent legislations in the financial sector where foreign investment is determined under the Foreign Exchange Management Act, 1999. In the PFRDA Bill, 2005, as modified by the official amendments, the foreign investment policy for pension funds and central recordkeeping agency was part of the said Bill;

(*b*) to make a provision for establishment of PFRDA consisting of a Chairperson, three Whole-time Members and three Part-time Members instead of a Chairperson, three Whole-time Members and two Part-time Members as proposed in the PFRDA Bill, 2005, as modified by the official amendments;

(*c*) to make a provision that the period of transitional arrangement for continuance of the intermediary's business would be six months till his application for registration certificate is decided by the PFRDA instead of three months as provided in PFRDA Bill, 2005;

(*d*) to make certain new provisions providing that, —

(*i*) actions done by the Interim Pension Fund Regulatory and Development Authority would also be saved;

(*ii*) the New Pension System as provided in the PFRDA Bill, 2005 would be renamed as the National Pension System in the Pension Fund Regulatory and Development Authority Bill, 2011;

(*iii*) the National Pension System Trust would be recognised as an intermediary in the Pension Fund Regulatory and Development Authority Bill, 2011;

(*iv*) the main features of the National Pension System would be part of the statute and the Government notification of 22nd December, 2003 introducing the NPS could be modified through the regulations under the proposed legislation;

(*v*) no withdrwals shall be permitted from the individual Tier-I Pension Account, except as may be specified under the regulations; and

(*vi*) the provisions of clause 7 of the Pension Fund Regulatory and Development Authority Bill, 2011 relating to restriction on future employment of Members of the Pension Fund Regulatory and Development Authority would also be applied to the Chairperson and Members of the Interim Pension Fund Regulatory and Development Authority.

IV. Main recommendations of the Committee on PFRDA Bill, 2005 – 21st Report (14th Lok Sabha)

8. During the course of undertaking examination of the PFRDA Bill, 2005, for report thereon, the Committee had sought memoranda and had personal hearings of a cross-section of experts and representatives of employees associations, trade unions and individuals apart from taking evidence of the representatives of Ministry of Finance, Chairman, PFRDA and Chairman IRDA, with a view to seek clarifications on various aspects of the 'New Pension System' viz. contributory pension system and the provisions of PFRDA Bill, 2005. Most of the trade and employees unions contended that the 'contributory pension scheme' and the provisions of the PFRDA Bill seek to deprive government employees of their old age security guarantee by way of statutory pension, which is considered the best of social security measures. On the other hand, the Chambers of Commerce as well as most of the Experts have supported the pension reform measures and establishment of Pension Fund Regulatory and Development Authority. It has been contended that the defined benefit pension scheme for Civil Servants was beginning to consume an alarming proportion of Central and State Government revenues and was therefore becoming unsustainable, EPFO Members received poor returns on their contributions and on the other end of the spectrum, social assistance schemes did not reach many of the poorest.

9. The Committee, having considered the diverse views expressed from a cross-section of experts and representatives of employees associations, trade unions and individuals and the clarifications given by the Ministry of Finance were of the opinion that the reform process in the pension sector involving the setting up of the PFRDA as a statutory regulatory body for managing the NPS was an urgent necessity mainly on account of burgeoning fiscal stress of pension payments on the Central and State revenues and the need to provide a viable alternative to the populace at large to save for old age income security. The Committee added that the apprehensions expressed by the concerned sections on the new contributory pension system were borne out of genuine concerns. The Committee were of the opinion that such apprehensions could be minimised, if not totally eliminated, if proper safeguards were introduced in the larger interest of the subscribers- both the Government employees who are compulsorily covered under the scheme as well as the others. *After having considered the PFRDA Bill,*

2005 clause wise, the Committee approved the same for enactment subject to certain modifications/amendments/ recommendations.

10. The gist of the observations/recommendations in the 21st Report (14th Lok Sabha) of the Standing Committee on finance on the PFRDA, Bill 2005 are given below:

(i) Composition of Authority –(Clause 4)

The Committee recommended that the clause be rephrased to clearly depict the composition of the authority viz. (a) a Chairperson; (b) not more than three whole time members; and (c) not more than two part-time members. The Committee desired that selection of both whole-time and part-time members of the Authority should be confined to professionals having experience in economics or finance or law only.

(ii) Duties, Powers and Functions of Authority - (Clause 14)

The Committee were of the view that with specific reference to matters relating to protection of subscribers' interests, the following aspects should inter-alia be inserted in clause 14:

- Ensuring safety of the subscribers' contributions to various pension schemes and funds under the New Pension System;
- Ensuring payment of benefits or returns in accordance with guarantees, if any, attached to the pension schemes or investment options chosen; and
- Ensuring that the intermediation and other operational costs under the New Pension System do not have an adverse bearing on the returns to the subscribers.

(iii) New Pension System - (Clause 20)

(*a) Withdrawal from Pension Account:*

The Committee desired that even in the case of Tier I account, an element of flexibility should be provided under the New Pension System to enable subscribers to withdraw moneys to meet unforeseen and urgent expenses.

(b) *Benefits to subscribers*:

The Committee recommended that the option of 100% investment of the pension funds in Government Securities be made available to the subscribers and this aspect be indicated in clear terms in Clause 20 (c) of the PFRDA Bill.

The Committee recommend that in the matter of selection of pension fund managers preference be given to such companies which offer guarantees on returns.

As regards the coverage of the unorganised sector, the Committee desired that the Government must bring forward a comprehensive legislation in order to cater to the social security of the unorganised sector inclusive of pension coverage of the workforce simultaneous to the setting up of PFRDA as a statutory body.

(iv) Pension Funds – (Clause 23)

The Committee recommended that the aspect about one of the pension funds being from the public sector be specified in clear terms in Clause 23 of the PFRDA Bill which would be in the interest of subscribers.

(v) Registration of Intermediaries – (Clause 24)

The Committee were the opinion that the criteria for selection of other intermediaries who would become operative under the New Pension System viz. Central Record Keeping Agency etc. also need to be specified in the Bill.

The Committee were of the considered opinion that any decision relating to permitting FDI in the pension sector should be implemented only by way of bringing forward suitable amendment in the present legislation. They were further of the view that the decisions relating to permitting FDI in the pension sector and deployment of pension funds outside the Country, should, in no way be in variance with the related provisions applicable to the insurance sector.

(vi) Attachment of Assets and Supersession of Management of Intermediary – (Clause – 28)

The Committee found that no mention under this Clause had been made with regard to the appointment of an Administrator in the event of dissolution of the Board. The Committee desired that clause 28 be suitably amended for enabling the appointment of an Administrator.

(vi) Power to Make Regulations

The Committee recommended that a Pension Fund Advisory Committee on lines similar to that of IRDA may be set up, with the representatives of the employees and subscribers co-opted into it.

The Committee were of the view that the initial or broad contours of the regulations governing the implementation of the New Pension System under the infrastructure of

PFRDA should be framed and made clear in the public domain prior to the enactment of the PFRDA Bill.

(vii) Delegation of Powers – (Clause 50)

To protect the interests of the subscribers the Committee recommended that the representatives of the employees associations and subscribers should be co-opted in the special committees to be set up by the Authority.

