Chapter 6

SOCIAL SECURITY OF LABOUR: A COMPARATIVE STUDY

6.1. Social Security in United States

6.2. Social Security in UK

6.3. Social Security in Sweden

6.4. Social Security in India

6.5. Conclusion

Social security programmes are often described as the most successful programme of the modern welfare states. But its long term future is now in doubt. International Social Security Association finds that, while globalization is likely to erode the pension income of the older persons, it will enhance their wealth and income from capital, leaving their overall spending power slightly improved. The working age population, which earns lower wages as a result of having less capital to work, is an unambiguous loser from the globalization process. The situation is different from country to country. As a result of these dire predictions, there are proposals to reshape the social security system abound. An


examination of the different kinds of social security systems function in three countries, viz., U.S.A. U.K. and Sweden and how far they made changes to cope up with the changes in the new economic order is essential to this part of the study. Indian position is also briefly explained for the sake of a comparative study.

6.1 Social security in United States
Historical Background and Development

Social security program in US began in limited sphere as a measure to implement “social insurance” during great depression of 1930s. The idea behind the programme was to offer economic security to Americans. The industrial revolution has changed the family structure and multiple generations of one family were no longer living together. After stock market crash in 1929 and the ensuing depression, Americans needed protection from financial worries. In the beginning the Social Security Act when passed by FDR, the retired workers and the unemployed workers were the two groups covered by the programme. Within a few years Congress added benefits for surviving

3. For important demographic changes happened in America ie, the industrial revolution The urbanization of America The disappearance of the “extended” family, and a marked increase in life expectancy-rendered the traditional systems of economic security increasingly unworkable. www.ssa.gov/policy/docs, accessed on 7th October, 2008

4. In 1932, the Federal Government first made loans, then grants, to states to pay for direct relief and work relief. After that Special Federal emergency relief and public works programmes were started. In 1935, President Roosevelt proposed to congress economic security legislation and thus Social Security Act is passed and signed into law on August 14,1935. See, Historical Information, available in http://www.ssa.gov/history/brief.html, accessed on 7th October, 2008

5. ‘Federal Intervention seemed to be the only option as private charities and state also had budget woes’, Kathleen Santoro, “Social Security Privatization”, 2006 (10) Holy Cross J. L.& Pub. Pol’y 47
dependants of deceased workers. Later it has become the largest government programme in the world.

The basic nature of social security in US is social insurance programme funded through payroll tax. i.e., a ‘pay as you go’ system (PAYGO System)\(^6\). It is formally known as Old Age Survivors and Disability Insurance Program\(^7\) (OASDI program). The OASDI Programme is administered by the Social Security Administration (SSA). The SSA is in the process of re-engineering the disability process in order to restore public confidence in its programme and ensure a nurturing environment for its employees\(^8\). Originally, in US the social security system included unemployment insurance. However the term is now used to mean only three benefits\(^9\), i.e., benefits for retirement, disability and death.

### Eligibility Status

To become eligible for the benefits for family members or survivors, a worker must earn a minimum number of credits based on work in covered employment or self-employment. These credits are

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6. I.e., today’s retiree’s benefits are financed by social security taxes that today’s workers are paying on a monthly basis. See, Elizabeth D. Tedrow Social Security Privatization in Other Countries-What Lessons Can Be Learned For The United States? 2006 (14) Elder L.J. 35 at p.36


9. These three benefits are provided by traditional private sector pension plans that still exist.
described as Quarters of Coverage (QC). Eligibility for most types of benefits requires that the worker is fully insured. A fully insured worker usually has a number of QCs at least equal to the number of calendar years elapsing between the age of 21 and the year in which he/she reaches the age of 62, becomes disabled or dies, whichever occurs first. For workers who become disabled or die before the age of 62, the number of QCs needed for fully insured status depends on their age at the time when worker becomes disabled or dies. A minimum of 6 QCs is required regardless of age for entitlement of benefits.

Retirement Benefits

The largest component of OASDI is the payment of retirement benefits. In US throughout a worker’s career, the social security administration keeps track of his or her earnings. The amount of the monthly benefit to which the worker is entitled depend on that earning record and upon the age at which the retiree chooses to begin receiving benefits. The earlier stage at which the benefits are payable is 62 years and full retirement benefits are dependent on a retiree’s year of birth.

Spouse Benefits

In US any current spouse is eligible and divorced or former spouses are eligible generally if the marriage lasts for at least 10 years. The spousal benefit is half the Primary Insurance Amount\(^\text{10}\) (PIA) of the worker. Only after the worker applies for retirement benefits the non-working spouse can apply for the spousal retirement benefits.

