ABSTRACT

In the globalized era of industrial world where the economy is in its full employment on the line of “welfare state”, the protection of employees becomes the ultimate goal of the legal system in the name of social security.

Social security is a dynamic concept. It varies from time to time and country to country for the employees. Social security means safety and freedom from fear of wants as well as hanger and it apply to them as a group of interrelated and interdependent people of the industrial arena.

Insurance and pension are chief elements of social security for employees. Insurance and pension envisage that the employees shall be protected by collective action against social risk causing undue hardship and privation to individual employees whose private resources can seldom be adequate to meet them. Insurance and pension cover through an appropriate organization, certain risks to which the employees are exposed.

From the beginning the government of the countries like U.K., U.S. and India is active in providing social security to their employees in the name of insurance and pension. In reference of insurance and pension these countries made a fine system. But now systems providing insurance and pension benefits to the employees are under increasing threat. Several factors contributed to this—firstly, the aging trends continue increasing the old age dependency ratio. Secondly, reform has not been easy to implement, so that fiscal costs of the system continue to increase as well. The fiscal costs of these countries have been augmented by the effects of recent economic shocks which have lowered growth and increased the public debt. Finally, the trend in economic policy goal toward lower inflation, tighter fiscal policy and increased monetary system interdependence, has placed these implicit insurance and pension debt in sharper focus, out-linking the nature of the strain on the fisc posed by
unreformed system. Insurance and pension reforms continue to be a hot topic in economic policy discussion.

In this respect, firstly the government of U.K. takes actions to reform the insurance and pension sector by passing the Social Security Act 1986 and Financial Service Authority Act 1986. The actions of the U.K. government are still in progress; much recently the government has passed the Financial Services Authority and Market Act 2001 as well as Pension Act 2004.

In this respect the government of India is too on the path of reforms of insurance and pension sector, the examples are passage of Insurance Regulatory and Development Authority Act, 1999 on the recommendation of R.N. Malhotra Committee and presentation of Pension Fund Regulatory and Development Authority Bill, 2005 on the recommendation of Old-Age Social and Income Security Committee, before the parliament, which is still in pending.

But the progress of reforms in insurance and pension sector of U.S. in terms of privatization is slow. First time this idea of reforms on the name of privatization was proposed in the Bush second administration. But before any action, the government of Bush went. Now this idea of reforms in terms of privatization is rejected by present Obama government. The Obama government wants reforms to the insurance and pension sector but not through the rout of privatization. Recently a lot of legislation has been proposed by the Obama government such as Insurance Information Act 2009, Insurance Industry Competition Act 2009 as well as Consumer Financial Protection Agency Act 2009.

By taking these steps the governments of these nations have made a serious impact on the various nuances of insurance and pension and its regulated principles. By doing this these nations created new markets, new products, new mindsets, new competencies, new innovations, redefined the
consumerism and increased the competition in a given market. But the employees are still in much vulnerable state of affairs.

Insurance and pension reforms are very complex fields involving interlinking consideration of spanning fields of finance, labour market, macro economics, information technology, administrative procedure etc. So the door of research is open.

The main objective of this study is to discuss the broad imperatives for effective insurance and pension reforms in India with special reference to the U.K. and U.S. The current problematic situation suggests that these nations became old than it became rich but it must be the response of these nations that they became rich than it became old, in coping with the current problematic situation of insurance and pension.

In addition, the issues involving in transitioning from the current to the reformed system are difficult. But constructing and sustaining adequate insurance and pension system in the name of social security are essential for managing the challenges of this liberalized, privatized and globalized era.

This study reviews the various components of insurance and pension system of India with special reference to U.K. and U.S., in order to identifying a complete and proper system which provide financial security to the employees up to the level of their satisfaction. This study has been design as-

Part- A: Indian Position

Insurance and Pension: Conception and Notion

This Caption defines, on one hand, the insurance is an agreement in which employer agrees to indemnity the employee against the loss which they might be suffered in any way other than his own willful or negligent act.
The insurance system was started in India during 19th century without any regulation by the Britishers. The first established life insurance Company of British India was “Orient Insurance Company”, which was followed by other companies. These companies were taking extra premium of 20% from Indian in comparison of non-Indian. Till 1938, there were 176 companies (both life and non life) in India but plagued by fraud. Hence a comprehensive set of regulations was put in place to stern this problem in the name of Insurance Act, 1938. After that, insurance companies were established by Indians. Till the 1956 there were 154 Indian companies. In 1956 Life Insurance Corporation Act was passed and life insurance companies were nationalized. Indian government was trying to nationalize general insurance companies by amending Insurance Act from time to time but this move was not sufficient. There was need of a separate statute, so General Insurance Business Nationalization Act was passed which gave a new move to general insurance through the nationalized companies.