V. The provisions incorporated in the PFRDA Bill, 2011 in pursuance to the recommendations of the Committee (21st Report - 14th Lok Sabha)

11. The recommendations accepted and the incorporated the PFRDA Bill, 2011 as furnished by the Ministry of Finance (Department of Financial Services) are summarized in the following table:

Sl. No.	Recommendation of the Standing Committee on Finance	Proposed Amendment in PFRDA Bill, 2011
1	Paragraph 62: to insert the following additional aspects in clause 14 to ensure safety of subscribers' contributions, payment of benefits in accordance with guarantees, if any, attached to the pension schemes or investment options chosen; and ensuring that costs under the NPS do not have an adverse bearing on returns.	**Accepted.** Sub-Clause (e) of Clause 14 of the PFRDA Bill, 2011 suitably worded.
2	Paragraph 65: to include the differentiation between Tier-I and Tier II accounts as a part of the basic or essential features of the New Pension System in clause 20 of the Bill.	**Accepted.** Clause 20 of the PFRDA Bill, 2011 suitably worded.
3	Paragraph 74: to make available to subscribers an option of 100% investment in Government securities and to indicate this in the Bill;	**Accepted.** Clause 20 suitably worded by adding a proviso to new sub-clause (d) of clause 20 of the PFRDA Bill, 2011.
4	Paragraph 79: to specify in the Bill that one of the pension funds would be from the public sector;	**Accepted.** A proviso in sub-clause (2) of Clause 23 of the PFRDA Bill, 2011 added.
5	Paragraph 86: Bill to include a provision	The prohibition of offshore

	regarding FDI; such decisions and decisions relating to deployment of pension funds outside the country not to be at variance with related provisions applicable to the insurance sector.	investment of subscribers' funds **accepted.** Clause 24 of the PFRDA Bill, 2011 inserted providing that no deployment of pension funds of subscribers overseas would be allowed.
6	Paragraph 89: to suitably amend clause 28 for enabling the appointment of an Administrator under this clause; and	**Accepted.** Sub-clause (3) of clause 30 of the PFRDA Bill, 2011 provides for management of affairs of the intermediary by the Administrator.
7	Paragraph 97: to co-opt representatives of employees' associations and subscribers in the special committees to be set up by PFRDA under clause 50.	**Accepted.** This has been addressed in the proposed Pension Advisory Committee under new Clause 44 of the PFRDA Bill, 2011.

Recommendations of the 21st report of the Committee that were partially accepted by the Government:

12. Recommendations of the 21st report of Standing Committee on Finance on PFRDA Bill, 2005 that are partially accepted by the Government as furnished by the Ministry of Finance (Department of Financial Services) are as below:

Sl. No.	**Recommendation**	**Proposal for Partial Acceptance in the PFRDA Bill, 2011**
1	Paragraph 59: to clearly depict the composition of the Authority; viz. (a) a Chairperson; (b) not more than three whole time members; and (c) not more than two part-time members; to select members of the Authority only from amongst professionals having experience in economics or finance or law; one of the part-time members to be a Central Government nominee.	It is proposed to accept the recommendation regarding number of full-time members but that regarding areas of specialisation/background the restriction may not be accepted. **(Clause 4 of the PFRDA Bill, 2011 suitably amended).**
2	Paragraph 67: to allow withdrawal from Tier I account also or repayable advance.	Sub-Clause (b) of Clause 20 of the PFRDA Bill, 2011 permits withdrawals under the Regulations. As the facility of withdrawal is provided under Tier-II account without any

		conditions attached, withdrawal should not be generally permitted from Tier-I pension account. Further, NPS is aimed at providing old age income security and not at meeting periodic or occasional fund requirements during the working period. If withdrawals were to be freely permitted, the link between contributions and final benefits would be weakened. In fact, unrestricted withdrawals will result in trends noticed in General Provident Fund and Employees' Provident Fund namely, small value balances at the time of retirement. This will reduce the terminal pension wealth available for purchase of annuities and defeat the very objective of providing meaningful old age income security. So, withdrawals for only limited purpose (e.g. critical illness of the subscriber) may be permitted under the regulations.
3	Paragraph 75: to give preference to such pension fund managers that guarantee returns.	It is being proposed that the criteria for selection will also include track record and ability to offer guaranteed returns. **(new clause 25 of the PFRDA Bill, 2011).**
4	Paragraph 85: to spell out the pre-requisites relating to capital structure and experience criteria for selection of pension funds and other intermediaries in the Bill.	It is proposed to incorporate only qualitative criteria for selection of intermediaries, including pension funds, such as minimum capital requirement, past track record, ability to provide guaranteed returns, costs and fees, geographical reach, customer base, information technology capability, human resources

		etc. **(new clause 25 of the PFRDA Bill, 2011).**
5	Paragraph 86: Bill to include a provision regarding FDI. Such decisions not to be at variance with related provisions applicable to the insurance sector.	FDI could be capped at any percent including at 26% under the general regulations framed under provisions of the Foreign Exchange Management Act, 1999. So, no express provisions are inserted in the PFRDA Bill, 2011.
6	Paragraph 94: to set up a Pension Advisory Committee on lines similar to that of IRDA, with the representatives of the employees and subscribers co-opted into it to enable in safeguarding the interests of the subscribers and help the authority in discharging the multifarious functions of regulating the pension funds and schemes	It is proposed to provide for the establishment of a Pension Advisory Committee, which will also have representatives of employees and subscribers which will advise the Authority on matters referred to it by the Authority. **(new clause 44 of the PFRDA Bill, 2011).**
7	Paragraph 95: to frame at least the broad contours of the regulations governing the implementation of the NPS and placed in the public domain before the enactment of the Bill. Parameters will be placed in the public domain by the Regulator after the Bill is passed and PFRDA is appointed.	The idea of regulations being in the public domain is acceptable. The Interim Pension Fund Regulatory and Development Authority (PFRDA) had placed preliminary draft regulations outlining the broad contours of registration, selection etc. of intermediaries, on the Ministry of Finance website for public comments. However, the final regulations can only be drafted by the Authority under clause 51 after passage of the PFRDA Bill, 2011.

VI. New provisions incorporated in the PFRDA Bill, 2011 vis-à-vis the PFRDA Bill, 2005

13. New provisions incorporated in the PFRDA Bill, 2011 vis-à-vis the PFRDA Bill, 2005 alongwith the rationale thereof as furnished by the Ministry of Finance, (Department of Financial Services) are given below:

Clause No.	**Provisions in PFRDA Bill,2005**	**New/revised provisions in PFRDA Bill, 2011**
Clause 2.(1) g	intermediary" includes pension fund, central recordkeeping agency, pension fund adviser, retirement adviser, point of presence and such other person or entity connected with collection, management, recordkeeping and distribution of accumulations;	intermediary" includes pension fund, central recordkeeping agency, **National Pension System Trust**, pension fund adviser, retirement adviser, point of presence and such other person or entity connected with collection, management, recordkeeping and distribution of accumulations;
Clause 2(1)(i)	New Pension System" means the contributory pension system referred to in section 20 whereby contributions from a subscriber are collected in an individual pension account using points of presence and a central recordkeeping agency and accumulated by pension funds for pay offs as specified by regulations;	"**National** Pension System" means the contributory pension system referred to in section 20 whereby contributions from a subscriber are collected **and accumulated** in an individual pension account using **a system of** points of presence ~~and~~, a central recordkeeping agency and ~~accumulated by~~ pension funds ~~for pay off~~ **as may** be specified by regulations;
Clause 5(1)	The Chairperson and every whole-time member shall hold office for such term as may be prescribed	**The Chairperson and every other whole-time member shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for reappointment :** **Provided that no person shall hold office as a Chairperson after he has attained the age of sixty-five years:** **Provided further that no person shall hold office as a whole-time member after he has**