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\(^{10}\) This is the basic social security benefit available to a worker. There is a formula for calculating PIA based on average indexed monthly earning. See, http://www.ssa.gov/history/brief.html, accessed on 7th October, 2008
Disability

A worker who has worked long enough and recently enough to be covered can receive benefits upon becoming totally disabled, regardless of his or her age. The eligibility formula requires a certain number of credits based on earnings to have been earned overall, and a certain number within the ten years preceding the disability, but with more lenient provisions for younger workers who become disabled before having had a chance to compile a long earnings history.

The worker must be unable to continue in his or her previous job and unable to adjust to other work, taking into account the worker’s age, education and work experience. The disability must be long term lasting 12 months resulting in death, or expected to result in death. As with the retirement benefit, the amount of disability benefit payable depends on the worker’s age and record of covered earnings.

Supplemental Security Income (SSI) uses the same disability criteria as the insured social security disability program, but SSI is not based upon insurance coverage. But a system of means-testing is used to determine if the claimants’ income and net worth fall below certain income and asset thresholds after the claimants establish disability.

Severely disabled children may qualify for SSI. In addition, disabled minor children of disabled or deceased workers may receive survivor’s benefits. A programme called Disabled Adult Child Insurance Benefits (DACIB) provides benefits for the disabled adult children of disabled or deceased workers.
For disability determination at the Social Security Administration has created administrative courts in the US depending on the state of residence. A claimant whose initial application for benefits is denied can request reconsideration or having before Administrative Law Judge. It involves a re-examination of evidence and an opportunity for hearing before disability hearing officer. The hearing officer then issues a decision in writing, with reasons for his findings. If claimant is again denied at the reconsideration stage, he can request hearing before Administrative Law Judge. In some states SSA is implemented as a pilot program that eliminates the reconsideration steps and allows claimants to appeal an initial denial directly to an Administrative Law Judge. Since the number of applications for social security is very high\textsuperscript{11} the time for hearing is limited to 90 days of the request of the claimant.

After hearing, the Administrative Law Judge issues decision in writing. The decision can be fully favourable (the claimant is disabled); partially favourable (the claimant is disabled in source point and not in certain others as claimed) or unfavourable (not disabled at all). In case of the last two decisions, the claimant can appeal to Social Security’s Appeals Council and it accepts no hearings but written briefs. If the claimant disagrees with the Appeal Council’s decision he can appeal the case in the federal district court. As in most federal court cases an unfavourable district court decision can be appealed to the appropriate appellate circuit courts and an unfavourable appellate court decision can be appealed to the United States Supreme Court.

\textsuperscript{11} Approximately 650,000 per year
Survivor’s Benefit

If a worker covered by social security dies, a surviving spouse or children can receive, survivor’s benefits. In several instances, survivors benefit are available even to a divorced spouse. Survivor’s benefits to non-disabled children are upto 18 years of age or the child graduation from high school, whichever is later. The earliest age for a non-disabled widow(er) benefit is 60 years. The benefit is equal to the worker’s full retirement benefit for spouses who are at or older than survivor’s normal retirement age (if the worker dies when the survivor is younger, there is an actuarial reduction).

Reshaping the Social Security Law

The Social Security Act was passed in the year 1935 It is otherwise known as Old Age Pension Act. This Act provided benefits to the retirees and the unemployed and a lump sum benefit at death. Payments to current retirees are financed by a payroll tax on current worker’s wages, half directly as payroll tax and half paid by the employer. Though the constitutionality of the Act was challenged in many cases, the courts affirmed its validity.\(^\text{12}\)

The original 1935 Act paid retirement benefits only to the primary worker. Many types of people were excluded, like farm workers, the self employed and anyone employed by an employer of less than 10 people. These exclusions intended to exclude those, as it would be difficult to monitor compliance, and covered approximately half of the civilian labour force in the US.

\(^{12}\) Steward Machine Co. v. Davis, 301, US 548 (1937); Helvering v. Davis, 301 U.S. 619.
The 1935 Act also contained the first national unemployment compensation program aid to the states for various health and welfare programs and the Aid Dependent Children Program. The initial tax rate was 2.0% of the first $3000 of the employees earning shared equally between the employee and the employer. The tax rates were increased by amending Federal Insurance Contribution Act generally in three important ways. They are

(i) The widowed non-working spouse of someone entitled to an old age benefit also entitled to an old age benefit.

(ii) Survivors (widows and orphans) became eligible for a benefit.

(iii) Retirees who had never paid any FICA taxes became eligible for old age benefits. In 1956, the tax was raised to 4.0% (2% for employer and 2% for employee-equal contribution) and disability benefits were added. In 1961 also the tax rate was increased to 6%.

