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**VIDHI**  
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**EXAMINING *the***  
**REGULATORY**  
**FRAMEWORK *for***  
**PENSIONS IN INDIA**

*Making a case for harmonisation*

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# Contents

<b>Chapter I: Introduction: Setting the context</b>	<b>4</b>
<b>Chapter II: An Overview of Pension Systems</b>	<b>7</b>
<b>A. A brief history of pension systems worldwide</b>	7
<b>B. Major themes in regulating pension systems</b>	8
<b>C. Making the case for harmonised pension frameworks: Global evidence</b>	10
<b>D. India's present pensions framework and making the case for reform</b>	13
<b>Chapter III: India's Existing Pension Framework</b>	<b>15</b>
<b>A. An overview of important pension systems in India</b>	
1. An overview	15
<b>B. Classification of major Indian pension schemes</b>	16
1. Civil servant pensions	17
2. The Employees' Provident Fund and the Employees' Pension Scheme	18
3. The Public Provident Fund Scheme	20
4. The National Pension System	21
<b>Chapter IV: Challenges in India's Existing Pensions Framework</b>	<b>23</b>
<b>A. Potential constitutional law issues arising from a non-harmonised pensions regulatory framework</b>	24
1. The right to social justice and Article 21	24
2. The right to dignity and adequate pensions	26
3. Impact of a dispersed pensions framework on classification between pensioners	27
<b>B. Other challenges</b>	28
1. Challenges associated with funding certain pensions	28
2. Tax distortions	29
3. Disparate investment guidelines	29
4. Enhancing consumer protection	30
5. Lack of a dedicated framework dealing with micro-pensions	30
6. Lack of a framework for resolving distressed pension funds	31
7. Special challenges in relation to pensions in the unorganised sector	31
<b>Chapter V: Conclusion: Key Learnings</b>	<b>34</b>
<b>Annexure I</b>	<b>36</b>
<b>Annexure II</b>	<b>39</b>
<b>Annexure III</b>	<b>40</b>
<b>Annexure IV</b>	<b>44</b>

# Chapter I

## Introduction: Setting The Context

Pensions are important primarily because they act as a buffer against old-age income insecurity.<sup>1</sup> With rising life expectancies, having access to old-age income insurance is important to ensure that individuals are protected against longevity risks.<sup>2</sup> While the central aim of pensions is to ensure an adequate standard of living for people in old age, it is also the case that like other economic and financial institutions, pension systems often fulfil additional responsibilities.<sup>3</sup> These include, for instance, deepening capital markets and aiding national growth.<sup>4</sup>

The World Bank notes, that by 2050, the global population aged 65 and older would have doubled from 10% to 20%, with 80% of the world's elderly living in low income countries, with just around one-third of the population in such countries having any sort of formal retirement income. Therefore, globally, pension systems have sought to contribute to the twin goals of providing income in the event of old age, disability and premature death of primary beneficiaries, as well as to long-term savings, and economic growth.<sup>5</sup>

It may be noted that there are two main objectives sought to be fulfilled by pension systems in most

countries across the world. While the first objective is reducing poverty amongst the elderly, the second objective is smoothing consumption between an individual's working years and retirement years, so as to maintain living standards for the elderly. The first objective of poverty reduction is generally financed through the government's budgetary sources, while consumption smoothing is typically financed by contributions from workers. Both these objectives represent separate societal priorities, and countries place different emphases on them. For example, Australia, New Zealand, and the United States focus more on the poverty reduction objective than the consumption smoothing objective, with New Zealand offering all individuals of a certain age a flat pension unrelated to previous income, and Australia offering a means-tested pension providing some level of benefit to more than 75% of the elderly population. On the other hand, countries like Austria and Sweden strongly link contributions and benefits and achieve much higher rates of consumption smoothing. Yet again, some countries choose to distinguish between these objectives by pursuing them using separate instruments.<sup>6</sup>

<sup>1</sup> Olivia S. Mitchell and Gary S. Fields, 'Designing Pension Systems for Developing Countries,' University of Pennsylvania Pension Research Council Working Paper (April 1996) <<http://pensionresearchcouncil.wharton.upenn.edu/wp-content/uploads/2015/09/Wp1995-14.pdf>> accessed on 20 December 2018, 3-5.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> The World Bank, 'Pension Funds, Insurance and Investment Funds' (The World Bank, 2 February 2018) <[www.worldbank.org/en/topic/financialsector/brief/pension-funds](http://www.worldbank.org/en/topic/financialsector/brief/pension-funds)> accessed 20 December 2018.

<sup>6</sup> Anita M. Schwarz, 'Pension System Reforms', The World Bank <[http://siteresources.worldbank.org/INTPSIA/Resources/490023-1120845825946/3622-01\\_Ch01.pdf](http://siteresources.worldbank.org/INTPSIA/Resources/490023-1120845825946/3622-01_Ch01.pdf)> accessed 20 December 2018, 7.

In India, a fundamental issue which exists concerns the absence of a comprehensive regulatory framework, harmonised in its application across existing pension schemes. This presents a considerable lack of clarity regarding the objectives sought to be achieved by various pension schemes, and the regulatory frameworks governing them.

We have, in a previous report on pensions in India, discussed in detail, issues plaguing some of the flagship pension schemes meant for India's informal sector workforce including the Atal Pension Yojana ('APY') and the Swavalamban co-contribution scheme of the Government of India.<sup>7</sup> The issues pointed out in the previous report included a lack of clarity in the design of the APY, a considerably fragmented and overlapping regulatory structure, and an inadequate emphasis on consumer protection.<sup>8</sup> This disparate state of affairs points to a pressing need to have discussions on the challenges inherent in India's pensions framework, with a view to evolving sustainable solutions to the same.

Given the imperative for urgent reform in relation to harmonising India's dispersed pensions framework, the present report analyses the regulatory framework governing some of India's largest pension schemes. The report takes on from the discussion in our previous report and undertakes a broad review of the issues pertaining to India's pensions regulatory framework generally. This report takes the discussion in the previous report forward and makes a case for a comprehensive analysis of India's fragmented pensions regulatory framework and the multiple schemes comprising India's pensions ecosystem. This

becomes even more important in light of recent developments, including the introduction of newer pension schemes such as the Shram Yogi Maan-Dhan Yojana.

Based on global precedents and best practices in some of the world's most developed nations, this report argues, that having multiple regulators and regulatory frameworks and legislations governing the space of retiral security, inhibits the development of an inclusive and equitable pension framework, which provides equal opportunities and rights to all citizens, regardless of their employment status. This report argues that the design and performance of existing and new pension programmes, as well as the underlying actions of regulators, administrators and trustees, should be guided by similar regulatory principles.<sup>9</sup>

The report is structured as follows:

Chapter II traces the evolution of pension systems, and highlights the need for pension reforms in India, both in light of global practice, and limitations of the existing framework.

Chapter III presents an overview of India's pension regulatory framework.

Chapter IV discusses some of the challenges that exist in India's pension regulatory framework, and highlights potential issues posed by the fragmented structure of India's pensions regulatory framework. Some of the issues discussed include certain constitutional law aspects, the presence of multiple regulators, tax distortions, disparate investment

<sup>7</sup> See, Vidhi Centre for Legal Policy, 'Securing our Future: Analysing the Regulatory Framework for Pensions in India' (April 2018) <<https://vidhilegalpolicy.in/reports/2018/4/30/securing-our-future-analysing-the-regulatory-framework-for-pensions-in-india>> accessed 20 December 2018.

<sup>8</sup> Ibid 27-36.

<sup>9</sup> Dhirendra Swarup, 'Designing sustainable and equitable pension systems in Asia in the post crisis World, the reform experience of India: widening coverage in a sustainable and equitable way' (2013) <[https://www.imf.org/external/np/seminars/eng/2013/oapfad/pdf/swarup\\_ppr.pdf](https://www.imf.org/external/np/seminars/eng/2013/oapfad/pdf/swarup_ppr.pdf)> accessed 21 December 2018, 13.

guidelines, the need to strengthen consumer protection, the lack of a dedicated framework regulating micro-pensions and the lack of a framework for resolving distressed pension funds.

Chapter V presents key learnings, suggesting certain recommendations to strengthen India's pensions regulatory framework, while making the larger point that harmonising the regulatory framework is essential for securing India's future.

Annexure I sets out an indicative list of existing pension schemes in India, along with their governing regulatory mechanisms.

Annexure II sets out a brief mapping of India's pension regulatory framework against the five-pillar framework adopted by the World Bank.

Annexure III provides a brief summary of the salient features of investment guidelines applicable to India's major pension schemes.

Annexure IV sets out a list of various Provident Fund Schemes ('PFs') in India.

## Chapter II

# An overview of pension systems

### A. A brief history of pension systems worldwide

In order to understand present pension systems, and the gradual trend towards harmonisation, it is important to understand the trajectory of evolution of pension systems globally.

The most prominent example of a harmonised, universal pension systems was in Europe. The development of pension systems there was premised on two factors viz. the introduction of a universal mandatory pension system, and the introduction of the obligation to participate in the privately managed mandatory savings system.<sup>10</sup> In fact, the first universal mandatory pension systems were introduced in the countries belonging currently to the European Union as early as in the 19th century.<sup>11</sup> From the philosophical point of view, the implementation of such universal pension systems constituted the transition from the 'individual' into the 'collective' responsibility for the future of the elderly, and due to its mandatory character, meant the restriction of human freedom.<sup>12</sup> Germany and Denmark, which introduced universal pension systems in the late 1800s, were the leaders in that aspect.<sup>13</sup> However, there was a gradual conversion into unfunded pension systems after World War II, after the

military authorities of Fascist Italy and Nazi Germany used pension fund assets to finance budgetary expenditures, leading to a decrease in the capital assets of pension funds, gradually leading to the necessity of financing pension pay-outs directly through contributions and taxes.<sup>14</sup> Thus, in the economic context, it meant the conversion of the market method of pension management into a redistribution method, which finally turned to universal pensions only in the 1990s when Sweden became a pioneer in the area.<sup>15</sup>

In this regard, it should be noted that ever since then, there has been progress, and the process of pension reform has been underway globally. For instance, in the period between the 1980s to the early 2000s, Latin American countries saw major reforms, moving from defined benefit ('DB') and partially-funded schemes to defined contribution ('DC') fully-funded individual capitalization accounts with private sector fund administrators.<sup>16</sup> In fact, during the period from 1981 to 2007, more than thirty nations globally made the shift from pay-as-you-go pension systems to those based on individual, private pension savings accounts.<sup>17</sup> On the other hand, administrative reforms which occurred in other countries, focused on improving compliance and coverage of individuals.<sup>18</sup> Largely, common themes in reform

<sup>10</sup> Jaroslaw Poteraj, 'Pension Systems in 27 EU Countries' (September 2008) <[https://mpra.ub.uni-muenchen.de/31053/1/MPPA\\_paper\\_31053.pdf](https://mpra.ub.uni-muenchen.de/31053/1/MPPA_paper_31053.pdf)> accessed 20 December 2018, 450-452.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Wouter van Ginekken, 'Extending Social Security: Policies for Developing Countries' (2003) Extension of Social Security Paper No. 13, International Labour Organisation, <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=673121](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=673121)> accessed 20 December 2018, 35-38. See also, Carmelo Mesa-Lago and Katharina Müller, 'The Politics of Pension Reform in Latin America' (2002) Journal of Latin American Studies, Volume 34, Number 3, 687-688.

<sup>17</sup> See, Mitchell A. Orenstein, 'Pension privatization in crisis: Death or rebirth of a global policy trend?' (2011) International Social Security Review, Volume 64, Issue 3, 65-80.

<sup>18</sup> Van Ginekken (n16) 38-39.

across countries, which have been highlighted as potential concern areas (therefore, indicating areas for reform) include the revision of statutory schemes, strengthening of administrative capacity and extension of coverage.<sup>19</sup>

Taking on from the discussion in this part, the following section discusses some of the major themes in the regulation of pension systems worldwide.

## B. Major themes in regulating pension systems

As such, the development of pension systems worldwide indicates that some important considerations which are relied upon when designing pension schemes include coverage, benefits, financing and administration.<sup>20</sup>

As a starting point, it is important to determine the beneficiaries of a pensions system and the manner in which the benefits will be paid. This is usually resolved by mandating that only retirees who have contributed to the pension plan during their working lives receive benefits in old age.<sup>21</sup> This feature is effectuated by the two major kinds of pension arrangements in vogue today viz. a DB plan or a DC plan.<sup>22</sup>

In a DB arrangement, pay-outs are essentially based on a specified benefit formula which links the pay-out amount to an individual worker's salary and years of service.<sup>23</sup> DB plans are considered redistributive, and thus many national pension systems are DB in nature and provide minimum benefits to all

individuals, irrespective of contribution.<sup>24</sup> At the other end of the spectrum lie pension plans which are DC in nature, where benefits are directly linked to contributions (which are paid either by individuals and/or workers), and depend on investment outcomes.<sup>25</sup> The pay-out in a DC scheme is linked to contributions and there is no minimum benefit guaranteed.<sup>26</sup> At the time of retirement, some DC schemes may provide for annuitisation (or paying a steady stream of retirement payments until death), some other DC schemes may provide for a lump-sum payment, and some other DC schemes may provide for a choice between the two forms.<sup>27</sup>

Pension arrangements in most countries across the world are a variant of either of these models.<sup>28</sup>

In Denmark, which has one of the most advanced pension systems in the world,<sup>29</sup> there exists a public basic pension scheme, a supplementary pension benefit tied to income, a fully funded defined-contribution plan, and mandatory occupational schemes.<sup>30</sup>

In the Netherlands, the retiral savings system includes a flat-rate public pension and a semi-mandatory occupational pension linked to earnings and industrial agreements.<sup>31</sup> Most of Netherlands' employees are members of these occupational plans, which are industry-wide DB plans and earnings are based on lifetime average earnings.<sup>32</sup> This is similar to Canada, which uses a universal flat-rate pension combined with an income-tied pension, an earnings-related pension derived from lifetime earnings, voluntary occupational pension schemes, as well as voluntary individual retirement savings plans.<sup>33</sup>

<sup>19</sup> Ibid 43.

<sup>20</sup> Ibid 13-14.