		<u>attained the age of sixty-two years.</u>
Clause 5 (2)	A part-time member shall hold office for such term as may be prescribed.	**<u>A part-time member shall hold office as such for a term not exceeding five years from the date on which he enters upon his office.</u>**
Clause 12 (5)	Notwithstanding anything contained in clause (*c*) of sub-section (*3*), the Central Government may, by notification, extend the application of this Act to any other pension scheme [including any other pension scheme exempted and notified under clause (*c*) sub-section (*3*)].	Notwithstanding anything contained in clause (*c*) of sub-section (*3*), the Central Government may, by notification, extend the application of this Act to any other pension scheme [including any other pension scheme exempted and notified under clause (*c*) **<u>of</u>** sub-section (*3*)].
Clause 14 (2)(e)(i)	ensuring safety of the contribution of subscribers to various schemes of pension funds under the New Pension System.	ensuring safety of the contribution of subscribers to various schemes of pension funds ~~under the National Pension System~~ **<u>to which this Act applies</u>**
Clause 20 (2)(b)	no withdrawals shall be permitted from the individual pension account;	no withdrawals shall be permitted from the individual pension account, **<u>except as may be specified under the regulations;</u>**
Clause 29 (1)	For the purposes of adjudging under section 276, the Authority shall appoint any of its officers not below the rank specified by regulations to be an adjudicating officer for holding an inquiry as may be determined by regulations, after giving the person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.	For the purposes of adjudging under section ~~276~~ **<u>27</u>**, the Authority shall appoint any of its officers not below the rank specified by regulations to be an adjudicating officer for holding an inquiry as may be determined by regulations, after giving the person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.
Clause 30 (1)(d)	such other interim measures as may appear the Authority to be just and necessary,	such other interim measures as may appear **<u>to</u>** the Authority to be just and necessary,
Clause 50 (2)(a)	the tenure of Chairman, whole-time member and the tenure of part-time member under sub-section (1) and	~~the tenure of Chairman, whole-time member and the tenure of part-time member under sub-section (1) and~~

	sub-section (2) of section 5;	~~sub-section (2) of section 5;~~ **(TO BE DELETED).** **II) The clauses under sub-section (2) re-numbered from (a) to (j)**

14. While deposing before the Standing Committee on Finance, Secretary, Ministry of Finance (Department of Financial Service) has made the following oral submission as stated below:

> "As you have very correctly mentioned, there were some earlier recommendations which were accepted fully, some partially accepted and there are some new provisions which have been introduced. They are all in the nature of textual changes and they are not much significant things except the term of the Office of the Chairperson and the whole-time Member."

VII. Insight from the international experience on pension reforms

15. On being asked about the international experience on pension reforms and what have been learnt by the Government from these efforts the Ministry of Finance (Department of Financial Services) inter alia made the following written submission as stated below:

> "There is growing International trend towards movement away from the defined benefit pension schemes to defined contribution pension schemes. Even under the defined benefit schemes, there are parametric changes to reduce the benefit structure to bring down the funding gap, which arises basically from increasing longevity and dwindling fiscal resources to support these schemes. We have gained from the learning of other countries and mistakes these countries have made. For example, while taking the positive learning from the Chilean experience of introducing individual defined contribution retirement accounts, we have tried to avoid their criticism of high administrative cost and charges under the NPS by unbundling the functions of all the players (contribution collection, recordkeeping and accounting, asset management and benefit payouts) and providing full transparency in costs, fees and charges by selecting market players (Central Recordkeeping Agency and pension fund managers) through competitive bidding. Keeping investment choices simple and introducing an intelligent default option for uninitiated and less sophisticated subscribers is another design feature of NPS, which has been adopted following international practices. While many design features of NPS are incorporated based on international practices, the unbundling of functions and a Central Recordkeeping Agency framework is rather unique to India. Very few countries have experimented with a Central Recordkeeping Agency for the entire pension system."

VIII. Coverage of voluntary NPS

16. When the Committee asked the reasons for the low popularity of the voluntary NPS for all citizens including that of the unorganised sector workers, the Ministry of Finance (Department of Financial Services) furnished the following written submission:

> "The coverage of vast masses of unorganised sector workers under NPS is a tremendous challenge as about 88% of the workers are without the benefit of any formal pension provision. It requires a huge educational and awareness effort to inform and enthuse the workers to join a pension system with no easy withdrawal benefits for 30-40 years. Central Government has launched the co-contributory pension scheme in the form of "Swavalamban" in the Budget 2010-11 to allow unorganised sector workers to join NPS. On the request of the Central Government, two state Governments, namely, Haryana and Karnataka have also come forward to launch co-contributory pension schemes for specific group of workers to supplement pension contributions under "Swavalamban." Many other State Governments are also examining the possibility of joining the Swavalamban Scheme. Around 3 lakh subscribers had joined Swavalamban Scheme by 31st March, 2011, although it was launched in the second half of 2010-11. Around 51,000 subscribers have joined voluntary NPS for all citizens as on 31st March, 2011. It is expected that with financial literacy and awareness campaign, which is an integral part of the NPS, the number subscribers under voluntary NPS for all citizens and the Swavalamban would grow rapidly in the coming years."

17. The Committee note from the Ministry's submission that the reform process in the pension sector involving setting up of the Pension Fund Regulatory and Development Authority (PFRDA) as a statutory body for managing the National Pension System (NPS) was necessary mainly on account of the burgeoning fiscal stress of pension payments on Central and State revenues and the need to provide a viable alternative to the populace at large to save for old age income security. The Committee note that the official amendments proposed by the Government in pursuance to the recommendations of the Committee on PFRDA Bill, 2005 (21st Report, 14th Lok Sabha) could not be moved since the said Bill lapsed due to the dissolution of the 14th Lok Sabha. <u>The provisions of the Bill being broadly in line</u>

with the lines of the PFRDA Bill, 2005, the Committee reiterate in principle their recommendations on the PFRDA Bill, 2005 (21st Report, 14th Lok Sabha).

18. The Committee note that the NPS was launched as a compulsory scheme for the Government employees from January, 2004, and it was launched on voluntary basis for all citizens of the country including the unorganised sector workers w.e.f 1 May, 2009. The Committee further note that as on 16.07.2011, the total corpus of NPS has grown to Rs. 9924.72 crore with a subscriber base of 23.56 lakh. However, facts and figures made available to the Committee show that in the unorganised sector only around 3 lakh subscribers have so far joined the "Swavalamban" pension scheme, and that only around 51,000 have joined the voluntary part of the NPS so far. The Committee thus find that the subscriber base of the voluntary component of the NPS has been rather narrow, suggesting low popularity of the scheme launched on countrywide scale. The Committee would, therefore, expect the Government to make serious efforts to popularise the scheme so as to achieve the intended objectives.

19. The Committee having dwelt upon the various provisions of the Bill, recommend for enactment of the Bill with the modifications as recommended in the succeeding paragraphs.

IX. Performance of Pension Fund Managers

20. As per the information furnished by the Ministry of Finance (Department of Financial Services), as on 16.07.2011 the total corpus of NPS has grown to Rs.9924.72 crore with a subscriber base of 23.56 lakh which will expand further with regular uploading of the funds of the existing subscribers and also more State / UT Governments and other entities joining the NPS.

21. On being enquired about the performance of pension fund managers under the New Pension System as to whether their performance appraisal has been done and how the fund managers fare when compared with the performance of (rate of return) of Employees Provident Fund, the Ministry of Finance (Department of Financial Services) inter alia furnished their reply as stated under:

> “The contributions of the employees of the Central Government and State Governments were invested in the financial instruments only after the institutional architecture of NPS including the Central Recordkeeping Agency, Pension Fund Managers etc. was established. So the funds of the subscribers under NPS were invested with effect from April, 2008 onwards. The performance of the three pension fund managers for the Central Government employees indicate that the returns on subscribers’ contributions under NPS ranged between 16.38% and 8.05% during the period 2008-09 to 2010-11. For State Government employees the returns ranged between 11.34 to 5.94 during the period 2009-10 and 2010-11. For the period 2009-10 and 2010-11, the returns for Unorganised sector workers ranged between 12.52% and 1.82% for the Government securities, 12.66% and 4.02% for the Corporate bonds and 25.94% and 7.95% for equity. The details are given as below in the Table:

Returns under NPS for Government Employees

Years	**Central Government Employees**		**State Government Employees**	
	Highest Return	**Lowest Return**	**Highest Return**	**Lowest Return**
2008-09	16.38	12.18	-	-
2009-10	12.27	8.88	6.34	5.94
2010-11	8.45	8.05	11.34	9.88

Returns for NPS for Unorganised Sector (Tier I)

Years	Return on Government Securities		Return on Corporate Bonds		Return on Equities	
	Highest Return	Lowest Return	Highest Return	Lowest Return	Highest Return	Lowest Return
2009-10	10.02	1.82	10.04	4.02	25.94	7.95
2010-11	12.52	6.97	12.66	6.26	11.89	8.05

22. It may be mentioned that low investment returns for State Government employees and Unorganised sector workers in Government Securities and Corporate Bonds reflect the fact that these investments were made for short period and in short term instruments as the contributions of funds for these two sets of employees was irregular and in small lots which are less than the market lot for Government Securities and Corporate Bonds.