Medicare was added in 1965 by Social Security Act of 1965. Supplementary Security Income benefits, though not exactly social security benefit but welfare benefit prolonged to immigrants who had never paid into the system even when they reached 65 years of age.

In the early 1980s there was concern about the long-term prospects for social security because of demographic considerations. A commission chaired by Alan Green Space made several recommendations. Under the 1983 Amendments to social security, the payroll tax rate was increased, additional employees were added to the system, the full age retirement age
was slowly increased and up to half of the value of social security benefit was made potentially taxable income.

As a result of these changes, the social security system began to generate a large surplus of funds intended to cover added retirement cost. Congress invested these surpluses into special series, non-marketable US Government bonds which are held by social security trust fund. Under the law, the government bonds held by social security are backed by the full faith and credit of the US government. The special series non-marketable bonds currently held in social security trust fund are off-balance sheet and are excluded from the US National Debt Calculation. These bonds simply represent a promise to pay the trust fund later, whether by increasing taxes, cutting benefits or simply borrowing some money.

**Social Security Tax on Wages and Self Employment Income**

Benefits are funded by taxes imposed on wages of employees and self employed persons. In case of employment, the employer and employee are responsible for one half of the social security tax with the employees half being withheld from the employees’ pay check. In the case of self employed persons too, independent contractors the person himself is responsible for the entire amount of social security tax.

A separate payroll tax of 1.4% of an employees’ income paid directly by the employer and an additional 1.45% deducted from the employees’ pay check, yielding an effective rate of 2.9%, funds the Medicare program. This program is primarily responsible for providing

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health benefit to retirees. The combined tax rate of these two federal program is 15.3%.

Social Security taxes are paid into the Social Security Trust Fund maintained by US Treasury. Current year expenses are paid from current social security tax revenues. A Social Security Number (SSN) is issued in pursuant to section 205(c) (2) of the Social Security Act is provided with. A multitude of US entities use the social security number as a personal identifier.

**Legislative Changes from 1996**

Contract with America Advancement Act of 1995 made a change in the basic philosophy of the disability programme. By this Act New applicants for the Social Security or SSI disability benefits could no longer eligible for benefits if drug addiction or alcoholism is a material factor to their disability.

The Personal Responsibility and Work opportunity Reconciliation Act of 1996 is called as “welfare reform” legislation. Previously lawfully admitted aliens could receive SSI if they met other factors of eligibility. From the date of enactment no new non-citizens could be added to the benefit rolls and all existing non-citizens beneficiaries, have been be deleted from the list.

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14. [http://www.law.cornell.edu/usc-‘gi](http://www.law.cornell.edu/usc-‘gi) [http://www.ssa.gov/history/brief.html], accessed on 7th October, 2007

15. Previous policy has been that if a person has a medical condition that prevents him from working, he is eligible to Social Security regardless of the cause of the disability. See Larry DeWitt, SSA Historians Office. See [www.ssa.gov/history](http://www.ssa.gov/history) 7th October, 2007

16. Unless they can qualify on some other medical basis they cannot receive disability benefits. Individuals in this category already receiving benefits, have been be deleted from the list.
even the children eligible under old law, would be removed from the rolls.

Ticket to work and Work Incentives Improvement Act of 1999 made a most significant change in the disability policy. This law creates a Ticket to Work and Self-Sufficiency Programme which will provide disability beneficiaries with a ticket they may use to obtain vocational rehabilitation services and other support services from an employment network of their choice. The new provisions provide a number of safeguards to the beneficiaries to protect their benefits and health. Law also provides for incentive payments to providers for successful rehabilitation in which the beneficiary returns to work. Altogether the Ticket to Work initiative seeks to shift the emphasis in the disability programme away from mere maintenance of benefits to more toward rehabilitating the disabled and assisting them in returning to productive work.

The Senior Citizen’s Freedom to Work Act of 2000 eliminated the Retirement Earnings Test\textsuperscript{17} which is provided under Social Security Act, with effect from January, 2000\textsuperscript{18}.

\begin{quote}
\textsuperscript{17} The retirement earnings test applies only to people below normal retirement age (NRA), which ranges from age 65 to 67 depending on year of birth. Social Security withholds benefits if your earnings exceed a certain level, called a retirement earnings test exempt amount, and if you are under your NRA. One of two different exempt amounts apply, depending on the year you attain your NRA http://www.ssa.gov/OACT/COLA/rtea.html accessed 7th October, 2007
\end{quote}

\begin{quote}
\textsuperscript{18} Beneficiaries under full retirement age (FRA) with earnings in excess of certain exempt amounts may have all or part of their benefits withheld as a result of annual earning test. See, Curt Pauzenga,” Social Security (Old Age, Survivors and Disability Insurance)” 2005 Supp. Soc. Sec. Bull. 11
\end{quote}
Three Models of U.S. Social Security Reform