<sup>21</sup> Olivia S. Mitchell and Gary S. Fields (n1) 5-7.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

<sup>29</sup> This is according to the Australian Centre for Financial Studies, which releases the Melbourne Mercer Global Pension Index.

<sup>30</sup> Davidson Asset Management, 'How do Pension Funds Work In Other Countries' (DAM Blog, 23 September, 2018)

<<http://www.damgoodpensions.com/blog/how-do-pensions-work-in-other-countries/>> accessed 20 December 2018.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.



In Japan, the pension system comprises two main elements viz. a national pension system and employee pensions.<sup>34</sup> The national pension system is a contributory public pension system, which sees participation from individuals within the age groups of 20 to 59, providing inter alia certain old-age related benefits from the age of 65.<sup>35</sup> All registered Japanese residents are covered by the national pension system, with public pension contributions subject to a tax deduction called the 'social insurance contribution'.<sup>36</sup> In addition to the national pension, employed individuals are required to be enrolled in the Employees' Pension Insurance Plan, which provides old-age pensions to employees.<sup>37</sup> In 2016, Japan carried out important pension reforms to improve financial sustainability and increase pension coverage. These include reducing the minimum qualifying age, removing contribution restrictions to DC schemes, and extending pension coverage for part-timeworkers.<sup>38</sup>

Australia's pension system comprises an income-tied, age-based pension funded by the government, a mandatory contribution from employers into a private fund and voluntary contributions into a private retirement fund.<sup>39</sup> Auto-enrolment ensures that all Australian workers who meet some basic

criteria are automatically enrolled onto their company pension.<sup>40</sup> The United Kingdom has modelled its pension auto-enrolment system based on the Australian model.<sup>41</sup> However, unlike Denmark, Australia's asset allocation of their pension funds sees only 20% at most invested in bonds, while the market is heavily linked to shares with 45% of funds invested in shares. Cash and other assets make up the rest.<sup>42</sup>

In the United States, the retirement income system includes a Social Security program, which has a progressive benefit formula based on lifetime earnings, and voluntary private pensions, which can be occupational or personal.<sup>43</sup> DB plans are not very commonplace, and one of the major components of the United States' retirement income model is a private DC plan known as a '401(k) plan'.<sup>44</sup> Such plans allow its participants to defer a part of their pay, on a pre-tax basis, up to an annual limit (which varies with age), with employers often making matching contributions on participants' behalf.<sup>45</sup> Employers are also permitted to make discretionary profit-sharing contributions to such plans.<sup>46</sup> Further, employees are permitted to direct how their 401(k) plan accounts should be invested, from a set of investments established by the employer.<sup>47</sup>

<sup>34</sup> See, Hiroki Habuka et al, 'Pensions & Retirement Plans: Japan', Getting the Deal Through (2018) <<https://gettingthedealthrough.com/area/57/jurisdiction/36/pensions-retirement-plans-japan/>> accessed 3 February 2019.

<sup>35</sup> See, Japan Pension Service, 'Japanese National Pension system', <<https://www.nenkin.go.jp/pamphlet/kokunenseido.files/2English.pdf>> accessed 2 February 2019.

<sup>36</sup> Ibid.

<sup>37</sup> See, Habuka et al (n34).

<sup>38</sup> See OECD, 'Pensions at a Glance 2017, How does Japan Compare', (5 December 2017) <<https://www.oecd.org/japan/PAG2017-JPN.pdf>> accessed 07 February 2019.

<sup>39</sup> See, OECD, 'Pensions at a Glance 2009: Retirement Income Systems in OECD Countries' <[https://www.oecd-ilibrary.org/docserver/pension\\_glance-2009-en.pdf?expires=1550074369&id=id&accname=guest&checksum=7918C0C7A0C7268E28947FE1D4851A3B](https://www.oecd-ilibrary.org/docserver/pension_glance-2009-en.pdf?expires=1550074369&id=id&accname=guest&checksum=7918C0C7A0C7268E28947FE1D4851A3B)> accessed 13 February 2019, 165.

<sup>40</sup> Davidson Asset Management (n30).

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

<sup>43</sup> See, OECD, 'Pension Country Profile: United States', OECD Private Pensions Outlook (2008), <<https://www.oecd.org/finance/private-pensions/42575094.pdf>> accessed 24 December 2018.

<sup>44</sup> Steven J Friedman and Melissa B Kurtzman, 'United States: Pensions & Retirement Plans', Getting the Deal Through (6th edition, 2018) 89-90.

<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

## C. Making the case for harmonised pension frameworks: Global evidence

In most countries around the world where pension systems are well regulated, evidence points to a harmonised system of regulation. This section briefly sets out examples from various jurisdictions to support this claim.

In Denmark, pension and retirement plans are managed by the Agency for Modernisation of Public Administration, under the Ministry of Finance.<sup>48</sup> Under the local Danish regulation, all pension institutions, whether they are established as life insurance companies or as pension funds, are subject to the Financial Services Act (which is the main law governing all financial services) and all secondary legislation established as a consequence.<sup>49</sup> Therefore, they are all subject to similar legislation on the contribution principle, similar investment and solvency rules, similar accounting framework, stress-testing requirements and so on.<sup>50</sup>

In the Netherlands, pension administrators are

regulated by two entities, namely, the Dutch Central Bank (DNB) and the Dutch Authority for the Financial Markets (AFM).<sup>51</sup> In this regard, the DNB is concerned with the examination of the financial position of the pension funds, substantive regulation, and monitoring of standards set by them.<sup>52</sup> However, the implementation and administration of the pension scheme is left to the pension fund. The AFM on the other hand, monitors the behaviour of pension funds, in particular, the obligation to provide information to members.<sup>53</sup> The AFM also monitors the duty of care to be followed by pension funds in providing investment support to their members.<sup>54</sup> In terms of key legislations, the Pensions Act, 2006 sets forth the rules governing occupational pensions, whereas the Algemene Ouderdoms Wet (AOW), or Pensions Act, 1956 lays down the rules governing the public retirement pension system.<sup>55</sup>

In Chile, the regulator for pensions is the Superintendency of Pensions (SP), which represents the State within the pension system.<sup>56</sup> It is an autonomous entity whose highest authority is the Superintendent.<sup>57</sup> It is related to the government through the Ministry of Labor and Social Welfare, through the Undersecretary of Social Welfare.<sup>58</sup> The

<sup>48</sup> See, OECD, 'Human Resources Management Country Profiles: Denmark', Human Resources Management Country Profiles <<https://www.oecd.org/gov/pem/OECD%20HRM%20Profile%20-%20Denmark.pdf>> accessed 13 February 2019; OECD, 'Pensions at a glance 2017: Denmark' <<http://www.oecd.org/els/public-pensions/PAG2017-country-profile-Denmark.pdf>> accessed 13 February 2019.

<sup>49</sup> Carsten Andersen and Peter Skjodt, 'Pension Institutions and Annuities in Denmark' World Bank, Policy Research Working Paper 4437 (December 2007) <<https://openknowledge.worldbank.org/bitstream/handle/10986/7605/wps4437.pdf?sequence=1&isAllowed=y>> accessed 20 December 2018, 27.

<sup>50</sup> Ibid.

<sup>51</sup> Dutch Association of Industry Wide Pension Funds, 'The Dutch Pension System: An overview of the key aspects', <<http://www.pensiondevelopment.org/documenten/The%20Dutch%20Pension%20System.pdf>> accessed 20 December 2018, 15-16.

<sup>52</sup> Ibid.

<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

<sup>55</sup> OECD, 'Pension Country Profile: Netherlands', OECD Private Pensions Outlook (2008), <<https://www.oecd.org/finance/private-pensions/42574973.pdf>> accessed 21 December 2018, 246.

<sup>56</sup> Superintendency of Pensions Chile, 'About us' <<https://www.spensiones.cl/portal/institucional/594/w3-propertyname-1.html>> accessed 20 December 2018.

<sup>57</sup> Ibid.

<sup>58</sup> Ibid.

SP exercises a normative role through the power to dictate rules and give instructions to its audited bodies.<sup>59</sup> One of the main axes of the regulation is to generate a regulation aligned with the Risk Based Supervision, which tends to the better functioning of the Pension System and Unemployment Insurance.<sup>60</sup> The primary legislation is the pension law laid down in Decree Law 3.500 in 1980, which establishes a framework for regulating the main aspects of the Chilean pensions system.<sup>61</sup> This includes the operations of pension fund administrator (AFPs), asset management and protection of rights.<sup>62</sup> Additional regulations have been passed to ensure that the objectives of the pension system are fulfilled more efficiently.<sup>63</sup>

In Australia, the regulator for pensions is the Australian Prudential Regulation Authority (APRA), which is an independent statutory authority that supervises institutions across banking, insurance and superannuation, and which is accountable to the Australian Parliament.<sup>64</sup> It works closely with the Australian Treasury, the Reserve Bank of Australia, and the Australian Securities and Investments Commission, while also acting as a national statistical agency for the financial sector.<sup>65</sup> Apart from prescribing prudential regulation on safety and

soundness of financial institutions, the primary task of APRA is to oversee and protect the interests of depositors, policyholders and superannuation fund members.<sup>66</sup> Key legislations include the Future Fund Act, 2006, which legalised the establishment of the Future Fund (strategic pension reserve fund) in Australia, with details as to objectives, investment strategies, structure of the board, and the Superannuation Guarantee (Administration) Act, 1992, which forms the basis of Australia's mandatory superannuation system and establishes the superannuation guarantee system.<sup>67</sup>

In New Zealand, the two primary legislations governing pension systems are the New Zealand Superannuation and Retirement Income Act, 2001 (which sets out details establishing the New Zealand Superannuation Fund) and the KiwiSaver Act, 2006 (which lays down rules governing the establishment of KiwiSaver plans in order to facilitate individuals' savings).<sup>68</sup> The key regulators in this regard are the Ministry of Social Development, responsible for the public pension plans, and the Ministry of Economic Development's Insurance and Superannuation Unit, which incorporates the Government Actuary and is chiefly responsible for registering and supervising the KiwiSaver plans.<sup>69</sup>

<sup>59</sup> Superintendency of Pensions Chile, 'Inspection and Regulation' <<https://www.spensiones.cl/portal/institucional/594/w3-propertyname-579.html#fiscalizacion>> accessed 20 December 2018.

<sup>60</sup> Ibid.

<sup>61</sup> OECD, 'Chile: Review of the Private Pensions System', (October 2011), <<http://www.oecd.org/finance/private-pensions/49497472.pdf>> accessed 21 December 2018, 20.

<sup>62</sup> Ibid.

<sup>63</sup> Ibid.

<sup>64</sup> Australian Prudential Regulation Authority, 'About APRA' <<https://www.apra.gov.au/about-apra>> accessed 21 December 2018.

<sup>65</sup> Ibid.

<sup>66</sup> Ibid.

<sup>67</sup> OECD, 'Pension Country Profile: Australia' <<https://www.oecd.org/finance/private-pensions/42565480.pdf>> accessed 20 December 2018, 160.

<sup>68</sup> OECD, 'Pension Country Profile: New Zealand' <<https://www.oecd.org/finance/private-pensions/42574991.pdf>> accessed 20 December 2018, 250.

<sup>69</sup> Ibid.

In the United Kingdom, pension systems are regulated by the Pensions Regulator (TPR), which regulates work-based pension schemes.<sup>70</sup> It works with trustees, employers, pension specialists and business advisers, providing guidance on what is expected of them.<sup>71</sup> TPR is an executive non-departmental public body, sponsored by the Department for Work and Pensions.<sup>72</sup> The Financial Conduct Authority (FCA) also plays a role, by regulating the sale and marketing of all stakeholder pension schemes and all personal pension schemes, including group personal pensions and self-invested schemes.<sup>73</sup> The FCA authorises firms that provide and operate schemes, and also regulates firms that give advice to consumers about these schemes.<sup>74</sup> Although TPR regulates occupational pension schemes, the FCA regulates firms which provide investments and investment services to these schemes, such as investment managers who sell pension products.<sup>75</sup> Key legislations include the Pensions Act 2004, which gives the TPR its statutory powers and lays down its objectives, and the Welfare Reform and Pensions Act 1999, which lays down the rules on stakeholder pensions.<sup>76</sup>

In the United States, one of the major components of the pension and retirement income framework is the 'social security' system which is DB in nature, funded by both employer and employee contributions and based on complex calculations.<sup>77</sup> The second major component is the popular '401(k)'

DC plan, which is a privately managed pension plan, based on employer and employee contributions, and offering employees the flexibility to choose investment patterns.<sup>78</sup> The main legislations in this regard include the Internal Revenue Code of 1986, the Employee Retirement Income Security Act of 1974, United States Treasury Regulations and Department of Labour Regulations, while the Internal Revenue Service plays a major role in auditing pension plans for compliance.<sup>79</sup>

In Canada, the Office of Superintendent of Financial Institutions (OSFI) supervises federally regulated pension plans and Pooled Registered Pension Plans, and intervenes in a timely manner to protect members and beneficiaries of pension plans from loss, while recognising that plan administrators are responsible for the plan's management.<sup>80</sup> Key legislations include the Canada Pension Plan Investment Board Act (1997), Pension Benefits Standards Act, 1985, legislation on the Canadian Pension Plan, 1966, and the Old Age Security Act, 1952.<sup>81</sup>

In Japan, public pensions are governed by the National Pension Act, 1959 and the Employees' Pension Insurance Act, 1954, private pensions are governed by the Defined Benefit Corporate Pension Act, 2001 and the Defined Contribution Pension Act, 2001.<sup>82</sup> Key regulatory and supervisory authorities include the Ministry of Health, Labour and Welfare, and the Japan Pension Service.<sup>83</sup>

<sup>70</sup> The Pensions Regulator (UK), 'About us' <<https://www.thepensionsregulator.gov.uk/en/about-us>> accessed 13 February 2019.

<sup>71</sup> The Pensions Regulator (UK), 'Who we are and what we do' <<https://www.thepensionsregulator.gov.uk/en/about-us/what-tpr-does-and-who-we-are>> accessed 13 February 2019.

<sup>72</sup> The Pensions Regulator (UK), 'The Pensions Regulator (TPR)' <<https://www.thepensionsregulator.gov.uk/>> accessed 21 December 2018.