The details of the relative performance of fund managers is given as below:

Performance Snapshot

Central Government

	SBI		UTI		LIC	
Scheme CG	Returns	Rank	Returns	Rank	Returns	Rank
2008-2009	16.38	1	13.01	2	12.18	3
2009-2010	8.88	3	9.27	2	12.27	1
2010-2011	8.05	3	8.45	1	8.30	2
2011-2012**	0.33	1	0.12	2	0.04	3

**Returns for the period 4/1/2011 to 6/30/2011

State Government

	SBI		UTI		LIC	
Scheme SG	Returns	Rank	Returns	Rank	Returns	Rank
2009-2010*	6.34	1	5.94	3	6.03	2
2010-2011	9.88	3	11.34	1	10.77	2
2011-2012**	0.62	1	0.31	2	0.11	3

*Returns for the period 26/6/2009 to 31/3/2010 **Returns for the period 4/1/2011 to 6/30/2011

Unorganized Sector

	SBI		UTI		ICICI		IDFC		KOTAK		Reliance	
Scheme E- Tier I	Returns	Rank	Returns	Rank	Returns	Rank	Returns	Rank	Returns	Rank	Returns	Rank
2009-2010*	7.95	6	25.94	1	22.50	3	23.51	2	14.26	5	21.21	4
2010-2011	8.05	6	8.35	5	11.83	2	8.89	4	11.89	1	9.67	3
2011-2012**	-2.74	3	-2.80	4	-2.47	1	-2.61	2	-3.12	6	-2.95	5

*Inception date 1/5/2009 **Returns for the period 4/1/2011 to 6/30/2011

	SBI		UTI		ICICI		IDFC		KOTAK		Reliance	
Scheme C- Tier I	Returns	Rank	Returns	Rank	Returns	Rank	Returns	Rank	Returns	Rank	Returns	Rank
2009-2010*	9.94	3	4.02	6	10.04	1	9.86	4	10.01	2	4.54	5
2010-2011	12.66	1	9.20	4	9.41	3	6.26	6	10.86	2	7.82	5
2011-2012**	0.85	3	0.73	4	1.60	1	0.50	5	1.03	2	-0.35	6

*Inception date 1/5/2009 **Returns for the period 4/1/2011 to 6/30/2011

	SBI		UTI		ICICI		IDFC		KOTAK		Reliance	
Scheme G- Tier I	Returns	Rank	Returns	Rank	Returns	Rank	Returns	Rank	Returns	Rank	Returns	Rank
2009-2010*	10.02	1	1.82	6	4.51	2	2.48	5	3.50	3	2.62	4
2010-2011	12.25	2	12.52	1	7.71	4	6.97	6	9.14	3	7.71	5
2011-2012**	-0.07	5	-0.88	6	0.65	2	1.16	1	0.59	3	-0.06	4

*Inception date 1/5/2009 **Returns for the period 4/1/2011 to 6/30/2011

	SBI		UTI		ICICI		IDFC		KOTAK		Reliance	
Scheme E- Tier II	Returns	Rank	Returns	Rank	Returns	Rank	Returns	Rank	Returns	Rank	Returns	Rank
2009-2010*	0.20	6	0.30	4	0.31	3	0.23	5	1.26	2	3.04	1
2010-2011	7.86	5	10.16	2	10.12	3	7.05	6	11.66	1	9.51	4
2011-2012**	-2.60	2	-2.93	5	-2.69	3	-2.48	1	-3.15	6	-2.88	4

*Inception date 14/12/2009 **Returns for the period 4/1/2011 to 6/30/2011

	SBI		UTI		ICICI		IDFC		KOTAK		Reliance	
Scheme C- Tier II	Returns	Rank	Returns	Rank	Returns	Rank	Returns	Rank	Returns	Rank	Returns	Rank
2009-2010*	2.21	1	0.83	5	1.43	2	0.92	4	0.80	6	1.02	3
2010-2011	14.46	1	7.62	3	10.74	2	6.02	6	7.20	4	7.17	5
2011-2012**	1.09	4	1.56	3	1.98	1	0.74	5	1.84	2	-0.23	6

*Inception date 14/12/2009 **Returns for the period 4/1/2011 to 6/30/2011

	SBI		UTI		ICICI		IDFC		KOTAK		Reliance	
Scheme G- Tier II	Returns	Rank	Returns	Rank	Returns	Rank	Returns	Rank	Returns	Rank	Returns	Rank
2009-2010*	5.65	1	0.74	5	1.07	3	0.91	4	0.69	6	1.33	2
2010-2011	11.82	2	16.44	1	6.43	3	6.00	5	6.40	4	5.68	6
2011-2012**	-0.01	3	-0.83	6	0.41	2	1.99	1	-0.04	4	-0.10	5

*Inception date 14/12/2009 **Returns for the period 4/1/2011 to 6/30/2011

23. The NPS Trust has been constituted for taking care of the assets and funds under the NPS in the interest of the beneficiaries. Securities are being purchased by Pension Fund(s) on behalf of, and in the name of the Trustees. However, individual NPS subscribers remain beneficial owners of these securities, assets and funds. The Trustees manage the affairs of the NPS Trust with utmost trust, good faith and economy, consistent with the maintenance of efficiency of administration and sub serving the interests of the beneficiaries. The Board of Trustees are required to strictly adhere to Investment guidelines, code of conduct and ethics and such other guidelines/directions as may be issued by PFRDA from time to time. The allocation of funds of the subscribers of the Central Government amongst three different pension fund managers is done based on their past performance only.

24. The Employees' Provident Fund Organisation (EPFO) has declared rate of return for the subscribers to the Employees' Provident Fund at the rate of 8.5% for the year 2008-09 and 2009-10. The declared rate was 9.5% for 2010-11. However, it may be mentioned that this is an administered rate of return which includes return on investments as well as some reserve funds and penalties and damages for violations of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, which have been utilised by EPFO to declare the rate of interest. So, these are strictly not investment returns of the Employee' Provident Fund. For example, the EPFO decided to utilise Rs. 1732 crore lying in the interest suspense account during 2010-11 to declare the rate of interest at 9.5%. Similarly, for the year 2008-09, contingency reserve fund was utilised to declare rate of interest of 8.5%."

25. The Committee find that the performance of the Fund Managers appointed by the PFRDA to implement the scheme has been uneven over the last three years or so and the returns generated by them show a downward trend, particularly with regard to the unorganised sector, where the returns have been abysmal. The Committee are extremely concerned to note the negative returns in some of the schemes involving all fund managers. Against such a dismal performance scenario, it becomes imperative that the PFRDA exercises stringent monitoring and reviews the guidelines /

<u>instructions issued to the Fund Managers periodically and strictly evaluates their performance with a view to ensuring stability of returns to the subscribers</u>.