Recently the Government offers three alternative plans (Model I,II &III) for reforms. They are as follows:

Model I allows workers to invest up to 2% of their taxable income in to a personal account. Traditional benefits if received would then be setoff from the personal account contributions. In Model II the workers could contribute up to 4.5% of their taxable income. Social Security benefits would be set off from the contributions, but the additional interest of 2% of the workers contribution, compound over the worker’s career. Model III involves a 2.5% contribution from payroll taxes, plus a 1% additional contribution by the employee, up to 1000 dollars maximum. Benefits then be setoff from the account of the contributions but the additional interest rate reduction under this model would be 2.5%.

Under all these three models there are changes in the way that benefits are calculated. In the current system benefits are indexed to current wages but here the benefits would be indexed to prices.

Comparison with Private Pensions

Although social security is sometimes compared to private pensions, the payment of disability benefits distinguishes social security from most private pensions. A private pension fund accumulates the money paid into it, eventually using those reserves to pay pension to the workers who contributed to the fund. Social security on the other hand, is fundamentally a wealth transfer system. A private system can refund because it does not try to cover everybody, so they can be net savers and net borrowers; on the other hand, social security system operates as
a pipeline through which current tax receipts from worker, are used to pay current benefit to retirees, survivors and the disabled. Although there is a social security trust fund that holds the cumulative excess of taxes withheld over benefits paid, unlike a private pension plan, the social security trust fund does not hold any substantial marketable assets to secure worker’s paid-in contributions. Two broad categories of private pension plans are: (1) defined benefit pension plans; (2) defined contribution pension plans. Out of these, social security is more similar to defined benefit pension plan in which benefits ultimately received are based on some sort of pre-determined formula. Defined pension plans generally do not include separate accounts for each participant. But in a defined contribution pension plan each participant has a specified account in the funds put into that account by employer in the participant or by both. Here the ultimate benefit is based on the amount in that account at the time of retirement. Private pension are governed by Employee Retirement Income Security Act, which requires minimum level of funding. The purpose is to protect workers from corporate mismanagement and outright bankruptcy. In terms of financial structure, social security would be analogous to an under funded pension, i.e., where savings are not enough to pay future benefits without collecting future tax revenues.\footnote{In 1981 a National Commission on Social Security Reform was established by President Reagan and sent its recommendations in 1983 Unanimously the Commission recommended that The Congress in its deliberations on financing proposals, should not alter the fundamental structure of Social Security programme or undermine its fundamental principle. The National Commission rejected proposals to make the social security programme a voluntary one, or to transform it into a programme under which benefits are a product exclusively of the contributions paid or to convert into a fully funded programme or to change it into a programme under which benefits are conditioned on the showing of financial need. See, Report of National Commission on Social Security Reform 1983 46 Soc. Sec. Bull. 3
On February 2, 2005 President George Bush in his Statement of the Address described the social security system as “headed for bankruptcy”\(^\text{20}\) and outlined in general terms, a proposal based on partial privatization\(^\text{21}\). Critics responded that privatization would worsen the program’s solvency outlook and would require huge new borrowing\(^\text{22}\).

**International Social Security Agreements**

In today’s global environment, people often relocate from one country to another, either permanently or limited time basis. This poses challenges to business, governments and individuals seeking to ensure future benefits or having to deal with taxation authorities in multiple countries. The President is authorized to enter into international Social Security Agreements to coordinate the U.S. Old Age, Survivors and Disability Insurance (OASDI) with comparable programmes of other countries. To that end the U.S. has signed treaties, often referred to as ‘totalization agreements’ with other social insurance programs of various foreign countries\(^\text{23}\).

International Social Security agreements have two main purposes for U.S. First they eliminate dual social security coverage and the

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20. It is reported that by 2040, Social Security will no longer be able to pay its obligations. www.socialsecurityonline.org visited on 12th June, 2008.

21. Private account would replace in part the defined benefits that that Social Security Recipients can expect today. See, also *supra* n. 1 at p.74

22. The system of private account would present a serious cash flow problem to the system, and undermine the social insurance function of social security. The second argument is that it would place women minorities and the disabled at a disadvantage. Third is the privatization will reduce many of the auxiliary benefits that available today. See also Kathleen Santoro, “Social Security Privatization” 10 Holy Cross J. L.& Pub. Pol’y 47 at p.55 ,(2006)

23. Currently has agreement with 21 countries. See www.ssa.gov/OACT, accessed on 8\(^\text{th}\) October 2008
second is to help in filling gaps in benefit protection for workers who have divided their careers between the U.S. and the other country. They eliminate dual social security taxation when a worker from one country works in another country and is required to pay social security taxes to both countries on the same earnings. Those who divided their careers may fail to qualify their social security benefits from one or both countries because they have not worked long enough to meet the criteria. Under an agreement these workers and their family members may qualify for a partial U.S. benefit based on totalized credits from both countries.