In 1991, the issue of privatization of insurance was raised under the open market system, so the government constituted Malhotra Committee which suggested in favor of privatization. After that the change in insurance industry appeared immanent and Insurance Regulatory and Development Authority Act, 1999 was passed. This Act created a new authority i.e. IRDA for the regulation of insurance business. But the problem was still there. On the request of the government, Law Commission in its 190th report of 2005 suggested for the amendment of Insurance Act 1938, Life Insurance Corp. Act 1956 and Insurance Regulatory and Development Authority Act 1999. Than the government constituted K.P. Narasimha Committee and on the recommendation of such committee Insurance Laws (Amendment) Bill 2008 was passed which increased the foreign equity from 26% to 49%.

The result of these policy changes emerged in the form of global integration of financial market, information explosion, financial innovations, wide investment option, customer centric approach etc.
The thing defined under this caption, on the other hand, is that the pension is the reward of the employees and not the discretion or the benevolence of the employer.

In India the concept of pension originated by the Britishers by passing so many legislation like Pension Act 1871, Old-Age Pension Act 1908 as well Provident Fund Act, 1912. But the schemes implemented by these Acts were not adequate, so India passed Widow, Orphan and Old-Age Contribution Act 1923, Workman Compensation Act 1923 as well as Provident Fund Act 1925 which provided some relief to the employees. At that time employees welfare was the main issue of financial system. So the government set-up Royal Commission in 1929 and on which recommendations passed Social Security Act 1935 and again set-up Labour Investigation Committee and passed the Family Allowance Act 1945 by which the scope of contributory pension system became larger.

In 1947, India became independent and pension matter was defined under Article 39 and 41 of the constitution. After that a series of legislations dealing with the pension matter, separately of industrial employees as well as civil employees came into existence. The Employee Provident Fund and Miscellaneous Provisions Act, 1956, Employee State Insurance Act 1948, Maternity Benefit Act 1861, Payment of Gratuity Act 1972 were passed for industrial employees as well as the Central Civil Services (Pension) Rules 1972, Central Civil Services (Commutation of Pension) Rules 1981 were passed for employees.

But the problem was still there because the government was burdened by continuous increasing ageing trends. So the government decided to replace the defined contribution system at the place of defined benefit system and implemented the New Pension System in the year 2004 for the employees who joined services from Jan. 1st 2004. In respect of legislative backing for NPS the
government tabled the Pension Fund Regulatory and Development Authority Bill, 2005 in the parliament which is still in pending.

The NPS is a defined contribution pension system with individual retirement account, product choices, professional fund management by competing private fund managers and portability through centralized record keeping and administrative actions.

**Insurance and Pension: Reformation towards the Privatization and Globalization**

This caption defines that the reformation in both the insurance and pension sectors of India is necessary. So firstly the government of India constituted R. N. Malhotra Committee and Mukherji Committee to examine the existing Indian insurance system as well as its difficulties, and to recommend for reforms towards the privatization and globalization. The committees after the exhaustive examination of Indian insurance system recommended that Indian system is prey of some shortcomings such as weakness of fund management mechanism, operational procedures, and governance, no availability of data’s for the common man, defected structure which increased fiscal stress, jealous attitudes among public and private sector corporations, so there is need to reform this sector because there are no consumer suited products, insurance awareness among the people is low, insurance covers are expensive, return from the insurance products is less etc. On the recommendations of these committees the government of India passed the Insurance Regulatory and Development Authority Act 1999 and privatized and globalized to the insurance system of country. After that step of government the Indian market became competitive which produced the dearth of product innovations, revolutionaries to the information technology, grape to the multi-channel routs and increase to the consumer’s awareness. Again in the year of 2004 the Law Commission recommended to amend the Insurance Act 1938 and Insurance Regulatory and Development Authority Act 1999 in terms of
privatization. Than the government of India constituted K.P. Narsimha Committee which gave report in 2007 and recommended for amendment of Insurance Act and Insurance Regulatory and Development Authority Act as well as for the introduction of some new principles for the regulation of insurance sector in the path of privatization. In the wake of this report the government of India amended the Insurance Act as well as Insurance Regulatory and Development Authority Act as well as passed the Insurance Laws (Amendment) Bill 2008 to introduce some new principles for leading to the rout of privatization.