<sup>73</sup> NI Business Info, 'Running a pension scheme' <<https://www.nibusinessinfo.co.uk/content/regulation-workplace-pension-schemes>> accessed 20 December 2018.

<sup>74</sup> Ibid.

<sup>75</sup> Ibid.

<sup>76</sup> OECD, 'Pension Country Profile: UK' <<https://www.oecd.org/finance/private-pensions/42566007.pdf>> accessed 20 December 2018, 295.

<sup>77</sup> Friedman and Kurtzman (n44).

<sup>78</sup> Ibid.

<sup>79</sup> Ibid.

<sup>80</sup> Office of the Superintendent of Financial Institutions, 'Pension Plan Administrators' <<http://www.osfi-bsif.gc.ca/Eng/pp-rr/ppa-rra/Pages/default.aspx>> accessed 21 December 2018.

<sup>81</sup> OECD, 'Pension Country Profile: Canada' <[www.oecd.org/finance/private-pensions/42565598.pdf](http://www.oecd.org/finance/private-pensions/42565598.pdf)> accessed 20 December 2018.

<sup>82</sup> See, Habuka et al (n34).

<sup>83</sup> Ibid.

Thus, examples from across the world point to a systematic structure of pension fund regulatory frameworks. This is evidenced by most countries having a harmonised framework of regulators and laws governing most social security schemes, including pensions. The lack of a harmonised framework for regulating pension schemes and other schemes providing similar retiral benefits is evidenced most prominently in India. The following section sheds more light on India's present regulatory framework for pensions, and why reform is imperative.

### **D. India's present pensions framework and making the case for reform**

In the Indian context, the problem of a rapidly ageing population is significant. Statistics from the 2011 Census show that there are nearly 104 million elderly persons in India, with an upward trend being noted in the elderly population over time.<sup>84</sup> The old-age dependency ratio<sup>85</sup> has also been climbing steadily, and has been estimated to be 14.2% for India (as on 2011).<sup>86</sup> Further, it has been estimated that by 2050, the share of the elderly population (over the age of 60) will increase to 19 percent.<sup>87</sup> This segment of the population is particularly vulnerable to adverse economic outcomes, given the loss of informal support systems, upon which the elderly

can rely in their old age.<sup>88</sup> Though India has traditionally relied on informal social support (through the joint family system) for old-age income security, in view of the challenges posed by urbanisation, migration and declining fertility rates, the efficacy of such informal mechanisms has been under challenge.<sup>89</sup> This in turn, necessitates discussion, on a larger scale, concerning the need for pension reforms.

It is significant to note that India's current pension framework has evolved in an ad hoc manner with individual schemes being added on by both central and state governments, therefore lacking a harmonised framework and inadequate regulatory attention for various components of the system.<sup>90</sup> This, in turn has had the result of inadequate coverage of the number of individuals, as well as the level and range of risks involved.<sup>91</sup>

As a result, the present pension framework in India is fragmented and scattered across multiple schemes, frameworks and regulation. This is particularly so because the present pension system has evolved over time, without an over-arching universal program, regulation, governance or coordination.<sup>92</sup> This makes the Indian pension system chaotic to navigate, both for regulators, and for beneficiaries.

<sup>84</sup> See, Government of India, Ministry of Statistics and Programme Implementation, 'Elderly in India: 2016' <[http://mospi.nic.in/sites/default/files/publication\\_reports/ElderlyinIndia\\_2016.pdf](http://mospi.nic.in/sites/default/files/publication_reports/ElderlyinIndia_2016.pdf)> accessed 20 December 2018, iii-iv.

<sup>85</sup> Ibid 92. In the Indian context, the old-age dependency ratio is defined as "the number of persons in the age-group 60 or more per 100 persons in the age-group 15-59 years".

<sup>86</sup> Ibid iii-iv.

<sup>87</sup> United Nations Population Fund, 'Caring for Our Elders: Early Responses, India Ageing Report – 2017,' <<https://india.unfpa.org/sites/default/files/pub-pdf/India%20Ageing%20Report%20-%202017%20%28Final%20Version%29.pdf>> accessed 15 December 2018, 5.

<sup>88</sup> Ibid 18.

<sup>89</sup> Azad Singh Bali, 'The Political Economy of Pension Reforms in India', Public Administration and Development, Vol. 34 (2014), 294-304, 299.

<sup>90</sup> Ibid 298-299.

<sup>91</sup> Ibid 298.

<sup>92</sup> Ibid 295.

Moreover, India's disparate pension schemes are governed by various regulators. These include the Employees' Provident Fund Organisation ('EPFO'), the Pension Fund Regulatory and Development Authority ('PFRDA'), the Ministry of Finance and the Ministry of Labour and Employment,<sup>93</sup> *inter alia*. Therefore, diverse regulatory frameworks govern the multitude of such pension schemes and there are variations in the way such pension schemes are managed, as well as the way they generate returns. The fragmented and conflicted regulatory architecture of India's retirement financing sector, where responsibilities are shared between the EPFO and the PFRDA have also attracted the attention of the Working Group on Insurance, Pensions and Small Savings ('Working Group') of the Financial Sector Legislative Reforms Commission ('FSLRC'), which recommended *inter alia* an integrated structure for regulation of retirement finance, and the regulation and supervision of the sector under one integrated supervisor.<sup>94</sup>

Compounding this problem is the fact that some of India's largest pension frameworks, like the Employees' Provident Fund ('EPF'), the National Pension Scheme ('NPS') and pensions for civil servants ('civil servant pensions') are all largely aimed towards individuals employed in the formal sector. Even within the formal sector, it has been noted that the adequacy of civil servant pensions is in sharp contrast to the pensions of individuals employed in the private sector,<sup>95</sup> which may lead to potentially inequitable results.

Additionally, pension schemes targeted towards the workforce in India's vast informal sector workforce, which comprises 82.7% of the population,<sup>96</sup> faces its own unique set of challenges. This only serves as a reminder that there is considerable complexity in the regulatory framework governing pensions in India, which may ultimately have an impact on the efficacy of the entire pensions framework as a whole.

<sup>93</sup> Ibid 299.

<sup>94</sup> See, Financial Sector Legislative Reforms Commission, Report of the Working Group on Insurance, Pensions and Small Savings, (2013) <[https://macrofinance.nipfp.org.in/fslrc/documents/wg\\_insurance\\_report.pdf](https://macrofinance.nipfp.org.in/fslrc/documents/wg_insurance_report.pdf)> accessed 29 January 2019, 77.

<sup>95</sup> Bali (n89) 301.

<sup>96</sup> See, Press Information Bureau, Government of India, Ministry of Labour & Employment, 'Workforce in Organised/ Unorganised Sector' (25 July 2016) <<http://pib.nic.in/newsite/PrintRelease.aspx?relid=147634>> accessed 10 December 2018.

# India's Existing Pension Framework

While Chapter II of this report has laid down the context and need for reforms in India's pensions framework, this Chapter will attempt to ground this discussion in an examination of some of the major pension systems in India, namely, the NPS, which is regulated by PFRDA, the EPF, which is regulated by the EPFO and administered by the Ministry of Labour and Employment, and the system of civil servant pensions, which is administered primarily by the Ministry of Personnel, Public Grievances and Pensions.

## A. An Overview of Important Pension Systems in India

### 1. An Overview

At the outset, it is important to note that the distinguishing feature of India's pension framework is that there exists no omnibus pension scheme or social security measure, which covers the entire population. This has been attributed to factors including India's prevalent levels of poverty and unemployment, which hinder setting up a payroll tax financed state pension arrangement for every citizen attaining old age.<sup>97</sup> Therefore, the provision of pension in India largely hinges on the formal employer-employee relationship, and is hence restricted largely to workers in the formal sector.<sup>98</sup>

On an overview, existing pension and social welfare schemes in India can be broadly categorized into three main categories.<sup>99</sup>

- (a) The first category comprises pension schemes for workers in the organized sector. This includes statutory pension schemes and PFs for organized sector workers;
- (b) The second category comprises of voluntary retirement savings schemes for the self-employed and unorganized sector workers; and
- (c) The third category comprises of targeted and means-tested social assistance schemes and welfare funds for the poor.

A more comprehensive table setting out existing pension and social welfare schemes in India, along with their governing regulatory mechanisms at **Annexure I** of this report.

In this regard, the three basic pillars of pension systems worldwide, originally identified by the World Bank, which govern most pension fund regulatory systems worldwide, should be noted.<sup>100</sup> The three main pillars originally identified by the World Bank include a 'first' pillar which is

<sup>97</sup> Reserve Bank of India, 'Report of the Group to Study the Pensions Liabilities of the State Governments' (October 2003) <<https://www.rbi.org.in/Scripts/PublicationReportDetails.aspx?ID=372>> accessed 20 December 2018.

<sup>98</sup> Ibid.

<sup>99</sup> This classification has been adopted from Reserve Bank of India (n97).

<sup>100</sup> See, OECD iLibrary, 'Pensions at a Glance 2005: Public Policies Across OECD Countries' <[https://www.oecd-ilibrary.org/docserver/pension\\_glance-2005-en.pdf?expires=1543574335&id=id&acname=guest&checksum=DAFAD9133B9512B09D2B9A04E582ADEC](https://www.oecd-ilibrary.org/docserver/pension_glance-2005-en.pdf?expires=1543574335&id=id&acname=guest&checksum=DAFAD9133B9512B09D2B9A04E582ADEC)> accessed 20 December 2018.

mandatory, publicly managed plan and aimed at poverty reduction; a 'second' pillar which is a privately managed mandatory savings system; and a 'third' pillar which comprises voluntary savings.<sup>101</sup> Subsequently, in 2005, the World Bank's three-pillar system was expanded upon to include within its ambit two more pillars viz. a so-called 'zero' pillar which is a non-contributory social pension, or general social assistance, aimed at poverty alleviation and securing minimal levels of protection for the elderly, and a non-financial 'fourth' pillar which includes access to informal support, other formal social programs and individual financial and non-financial assets.<sup>102</sup> A more detailed depiction of the five-pillar framework in its application to India, is given in **Annexure II** of the report.

In addition to the five-pillar framework adopted by the World Bank, there are certain other design

principles which are important for an ideal retirement system. These include: establishing clear objectives for the whole retirement system, ensuring a minimum level of funding towards pensions, cost-effective default arrangements, disclosure of administration and investment costs, flexibility in retiral systems, independent governance of pension plans and subjecting the pension system to appropriate regulation.<sup>103</sup>

## B. Classification of major Indian pension schemes

As indicated in the previous section, there is a clear distinction between India's pension frameworks for the organised sector workforce, and that meant for individuals employed in the unorganised sector.

### Recommendations for India based on the World Bank's Five-Pillar Model<sup>104</sup>

- Having targeted social pension schemes for the elderly;
- Boosting awareness about retirement planning and government schemes;
- Leveraging Jan-Dhan, APY and NHPS (National Health Protection Scheme) for efficient micro-insurance and pension administration
- Developing a central repository of data regarding policy details, number of people covered, benefit levels and costs, financing sources, frequency and quality of the provision offered, for greater information symmetry.
- Better asset allocation through market-linked products;
- Monetary incentivisation by government; and
- Better annuity design to counter market risk, longevity risk and inflation risk

Box 1: Recommendations for India based on the World Bank's Five-Pillar Model

<sup>101</sup> The World Bank, 'The World Bank Pension Reform Primer: The World Bank Pension Conceptual Framework' (September 2008) <[http://siteresources.worldbank.org/INTPENSIONS/Resources/395443-1121194657824/PRPNoteConcept\\_Sept2008.pdf](http://siteresources.worldbank.org/INTPENSIONS/Resources/395443-1121194657824/PRPNoteConcept_Sept2008.pdf)> accessed 20 December 2018.

<sup>102</sup> Ibid.

<sup>103</sup> See, Mercer and the CFA Institute, 'An Ideal Retirement System' (March 2015) <<https://www.cfainstitute.org/-/media/documents/support/future-finance/an-ideal-retirement-system.ashx>> accessed 08 February 2019.

<sup>104</sup> These have been adapted from PFRDA & CRISIL, 'Security for seniors: Opportunities and challenges in creating an inclusive and sustainable pension system in India' (February 2018) <[https://www.pfrda.org.in/writereaddata/links/crisil\\_resize80b3e2da-346e-489b-bb2e-2df91d84a225.pdf](https://www.pfrda.org.in/writereaddata/links/crisil_resize80b3e2da-346e-489b-bb2e-2df91d84a225.pdf)> accessed 21 December 2018, 29-31.



It must be noted here that barely 14% of India's workforce is covered by a formal pension program.<sup>105</sup> Individuals who are members of this cohort include central and state government employees, private and public sector salaried workers covered by the EPF and other statutory provident and pension funds, and a small population subscribing to private pension plans offered by insurance companies.<sup>106</sup>

The major components of India's pensions framework comprise the following schemes.<sup>107</sup>

- (a) Mandatory civil servant pensions;
- (b) Mandatory pension and PF programmes administered by the EPFO and other statutory PF organisations for salaried individuals; and
- (c) Voluntary pension schemes for individuals employed in both the organised and unorganised sectors.

Within the framework mentioned above, the schemes mentioned below are particularly important, for the number of people they cover, and their seemingly similar mandate at the Central level<sup>108</sup>. As such, they have been selected for the purposes of this report.

- (a) Civil servant pensions;
- (b) The EPF and the Employees' Pension Scheme ('EPS');
- (c) The Public Provident Fund Scheme ('PPF

Scheme'); and

- (d) The NPS

A discussion on each of these schemes is set out briefly below.

### 1. Civil servant pensions

Civil servant pensions have existed in India from the colonial period, and cover the salaried workforce in the employment of the Central and State governments, and Union Territory administrations.<sup>109</sup> These include a range of pensions paid to civil servants including a superannuation pension, a retiring pension and a family pension.<sup>110</sup> In addition to pensionary benefits, civil servants are covered under the General Provident Fund (GPF) scheme and the Central Government Employees Group Insurance Scheme (CGEGIS).<sup>111</sup> The Department of Pension and Pensioners' Welfare of the Ministry Of Personnel, Public Grievances And Pensions, Government of India, acts as the nodal department for the formulation of policies relating to pensions and retiral benefits in relation to Central Government pensioners.<sup>112</sup> The Ministry of Finance is also involved in certain aspects related to operationalising civil servant pensions.<sup>113</sup> However, it should be noted that post the introduction of the NPS in 2003, all new entrants to the civil services from January 1, 2004 come under the ambit of the NPS and new beneficiaries are not being added to the cohort of individuals who are liable to receive civil servant pensions.