6.2 Social Security in U.K.

The United Kingdom is a unitary state in which the central government substantially directs most government activity. British social policy was dominated by Poor Laws, first passed in 1598 and continuing till 1948. Britain’s social security system dates back to the 19th century and was enacted based on the overriding principle that the individuals should be insured “against the contingency of their growing old and being unable to earn a living.” The first laws relating to social security was Old Age Pension Act, 1908, Disability Insurance Act, 1911 and Old Age and Survivors Insurance 1925. In 1942, the Beveridge Report proposed a system of national insurance based on three assumptions i.e., family allowances, a national health service and full


employment. The labour government in 1945 introduced the following three Acts:

(i) The National Insurance Act, 1946 which implemented Beveridge Scheme for social security;

(ii) The National Health Services Act, 1948; and

(iii) The National Assistance Act, 1948 which abolished the Poor Law while making provisions for welfare services.

In simple terms British pension system is based on two tiers. The first tier, introduced in 1908 is mandatory and provides a basic flat–rate weekly benefit, which is independent of earning. It is financed on a PAYGO basis. The level of benefit from this basic pension ensures very low benefits. The second tier introduced in 1961, provides earning related benefits from public or private pensions.

**National Insurance**

National Insurance is a system of taxes, and related social security benefits that has operated in the UK since its introduction in 1911 and extended in 1946. The name national insurance was adopted as an expression of the government aspiration that the system should be qualitatively different from conventional general taxation such as income tax. Initially, the most important contributory benefits were the State Retirement Pension and Unemployment Benefit. With the introduction of employer payroll tax deduction (Pay-As-You-Earn or PAYE) employee’s national insurance contributions were collected.

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along with income tax. This replaced the old system of purchasing a contribution certificate or stamp. In the contemporary United Kingdom budget national insurance contribution are a significant source of government revenue comparable with value added tax.

Contribution to National Insurance Contributions (NICs) falls into a number of classes. Class 1, 2 & 3 NICs paid are credited to an individual’s NIC account, which determines entitlements to certain benefits including the state pension. Class 1A, 1B and 4 NICs do not count towards benefit entitlements but must still be paid if due.

Class I contributions are paid by employees and their employers. They are deducted from their gross wages by the employer, with no action required by the employee. The employers also match their contributions. Lower Earning Limit (LEL), Earning Threshold (ET) and Upper Earning Limit (UEL) are the milestone figures which determine the rate of NIC. The rate is:

(i) Below the LEL, no NIC is paid

(ii) Between LEL and ET, NIC are not paid but are credited as if they were earning employees

(iii) Between the ET and UEL, NICs are paid at the rate of 11% on earning by employees and 12.8% of earnings by employers.

(iv) Above the UEL, NCCs are paid at the rate of 1% on earnings by employees and 12.8% of earning by employers.
Class I.A contributions are paid by employers on the value of company cars and other benefits in kind of their employees and directors at the rate of 12.8% of value of the benefits in kind. Class 1.B were introduced on 6th April 1999 and are payable whenever an employer enters in to PAYE Settlement Agreement for tax. Class 1.B NCCs are payable only by employers and payment does not provide any benefit entitlement for individuals.

Class 2 contributions are fixed weekly amounts paid by the self employed. They are due regardless of trading profits or losses, but people on small earnings can apply for exception from paying and those on high earnings with liability to either class 1 or 4 can apply for different from paying. While the amount is calculated to a weekly figure, they are typically paid monthly or quarterly. Class 3 contributions are voluntary NICs paid by people that wish to fill a gap in their contributions record which has arisen either by not working or by their earnings being too low. The main reason for paying class 3 NICs is to ensure the “10 years’ worth” of contributions required for entitlement to the state pension. “10 years’ worth” is the amount that would be accrued through 520 weeks of earnings at the LEL for people with higher salaries, this might be achieved in less than 10 years.

Class 4 contributions are paid by self-employed people as a portion of their profits, calculated with income tax at the end of the year. Below the earning threshold no class 4 NICs are due. Above the earnings threshold and below the upper earnings limit class 4 NICs are paid at a rate of 8% of trading profits. Above the upper earnings limit
class 4 NICs are paid at the rate of 1% of trading profits. They do not form part of a qualifying contribution record for any benefits, including the state retirement pension.