After that the government constituted Old Age Social and Income Security Committee and Bhattacharya Committee to determine the difficulties of pension sector and recommended for reforms. These committees examined the pension sector of India, and recommended to privatize the pension sector of the nation because it had some malpractices such as administrative incapacity of Employee Provident Fund Organization, low public awareness about their system, weak information system, fiscal stress etc. On these recommendations the government moved the Pension Fund Regulatory and Development Authority Bill 2005 in the parliament which is still in pending and implemented the NPS for the employees recruited on or after first Jan 2004. Currently the debate on the effects of NPS system is still going on.

**Insurance and Pension: Era of Privatization and Globalization; A Critical Appraisal**

This caption defines the present scenario of insurance and pension system in India. The insurance and pension are two sides of same coin that means two aspects of our financial system. But the government of India wants to develop these two sectors on the same pattern. So firstly the government tried to privatize the insurance system. The goal of government behind the privatization was encouragement in competition, improvement in insurance penetration and service standard, customer centric product, efficient allocation
of resources, dynamic management portfolio, change in consumer outlook etc. The decision of government of insurance privatization was correct but some things such as privatization increased private monopoly and cost of insurance because private corporation provided expert services as well as there may be the possibility of breaking of joint venture which was ignored by the government. So some problems are still there such as insurance is still a tax saving tool, there are inadequate roles of intermediaries, inefficiencies in Bancassurance System, inappropriate regulations, defects in growth strategy, expansion of distribution costs etc. But the solutions of these problems are also available such as improvement in product strategy, service level, stabilizing monitoring compliance, adaptation of multi-channel, multi-product, multi-segment rout as well as constitution of role model for bancassurance.

By making these improvements the system can do better work but every system has some drawbacks like this insurance system after making improvement also have some drawbacks, such as in privatization there is a sale of the insurance to multinational corporations which links it to a speculative bubble of casino capitalism, promote jealous attitude among pub-private sector corporations, make insurance the privilege of only richest people.

After the progress in insurance sector by privatization, the government tried to privatize the pension system. The government’s goal behind privatization of pension was to increase old age income coverage, removal of unfunded governmental liability, state facilities in regulatory mechanism for insuring sustainable development, optimum return for old age etc. The decision of government up to some extent was correct but there are many things such as privatization contains no social insurance component, provides individual retirement account which is expensive, shifts the risk from corporation to employees, creates problem of agency risk etc. which were unseen by the government. The reasons behind these things which could not be seen by the government were some pre-requisite acts on the part of government e.g. suitable legislative framework, establishment of strong regulatory authority,
and ombudsmen institution for dispute settlement, as well as pension protection fund for the situation of insolvency. But no doubt, these problems can be avoided by some bold steps such as change in the structure of NPS, removing the cap from the number of pension fund manager, providing wide and different investment options as well as government’s guarantee in distress, establishment of strong administrative authority.

Like privatization of insurance, some drawbacks also came out from the privatization of the pension system after taking the possible future directions, such as, NPS does not give any assurance except market based guarantee, private fund manager have speculative motive and are not concerned with the well being of clients. It is investment centric rather than social insurance centric as well as costly in terms of revenue deficit and it’s a kind of green signal for FDI.