<sup>105</sup> Dr Shashank Saksena, 'Towards Comprehensive Pension Coverage' in India in Parul Seth Khanna, William Price and Gautam Bhardwaj (eds.), *Saving the Next Billion from Old Age Poverty: Global Lessons for Local Action*, (Pinbox Solutions, 2018) 31.

<sup>106</sup> *Ibid.*

<sup>107</sup> This classification has been done based on discussions with academicians.

<sup>108</sup> This understanding is based on discussions with academicians.

<sup>109</sup> See, Reserve Bank of India (n97), ¶¶ 3.26 - 3.29.

<sup>110</sup> *Ibid.*, Box 3.2.

<sup>111</sup> See, the General Provident Fund (Central Services) Rules, 1960.

<sup>112</sup> It should be noted that even within the Central Government, schemes are segregated by occupation and the nature of employment. For instance, pensioners of the Ministry of Railways and Defence are covered by independent pension rules and administrative machinery.

<sup>113</sup> See, Pensioners Portal, 'Frequently Asked Questions (FAQs): Central Civil Services' <[http://pensionersportal.gov.in/FAQ\\_Civil.pdf](http://pensionersportal.gov.in/FAQ_Civil.pdf)> accessed 21 December 2018.

## 2. The Employees' Provident Fund (EPF) and the Employees' Pension Scheme (EPS)

Under the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 ('**EPF Act**'), three major social security schemes including the EPF, the EPS and the Employees' Deposit-Linked Insurance Scheme (EDLIS) have been envisaged.<sup>114</sup> Out of these three schemes, the first two are most directly related with the provision of pension, and are hence discussed here.

The EPF, set up in 1952, is regarded as one of the most important fully-funded DC plans.<sup>115</sup> Participation in the EPF is mandatory for enterprises in specified classes of establishments employing more than 20 workers.<sup>116</sup> The EPF covers employees earning upto Rs 15,000 per month, and requires the employer to contribute 12% of the basic wages, dearness allowance and retaining allowance (if any) drawn during a whole month (together, the total pay) payable by the employer to an employee. Equal contributions are also required to be made from the salary of the employee.<sup>117</sup> The employer pays administrative charges at the rate of 0.5% of the total pay.<sup>118</sup> EPF members are entitled to a final settlement in certain circumstances, including retirement and cessation of membership.<sup>119</sup>

The EPS, introduced in 1995, is the successor to the erstwhile Family Pension Scheme (FPS) which paid survivor benefits.<sup>120</sup> The EPS is funded by both employers and the Central Government, and addresses contingencies occasioned by death during service, superannuation and permanent disability. The EPS scheme envisages multiple kinds of pensions such as superannuation pension, reduced pension and widow pensions.<sup>121</sup>

The EPFO is in charge of regulating pension schemes under the EPF Act, which is achieved by the EPFO's enforcement of the law at both the Central and the State levels.

Under the framework of the EPF Act, the Central Board of Trustees ('**Central Board**') of the EPF plays a pivotal role in the management of the EPF. The Central Board, which is a body corporate,<sup>122</sup> administers the fund, maintains proper accounts, performs other functions as specified,<sup>123</sup> and may also be assisted by an Executive Committee.<sup>124</sup>

<sup>114</sup> EPF Act 1952, Sections 5, 6A and 6C.

*See also*, the Employees' Provident Fund Scheme, 1952; the Employees' Deposit-Linked Insurance Scheme, 1976 and the Employees' Pension Scheme, 1995.

<sup>115</sup> *See*, Reserve Bank of India (n97), ¶¶ 3.8 - 3.10.

<sup>116</sup> *Ibid*.

<sup>117</sup> *See*, Trilegal, 'Update: Wage ceiling under EPF Act increased to INR 15,000' (2 September 2014) <[https://www.trilegal.com/pdf/create.php?publication\\_id=15&publication\\_title=wage-ceiling-under-epf-act-increased-to-inr-15000](https://www.trilegal.com/pdf/create.php?publication_id=15&publication_title=wage-ceiling-under-epf-act-increased-to-inr-15000)> accessed 13 February 2019.

<sup>118</sup> *See*, Surya Sarathi Ray, 'EPFO reduces administrative charges to 0.5%' (The Financial Express, 22 February 2018) <<https://www.financialexpress.com/money/epfo-reduces-administrative-charges-to-0-5/1074965/>> accessed 13 February 2019.

<sup>119</sup> *See*, Reserve Bank of India (n97), ¶¶ 3.8 - 3.10. *See also*, the EPF Scheme 1952.

<sup>120</sup> *Ibid*. *See also*, the EPS Scheme 1995.

<sup>121</sup> The Central Civil Services (Pension) Rules, 1972 are important in this regard. In addition to these rules, certain other rules such as the Central Civil Services (Commutation of Pension) Rules, 1981 and the Central Civil Services (Extraordinary Pensions) Rules 1939, are also relevant.

<sup>122</sup> EPF Act, 1952, Section 5C.

<sup>123</sup> *Ibid* Section 5A.

<sup>124</sup> *Ibid* Section 5AA.

## Analysing the EPF Act and the role of the EPFO

- The Preamble to the EPF Act specifies that it is set up to “provide for the institution of provident funds, pension fund and deposit-linked insurance fund for employees in factories and other establishments”.<sup>125</sup> However, the EPF Act does not mention the goals that it seeks to achieve explicitly. The legislation simply states that the Act have been brought into force with the aim of providing for the institution of provident funds for employees in factories and other establishments; there is no mention of any other reason stating why the institution of such a fund is of importance to employees.
- Explicit proportionality requirements have not been set out in the EPF Act, though there is provision for imposing enhanced punishment on repeat violations of the Act.<sup>126</sup>
- Neither the EPF Act nor the EPF Scheme have any explicit confidentiality related obligations. Further, neither the EPF Act nor the EPF Scheme explicitly address issues of consultation and/or cooperation with regulated entities and/or other supervisory authorities.
- The governance structure of the EPF, and particularly the role of the EPFO, merits reform in a number of aspects including developing internal investment capabilities, professionalization of investment management, seeing benchmarks in service standards et al.<sup>127</sup> This is particularly important, given the critical role of providing retiral income security, being fulfilled by the EPFO.
- Though the Central Board under the EPF Act, has a number of checks placed on it, the PFRDA prima facie is subject to more rigorous checks and balances, which is an aspect in which the functioning of the Central Board under the EPF Act may be strengthened.
- It is important to note that, the government is currently considering divesting the EPFO of its regulatory role and vesting such functions with a separate entity. The idea behind this is to avoid the conflict of interest emanating from EPFO being the country’s largest PF provider and also the regulator for such entities. Arguing that EPFO’s dual role causes conflict of interest, the Ministry of Finance has in fact suggested that the bifurcation process should be carried out after identifying and separating the activities those are regulatory in nature and those of a PF provider within the EPFO.<sup>128</sup> In this regard, it is also apposite to consider the recommendations of the Working Group, when it stated that the EPFO should only manage and not regulate retirement financing schemes, and should itself be regulated like any other retirement financing entity.<sup>129</sup>
- The regulation of PFs poses unique challenges. The EPFO is not the sole PF Organization/regulator in the country.<sup>130</sup> In this regard, the Standing Committee on Labour examined the regulatory framework of Provident Funds in detail and stated that there was a need to establish a regulatory mechanism for various PF trusts in India.<sup>131</sup>

<sup>125</sup> Ibid Preamble.

<sup>126</sup> Ibid Section 14AA.

<sup>127</sup> See, Mukul Asher, ‘There is a need for NPS and EPFO to shape up’, (Livemint, 15 March 2018) <<https://www.livemint.com/Opinion/6jzfnVhkr9pGb9cQ47EYmM/There-is-a-need-for-NPS-and-EPFO-to-shape-up.html>> accessed 05 February 2019;

The Hindu Business Line, ‘A friendlier EPF’ (The Hindu Business Line, 4 May 2017)

<<https://www.thehindubusinessline.com/opinion/editorial/a-friendlier-epf/article9680992.ece>> accessed 05 February 2019.

<sup>128</sup> Surya Sarathi Ray, ‘Government likely to end EPFO’s regulatory functions, may form a separate entity’, (Financial Express, 9 September 2018) <<https://www.financialexpress.com/money/government-likely-to-end-epfos-regulatory-functions-may-form-a-separate-entity/1307074/>> accessed 20 December 2018.

<sup>129</sup> See, Working Group (n94) 17.

<sup>130</sup> Please see **Annexure IV** to this report for a table of various PFs being managed by different ministries.

<sup>131</sup> Ministry of Labour and Employment, Standing Committee on Labour (2017-18), ‘42nd Report: Regulatory Framework of the EPFO on the Excluded Category vis-a-vis implementation of various PF Acts’ (August 2018) <[http://164.100.47.193/Isscommittee/Labour/16\\_Labour\\_42.pdf](http://164.100.47.193/Isscommittee/Labour/16_Labour_42.pdf)> accessed 21 December 2018, vi.

- While the PF of private establishments/organizations/ PSUs largely comes under EPFO according to the EPF Act, there are two categories of organizations/ establishments under the EP Act – Exempted & Excluded. Under the Exempted category, EPFO has the power to exempt large organizations from depositing EPF with EPFO. The PF can be maintained by a Trust created by that organization for the purpose. Under the Excluded category, a particular industry's PF has been excluded under various Acts. It is then stipulated for the particular organization, under that Ministry, to form a separate PF Trust, which is to be maintained/ regulated by that particular Ministry e.g. Shipping, Coal, Railways, Banking, Govt. PF and other PFs.<sup>132</sup>
- The Standing Committee on Labour stated that there is no formal regulatory system for organizations on matters of PF under the Provident Fund Act, 1925. As such, the Committee recommended that for EPFO, Ministry of Labour & Employment should act as a sole regulator for all such PF trusts including those managed by the exempted, excluded and other categories of organizations/establishments.
- In this regard, it is also important to note that the Working Group itself had recommended that exempt and excluded funds should either align themselves with either the EPF or the NPS.<sup>133</sup>

Box 2: Analysing the EPF Act and the role of the EPFO

### 3. The Public Provident Fund Scheme (PPF)

The PPF Scheme was introduced in 1968, as a means of providing a long-term savings instrument to individuals not covered by any other formal pension scheme.<sup>134</sup> The Public Provident Fund Act 1968, specifies that it is “An Act to provide for the institution of a provident fund for the general public”.<sup>135</sup> It should be noted that the Finance Act, 2018 repealed the Public Provident Fund Act, 1968 and brought the PPF Scheme under the purview of the Government Savings Bank Act, 1873.<sup>136</sup>

In its design, the PPF is a long-term investment, with individual accounts opened for a period of fifteen years initially, which can be extended further.<sup>137</sup> The PPF Scheme also provides multiple tax benefits, with specified withdrawals permitted.<sup>138</sup> The PPF Scheme is

considered as a 'safe' instrument, since it is backed by the guarantee of the Government of India.<sup>139</sup> It should be noted that though the PPF Scheme was launched to create retiral funds for individuals with low incomes, the Scheme has supposedly failed to achieve its objectives due to various factors including presentation as a tax-saving instrument, withdrawal provisions prior to maturity, low-key publicity and marketing etc. The Ministry of Finance acts as the Nodal Ministry in relation to the PPF scheme the Scheme has supposedly failed to achieve its objectives due to various factors including presentation as a tax-saving instrument, withdrawal provisions prior to maturity, low-key publicity and marketing etc.<sup>140</sup> The Ministry of Finance acts as the Nodal Ministry in relation to the PPF scheme.

<sup>132</sup> Ibid vii.

<sup>133</sup> Working Group (n94)17.

<sup>134</sup> The discussion on the PPF Scheme is adapted entirely from H Sadhak, Pension Reform in India: The Unfinished Agenda (Sage Publications, 2013) 204.

See also, the PPF Act, 1968 and the PPF Scheme, 1968 in this regard.

<sup>135</sup> PPF Act 1968, Preamble.

<sup>136</sup> See, Finance Act 2018, Section 134.

<sup>137</sup> Sadhak (n134) 204.

<sup>138</sup> Ibid.

<sup>139</sup> Ibid.

<sup>140</sup> Ibid.

#### 4. The National Pension System (NPS)

The NPS which is regulated by PFRDA under the Pension Fund Regulatory and Development Authority Act, 2013 ('**PFRDA Act**'), is the most recent addition to already existing avenues for individuals to obtain pensions in their old age.

The NPS was originally set up vide an interim order of the Ministry of Finance in 2003, with a view to primarily reduce the burgeoning expenditure on civil servant pensions, by moving to a DC system, instead of

the prevailing DB regime.<sup>141</sup> Initially available to only new recruits to the civil services who joined service post 1 January 2004, the NPS was gradually opened up to all citizens by 2009.<sup>142</sup> The salient features of the NPS, as provided statutorily, include individual pension accounts, choice of multiple pension funds and pension schemes, mandatory annuitisation at the time of exit, and no implicit or explicit guarantee of benefits.<sup>143</sup> The PFRDA is tasked with the duty of regulating and promoting the NPS.<sup>144</sup>

### **Analysing the NPS and the role of the PFRDA**

- The PFRDA Act which provides the legislative backing for the NPS, is the only legislation to mention explicitly the goals of 'old-age income security, development, establishment and regulation of pension funds and protection of subscriber interests'.<sup>145</sup> The PFRDA has been tasked with the duty of regulating, promoting and ensuring the orderly growth of the NPS and pension schemes, and to protect the interests of subscribers.<sup>146</sup>
- The NPS under the PFRDA tries to segregate the functions of an operational supervisor from that of a legal regulator. However, there

is a clear lack of clarity in the way these roles have been designed, and continue to be operated, which is an aspect that could benefit from greater clarity.