People who are unable to work for some reason may be able to claim NIC credits. There are equivalent to class 1 NICs, though they are not paid for. They are granted wither to maintain a contribution record while not working, or to those applying for benefits whose contribution record is only slightly short of the requirements for those benefits. In the latter case, they are unavailable to fill ‘gap’ in contribution records for some benefits.

**New Labour Welfare Reforms**

Since 1997 British Government has transformed work and opportunity in Britain. The economic stability and labour market flexibility, with employee’s rights and active welfare to work programmes, have combined to produce the highest employment after the reforms\(^\text{27}\). With a goal of raising employment rate to 80% and reduce the number of working age, of people who are dependent on benefit and to continue to close the employment gaps between different groups U.K., made these changes\(^\text{28}\). Hence the government has given more stress on innovative employment programmes and improved incentives to work\(^\text{29}\). The work focused benefit regime provides help and advice on jobs


\(^{28}\) Ibid.

\(^{29}\) by providing support through tax credit system, by substantially increasing childcare provision and by introducing the minimum wage.http://www.dwp.gov.uk.
and training for people who can work and financial help for those who cannot\textsuperscript{30} through ‘Job Centre Plus\textsuperscript{31}’. This agency is responsible for the new changes in pensions and benefits generally.

Based on the Pension Committee Report, reforms were also proposed in pension for the ageing society taking it as the first priority\textsuperscript{32}. In 2002 itself Britain introduced State Second Pension crediting the low earners and some careers who missed out the State Earnings Related Pension Scheme\textsuperscript{33}.

The Government has set five tests for the reform package. It says that any reformed pension system must\textsuperscript{34}:-

(i) promote personal responsibility (to avoid under saving for retirement);

(ii) be fair (in protecting the poorest women and children);

(iii) be simple (in clarifying the roles of state, employer and the worker);

(iv) be affordable (in maintaining a strong market economy); and

(v) be sustainable (by being amenable to future trends)

\begin{itemize}
\item[30.] See, www.jobcentreplus.gov.uk, accessed on 12\textsuperscript{th} September 2009
\item[31.] An agency of Department of Work and Pension.
\item[33.] The predecessor of the State Second Pension Plan
\item[34.] http://www.dwp.gov.uk/pension reform, accessed on 12\textsuperscript{th} September 2009
\end{itemize}
There are many critics to these reforms. The main criticism is that there is nothing new. Some argue that ‘welfare to work’ is the same ideology behind Poor Law Act of 160135. Another criticism is against partnership between public and private sectors where there is chance of losing charitable aspect36 and welfare provision37. The government’s aim is to provide claimants a single point contact in case of controversy, then the quality and training of the officers who carry out the function becomes vital38.

According to British Pension’s Commission, the present level of pension right level accrual, both public and private, will be insufficient to fund an adequate retirement. The insurers have told the Britons that their private accounts are unlikely to match their second tier public benefit and to move back into public system. In 2004, nearly five lakh workers opted for state system39.

6.3 Social Security in Sweden

Sweden had a long successful economic formula of a capitalist system interrelated with substantial welfare element. But it was

36. Id. at p. 253
37. Presently pensioners receive 63%of their income from state benefits, 25% from occupational pensions and 12% from personal pensions. Since occupational pensions is unevenly distributed. The British Govt. tries to reverse 60/40 State/private balance by expanding voluntary pension provision by pension funds and private companies. Trade unions argue that this will not lead to a substantial increase in in pension saving. See, Report of British –German Trade Union Forum Conference ,“Tomorrow’s Welfare State” http://www.Agf.org.uk/pubs
38. See supra n.35 at p. 254
challenged in 1990s by high unemployment and 2000-02 by the global economic downturn. But the fiscal discipline in the country helped to withstand.40

The Swedish Social Insurance System consists of two tiers. A flat rate basic pension funded on a PAYGO basis and an income related supplementary pension (ATP)41. Workers are contributing 2.5% of eligible earning to their private accounts known as premium pensions, and the remaining 16% of payroll contributions continues to fund benefits on PAYGO Basis.42 In Sweden, the expenditure has been classified into four categories: general/cash, general/in kind selective/cash and selective/in kind.43

In Sweden, sickness disability and old age accounted for over 70% of the social security budget. Selective benefits only come up to 6%. Cash benefits dominate over in kind44 but most cash benefits are taxed and hence net benefits are considerably smaller. Sweden found that the growth in public expenditure for social security is to a large extent burdensome. Rejection of the fact that existing welfare state provisions gradually become expensive due to exogenous forces such as ageing population and new technologies in healthcare. There was also a

41. It was created through 1998 Legislation. See also, Elizabeth D. Tedrow, Social Security Privatization in Other Countries- What Lessons Can Be Learned for the United States? (2006) 14 Elder L. J. 35 at p.53
growing awareness of risk that welfare state has become a ‘black hole’ in the public budget gradually absorbing resources for other perhaps, more urgent needs. Various measures to cut public expenditure for social security were implemented by Sweden also in the 1990s. These expenditures fell over 5% points in just 6 years, from 38.6% relative to the GDP in 1993 to 33.3% in 1998.