**Insurance and Pension: Legislative Enactments to Promote Schemes for Employees**

This caption explains that for introducing any system the legislative backing is necessary because legislations provide a set pattern for regulating any system. On that idea the government of India introduced insurance and pension system with legislative backing. These legislations are separate in their respected field as well as joint in respect of labour legislations. The matter relating to the obligations of employees and employer, benefits, contributory efforts as well as administration in respect of insurance defined under Insurance Act, 1938. The Insurance Regulatory and Development Authority Act 1999 defined the composition, establishment, powers and functions of sole regulator of insurance that is Insurance Regulatory and Development Authority. The most recently passed Insurance Laws (Amendment) Bill 2008 defined some guiding principles in the field of privatization of insurance. The matter in reference of pension as employer and employees liabilities, benefits, contributory efforts as well as administration defined under Pension Act 1971,

The government of India does not make laws only on the national level but also make some agreements at international level such as GATS, General Agreement on Trade and Services for playing a leading role in the insurance sector.

**Insurance and Pension: Schemes for Employees in the New Economic Regim; Statutory and Governmental Initiatives**

This caption defines that after the legislative enactments, the insurance and pension schemes were emerged but with the passage of time the need and significance of these schemes became much in the new economic regime for the welfare of employees. The insurance and pension schemes are for both formal and informal sectors. These schemes in the formal sector are divided under two classes. One is schemes under statutory framework, which again divided into two classes. One is Provident Fund and Retirement Benefit Schemes, such as Employee Provident Fund Schemes, Employee Pension Schemes, Employee Deposited Link Insurance Scheme and Deceased Family Immediate Pension Scheme, second is Group Pension and Insurance Schemes, such as Group Life Cover Scheme, Group Life Insurance Scheme, Group Gravity Scheme, Group Mediclaim Scheme, Group Personal Accident Scheme and Group Superannuation Scheme etc. The second is schemes in the governmental regulations- such as Liberalized Scheme for Payment of Ex-gratia Lump Sum Compensation Scheme, Liberalized Schemes for Pensioner
Award, Central Govt. Employee Group Insurance Scheme, Central Govt. Health Scheme and New Pension Scheme etc. The schemes applicable for the informal sector are, Senior Citizen Saving Scheme, National Old Age Pension Scheme, Public Provident Fund Scheme, Rashtriya Swarthyta Bima Yojna, Aam Admi Bima Yojna, Jan Shri Bima Yojna, Janani Suraksha Yojna, National Scheme for the Welfare of Fisherman and Training and Extension and Handloom Weavers Comprehensive Welfare Scheme.

Insuranced and Pension: Schemes for Employees in the New Economic Regime; Public and Private Sector Initiatives

This caption defines that the insurance and pension schemes are not only implemented by the statutes or by governmental regulations but at greater level implemented by public and private sector corporations. But this caption contains schemes of few selected public and private companies, such as the Life Insurance Corporation of India which implements a lot of schemes, for employees as Endowment Assurance Schemes, Money Back Schemes, Whole Life Schemes, Unit Schemes, Group Schemes and Pension Schemes. State Bank of India implemented some schemes, for employees such as are Unit Link Schemes, Pure Protection Schemes, Protection-cum-Saving Schemes, Money Back Schemes, Group Retirement Schemes, Group Saving Schemes and Group Pension Schemes. The insurance and pension schemes implemented by private sector like TATA-AIG are, Group Term Schemes, Group Credit Life Schemes, Unit-non Unit Linked Schemes, Group Pension and Retirement Schemes, by Birla Sun Life are, Term Schemes, Saving Schemes and Retirement Schemes, by Bajaj-Allianz are, Regular Premium Schemes, Single Premium Schemes, Money Back Schemes, Term Schemes, and Retirement Schemes etc.
Insurance and Pension: Indian Judicial Reactions

This caption defines the judicial attitudes regarding insurance and pension schemes under different stages of time. If the lamp to justice goes out in darkness, how great is that darkness. This statement can be applied as a yardstick to measure the efficacy and efficiency of insurance and pension laws as well as their implemented schemes. History is full with such instances that when the legislations relating to insurance and pension as well as their implemented schemes faces credibility crisis, the judicial system comes to rescue the people. In the present era our courts are playing a big role regarding the settlement of insurance and pension cases. Day by day new complicated issues in reference of insurance and pension schemes are faced by the judges.