- The National Pension Scheme Trust ('**NPS Trust**') under the architecture of the NPS, is an intermediary exercising critical functions and holding subscriber fund and assets in its custody. As section 2(j) of the PFRDA Act states, the NPS Trust holds "*the assets of subscribers for their benefit*".<sup>147</sup> The Board of Trustees of the NPS Trust is required to oversee various audit reports and compliance reports of pension fund managers, besides monitoring their performance.<sup>148</sup> In matters of general

<sup>141</sup> Pension plans provide their members with retirement benefits under two basic structures, defined benefits or defined contributions. In a defined benefit arrangement, the plan sponsor (employer) is responsible for paying a stream of benefits determined by a formula to a retired plan member, with the employer/plan sponsor bearing the risk that plan assets will not sufficiently fund the benefits. In a defined contribution arrangement, employer contributions are fixed by formula and the plan member's benefit is equal to the accumulated value of employer and employee contributions in the member's account, with the plan member bearing the risk that accumulated assets will not provide adequate funds for retirement. See, Financial Stability Board, 'Policy Recommendations to Address Structural Vulnerabilities from Asset Management Activities' (12 January 2017) <<http://www.fsb.org/wp-content/uploads/FSB-Policy-Recommendations-on-Asset-Management-Structural-Vulnerabilities.pdf>> accessed 18 February 2019,42.

<sup>142</sup> See, Vidhi (n7) 2.

<sup>143</sup> See, PFRDA Act 2013, Section 20(2).

<sup>144</sup> It should be noted that Section 12 (3) of the PFRDA Act clearly stipulates that the provisions of the PFRDA Act shall not apply to *inter alia* schemes or funds under the EPF Act, contracts under Section 2(11) of the Insurance Act, 1938, exempted pension schemes and persons appointed before 1<sup>st</sup> January 2004 to public services in connection with the affairs of the Union or to All-India Services constituted under the All-India Services Act, 1951.

<sup>145</sup> PFRDA Act 2013, Preamble.

<sup>146</sup> *Ibid* Section 14.

<sup>147</sup> Under section 52 (2)(v) of the PFRDA Act, the regulator has the power to make regulations for the establishment, duties and functioning of the NPS Trust.

<sup>148</sup> PFRDA (National Pension System Trust) Regulations 2015, Regulations 11 and 12.

superintendence, direction, and management of the affairs of the NPS Trust and all powers, authorities and discretions are vested in the Board of Trustees of the NPS Trust.<sup>149</sup> Thus, the NPS Trust implements PFRDA Regulations, supervises and monitors the pension fund managers, and intermediaries, but the ultimate regulator remains the PFRDA.

The NPS Trust, therefore, enjoys significant powers. Given that the NPS Trust is itself an intermediary under the overall supervision of the PFRDA, there is a need for clearer delineation of powers between the NPS Trust, and the PFRDA.<sup>150</sup> This is especially important given the level of control PFRDA exercises over the NPS Trust including appointing the Chairman, Trustees and the CEO of the NPS Trust.<sup>151</sup> In this regard, the recommendations of the Working Group to the effect that the NPS should be separated from PFRDA, the retirement financing regulator, to avoid conflicts of interest, by making the NPS Trust an independent entity, subject to supervision of the retirement financing regulator,<sup>152</sup> assume importance.

- The PFRDA is not explicitly mandated under the PFRDA Act to consult with other supervisory bodies or take preventive measures to specifically tackle the issues of organised crime, or phases of economic difficulty or financial volatility. Though the PFRDA is in itself accountable to the Comptroller and Auditor General of India, and may be issued directions

by the Central Government,<sup>153</sup> there is no explicit provision dealing with consultation of the PFRDA with other regulators.

- There is no explicit obligation imposed on the PFRDA under the PFRDA Act to maintain the confidentiality of such information and/or to release it only when required by law. Neither is there any publicly available policy of the PFRDA in relation to its treatment of confidential information.
- The PFRDA Act<sup>154</sup> as well as the PFRDA (Pension Fund) Regulations 2015<sup>155</sup> lay down the statutory framework for entities known as pension funds. Under the aegis of the PFRDA Act and the PFRDA (Pension Fund) Regulations, 2015 a comprehensive framework has been set up for pension funds including inter alia licensing and eligibility requirements, requirement for a pension fund to be set up as a separate company, constitution of Investment and Risk Management Committees (and respective investment and risk management policies), creation of audit framework and minimum capital requirements for pension funds.<sup>156</sup> While there is a framework for public disclosure, a code of conduct for pension funds and certain compliance/corporate governance guidelines for pension funds,<sup>157</sup> there is no specific provision for pension funds constituting remuneration or funding policies, which is an issue which may require consideration.

### Box 3: Analysing the NPS and the role of the PFRDA

<sup>149</sup> Ibid Regulation 11(1).

<sup>150</sup> Vidhi (n7).

<sup>151</sup> National Pension System Trust Regulations (n148) Regulation 10.

<sup>152</sup> See, Working Group(n94) 24.

<sup>153</sup> See, PFRDA Act, Sections 42 and 43.

<sup>154</sup> Ibid Section 23.

<sup>155</sup> PFRDA (Pension Fund Regulations) 2015.

<sup>156</sup> Ibid.

<sup>157</sup> Ibid, Schedules.

## Chapter IV

# Challenges in India's Existing Pensions Framework

Chapter III of the report has discussed some of the major pension schemes in India, while pointing out the fragmented nature of the existing framework.

This Chapter builds on the discussion, and highlights certain unique challenges that exist in India's pension regulatory framework. Accordingly, some of the challenges discussed include challenges posed by a non-harmonised pensions regulatory framework governing various pension schemes, potential constitutional law issues, tax distortions, disparate investment guidelines, the lack of a dedicated framework regulating micro-pensions and the absence of a framework for resolving distressed pension funds.

With regard to the constitutional analysis presented in this Chapter, it should be noted that the same has been developed by largely relying on the jurisprudence of Indian Courts developed in the context of 'statutory' pensions granted under the provisions of specific regulations, and service law matters generally. Therefore, to that extent, there is a factual distinction between pensions where such pensionary rights flow from legislation, and other matters emanating from specific service laws.

However, this Chapter primarily makes the case for harmonising pension schemes in terms of applicable laws, regulatory bodies, and governance norms, *inter alia* for securing more meaningful and adequate old age security for all. To this extent, existing jurisprudence is important to shed light on the importance of old age security even generally, and has

hence been relied on for the purposes of the foregoing analysis.

Additionally, it should be kept in mind that a significant constitutional issue concerns the legislative competence to enact laws in relation to pensions. Under the scheme of Article 246 of the Constitution of India ('**Constitution**'), there is a clear allocation of legislative competence between the Union and States. The Union enjoys powers to legislate on subjects covered under List I (i.e. the Union List) of the Seventh Schedule of the Constitution, while States enjoy powers of legislation on subjects enumerated under List II (i.e. the State List). Both the Union and the States enjoy powers of legislation in terms of the subject matters enumerated under List III (i.e. the Concurrent List).

In terms of the broad subject of pensions, a number of legislative entries across the Seventh Schedule have a bearing on the topic, and hence may need to be considered while dealing with the issue of pension reforms. The major entries in this regard include Entry 71 of List I (which deals with Union pensions, or pensions payable by the Government of India or out of the Consolidated Fund of India), Entry 42 of List II (which deals with State pensions, which is to say, pensions payable by the State or out of the Consolidated Fund of the State), Entry 23 of List III (which deals with Social security and social insurance, *inter alia*) and Entry 24 of List III (which deals with welfare of labour including provident funds and invalidity and old-age pensions, *inter alia*).<sup>158</sup>

<sup>158</sup> It should be noted that additionally, there are certain other legislative entries in the Seventh Schedule of the Constitution, which may need to be consulted when discussing the issue of pension reforms. These may include, for instance, Entry 43 of List I (dealing with the incorporation, regulation and winding-up of financial corporations, *inter alia*), Entry 47 of List I (which deals with insurance), Entry 73 of List I (salaries and allowances of members of Parliament, the Chairman and Deputy Chairman of the Council of States, and the Speaker and Deputy Speaker of the House of the People, *inter alia*), Entry 75 of List I (dealing with the emoluments, allowances, privileges and rights of the President, Governors, Ministers of the Union and the Comptroller and Auditor-General), Entry 97 of List I (in relation to residuary powers of legislation enjoyed by the Union, read with Article 248), Entry 38 of List II (dealing with the salaries and allowances of members of the Legislature of the State, of the Speaker and Deputy Speaker of the Legislative Assembly, *inter alia*) and Entry 23 of List III (dealing with social security, *inter alia*).

## A. Potential constitutional law issues arising from a non-harmonised pensions regulatory framework

A preliminary examination of the extant pension framework in India, as undertaken in the previous Chapter, reveals a tilt towards securing pensions and social welfare for workers in the organized workforce, especially in the employment of the government. This reveals not just a non-harmonised and fragmented regulatory framework, but also the exclusion of a large number of people from India's pension systems.

Pensionary benefits are extended largely to employees in the formal sector (with contributions by the State in certain cases), which stands in contrast to the largely voluntary pensions framework applicable to the unorganised sector workforce in India. This is compounded by the fact that 82.7% of the Indian workforce is engaged in the unorganised sector,<sup>159</sup> pointing to a potential area of concern in terms of sub-optimal coverage of India's existing pensions framework, and the denial of a reliable means of social security in old age to vast majority of the population.

The fact that pension systems should be inclusionary, and that they form an integral part of the social vision of the country, was articulated by the Supreme Court of India ('**Supreme Court**') in *Som Prakash Rekhi v Union of India*<sup>160</sup> in the following words:

*"We live in a welfare State, in a 'socialist' republic, under a Constitution with profound concern for the weaker classes including workers (Part IV) welfare benefits such as pensions, payment of provident fund and gratuity are in fulfilment of the Directive Principles."*

Thus, as recognised by the Supreme Court, welfare benefits such as pensions and provident funds are in fulfilment of the role of the 'welfare State' and the Directive Principles of the Constitution, and such observations of the Supreme Court point to a serious, though oft-neglected issue.

In this regard, the following section looks at some of the landmark judgements of the Supreme Court, and analyses India's fragmented pensions regulatory framework, characterised by disparity both in the number of schemes and their standards of regulation, from the perspective of constitutional law.

### 1. The right to social justice and Article 21<sup>161</sup>

In *Deoki Nandan Prasad v State of Bihar*,<sup>162</sup> a Constitution Bench of the Supreme Court recognised that the right to pension for government servants, granted by statute, was a valuable right, holding that "*pension is not a bounty payable on the sweet will and pleasure of the Government and that, on the other hand, the right to pension is a valuable right vesting in a government servant.*"

The observations of the Supreme Court in this judgement were re-iterated in a number of cases,<sup>163</sup> including *Poonamal v Union of India*,<sup>164</sup> where it was observed again that "*It is not necessary to examine the concept of pension. As already held by this Court in numerous judgments that pension is a right not a bounty or gratuitous payment. The payment of pension does not depend upon the discretion of the Government but is governed by the relevant rules and anyone entitled to the pension under the rules can claim it as a matter of right.*"

<sup>159</sup> See, Press Information Bureau (n96).

<sup>160</sup> (1981) 1 SCC 449.

<sup>161</sup> It should be noted that the discussion in this section relies entirely on cases where there was a pensionary right granted by statute.

<sup>162</sup> AIR 1971 SC 1409, ¶35. In this case, the petitioner was denied pension, which had accrued to him under the Bihar Pension Rules.

<sup>163</sup> See, *State of Punjab and Anr vs Iqbal Singh*, AIR 1976 SC 667, ¶3. In this case, the respondent was entitled to pension in terms of the Punjab Civil Service rules.

<sup>164</sup> AIR 1985 SC 1196, ¶7. This case concerned the denial of the payment of family pensions to widows of government servants in terms of the Civil Services Pension Rules 1972.



Over time, the jurisprudence in relation to various aspects of pensions and its interface with Article 21<sup>165</sup> has only expanded, and has largely been envisaged in the realm of social justice, emanating from the imperatives of the Directive Principles. For instance, in *Maha Singh Sinhar v State of Haryana*,<sup>166</sup> the Punjab and Haryana High Court held that the denial of payment of pension and other retiral benefits to a pensioner with effect from the date of retirement was a violation of fundamental and constitutional rights. The denial of family pension has also been held to be a violation of Article 21 by the Supreme Court.<sup>167</sup> A delay in the payment of pensionary benefits has also been recognised as violative of Article 21.<sup>168</sup> More recently, the Central Information Commission has also observed that the suspension of pension payments amounts to a denial of the right to life.<sup>169</sup>

In the specific context of India's pension regulatory framework, which largely serves the retiral needs of individuals employed in the formal sector, while a vast majority of the unorganised sector workforce has no effective means of social security, this indicates a critical area of concern.

The contours of adequate old age security, including adequate pension, nutrition, and shelter, was

discussed in detail in a recent judgement, where the Supreme Court, observing on a Public Interest Litigation,<sup>170</sup> held that "*In view of the various decisions of this Court, there cannot now be any doubt that the right to live with dignity is, in effect, a part of the right to life as postulated in Article 21 of the Constitution. Such a right would be rendered meaningless if an aged person does not have the financial means to take care of his basic necessities and has to depend for it on others.*" As stated by the Supreme Court, an inadequate pension failed to advance the constitutional mandate under Article 21, for example as in the case of Indira Gandhi National Old Age Pension Scheme ('IGNOAPS'), where the amount of pension was last revised in 2007.<sup>171</sup> Therefore, a right to adequate pension was read as an essential part of Article 21.

It can be argued that fragmented nature of India's pensions frameworks (and its associated pitfalls) undermines such a right. It may also be argued that the right to adequate pensions, as has been recognised in the recent past,<sup>172</sup> ought to be extended to other pension schemes in operation, within the limits of the State's economic capacity and attendant fiscal constraints.

<sup>165</sup> Constitution of India 1950, Article 21.

<sup>166</sup> (1994) 108 PLR 409, ¶17. In this case, there was an inordinate delay in the payment of pension and retiral benefits to the petitioner.

<sup>167</sup> See, *S.K. Mastan Bee v. General Manager, South Central Railway*, (2003) 1 SCC 184, ¶16. In this case, the appellant, was the widow of a railway employee, whose claim for family pension had been rejected.