Social Insurance Schemes make up the major part of public expenditures for social security with respect to cash benefits. These schemes include old age pensions, disability pensions, sickness insurance, parental insurance, worker’s compensation and unemployment insurance. In addition, there are benefits in kind such as healthcare.

**Sickness Insurance**

In Swedish Sickness Scheme, individuals are compensated for loss of income due to temporary illness. Compensation is given irrespective of cause of illness i.e., no distinction is made between illness caused by a common cold, a work or traffic accident, sport activities etc. The compensation is given into two parts: (1) sick pay from the employer during the first two weeks of sickness episode, the sick pay period and thereafter; (2) a sickness benefit from the social insurance. In Sweden, there is no formal limit for the period one can receive sickness benefit. However, in case an individual’s working capacity is permanently reduced the sickness benefit will be replaced by a disability pension. In Sweden law carefully regulates both part of the compensation. Thus employers are not free to have a higher or lower sick pay than stipulated equity as well as efficiency arguments are used in favour of this
regulations. Its purpose is to make sure that the rate of co-insurance is kept reasonable high and the same for all workers.

The main two advantages of having insurance in the hands of competing private insurance companies which forced Sweden to shift are:

(i) Differentiation: Competing insurance companies are likely to take all steps possible to promote prevention on the part of the insured.

(ii) Diversification: Competing insurance companies are likely to offer policies adapted to the performance of various (major/minor) groups in the society.

There are two types of work injuries—accidents and diseases. For accidents, it is often possible to determine when and where the injury has arisen. It is therefore easy to change appropriate employer with the costs. Injuries caused by diseases are very difficult to handle. Private insurance for work injuries would imply large differences in premiums for employers in different branches.

Pensions

The Swedish Pension system has three parts. A social pension scheme, supplementary negotiated pension schemes and individual pension plans. The social scheme is public and two others are private—the difference between them being that the negotiated schemes are collective, similar or identical for all members of the respective group, while individual plans are adapted to each person’s preferences. The
three parts are closely interrelated. The negotiated schemes and individual plans are to a large extent merely supplements to the social scheme. Social pension schemes are as a rule mandatory and thus protect the interest of tax payers to mandate a system that requires everyone to pay into a scheme that provides adequate coverage in old age. The adequate level should at least include subsistence needs.

This pension reform is recently implemented and it includes a system of individual accounts giving individuals substantial flexibility in their choice of investments. At the same time other Swedish Social Insurance system such as unemployment insurance\(^{45}\) sickness benefits and parental leave has remained unchanged. The major reform is made in old age pension system i.e., the defined benefit scheme by national defined contribution system.\(^{46}\) Between 1998 and 2001 the system was converted from a 100% PAYGO system to a system where some money is saved and invested.\(^{47}\)

Government pension payments are financed through an 18.5% pension tax on all taxed economies in the country, which comes partly from a tax category called public pension fee (7% on gross income) and 30% of a tax category called employer fees on salaries (which is 33% on a retted income). Since January 2001, the 18.5% is divided into two

\(^{45}\) Swedish Unemployment Insurance is under private management. It is not mandatory. There is a benefit society for each Federation of Labour Unions handling cash benefits according to rules stated by law.


\(^{47}\) See *supra* n.1.
parts 16% goes to current payments and 2.5% to individual retirement accounts, which was introduced in 2001.

**Analysis of Recent Developments**

From 1998 onwards Sweden has started its reform measures to strengthen social security. In 1999 a new system of social insurance notional accounts plus mandatory individual “premium pension” accounts was established. It is a transition from the old system established in 1938 and continued in 1958. The earning related old-age pension system based on average income was replaced by a new system where notional account is calculated using an annual index based on development of an average wages, an annuity factor depending on average life expectancy at the time of retirement and a norm for the expected increase of average wages in future years. The premium pension is based on contributions plus net returns converted in to an individual, joint, fixed, or variable annuity. Annual pensions are made subject to taxation. A programme for unemployment benefits are also provided by 1997 legislation replacing the 1934 Act for the job seekers. This is a subscribed programme consisting of basic insurance and a voluntary income related insurance system and the source of payment is payment by insured as membership fee and the employer’s contribution calculated as a % of payroll.