Such issues which came before the courts to remove the difficulties of the people are as follows-

1. Dispute regarding the legal heir for the insurance and pension payment;
2. Fraud on the part of insurance and pension providers;
3. Misstatement about their health conditions on the part of insurance and pension takers;
4. Complicated conditions of insurance and pensions schemes
5. Repudiation of insurance and pension schemes without given due notice;
6. Nature of tripartite contract between employees, employer and insurance/pension providers
7. Commutation, calculation computation of insurance and pension amount;
8. Qualifying service period for insurance and pension claims
Such issues were decided by the court in paradoxical manners as per the laws, regulations as well as their prevailing circumstances.

Now days the judiciary is performing a laudable job and enlarging its application even to certain "gray areas" by delivering a liberal interpretation of the legal provisions by displaying a jurisprudential vision which infact the necessity of judicial intervention as the employees complained about violation of there rights at the hands of the insurance and pension providers. In cases where the bureaucracy refused to carry out the legislative will, it is certainly for the courts to step in and ensure compliance with the legislative mandate and protect the employees.

Part-B: English Position

*Insurance and Pension: Background, Structure, Reformations and legislations; A Comparative Analysis of U.K. and U.S.*

This caption defines that the concept of insurance and pension is not a new one in U. K. and U. S. In U. K., the field of insurance traced back from 1616 when few companies were started to compensate the people against the loss or damage caused by the great fire. After that many companies were established from time to time. These companies were regulated by the government, but when the responsibilities of government were increased, the government reformed the insurance sector in terms of privatization and these companies were regulated by the Department of Trade and Industry, as well as Department of Treasury with the technical assistance of government Actuary Department. But again the government changed the track to make stronger the privatized insurance industry by passing the Financial Services Authority Act 1986 and decided to establish a single regulator to regulate the insurance industry, but this dream of the government was completed in 1997 when treasury involved in the insurance regulation as a part to create a single regulator. Till 2001 the treasury was in the work of insurance regulation when
the Financial Services Authority gained their full power under the Financial Services Authority and Market Act 2001. Now the Financial Services Authority is single insurance regulator but whose responsibility is on the government.

In the field of pension, the U. K. government was very curious from the beginning; so many legislations were passed from time to time such as Old Age Pension Act 1908, National Insurance Act 1946 etc. But within the purview of these Acts the pension sector was regulated by the government and balegarded by the shortcomings due to the high responsibilities of the government. Than the government decided to reform the pension sector in the name of privatization and passed the Social Security Act 1986 which introduced personal money purchase schemes but did not give any idea about the regulatory structure on the pattern of privatization. Again the government from time to time tried to establish the regulatory structure of the pension sector on the privatized pattern, but finally the efforts completed in 2004 by passing the Pension Act.

This caption again defines that the development of insurance industry of U. S. which traced back from 1752 when the first insurance company was establish by Benjamin Franklin. From 1752 to 1944 the insurance industry was regulated by the states with the consultation of insurance companies but track was changed in 1945 when McCarran Ferguson Act was passed and regulatory control of insurance industry went back in the hands of federal government. On that decision of federal government there were a lot of hue and cry but the government did not take any move till 1999. In the year of 1999 the government passed the Gramm-Bliley-Leach Act and partially privatized the insurance industry.

The trends of developments of pension sector in U. S. started from 19th century when the pension system was firstly adopted by the railway industry. After that from time to time the pension sector was governed under the
Revenue Laws. The first legislation dealing with the pension was passed in 1958 which was Welfare and Pension Plan Disclosure Act which required the disclosure of the pension assets of the people but it could not fulfill the aims of the government. Than the government passed the Employee Retirement and Income Security Act 1974 by which the government privatized the pension sector, this was amended from time to time now it is a complete code on pension matters.

This study finds that the current arrangements do not provide sufficient incentives for professionalism and system wide perspectives essential to meet the challenges posed before insurance and pension system. Urgently, reorientation of laws, regulation, schemes and organizational structure, development of human resources, cushion of government responsibility, creation of large number of productive and sustainable job, implementation of defined contributed benefit schemes, impartment of financial education as well as indigenous research capabilities among policy maker, establishment of special forum to discuss the insurance and pension matter could greatly assist in meeting India’s insurance and pension challenges.