<sup>168</sup> See, *Manager, Solapur Municipal Corporation v. Devidas Mahadev Potdar & Ors.*, Judgement dated 10 December, 2008 of the Bombay High Court per Justice Dr. DY Chandrachud, ¶18. In this case, the timely payment of pensions in terms of the Maharashtra Civil Services (Pension) Rules 1982, was in question.

<sup>169</sup> See, Gaurav Bhatnagar, 'Citing Right to Life, CIC Pulls up EPFO for Stopping Widow's Pension for Three Years' (The Wire, 9 July 2018) <<https://www.thewire.in/government/citing-right-to-life-cic-pulls-up-epfo-for-stopping-widows-pension-for-three-years>> accessed 25 October 2018.

<sup>170</sup> *Dr. Ashwani Kumar v. Union of India & Ors*, Writ Petition (C) No. 193 of 2016, judgement dated 13 December 2018 Of the Supreme Court. The judgement was rendered on a Public Interest Litigation filed by the Petitioner to enforce the rights of elderly persons under Article 21 of the Constitution. In this regard, the petitioner prayed for reliefs in respect of pensions, shelter and geriatric care for the elderly, and the effective implementation of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

<sup>171</sup> Ibid 8.

<sup>172</sup> Ibid.

## 2. The right to dignity and adequate pensions

While the issue of exclusion discussed above has not been viewed explicitly, as being an unfortunate corollary of India's highly fragmented pensions framework, the Supreme Court has however stated that there is a need to have a *“relook at these schemes and perhaps overhaul them with a view to bring about convergence and avoid multiplicity. In particular, the Government of India and the State Governments must revisit the grant of pension to the elderly so that it is more realistic”*.<sup>173</sup> In this regard, it is pertinent to note certain observations of the Supreme Court in the same judgement. The Supreme Court noted that the rights of elderly persons were not fully foreseen by the framers of the Constitution, with an exception to the reference to the health and strength of workers, men, women, and children under Article 39 of the Constitution, and public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want under Article 41 of the Constitution. However, as the Supreme Court also noted, there is no specific reference to the health of the elderly or to their shelter in times of want and indeed to their dignity and sustenance due to their age.<sup>174</sup>

Further, it was noted by the Supreme Court that the pension amounts fixed under IGNOAPS more than a decade ago, were woefully inadequate to advance the constitutional mandate under Article 21, and also lower than the amount stated, if the current value of the rupee was taken into consideration.<sup>175</sup> As such, the Supreme Court stated that the right to live with dignity was in fact a right nestled under Article 21 of the

Constitution, and without adequate pension to take care of basic necessities, such a right would in fact be rendered meaningless.<sup>176</sup> However, it is worthwhile to state here, that the right to adequate pensions has been envisaged, taking into account, the limitations on the State's economic capacity. This is the reason, that for particular schemes like the National Social Assistance Programme, linking pension to the index of inflation has not been considered appropriate, since the provision of pension has been looked upon as a welfare measure.<sup>177</sup>

Perhaps the most pertinent point made by the Supreme Court in this regard has been to urge the Government of India, together with the State Governments and Union Territory Administrations, to work in tandem to make pension schemes workable and meaningful. This obligation has been read into Article 41 of the Constitution, which directs the State to provide public assistance to its citizens in the case of unemployment, old age, sickness and disablement as well as in other cases of undeserved want, within the limit of the State's economic capacity and development.<sup>178</sup> As such, the Supreme Court has passed directions to States, mentioning that a number of pension schemes in the country were out-dated, and hence should be overhauled, with a view to bring about convergence and avoid multiplicity.<sup>179</sup> Thus, judicial notice of India's present pensions framework being fragmented and leading to problems of exclusion, and severe handicap for the elderly require to be addressed in a holistic manner.

<sup>173</sup> Ibid.

<sup>174</sup> Ibid 3.

<sup>175</sup> Ibid 8-10.

<sup>176</sup> Ibid 16.

<sup>177</sup> Ibid 19.

<sup>178</sup> Ibid 17-18.

<sup>179</sup> Ibid.

### 3. Impact of a dispersed pensions framework on classification between pensioners

Article 14 of the Constitution guarantees individuals with both 'equality before the law' and 'equal protection of the laws'. Article 14 thus, crystallizes the constitutional mandate of equality amongst individuals of the same class. In the specific context of pensioners, even though Article 14 of the Constitution guarantees equality, in certain cases, the Supreme Court has delved into the issue of whether the test of Article 14 can be applied legitimately to every class of pensioners, in the same manner. Accordingly, the following discussion focuses on judicial decision rendered in the context of classification of pensioners under Article 14 vis-à-vis India's current dispersed framework for pensions.

In this regard, in *D.S. Nakara v Union of India*,<sup>180</sup> a Constitution Bench of the Supreme Court, *inter alia*, considered the question of whether pensioners entitled to receive superannuation pension under the Central Civil Services (Pension) Rules, 1972, formed a class as a whole or not. This question was answered in the affirmative, and the Constitution Bench held that pensioners for the purpose of receiving pension form a 'class', and that sub-classification in terms of their entitlement to

benefits based on their date of retirement was impermissible.<sup>181</sup> Subsequently, in the decision of a Constitution Bench of the Supreme Court in *Krishena Kumar v Union of India*,<sup>182</sup> it was held that PF retirees and pensioners form two separate classes, given the distinctive natures of the two schemes, and that consequently there could be no claim to treatment at par between pensioners and PF retirees.<sup>183</sup> The view that pensioners governed by different rules form different groups was also highlighted by the Patna High Court in *ITC Ltd v State of Bihar*,<sup>184</sup> where it was held that where different groups were governed by different sets of rules, it was permissible to treat them as belonging to different classes, provided there was a rational basis for fixing a cut-off date.

The view taken in the above cases highlights the fact that different classes of pensioners governed by different rules form different classes. This may assume importance in the context of the dispersed framework for pensions in India.<sup>185</sup> This issue should be considered in relation to *Ashwani Kumar*<sup>186</sup> discussed previously, where the Supreme Court noted that the dispersed framework of pension systems in India extended to State pension systems such as the IGNOAPS as well, where there was significant dispersion in the contributions made by the various state governments and Union Territory

<sup>180</sup> AIR 1983 SC 130, ¶44. In this case, the main question before the Court was whether pensioners entitled to receive superannuation pensions under the Central Civil Services (Pension) Rules, 1972 formed a class as a whole, and if the date of retirement was a relevant consideration for eligibility when a revised formula for computation of pension was ushered in and made effective from a certain date.

<sup>181</sup> This was because such classification was not based on a rational principle with a nexus to the underlying object of the legislation. Hence, this was held to be violative of Article 14.

<sup>182</sup> AIR 1990 SC 1782, ¶46. In this case, the facts pertained to a switch-over date prescribed for railway employees in relation to provident fund and pensionary benefits.

<sup>183</sup> In the two cited cases, it was held that pension schemes were vastly different from Provident Funds. This was because while for a pensioner, the State's obligation to pay pensions started at the time of retirement, for a Provident Fund retiree, the State's obligation to contribute to such Provident Fund ended at the time of retirement. Additionally, the rules governing pensions are different from the rules governing Provident Fund, and additionally pensions (unlike Provident Funds) were non-contributory and in the nature of a statutory liability for the Government. Given this, there was a clear distinction between pensioners and Provident Fund retirees. See, *Krishena Kumar v Union of India*, AIR 1990 SC 1782, ¶48.

<sup>184</sup> (1998) ILLJ 418 Pat, ¶17. In this case, the primary question concerned whether a workman who had opted for voluntary retirement, would be entitled to the benefit of revised pension, in terms of a more beneficial pension scheme which had been arrived at in terms of a settlement, post his retirement.

<sup>185</sup> As mentioned previously, it should be noted that while certain classes of individuals (for instance, individuals receiving civil service pensions or those covered under the EPS) receive defined pensionary benefits, while other individuals either do not receive pensionary benefits (for instance, individuals who have not voluntarily subscribed to schemes such as the NPS) or receive variable pensions (for instance, individuals in the private sector who have subscribed to the NPS and whose pensions are linked to market returns, and are based on subscriber contributions).

<sup>186</sup> Dr. Ashwani Kumar (n 170).

Administrations.

Thus, the thread of argument running through these cases, juxtaposed with India's highly fragmented pensions framework, which tilts towards securing pensions and social welfare for individuals in the organized workforce, as compared to individuals in the unorganised workforce, highlights the inadequate state of retiral security, both in the organized and unorganised sectors. Additionally, as is discussed later, the presence of different investment and return-generation mechanisms for various classes of pensioners, may lead to inequitable outcomes in terms of returns generated, and therefore point to another source of potential inequity.

Therefore, this creates sufficient justification for harmonising not only the various existing pension schemes in India, but also the regulatory mechanisms governing India's highly dispersed and fragmented pensions framework, fulfilling both constitutional, and welfare goals in the process.

## B. Other challenges

### 1. Challenges associated with funding certain pensions

The Constitution mandates that certain categories of individuals are to be paid salaries, allowances and pensions from the Consolidated Fund of India ('CFI').<sup>187</sup>

In this regard, it is pertinent to note that Article 366 of the Constitution defines pension to mean "a pension, whether contributory or not, of any kind whatsoever payable to or in respect of any person, and includes retired pay so payable; a gratuity so payable and any sum or sums so payable by way of the return, with or without interest thereon or any other addition thereto, of subscriptions to a provident fund;"

For instance, pensions of the Comptroller and Auditor General of India,<sup>188</sup> officers of the Supreme Court,<sup>189</sup> and officers of High Courts are to be charged on the CFI.<sup>190</sup> Additionally, the traditional civil servant pensions (both at the level of the Centre and States) are also funded from the CFI on an unfunded pay-as-you-go basis.<sup>191</sup> Moreover, for civil servant pensions, there is an 'administered rate of return',<sup>192</sup> which is presumably not generated by the investment of moneys, but is instead simply declared. Thus, while the Constitutional mention of certain pensions by itself may be attributable to the nature of the office and may be fairly uncontroversial, coupled with the fact that pensions for certain classes of Constitutional functionaries, as well as civil servants, are specifically funded from CFI, this points to a departure from pensionary benefits available to other individuals. Hence, it may be important to consider if the payment of such unfunded pensionary liabilities, could lead to a potential fiscal issue in the future.

<sup>187</sup> The payment of pensions to certain constitutional functionaries, such as judges, in other jurisdictions, are seemingly funded from general revenues. For instance, in Australia, pension payments to judges are made out of the Consolidated Revenue fund, and in the United Kingdom judicial pensions are charged on the Consolidated Fund. See, Section 14 of the Judges' Pensions Act, 1968 (Australia) and Section 31 of the Judicial Pensions Act, 1981 (United Kingdom).

<sup>188</sup> Constitution, Article 148.

<sup>189</sup> Ibid Article 229.

<sup>190</sup> Ibid Article 146. See also, Constitution, Article 112.

<sup>191</sup> See, Renuka Sane and Ajay Shah, 'Civil Service and Military Pensions in India' Working Paper No. 2011-91 (September 2011) <[https://www.nipfp.org.in/media/medialibrary/2013/04/wp\\_2011\\_91.pdf](https://www.nipfp.org.in/media/medialibrary/2013/04/wp_2011_91.pdf)> accessed 26 October 2018, 4-5.

<sup>192</sup> Ibid.

## 2. Tax distortions

Another issue which has been identified in the context of pension systems in India, is the prevalence of tax distortion. Consider for example, the NPS, which was initially introduced as a means to reform the pensions framework in India, and provide simple and comprehensive coverage to the entire population. The NPS suffers from a significant design problem, because unlike certain voluntary schemes such as the PPF which allow for substantial tax rebates or exemptions, through favourable tax rules on voluntary retirement savings, the NPS does not offer the same advantages.<sup>193</sup> This makes certain schemes like the PPF attractive to the self-employed, who use the same as tax-saving devices.<sup>194</sup> On the other hand, a critical pension system such as the NPS, suffers from the issue of retirement corpus being taxed, while competing schemes such as the PPF and the EPF are not similarly disadvantaged.<sup>195</sup> This has been said to lead to the unpopularity of the NPS, leading to the crowding out of the 'private' market for pensions.

In this regard, it should be noted that there has been a recent proposal to increase the tax exemption available at the time of exit from the NPS on a certain portion of an individual's accumulated retirement corpus.<sup>196</sup> This has been reportedly sought to be done by proposed future amendments to the Income Tax Act, 1961.<sup>197</sup> While this may reduce the tax distortions between the NPS *vis-à-vis* other pension schemes

partially if and when implemented,<sup>198</sup> it does not completely address the problem of unfavourable tax treatment of the NPS, since the proposed tax exemption supposedly does not apply to the mandatory annuities contemplated under the NPS.<sup>199</sup>

## 3. Disparate investment guidelines

The presence of investment guidelines for pensions schemes, which are well-designed, can provide subscribers with competitive rates of return and enable significant improvement in post-retiral incomes. The documented success of Malaysia's Employees Provident Fund which has been aided by progressive investment guidelines, is a case in point.<sup>200</sup> A focal area of the Malaysian Employees Provident Fund's risk management framework, which lends to its success, prioritizes the prudent person approach without the government setting investment limits, requires approvals only in limited cases, and enables monitoring and review of investments. The Malaysian Employees Provident Fund by following a Strategic Asset Allocation strategy, has not only generated returns for its members consistently, but has also expanded the scope of its investments and has increased the depth of capital markets. Thus, well-designed investment guidelines for pension schemes generally have positive effects extending beyond its subscribers, and should hence be considered an area of priority for policy-makers.

<sup>193</sup> Oskari Juurikkala, 'Sustainable Pension Reform in India: Towards A Market-Based System', *Economic Affairs*, Vol. 28, Issue 1 (March 2008) 35-40, 37.

<sup>194</sup> *Ibid.*

<sup>195</sup> See, 'What stops NPS from being a lucrative investment? Taxation on maturity' (The Economic Times, 2015) <<https://economictimes.indiatimes.com/what-stops-nps-from-being-a-lucrative-investment-taxation-on-maturity/investarticleshow/46674410.cms>> accessed 26 October 2018.