### 6.4 Social Security in India

The general framework of social security legislations in India includes Employees’ Provident Fund, Gratuity, Employee’s Insurance,

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48. Chapter5,6 and 8 elaborately discuss social security in India. This part is narrating the present system in India for the purpose of comparative study only.
Employee’s Pension Scheme and National Social Assistance Programme. Social Security to the workers in the organized sector is provided through five Central Acts, namely, the Employees State Insurance Act, the Employees Provident Fund & Miscellaneous Provisions Act, the Workmen’s’ Compensation Act, the Maternity Benefit Act, and the Payment of Gratuity Act. In addition, there are a large number of welfare funds for certain specified segments of workers such as beedi workers, cine workers, construction workers etc.

The types of programmes in India include Provident Fund with Survivor (Deposit Linked) Insurance and pension fund, gratuity schemes for industrial workers and social assistance system. In 2004, a voluntary old age, disability and survivors benefits scheme introduced under unorganized sector social security scheme for employees and self employed persons between the age of 36 to 50 having a monthly income Rs. 6500/- or less. This means that India is having a lot of social security benefits under different heads. Moreover, a single benefit is provided under many heads also. For example old age benefits are provided by provident fund, pension scheme, gratuity scheme and old age pension under social assistance also. Like wise permanent disability benefit is provided by provident fund scheme, pension scheme and gratuity scheme. The survivor’s benefits are provided through provident fund, survivor (deposit-linked) insurance scheme, pension scheme (widow(er)’s pension, orphan’s pension, other eligible survivor’s pension), gratuity scheme, funeral grant and survivor grant under social assistance. Generally the coverage comes under social assistance and social insurance.
Relevant amendments are proposed in the EPF and MP Act as also in the ESI Act. The consultation process is on with reference to the amendment suggestions received in case of the Maternity Benefit Act and the Workmen’s Compensation Act.

Innovative measures are proposed in the running of the Social Security Schemes of Employees’ Provident Fund Organisation and Employees’ State Insurance Corporation. This includes flexible benefit schemes tailored to the specific requirements of different segments of the population.

Most social security systems in developed countries are linked to wage employment. In India, the situation is entirely different from that existing in developed countries. The key differences are:\(^49\):

(i) India does not have an existing universal social security system;

(ii) India does not face the problem of exit rate from the workplace being higher than the replacement rate. Rather on the contrary lack of employment opportunities is the key concern;

(iii) 92% of the workforce is in the informal sector which is largely unrecorded and the system of pay roll deduction is difficult to apply.

### 6.5 Conclusion

The new trend in all countries is that the State is trying to withdraw from its responsibility to provide security benefits to their workers. They do it either by privatizing or through converting

\(^{49}\) http://labour.nic.in/ss/overview.html, accessed on 20th September, 2009
assistance to contributory insurance. In United States, the government is trying to increase pay roll tax rates and promote rehabilitation programmes which enable workers to return to work. International social security agreements with other countries by U.S. to enable the workers who divide their career between U.S. and other countries is a good initiative to be taken into consideration. U.K. introduced innovative employment programmes and improved incentives to work. They modify the social security system by increasing personal responsibility and creating an affordable and sustainable reform package. Sweden has taken a balanced approach in providing social security in cash and in kind benefits. They changed to 100% PAYGO system based on membership fee and employers’ contribution. As the social, economic and political situation in India is highly different from other nation states, India has to find out solutions for maximum social security coverage in tune with its own resources and needs. The position in India with regard to social security can be differentiated mainly on three grounds.

(i) *Lack of effective grievance redressal mechanism:* In India the social security benefits are under different legislations and under different schemes. Some legislations provide for redressal fora and some do not. Many of the benefits under schemes are not a matter of legal rights to get adjudicated under a court of law.

(ii) *Lack of comprehensive coverage:* The system prevailed under other countries are providing coverage irrespective of any classification for coverage. All are legally entitled to one
benefit scheme or other benefit scheme. But in India majority are outside the legally covered social security programmes$^{50}$.

(iii) **Constitutional Mandate:** Unlike any counterpart Indian Government is constitutionally bound to provide social security to its citizens$^{51}$

Apart from this, in the contemporary world, the domestic legal scenario is highly influenced by international agreements and sovereignty of nation is said to be re-defined. This influence is made a sweeping change in India too. Hence it is highly necessary to understand the labour and trade law relationship and how it affects the states’ welfare measures for labour force. In this context a deliberation up on the question whether there is any conflict between trade liberalization and labour rights becomes indispensable.

The next chapter is an attempt to examine the relationship between international trade law and labour rights.

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50. In India 66% of workforce are under unorganized sector and outside the coverage area of legally declared social security benefits. Some of them are covered under different schemes declared by Government from time to time.

51. This aspect will be discussed in detail in Chapter 4