X. Foreign Investment Policy for Pension Sector

26. Though there is no provision in the Bill on the issue of policy for Foreign Direct Investment in pension sector, the same has been included as one of the salient features of proposed modifications in PFRDA Bill, 2011 vis-à-vis PFRDA Bill, 2005. It has been stated in the objects and reasons of the PFRDA Bill, 2011 as given below:-

> "…the foreign investment policy for pension sector intermediaries, (including the pension funds and central recordkeeping agency) would be determined and notified outside the proposed legislation under the Foreign Exchange Management Act, 1999. This is on lines with the recent legislations in the financial sector where foreign investment is determined under the Foreign Exchange Management Act, 1999. In the PFRDA Bill, 2005, as modified by the official amendments, the foreign investment policy for pension funds and central recordkeeping agency was part of the said Bill"

27. On the issue the Committee had earlier made the following recommendation as stated under:

> *"The Committee were of the considered opinion that any decision relating to permitting FDI in the pension sector should be implemented only by way of bringing forward suitable amendment in the present legislation. They were further of the view that the decisions relating to permitting FDI in the pension sector and deployment of pension funds outside the Country, should, in no way be in variance with the related provisions applicable to the insurance sector."*

28. On being asked why the foreign investment ceiling for pension sector not prescribed in the PFRDA Bill 2011 by leaving the decision on FDI in the executive domain, the Ministry inter alia furnished the following written reply as stated under:

> "The Government is of the view that the Foreign investment in Pension Sector may be capped at 26% on par with that in the Insurance Sector under the general regulations framed under the Foreign Exchange Management Act, 1999 (FEMA). However, no express provision has been made in the PFRDA Bill, 2011. This is in line with most of the legislations in the Financial Sector. For example, the foreign investment limit for private sector banks under the Banking Regulation Act, 1949, stock exchanges, depositories, clearing

corporations under the securities laws, asset reconstruction companies under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, credit information companies under the Credit Information Companies (Regulation) Act, 2005 is not determined under the respective legislations under which these are constituted, but under the regulations framed under FEMA. Even for State Bank of India, the foreign investment limit is administratively determined and not under the State Bank of India Act, 1955. It may be mentioned that the regulations framed under FEMA are required to be laid in both the Houses of Parliament for ratification and as such the FEMA route specifying foreign investment ceiling is also subject to Parliamentary scrutiny. In view of this, the Government is of the view that foreign investment ceiling for Pension sector may not be specified in the PFRDA Bill, 2011. The ceiling may be specified under the regulations under FEMA."

29. The Committee note that foreign investment in the pension sector may be capped at 26% under the general regulations framed under the Foreign Exchange management Act, 1999 (FEMA) which, as stated in the reply of Government, is in line with most of the legislations in the financial sector. Further, the Committee believe that spelling out the foreign investment policy in the pension sector clearly in the provisions of the PFRDA Bill will be more in the fitness of things, as the pension fund managers holding the stake of the old age income security of their clients cannot be compared with other agencies/companies/institutions in the financial sector. <u>The Committee, therefore, would like to reiterate their earlier recommendation that any decision relating to permitting FDI in the pension sector should be implemented only by way of bringing forward suitable amendment in the present legislation.</u>

XI. Composition of Authority

30. Clause 4 of the PFRDA, 2005 reads as under:

"The Authority shall consist of a Chairperson and not more than five members, of whom at least three shall be whole-time members, to be appointed by the Central Government from amongst persons of ability, integrity and standing and having experience and knowledge in economics, finance, law or administrative matters with at least one person from each discipline."

31. The Committee made their observation/recommendation in the 21st report as stated under:

> *"The above provision conveys that the Authority shall include two part-time members. Yet the qualifications required to be met for selection of part-time members in terms of expertise and knowledge in specified fields have not been provided in the clause. With a view to provide clarity, the Committee recommend that the clause be rephrased to clearly depict the composition of the authority viz. (a) a Chairperson; (b) not more than three whole time members; and (c) not more than two part-time members. The Committee further desire that selection of both whole-time and part-time members of the Authority should be confined to professionals having experience in economics or finance or law only. The Committee are also of the opinion that if the Central Government so desire, one of the part time members in the Authority could be their nominee*."

Clause 4 of the PFRDA Bill, 2011 reads as below:

"The Authority shall consist of the following Members, namely:—

(*a*) a Chairperson;
(*b*) three whole-time members; and
(*c*) three part-time members,

to be appointed by the Central Government from amongst persons of ability, integrity and standing and having knowledge and experience in economics, finance, law or administrative matters with at least one person from each discipline."

32. On being asked why the Government have not fully accepted the Committee's recommendation on the matter by including 'administration' as one of the fields of knowledge and experience to determine eligibility for appointment as member in the PFRDA Board, the Ministry of Finance (Department of Financial Services) inter alia furnished their reply as stated under:

> "It is proposed to accept the recommendation regarding number of whole-time members. As regards the areas of specialisation/background for the Members of PFRDA Board, with a view to broadbase the selection zone, it has been provided that Members of PFRDA would be appointed by the Central Government from amongst persons of ability, integrity and standing and having knowledge and experience in economics, finance, law or administrative matters with at least one person from each discipline."

33. On the issue of composition of the Pension Fund Regulatory Development Authority (PFRDA), the Committee note that the Government has accepted their earlier recommendation except for persisting to include 'administration' as one of the fields of knowledge and experience to determine eligibility for appointment as one of the members of the Authority. The reason adduced by the Government for including 'administration' as one of the fields of knowledge and experience apart from economics, finance and law is stated to be to broadbase the selection zone. The Committee are, however, not convinced by this explanation given by the Government and believe that with economics, finance and law as the fields of experience and knowledge for appointment as members of the Authority, the selection zone would be broad enough. <u>They would, therefore, reiterate their earlier recommendation that membership of the Authority should be confined to professionals having experience in economics or finance or law only</u>.

XII. Clause 14 - Duties, Powers and Functions of Authority

34. Clause 14 (1)(2) (e) of the PFRDA, 2005 reads as under:

> "(1) Subject to the provisions of this Act and any other law for the time being in force, the Authority shall have the duty, to regulate, promote and ensure orderly growth of the New Pension System and pension schemes to which this Act applies and, to protect the interests of subscribers of such System and schemes.
>
> (2) Without prejudice to the generality of the provisions contained in sub-section (1), the powers and functions of the Authority shall include-
>
> (e) protecting the interests of subscribers;"

35. The Committee made their observation/recommendation in the 21st report as stated under:

"In view of the fact that vast powers are going to be bestowed on the PFRDA, which include, issuing of certificates of registration to pension funds and other intermediaries; promoting efficiency in the development and functioning of pension funds and schemes; approving and regulating pension schemes; and adjudication of disputes, the Committee are of the view that with specific reference to matters relating to protection of subscribers' interests, the following aspects should inter-alia be inserted in clause 14:

- *Ensuring safety of the subscribers' contributions to various pension schemes and funds under the New Pension System;*
- *Ensuring payment of benefits or returns in accordance with guarantees, if any, attached to the pension schemes or investment options chosen; and*
- *Ensuring that the intermediation and other operational costs under the New Pension System do not have an adverse bearing on the returns to the subscribers.*"

36. Clause 14 (1)(2) (e) of the PFRDA, 2011 reads as under:

"(*1*) Subject to the provisions of this Act and any other law for the time being in force, the Authority shall have the duty, to regulate, promote and ensure orderly growth of the National Pension System and pension schemes to which this Act applies and to protect the interests of subscribers of such System and schemes.

(*2*) Without prejudice to the generality of the provisions contained in sub-section *(1),* the powers and functions of the Authority shall include–

(*e*) protecting the interests of subscribers by—

(*i*) ensuring safety of the contribution of subscribers to various schemes of pension funds to which this Act applies;

(*ii*) ensuring that the intermediation and other operational costs under the National Pension System are economical and reasonable;"

37. The Committee in their earlier report (21st Report, 14th Lok Sabha) had recommended that aspects relating to protection of subscribers' interest should be provided for in the Bill. The Committee are happy to note that the Ministry has duly addressed the concern expressed by them for protecting the interest of the

subscribers in Clause 14 (e) of the Bill. <u>The Committee, however, would like to recommend that Clause 14(e)(i) should be appropriately amended so as to make it mandatory for pension fund managers to insure the funds deposited by the subscribers in order to provide complete security for their funds</u>.