<sup>196</sup> Shaikh Zoab Saleem, 'Tax treatment of NPS set to change' (Livemint, 12 December 2018) <<https://www.livemint.com/Money/MnHzGr2IHnXE1m3FkyhSJ/Tax-treatment-of-NPS-set-to-change.html>> accessed 20 December 2018.

<sup>197</sup> *Ibid.*

<sup>198</sup> *Ibid.*

<sup>199</sup> *Ibid.*

<sup>200</sup> The discussion on the Malaysian Employees Provident Fund contained in this paragraph is adapted entirely from the World Bank Group, 'Case Study on the Employees Provident Fund of Malaysia' (June 2018) <<http://documents.worldbank.org/curated/en/197861540400101962/pdf/131289-WP-WorldBankReport-PUBLIC.pdf>> accessed 2 February 2019.

In this regard, an important issue which arises in relation to pension systems in India, is the disparate investment guidelines followed for different pension schemes. **Annexure III** of this report gives a brief overview of the various investment guidelines and their salient features.

For civil servants (under the employment of the Central Government), the amount of pension and family pension is stipulated in terms of a formula.<sup>201</sup>

Under the EPF Scheme, the corpus accumulated by the EPF is to either be deposited in specified banks as approved by the Central Government, or is to be invested in accordance with the directions of the Central Government, in specified securities,<sup>202</sup> and interest is to be paid to the account of an individual subscriber at a rate to be determined by the Central Government in consultation with the Central Board.<sup>203</sup>

Under the EPS, while the corpus accumulated by the EPS is to be invested in the manner provided for in the EPF Scheme, insofar as the amount of monthly pension goes, the same is according to a formula laid down under the Scheme and has been stipulated under the EPS Scheme itself.<sup>204</sup>

Under the NPS, there is no explicit guarantee of benefits to subscribers,<sup>205</sup> and the PFRDA stipulates investment guidelines for pension fund managers who manage the corpus of pension funds into which NPS subscribers contribute.<sup>206</sup>

The pension scheme run by the Reserve Bank of India for its staff members stipulates the amount of

pension payable.<sup>207</sup>

Therefore, the fragmented and non-harmonised approach to investment guidelines across pension schemes in India, may indicate potential inefficiencies. This may restrict the possibility of pension schemes being able to generate high rates of return for their members, which is inconsistent with the idea that pension schemes should aim to provide those whom it covers with maximum retiral wealth. Additionally, fragmented investment guidelines across pension schemes may lead to a situation where certain pension schemes generate higher returns due to less restrictive investment practices, while other schemes cannot do so. This may then point to a difference in rates of return generated, and hence pensions payable to various classes of individuals, which points to potential inequity in the operationalisation of India's fragmented pensions framework.

In this regard, and in order to improve the fragmentation of investment guidelines across pension schemes, it may be worthwhile to consider certain recommendations of the Working Group. These include its recommendations in relation to legally mandating pension funds to follow the 'prudent person' standard, to prevent excessive risk-taking, while at the same time not being unduly prescriptive.<sup>208</sup> Further suggestions of the Working Group, which are relevant in this regard, included recommending that all retirement financing funds must mandatorily be required to set forth and pursue an 'investment policy', as well as empowering regulators to set standards for the transparent valuation of scheme assets.<sup>209</sup>

<sup>201</sup> See, Central Civil Services (Pension) Rules, 1972, Regulations 49 (for pension) and 54 (for family pension).

<sup>202</sup> EPF Scheme 1952, Regulation 52.

<sup>203</sup> Ibid Regulation 60.

<sup>204</sup> Ibid Regulations 12, 16 and 26.

<sup>205</sup> See, PFRDA Act 2013, Section 20(2)(g).

<sup>206</sup> See, PFRDA (Pension Fund) Regulations 2015, Regulation 14. The investment guidelines set by the PFRDA differ depending on the nature of the subscriber, however.

<sup>207</sup> See, Reserve Bank of India (Pension) Regulations, 1990, Regulations 28 (for pension) and Regulation 32 (for family pension).

<sup>208</sup> See, Working Group (n94) 19.

<sup>209</sup> Ibid.

#### 4. Enhancing consumer protection

Consumer protection is an important issue, particularly in case of financial products. The protection of financial consumers is important given regulatory restrictions (which inhibit the growth of a large number of players in the market for financial products) and informational illiteracy, which ensures that consumer protection becomes a regulatory obligation.<sup>210</sup>

In the particular context of pensions, consumer protection is additionally critical given that the institutions offering such products represent a special segment of the financial market. Pensions, are by their nature long-term financial contracts which are not easily understood, and combined with their importance in retirement provisioning, represent a challenging area of regulation for governments.<sup>211</sup>

India currently does not have a specialised regime for the protection of consumers for financial products. Therefore, while there is a need to evolve a specialised regime dealing with the protection of financial consumers (which the FSLRC suggested be done through the creation of a Financial Redress Agency, functioning as a unified grievance redress system for all financial services),<sup>212</sup> the elements of a proposed consumer protection framework, which would specifically protect consumers of retirement funds, may be adapted from those proposed by the Working Group. These include, inter alia legal protection to consumers from being misled or deceived, subjected to

unfair contract terms or being unduly penalised, providing consumers access to reasonable grievance redressal mechanisms, providing consumers with the right to support to take right decisions and receive reasonable quality services, ensuring that consumer protection regulation is proportional to risks held by consumers, regulation of various charges, ensuring inter-operability, portability and exit options in retirement financing plans, and mandating the provision of suitability analysis and advice.<sup>213</sup>

#### 5. Lack of a dedicated framework dealing with micro-pensions<sup>214</sup>

Micro-pensions essentially refer to long-term savings made by individuals in the informal sector, who look to obtain income security in old age. Micro-pensions often serve a critical role in providing a regular source of income in old age. Micro-pensions are distinct from traditional pensions, and may hence require a specialised regulatory framework. For instance, issues of proximity of pension fund managers to consumers, low consumer awareness, large transaction costs and designing appropriate incentives are more pronounced in the case of micro-pensions. As on date, there is no specialised regulatory framework in India dealing with micro-pensions. This is unlike the case of micro-insurance, where the insurance regulator has issued a distinctive set of guidelines.<sup>215</sup> Moreover, creating an enabling framework for micro-pensions may also require creating an enabling regulatory framework for micro-finance and micro-finance

<sup>210</sup> See, Dr K.C. Chakrabarty, 'Financial Consumer Protection' (Inaugural address at the Reserve Bank of India – Bank of France Seminar on Consumer protection, 22 March 2013) <<https://www.bis.org/review/r130402b.pdf>> accessed 06 February 2019, ¶¶ 3-5.

<sup>211</sup> See, Nina Paklina et al, 'The Role of Supervision Related to Consumer Protection In Private Pension Systems', IOPS Working Papers on Effective Pensions Supervision (Number 27, December 2016) <[http://www.iopsweb.org/WP\\_27\\_Role-Supervision-Consumer-Protection.pdf](http://www.iopsweb.org/WP_27_Role-Supervision-Consumer-Protection.pdf)> accessed 07 February 2019.

<sup>212</sup> See, Financial Sector Legislative Reforms Commission, Report of the Financial Sector Legislative Reforms Commission (Volume I, March 2013) 50.

<sup>213</sup> Working Group (n94) 95-98.

<sup>214</sup> The discussion in this part is entirely adapted from Vidhi (n7) 14-15.

A more detailed discussion of the issue and analysis of the relevant literature is available in Vidhi (n7).

<sup>215</sup> See, Insurance Regulatory and Development Authority of India (Micro Insurance) Regulations, 2015.

institutions generally, which do not exist in India, at present. In the absence of a harmonised framework for pensions, micro-pensions because of their unique nature, may require a specialised regulatory framework. Therefore, this points to a gap in India's pensions regulatory framework, which merits deliberation.

#### 6. Lack of a framework for resolving distressed pension funds<sup>216</sup>

An important gap in India's present financial regulatory framework lies in the absence of a resolution framework for distressed pension funds (as well as other financial institutions). At present, pension fund resolutions are not covered exclusively either by the Insolvency and Bankruptcy Code, 2016, or under the proposed Financial Resolution and Deposit Insurance Bill, 2017 (which has since been withdrawn by the Government). This is because neither Section 227 of the Insolvency and Bankruptcy Code, 2016 (which deals with the powers of the Central Government to notify financial service providers for conducting their insolvency and liquidation proceedings under that law) nor the Second Schedule to the proposed Financial Resolution and Deposit Insurance Bill, 2017 (which enumerates classes of specified service providers eligible for resolution under that law) specifically cover pension funds.

In this regard, the observations of the Committee to Draft the Code on Resolution of Financial Firms are apposite.<sup>217</sup> The Committee noted that for certain categories of financial service providers, such as pension funds, the Central Government was

empowered to notify whether such entities should be covered under the FRDI Bill.<sup>218</sup> The Committee reached this conclusion based on the fact that only such pensions funds which made promises of guaranteed returns (which could portend insolvency risk for asset management companies managing the pension fund) may be required to be brought under the purview of a resolution process.<sup>219</sup> In light of there being no pension fund offering guaranteed returns at the time the Committee submitted its Report, the decision to notify such pensions funds for resolution (under the ambit of the FRDI Bill), was left to a future notification, to be issued when such products would ultimately be launched.

It should also be noted that the issue of resolution may be a concern pertinent only in relation to pension funds offering minimum guarantees, which are non-operational presently. The issue of resolution may not be an immediate concern for a scheme such as the EPF, which is managed by statutory organisations such as the EPFO, and therefore in a sense, has sovereign backing.<sup>220</sup>

Given that pension funds like the NPS frequently deal with a lot of public money, and trust, their health becomes significantly important from the perspective of maintaining public confidence in the Government. This concern becomes more pronounced especially in relation to systemically important pension funds. Given the absence of any explicit guidance on the resolution of distressed pension funds, it is important to assess the regulatory framework for their resolution, especially in light of failing pension systems in Greece, and other

<sup>216</sup> The discussion in this part is entirely adapted from Vidhi (n7) 15-19.

A more detailed discussion of the issue and analysis of the relevant literature is available in Vidhi (n7).

<sup>217</sup> See, Department of Economic Affairs, Ministry of Finance, 'Report of Committee to Draft Code on Resolution of Financial Firms' (21 September 2016) <[https://dea.gov.in/sites/default/files/report\\_rc\\_sept21\\_1.pdf](https://dea.gov.in/sites/default/files/report_rc_sept21_1.pdf)> accessed 13 February 2019, 25.

<sup>218</sup> Ibid.

<sup>219</sup> Ibid.

<sup>220</sup> See, The Indian Express, 'Good signaling' (The Indian Express, 21 December 2016) <<https://indianexpress.com/article/opinion/editorials/provident-fund-epfo-rate-cut-4437727/>> accessed 18 February 2019.



European countries, in the recent past.

As mentioned, neither the Insolvency and Bankruptcy Code, 2016 nor the (withdrawn) Financial Resolution and Deposit Insurance Bill, 2017 expressly cover pension funds at present. However, it should be noted that under both these legislations, specific notifications by the Central Government would be needed to cover the resolution of distressed pension funds, as and when they are decided to be included within the purview of the resolution process. Therefore, currently (in the absence of such notifications), there is a gap in the regulatory framework dealing with the resolution of such distressed pension funds.

The absence of a regulatory framework for the resolution of distressed pension funds has also been highlighted by the Working Group, which inter alia recommended that the law should provide for an efficient resolution mechanism for funds which offered DB retirement financing plans, while also providing for a transition of consumer assets to a healthy DC fund, in the event the sponsoring entity went bankrupt.<sup>221</sup>

Hence, this points to another gap in India's pensions regulatory framework (as well as the larger landscape of financial regulation), which merits deliberation.

### 7. Special challenges in relation to pensions in the unorganised sector<sup>222</sup>

The provision of pensions to the workforce in India's unorganised sector is far from adequate, and is spread out across various schemes and legislations. However, certain unique challenges have arisen specifically in the context of schemes such as the APY which are specifically targeted towards workers in the unorganised sector. These require serious attention on part of policy-makers, given that India's vast unorganised sector workforce is particularly vulnerable and marginalized.

Some of these challenges include a highly fragmented structure for social security schemes in the unorganised sector in terms of multiple regulators and schemes (which results in a complete lack of clarity), a lack in definitional clarity regarding the scope of 'unorganised sector' itself within the APY scheme and the Unorganised Workers' Social Security Act, 2008, inadequate grievance redressal mechanisms, the presence of barriers to entry and exit for social security schemes by members of the unorganised sector, as well as a lack of defined funding mechanisms for social security schemes such as the APY.

This, then is another gap in India's pensions regulatory framework, meriting serious consideration.

<sup>221</sup> See, Working Group (n94) 22.

<sup>222</sup> A more detailed discussion on this is available in Vidhi (n7) 27-36.

# Chapter V

## Conclusion: Key Learnings

India's present regulatory framework for pensions is characterised by its fragmented nature, with a multitude of regulators and governing regulations. There is considerable disparity amongst existing schemes and regulations, which does not lend itself well to the objective of creating simple, effective and harmonised pension frameworks for all citizens. This is in sharp contrast to the increasing approach adopted by multiple nations towards harmonising the regulatory framework for pensions, through a more integrated approach. Further, the reality of India's highly fragmented pensions framework, where there is a distinct tilt towards securing pensions and social welfare for individuals in the organized workforce, as compared to individuals in the unorganised workforce, creates potential Constitutional law concerns, on grounds of unequal access and inadequate protections offered under the mandate of various social welfare and protection schemes.

While Indian pension reforms in the recent past, such as the introduction of the NPS in 2003, have introduced improved standards of regulation, this is only a stepping stone towards the broader goal of harmonisation of India's pensions regulatory

framework. This, will ensure that the existing multitude of pension schemes with dispersed regulatory structures and regulatory standards do not lead to slippages in pension coverage, or hinder from the objective of providing sustainable, and equitable retiral incomes for all citizens. Additionally, considering that newer pension schemes such as the Shram Yogi Maan-Dhan Yojana have been introduced; it becomes critical to ensure that the further development of India's pensions regulatory framework is undertaken in an organised manner.