XIII. Clause 20 - National Pension System – withdrawals, guaranteed returns, etc.

38. Clause 20 of the PFRDA, 2011 reads as under:

"20. (*1*) The contributory pension system notified by the Government of India in the Ministry of Finance *vide* notification number F. No. 5/7/2003-ECB&PR dated the 22nd December, 2003, shall be deemed to be the National Pension System with effect from the 1st day of January, 2004, and such National Pension System may be amended from time to time by regulations.

(*2*) Notwithstanding anything contained in the said notification, the National Pension System shall, on the commencement of this Act, have the following basic features, namely:–

(*a*) every subscriber shall have an individual pension account under the National Pension System;

(*b*) *no withdrawals shall be permitted from the individual pension account, except as may be specified under the regulations*;

(*c*) the functions of recordkeeping, accounting and switching of options by the subscriber shall be effected by the central recordkeeping agency;

(*d*) there shall be a choice of multiple pension funds and multiple schemes:

Provided that one of the schemes shall offer the subscriber an option of investing hundred per cent. of his funds in Government securities;

(*e*) there shall be portability of individual pension accounts in case of change of employment;

(*f*) collection and transmission of contributions and instructions shall be through points of presence to the central recordkeeping agency;

(*g*) *there shall not be any implicit or explicit assurance of benefits except marketbased guarantee mechanism to be purchased by the subscriber*;

(*h*) a subscriber shall not exit from the National Pension System except as may be specified by the regulations; and

(*i*) at exit, the subscriber shall purchase an annuity from a life insurance company in accordance with the regulations.

(*3*) In addition to the individual pension account mentioned in clause (*a*) of subsection (*2*), a subscriber may also, at his option, have an additional account under the National Pension System having the features mentioned in clauses (*c*) to (*g*) of sub-section (*2*) and also having the additional feature that the subscriber shall be free to withdraw part or all of his money at any time from the additional account."

39. On the issue of withdrawal from the pension accounts under NPS, the Committee made their observation/recommendation in the 21st report as stated under:

> *"The New Pension System provides for a 'non withdrawable' and compulsory Tier I account and a voluntary Tier II account, for a Government servant. Anyone who wants a 'withdrawable' facility has to opt for Tier II also. The Committee are of the view that this would be an additional burden particularly to Group 'D' employees. The Committee, therefore, desire that even in the case of Tier I account, an element of flexibility should be provided under the New Pension System to enable subscribers to withdraw moneys to meet unforeseen and urgent expenses. For instance, the subscribers could be allowed to take one repayable advance from their accounts after completion of 15 years of service and also permanently withdraw upto 50% of his contribution after completion of a minimum of 25 years of service to meet expenses on exigencies, which should be appropriately listed by regulations."*

40. On the issue of returns on investments of pension funds by subscribers, the Committee further recommended as follows:

> *"The Committee note that a major cause of concern for the employees is the fact that unlike the present pension system which guarantees a monthly retirement income of 50% of the average of the last ten months pay, devoid of any risk, the New Pension System leaves the likely retirement benefits of the subscribers to be determined by the market. The Committee's attempt to address this issue inter alia evoked the response that the Government was open to the ideas of permitting or giving preference to such pension fund managers also who guarantee returns to operate in the market; and making*

available to the subscribers the option of 100% investment of pension funds in Government securities.

The Committee recommend that the option of 100% investment of the pension funds in Government Securities be made available to the subscribers and this aspect be indicated in clear terms in Clause 20 (c) of the PFRDA Bill.

The projections of likely returns or benefits that may accrue to the subscribers under different possible investment options as furnished by the Ministry reveal that returns from an investment option involving equities would amount to much more than the returns on investments in Government Securities. Even in the case of pessimistic asset return assumptions, the returns to an employee are expected to be more beneficial than the present pension scheme of Central Government employees which provides for a monthly pension amounting to 50% of the average of the pay drawn in the last ten months of service and the facility of commutation. However, with the specific intention of minimizing, if not totally eliminating the apprehensions or fears expressed about market based returns, the Committee recommend that in the matter of selection of pension fund managers preference be given to such companies which offer guarantees on returns. At the same time, it needs to be ensured that the subscribers have sufficient options of choosing funds/schemes that may fetch high returns on the basis of market performance."

41. On being asked what "marketbased guarantee mechanism", the Ministry of Finance (Department of Financial Services) inter alia furnished their reply as stated below:

"Types of guarantees

There are four types of guarantees in the funded pension schemes that result in a contingent liability for the funded pension system. The first two relate to the accumulation stage while the last two apply during the payout phase. These are:

- Absolute return guarantees
- Relative rate of return guarantees (sector and benchmark-based)
- Guarantees on benefit payouts
- Minimum pension guarantees

The financing arrangements for such guarantee require a fairly developed financial market including the financial derivatives market. Currently, no Pension Fund Management Company in India offers guaranteed pension products. When the fund managers are registered under the PFRDA Act, possibility would be explored to register those fund managers also which are capable of offering any kind of guaranteed pension products. The investment guidelines would be framed by PFRDA in such a manner that besides the other financial instruments an option would be given to the subscribers of the New Pension System where 100% investment in government securities would be permitted."

42. The Committee had emphasized in their earlier Report (21st Report, 14th LS) the need for making provision in the PFRDA Bill, 2005 to enable subscribers to avail repayable advance as well as to withdraw from their pension accounts. Pursuant to the Committee's recommendations, a provision has now been incorporated in the Clause 20(b) of PFRDA Bill, 2011 which reads – '*no withdrawals shall be permitted from the individual pension account, except as may be specified under the regulations*.' <u>In this regard, the Committee would recommend that the spirit of the Committee's earlier recommendations may be captured in the above clause relating to 'withdrawals' by wording the same positively as – '*withdrawals shall be permitted from the individual pension account, as may be specified under the regulations*</u>.'

43. <u>The Committee desire that the facility of repayable advance should also be provided to subscribers to enable them to meet important commitments. For this purpose, the subscribers may be allowed to take a repayable advance from their accounts, say after 10-15 years of service. Suitable enabling amendments may accordingly be made in the Bill</u>.

44. The Committee, deeply concerned about the uncertainty of returns on the funds of the subscribers, are dismayed at the casual approach of the Government as reflected in Clause 20(g), wherein the hapless subscribers have no implicit or explicit assurance of benefits, except market based guaranteed return mechanism, neither tried nor tested. As any effective pension scheme needs to be underpinned by stability of returns and reasonable post retirement incomes, it is imperative that

Government should provide for minimum guaranteed return and not the mere camouflage of market based guarantee, which should not be less than the minimum return available currently under the defined benefit pension scheme. <u>The Committee therefore desire that the Government must devise a mechanism to enable subscribers of NPS to be ensured of such a minimum assured/guaranteed returns for their pensions so that they are not put to any disadvantage vis-à-vis other pensioners</u>. <u>The Committee would recommend that the minimum rate of return on the contributions to the pension fund of the employee should not be less than the rate of interest on the Employees Provident Fund Scheme.</u> In the absence of such a guarantee/assurance, the NPS cannot justifiably claim to provide 'old age income security.' Such a provision will also be complementary to the proposed Clause 25 wherein ability to provide guaranteed returns has been made one of the eligibility criteria for the fund managers. If there is any shortfall, then the Government in its Budget could bear the same and assume that additional responsibility. The Committee hope that this will go a long way in creating a sense of security amongst the employees that not only would their capital be safe but they would also be getting stable returns on the same. The Committee, therefore, recommend that Clause 20(2)(g) of the Bill should be altered accordingly.

XIV. Clause 23 - Pension Funds

45. Clause 23 of the PFRDA, 2005 reads as under:

> The Authority may, by granting a certificate of registration under sub-section (3) of section 24, permit one or more persons to act as a pension fund for the purpose of receiving contributions, accumulating them and making payments to the subscriber in such manner as may be specified by regulations.

(2) The number of pension funds shall be determined by regulations and the Authority may, in public interest, vary the number of pension funds.

(3) The pension fund shall function in accordance with the terms of its certificate of registration and the regulations made under this Act.

(4) The pension fund shall manage the schemes in accordance with the regulations.

46. The Committee made their observation/recommendation in the 21st report as stated under:

"The Committee note that in terms of the provisions of Clause 23, the PFRDA is entitled to grant a certificate of registration to one or more pension funds for the purpose of receiving contributions, accumulating them and making payments to the subscribers. As informed to the Committee, the Government have decided that one such pension fund would be from the public sector. The Committee, therefore, recommend that this aspect about one of the pension funds being from the public sector be specified in clear terms in Clause 23 of the PFRDA Bill which would be in the interest of subscribers."

47. Clause 23 of the PFRDA, 2011 reads as under:

23. (*1*) The Authority may, by granting a certificate of registration under sub-section (*3*) of section 26, permit one or more persons to act as a pension fund for the purpose of receiving contributions, accumulating them and making payments to the subscriber in such manner as may be specified by regulations.

(*2*) The number of pension funds shall be determined by regulations and the Authority may, in public interest, vary the number of pension funds:

Provided that at least one of the pensions fund shall be a Government company and wholly owned by a Government company or Government companies.

Explanation.—For the purposes of this sub-section, the expression "Government company" shall have the meaning assigned to it in section 617 of the Companies Act, 1956.

(*3*) The pension fund shall function in accordance with the terms of its certificate of registration and the regulations made under this Act.

(*4*) The pension fund shall manage the schemes in accordance with the regulations.

48. In their earlier Report, (21st Report, 14th Lok Sabha), the Committee had recommended that at least one of the pension funds should be from the public sector, which may be specified in the Bill itself. While revisiting this issue in view of the present day economic scenario, where volatility and uncertainties in the financial sector require to be adequately cushioned, the Committee are of the view that more players from the public sector should be encouraged to handle pension funds under NPS in the interest of subscribers. <u>The Committee, therefore, recommend that the proviso at Clause 23(2) should be amended appropriately to ensure that at least one-third of the fund managers are selected from the public sector</u>.

XV. Establishment of Pension Advisory Committee

49. Clause 44 of PFRDA, 2011 reads as under:

"44. (*1*) The Authority may, by notification, establish with effect from such date as it may specify in the notification, a Committee to be known as the Pension Advisory Committee.

(*2*) The Pension Advisory Committee shall consist of not more than twenty-five members, excluding *ex officio* members, to represent the interests of employees' associations, subscribers, commerce and industry, intermediaries, and organisations engaged in pension research.

(*3*) The Chairperson and the members of the Authority shall be the *ex officio* Chairperson and *ex officio* members of the Pension Advisory Committee.

(*4*) The objects of the Pension Advisory Committee shall be to advise the Authority on matters referred to it by the Authority."

50. On this issue, the Committee made their observation/recommendation in the 21st report as stated under:

"The Committee are of the opinion that constitution of an Advisory Committee, as provided in the case of IRDA would be beneficial in enabling the authority in making regulations under section 47. Moreover, as admitted by the Ministry, the

Pension sector or market is in a very nascent stage of development and firming up of regulatory aspects would be witnessed in course of time. The Committee, therefore, recommend that a Pension Fund Advisory Committee on lines similar to that of IRDA may be set up, with the representatives of the employees and subscribers co-opted into it. This would enable in safeguarding the interests of the subscribers and help the authority in discharging the multifarious functions of regulating the pension funds and schemes.''

51. On being asked why the Government not consider constituting the Pension Advisory Committee which would enable in safeguarding the interests of the subscribers and help the PFRDA in discharging the multifarious functions of regulating the pension funds and schemes, the Ministry of Finance,(Department of Financial Services) inter alia gave the following reply:

> "The objects of the Insurance Advisory Committee constituted under the IRDA Act, 1999 is to advise the IRDA on matters relating to the making of the regulations under section 26 of the IRDA Act, 1999. The Government is willing to constitute the Pension Advisory Committee exactly on the lines of Insurance Advisory Committee in the IRDA Act, 1999."

52. <u>The Committee are of the view that the Pension Advisory Committee to be constituted under Clause 44 (2) of the Bill should be made more representative by specifically providing that the representatives of stakeholders including the employees are directly made as Members of the Committee instead of *'members, to represent the interests of employees' associations, subscribers etc.'* as proposed in the Bill.</u> This change, the Committee believe, will enable the Advisory Committee to function as a truly representative body instead of being only a proxy representation of stakeholders.

53. The Committee also desire that the Pension Advisory Committee should be delegated more power and independence. As per the existing provision, the Pension Advisory Committee can only advise the Authority on matters referred to it by the Authority. When the Chairperson and members of the Board of the PFRDA are already the ex-officio Chairperson and members of the Pension Advisory

Committee, the provision that only matters referred to it by the Authority can be considered, limits the advisory role of the Committee. <u>The Committee, therefore, recommend that Clause 44(4) may be amended appropriately to allow the Pension Advisory Committee to play a more meaningful role by rendering advice suo-motu even on matters not referred to it</u>.

54. In conclusion, the Committee would like to emphasise that NPS is no longer New Pension Scheme but a National Pension System which is far wider in scope and far more comprehensive. <u>Therefore, the Committee would expect the Government to make concerted efforts to extend the coverage of the scheme in both public and private sector without remaining confined to Central Government employees</u>.

55. As the unorganized sector is a very important part of our society and economy, the Committee desire that their social security should be adequately safeguarded in the present era of craving for social inclusion. <u>The Committee would, therefore, like the Government to work out a tripartite kind of a scheme where the State Government, the Central Government and the unorganized sector workers could make contributions</u>. With such a comprehensive coverage, the present pension scheme which is rather narrow in scope now could move forward so as to truly justify its nomenclature as the National Pension System.

56. The Committee would further like to emphasise that the National Pension System should not put employees in a straitjacket or in a very rigid framework. <u>The Committee, therefore, desire greater flexibility in the operation of the scheme, whereby the employees will have the choice of the model / scheme as well as the fund managers</u>. They may also be permitted the flexibility to exercise this

choice/option periodically or even annually. The question of returns to be guaranteed will also thus depend on the option exercised by the employee. The Committee, therefore, believe that such flexibility in choice and ensuring employees' own volition will go a long way in not only dispelling the apprehensions in their minds but also making the scheme more acceptable and popular. <u>On the whole, the Committee would like the National Pension System to evolve in a manner that is more re-assuring to its subscribers</u>.

New Delhi;
<u>29 August, 2011</u>
07 Bhadra, 1933 (Saka)

YASHWANT SINHA,
Chairman,
Standing Committee on Finance.

NOTE OF DISSENT

Shri Moinul Hassan, MP

- The very premise of the initiative for reform of pension system on the ground of it being costly and creating budgetary difficulty is not acceptable. Government must prioritize it's commitment to common people. Employees and their pension is a basic right to be assured in a centralized democratic society.

- Concept of defined contribution benefit pension system is not acceptable since it pressures the common people/employers to purchase pension from the market without "assured pension amount".

- In the main recommendations of the Committee on PFRDA Bill, 2005 – 21st Report (14th Lok Sabha) it did not take into account or even recognize the points raised in the 'note of dissent'

- The Committee did not consider, rather ignored the unanimous views of employees associations and trade unions who objected the "defined" benefit system.

- Growing international trend in the drastic decline in the relative share of workers and employees in the gains of value addition and sharp increase in the appropriation by the employers/entrepreneurs/management.

  Should a democratic government or this Committee of democratically elected representatives endorse such a trend?

- Talking about "funding gap" in employees welfare by the Government in making the pensions scheme and pension return "market dependent' is nothing but abdication of State's responsibility on employees welfare.

- Under **<u>Coverage of voluntary NPS</u>** add one paragraph after point no. 19 one page 16:

  NPS should ensure payment of pension at 50% of the last pay drawn (basic plus periodical upward revision + DA) in tune with rise in price level.

- **Clause 20(2)(g)** which states that "there shall not be any implicit or explicit assurance of benefits except marketbased guarantee mechanism to be purchased by the subscriber". Should be dropped/deleted.

- Involvement of foreign companies in pension sector should be forbidden.

- The Pension fund created by the employees' subscription and employers' contribution which directly flows from the exchequer (which is nothing but tax revenue of the Government) is made available for the stock market operations which is not only unethical but also blatant diversion of public fund for private profit, both Foreign and Indian capitalists.

- The PFRDA Bill when enacted, it is rightly feared, will empower the Government to alter or even deny the present employees and pensioners the statutory defined pension benefit as has been done in the case of those who are appointed after the cut-off date.

- I may, in fine, quoting the concluding paragraph of the Committee set up by the 6th CPC:

  "Mainly given the fact that the future liability although may be large in terms of absolute size is not likely to last very long and does not constitute an alarmingly big share of the GDP which is also on the decline. It appears that pursuing the existing 'Pay as you go' to meet the liability will be an ideal solution."

The New Pension scheme enshrined in the PFRDA Bill may be withdrawn from the Parliament both in the interest of the Civil Servants and the exchequer.

Sd/-
(MOINUL HASSAN)

MINUTES OF THE TWENTY-FIRST SITTING OF THE STANDING COMMITTEE ON FINANCE (2010-11)

The Committee sat on Thursday, the 21st July, 2011 from 1100 hrs to 1300 hrs.

PRESENT

Shri Yashwant Sinha – Chairman

MEMBERS

LOK SABHA

2. Shri Gurudas Dasgupta
3. Shri Nishikant Dubey
4. Shri Bhartruhari Mahtab
6. Shri Mangani Lal Mandal
7. Dr. Kavuru Sambasiva Rao
8. Shri Sarvey Sathyanarayana
9. Dr. M. Thambidurai

RAJYA SABHA

10. Shri S.S. Ahluwali
11. Shri Raashid Alvi
12. Shri Vijay Jawaharlal Darda
13. Shri Piyush Goyal
14. Shri Moinul Hassan
15. Shri Satish Chandra Misra
16. Shri Mahendra Mohan
17. Dr. K.V.P. Ramachandra Rao

SECRETARIAT

1. Shri A. K. Singh – Joint Secretary
2. Shri R.K. Jain – Director
3. Shri Ramkumar Suryanarayanan – Deputy Secretary
4. Shri Kulmohan Singh Arora – Under Secretary

WITNESSES

Ministry of Finance (Department of Financial Services)

1. Shri R. Gopalan, Secretary
2. Shri Rakesh Singh, Additional Secretary
3. Shri Arvind Kumar, Joint Secretary

Pension Fund Regulatory & Development Authority (PFRDA)

1. Shri Yogesh Agarwal, Chairman
2. Shri Puskal Upadhyay, Chief General Manager

2. The Committee heard the representatives of the Ministry of Finance (Department of Financial Services) in connection with examination of the Pension Fund Regulatory and Development Authority Bill, 2011. The major issues discussed during the briefing included minimum returns guarantee, implementation status of the Standing Committee on Finance Report on the Pension Fund Regulatory and Development Authority Bill, 2005, inter- regulatory issues concerning pension funds, policy regarding FDI, constitution of Pension Advisory Committee, performance record of pension fund managers, coverage of the unorganised sector by the new pension system etc. The Chairman directed the representatives of Ministry of Finance (Department of Financial Services) to furnish replies to the points raised by the Members during the discussion at an early date.

The witnesses then withdrew.

A verbatim record of the proceedings was kept.

The Committee then adjourned.

MINUTES OF THE TWENTY-THIRD SITTING OF THE STANDING COMMITTEE ON FINANCE (2010-11)

The Committee sat on Thursday, the 18th August, 2011 from 1600 hrs to 1715 hrs.

PRESENT

Shri Yashwant Sinha – Chairman

MEMBERS

LOK SABHA

2. Shri C.M. Chang
3. Shri Harishchandra Chavan
4. Shri Bhakta Charan Das
5. Shri Nishikant Dubey
6. Shri Bhartruhari Mahtab
7. Shri Rayapati Sambasiva Rao
8. Dr. Kavuru Sambasiva Rao
9. Shri G.M. Siddeshwara
10. Shri Manicka Tagore

RAJYA SABHA

11. Shri Moinul Hassan
12. Shri Satish Chandra Misra
13. Shri Y.P. Trivedi

SECRETARIAT

1. Shri A. K. Singh	–	Joint Secretary
2. Shri R.K. Jain	–	Director
3. Shri Ramkumar Suryanarayanan	–	Deputy Secretary
4. Shri Kulmohan Singh Arora	–	Under Secretary

Part – I
(1600 hrs. to 1630 hrs)

WITNESSES

Ministry of Finance (Department of Financial Services)

1. Shri D.K. Mittal, Secretary
2. Shri Rakesh Singh, Additional Secretary
3. Shri Alok Nigam, Joint Secretary

Indian Banks' Association (IBA)

Shri M.R. Umerji, Chief Legal Advisor, IBA

2. **XX** **XX** **XX** **XX.**
XX **XX** **XX** **XX.**

The witnesses then withdrew.

Part II

(1630 hrs. to 1715 hrs)

WITNESSES

Ministry of Finance (Department of Financial Services)

1. Shri D.K. Mittal, Secretary
2. Shri Rakesh Singh, Additional Secretary
3. Shri Arvind Kumar, Joint Secretary

Pension Fund Regulatory & Development Authority (PFRDA)

4. Shri Yogesh Agarwal, Chairman
5. Smt. Padma Iyer Kaul, ED

3. The Committee heard the representatives of the Ministry of Finance (Department of Financial Services) in connection with examination of the Pension Fund Regulatory and Development Authority Bill, 2011. The major issues discussed included policy on FDI in pension sector, minimum guaranteed returns under NPS, provisions for giving more options and freedom of choice for subscribers of NPS, pension coverage of unorganised sector etc.

The witnesses then withdrew.

A verbatim record of the proceedings was kept.

The Committee then adjourned

Minutes of the Twenty Fourth sitting of the Standing Committee on Finance

The Committee sat on Monday, the 29th August, 2011 from 1500 hrs. to 1600 hrs.

PRESENT

Shri Yashwant Sinha – Chairman

MEMBERS

LOK SABHA

2. Dr. Baliram (Lalganj)
3. Shri C.M. Chang
4. Shri Nishikant Dubey
5. Shri Bhartruhari Mahtab
6. Shri Rayapati Sambasiva Rao
7. Shri Magunta Sreenivasulu Reddy
8. Shri Manicka Tagore
9. Shri Anjankumar M. Yadav
10. Dr. Kavuru Sambasiva Rao

RAJYA SABHA

11. Shri S.S. Ahluwalia
12. Shri Vijay Jawaharlal Darda
13. Shri Moinul Hassan
14. Shri Mahendra Mohan
15. Dr. Mahendra Prasad
16. Shri Y.P. Trivedi

SECRETARIAT

1. Shri A. K. Singh	–	Joint Secretary
2. Shri R.K. Jain	–	Director
3. Shri Ramkumar Suryanarayanan	–	Deputy Secretary
4. Shri Kulmohan Singh Arora	–	Under Secretary

2. The Committee took up the following draft Reports for consideration and adoption:-

(i) The Regulation of Factor (Assignment of Receivables) Bill, 2011; and

(ii) The Pension Fund Regulatory and Development Authority Bill, 2011.

3. The Committee adopted the draft reports at (i) and (ii) above with some modifications/changes as suggested by Members. The Committee authorised the Chairman to finalise the Reports in the light of the modifications suggested and present these Reports to Parliament.

The Committee then adjourned.