In this regard, certain measures may be contemplated to strengthen India's existing pensions framework, based on the analysis set out in the present report. While these recommendations are set out briefly below, it is hoped that in the long-run this report will initiate a conversation, and urge the government to form a committee to consider issues in relation to harmonising India's highly dispersed pensions regulatory framework, in a holistic manner. This will ultimately aid the welfare of the common citizen, by ensuring that India's existing pensions framework is harmonised, accessible, and transparent across the vast multitude of pension schemes.

### **Broad Recommendations for the Long-term**

- **Harmonise India's framework governing pensions**  
Multiple schemes and regulators governing India's regulatory landscape for pensions should be harmonised. This will assist in greater coverage and reduce potential co-ordination problems and regulatory gaps.  
  
A possible approach to examine in this regard, is whether such harmonisation can occur under the aegis of a single unified framework/Code, subject to Constitutional and other limitations. This approach would require further careful deliberation and study on a number of aspects, before finalisation. Indicatively, some issues on which such deliberation should be considered, include:
  - the parameters on which such unification could occur (*for instance, a starting point for this could be the unification of regulatory standards relating to good governance across existing pension schemes*);
  - the schemes the proposed framework could potentially subsume (*for instance, if schemes for similar target beneficiaries should be subsumed under such proposed framework*);

- the nature of the existing pension schemes the proposed framework would potentially subsume (*for instance, whether the scheme is DB or DC or a hybrid scheme*);
- treatment by the proposed framework of the different funding mechanisms of the schemes subsumed under such a unified framework (*for instance, the treatment of fund-based pension schemes vis-a-vis unfunded pension schemes*);
- treatment by the proposed framework of the differing nature of pension schemes proposed to be subsumed (*for instance, the manner in which such proposed framework will treat public pensions vis-a-vis private pensions*); and
- treatment by the proposed framework of the nature of beneficiaries under the unified framework (*for instance, if this framework would subsume all existing pension schemes*)

Additionally, further in-depth analysis of the Constitutional implications (*for instance, in terms of legislative competence*) of such proposed framework would be necessary, which would depend on the precise contours of the proposed framework.<sup>223</sup>

- **Harmonise disparate investment guidelines across pension products**  
Investment guidelines across varying pension products should be harmonised. This will ensure that consumers investing across such products receive comparable returns.

- **Reduce tax distortions created by favouring certain pension schemes**  
Tax treatment across all pension schemes should be harmonised, and similar treatment should be accorded to consumers across all pension schemes, if the primary objective is securing retiral incomes. In this regard, the proposed amendment to the tax-exemption status of the NPS is a step in the right direction.
- **Create a dedicated framework dealing with micro-pensions**  
A dedicated framework dealing with micro-pensions may be introduced, in the absence of a harmonised framework for pensions, in view of the distinctive nature of micro-pensions and its importance to individuals working in the informal sector.
- **Create a resolution framework for distressed pension funds**  
At present, there is no framework for the resolution of distressed financial institutions in India (of which distressed pension funds are an integral part). Moving forward, this is a gap which should be addressed.
- **Strengthen pension protection for the unorganised sector**  
Issues such as a highly fragmented pension framework, lack of definitional clarity, and the absence of effective grievance redressal mechanisms create barriers to access for a vast majority of the population. These issues need to be addressed urgently, to make pensions accessible to individuals in the unorganised sector, who are vulnerable and marginalised.

<sup>223</sup> A further issue in this regard would also concern the potential interplay of such proposed unified framework vis-à-vis the proposed Draft Labour Code on Social Security and Welfare, 2017, in relation to certain aspects including the creation of a specific entitlement for workers to social security (including pensions) under such proposed Labour Code.

## Recommendations for Immediate Action

- **Clarify the role and functions of existing pension regulators**

There is an urgent need to ensure that the role and scope of function of existing pension regulators such as the PFRDA and the EPFO, are clarified in their respective legislative frameworks, to avoid conflicts of interest and assist in clarity of regulatory objectives

- **Ensure comparable regulatory treatment across pension schemes**

All pension schemes should be managed professionally, with a clear distinction between regulatory and operational functions. So far in India, only the NPS has been modelled as such. All pension schemes, serving the same mandate of retiral benefits and retirement income safety should be treated similarly, to achieve transparency, clarity and efficiency in regulatory governance and fund performance.

- **Mandate consultation and co-ordination with other regulatory authorities**

Presently, there is no explicit legal requirement imposed on either the PFRDA or the EPFO/Central Board, which supervise two of India's largest pension schemes, to

engage in co-ordination and supervision with other authorities. There is a need to address this issue, particularly to assist in the push towards harmonisation and achieve both intra-regulatory and inter-regulatory co-ordination between financial sector regulators.

- **Impose confidentiality obligations**

At present, neither the NPS nor the EPF contain explicit provisions protecting consumer data or addressing concerns of confidentiality. This should be addressed through suitable legislative changes.

- **Strengthen consumer protection**

There is a need to strengthen consumer protection for financial consumers, particularly for consumers of retirement financing products, such as pensions. Particularly, the legislative regime governing all pension schemes should provide for sharing information with consumers as a matter of obligation. Consumer protection for financial consumers, particularly for the elderly and other vulnerable groups should also be provided for, explicitly.

# Annexure I

## *The regulatory framework governing selected pension schemes in India: A snapshot<sup>224</sup>*

Scheme	Legislative Framework	Regulator/Nodal Ministry
<b>Public Pensions</b>		
<b>Employees' Provident Fund</b>	<ul style="list-style-type: none"> <li>• Employees Provident Funds and Miscellaneous Provisions Act, 1952</li> <li>• Employees' Provident Fund Scheme, 1952</li> </ul>	<ul style="list-style-type: none"> <li>• Ministry of Labour and Employment</li> </ul>
<b>Employees' Pension Scheme</b>	<ul style="list-style-type: none"> <li>• Employees Provident Funds and Miscellaneous Provisions Act, 1952</li> <li>• Employees' Pension Scheme, 1995</li> </ul>	<ul style="list-style-type: none"> <li>• Ministry of Labour and Employment</li> </ul>
<b>Provident Fund</b>	<ul style="list-style-type: none"> <li>• Provident Fund Act, 1925</li> </ul>	<ul style="list-style-type: none"> <li>• Ministry of Labour and Employment</li> </ul>
<b>Public Provident Fund<sup>225</sup></b>	<ul style="list-style-type: none"> <li>• Public Provident Fund Act, 1968 (<i>since repealed</i>)</li> <li>• Public Provident Fund Scheme, 1968</li> <li>• The Government Savings Bank Act, 1873</li> </ul>	<ul style="list-style-type: none"> <li>• Ministry of Finance</li> </ul>
<b>National Pension System</b>	<ul style="list-style-type: none"> <li>• Pension Fund Regulatory and Development Authority Act, 2013 (and rules and regulations framed thereunder)</li> </ul>	<ul style="list-style-type: none"> <li>• Pension Fund Regulatory and Development Authority</li> </ul>
<b>Superannuation Funds</b>	<ul style="list-style-type: none"> <li>• Income Tax Act, 1961 (and relevant rules)</li> </ul>	<ul style="list-style-type: none"> <li>• Ministry of Finance</li> </ul>
<b>Other Pension Schemes<sup>226</sup> (selected)</b>	<ul style="list-style-type: none"> <li>• Reserve Bank of India (Pension) Regulations, 1990</li> </ul>	<ul style="list-style-type: none"> <li>• Reserve Bank of India</li> </ul>

<sup>224</sup> **Note 1:** It should be noted that this enumeration of the regulatory framework is illustrative, and is intended to serve as a guide to the Indian pension regulatory framework. Further, the enumeration covers pensions in the broad sense of the term, and therefore includes schemes in the nature of pensions and provident funds, which fulfill the object of ensuring post-retirement income security.

**Note 2:** In addition to the legislations enumerated, there are certain other legislations, which though not enumerated specifically, have a bearing on the pension regulatory framework. A prominent example of such a legislation is the Pensions Act, 1871, which inter alia enables commutation of pensions and exempts pensions from attachment.

<sup>225</sup> It should be noted that the Finance Act, 2018 repealed the Public Provident Fund Act, 1968 and brought the PPF Scheme within the ambit of the Government Savings Bank Act, 1873.

<b>Civil Servant Pensions<sup>227</sup></b>		
<b>Civil Servant Pensions</b>	<ul style="list-style-type: none"> <li>• The Central Civil Services (Pension) Rules, 1972</li> <li>• The Central Civil Services (Commutation of Pension) Rules, 1981</li> <li>• The Central Civil Services (Extraordinary Pension) Rules, 1939</li> <li>• The All India Services (Death-cum-retirement benefits) Rules, 1958</li> </ul>	<ul style="list-style-type: none"> <li>• Ministry of Finance</li> <li>• Ministry of Personnel, Public Grievances and Pensions</li> </ul>
<b>Pensions for Defence and Railway Personnel</b>		
<b>Pensions for Defence Personnel</b>	<ul style="list-style-type: none"> <li>• Pension Regulations for the Army, 1961</li> <li>• Pension Regulations for the Air Force, 1961</li> <li>• Navy (Pension) Regulations, 1964</li> <li>• Entitlement Rules to Casualty Pensionary Awards to the Armed Forces Personnel, 1982</li> </ul>	<ul style="list-style-type: none"> <li>• Ministry of Defence, Personnel, Public Grievances and Pensions</li> </ul>
<b>Railway Pensions</b>	<ul style="list-style-type: none"> <li>• Railway Services (Pension) Rules, 1993</li> </ul>	<ul style="list-style-type: none"> <li>• Ministry of Railways</li> <li>• Ministry of Personnel, Public Grievances and Pensions</li> </ul>
<b>Special Pension Schemes</b>		
<b>Pensions provided for under the Constitution of India</b>	<ul style="list-style-type: none"> <li>• Constitution of India</li> <li>• The High Court Judges (Salaries and Conditions of Service) Act, 1954</li> <li>• The Supreme Court Judges (Salaries and Conditions of Service) Act, 1958</li> </ul>	<ul style="list-style-type: none"> <li>• Ministry of Law and Justice (for pensions to judges)</li> </ul>
<b>Pensions for Parliamentarians</b>	<ul style="list-style-type: none"> <li>• The Salary, Allowances and Pensions of Members of Parliament Act, 1954</li> </ul>	<ul style="list-style-type: none"> <li>• Ministry of Parliamentary Affairs</li> </ul>
<b>Provident Fund for Coal Miners</b>	<ul style="list-style-type: none"> <li>• The Coal Mines Provident Fund and Miscellaneous Provision Act, 1948</li> </ul>	<ul style="list-style-type: none"> <li>• Ministry of Coal</li> <li>• Coal Mines Provident Fund Organisation</li> </ul>
<b>Provident Fund for Seamen</b>	<ul style="list-style-type: none"> <li>• The Seamen's Provident Fund Act, 1966</li> </ul>	<ul style="list-style-type: none"> <li>• Ministry of Shipping</li> <li>• Seamen's Provident Fund Organisation</li> </ul>

Social Pensions <sup>228</sup>		
<b>Atal Pension Yojana</b>	<ul style="list-style-type: none"> <li>Notification issued by the Ministry of Finance, Department of Financial Services<sup>229</sup></li> </ul>	<ul style="list-style-type: none"> <li>Ministry of Finance</li> <li>Pension Fund Regulatory and Development Authority</li> </ul>
<b>Pensions for Workers in the Unorganised Sector<sup>230</sup></b>	<ul style="list-style-type: none"> <li>Unorganised Workers' Social Security Act 2008</li> </ul>	<ul style="list-style-type: none"> <li>Ministry of Labour and Employment</li> </ul>
<b>Indira Gandhi National Old-Age Pension Scheme (IGNOAPS)<sup>231</sup></b>  <b>Indira Gandhi National Widow Pension Scheme (IGNWPS)</b>	<ul style="list-style-type: none"> <li>Guidelines issued under the National Social Assistance Program (NSAP)</li> </ul>	<ul style="list-style-type: none"> <li>Ministry of Rural Development</li> </ul>

<sup>226</sup> This particular enumeration is only in relation to pension schemes offered by certain institutions to its employees.

<sup>227</sup> Please note that this enumeration is only in relation to civil servant pensions at the Central level.

<sup>228</sup> It should be noted that the enumeration set out in this table is illustrative of some of the largest pension programmes at the Central level, funded by the Union Government. Even in the context of the enumerated schemes, it should be kept in mind that some of these also see substantial participation at the State level, where State Governments play an important role in their funding and implementation, such as in the case of the IGNOAPS.

<sup>229</sup> Ministry of Finance, Department of Financial Services, 'Notification: Atal Pension Yojana' (16 October 2015, New Delhi) <<http://www.jansuraksha.gov.in/Files/APY/English/Rules.pdf>> accessed 12 February 2019.

<sup>230</sup> **Note 1:** In the Interim Budget Speech for the financial year 2019-20, the Finance Minister has announced a co-contributory pension scheme, the 'Pradhan Mantri Shram-Yogi Maandhan' meant for unorganised sector workers, which provides such workers with an assured monthly pension of Rs 3,000 on attaining the age of sixty years, on payment of a small contribution during their working years. The scheme is to be operationalized from the current year. See, Shri Piyush Goyal, Minister of Finance, 'Interim Budget 2019-20' (1 February 2019) <<https://www.indiabudget.gov.in/ub2019-20/bs/bs.pdf>> accessed 12 February 2019, paragraph 37.

**Note 2:** The 'Pradhan Mantri Shram-Yogi Maandhan' Scheme has been enacted in pursuance of the powers conferred under Section 3(1)(c) of the Unorganised Workers' Social Security Act, 2008, to provide old age protection to unorganised workers. See, Ministry of Labour and Employment, 'Notification S.O. 764 ( E)', (7 February 2019, New Delhi) <<https://labour.gov.in/sites/default/files/197105.pdf>> accessed 12 February 2019.

<sup>231</sup> It should be noted that the IGNOAPS is a social security scheme for unorganised workers in terms of Schedule I to the Unorganised Workers' Social Security Act 2008.

# Annexure II

## *Implementation of the World Bank's Five-Pillar Framework in the Indian context<sup>232</sup>*

Pillar 0	Pillar 1	Pillar 2	Pillar 3	Pillar 4
<i>Universal Social Security</i>	<i>Pay-as-you-go</i>	<i>Occupational Pension</i>	<i>Personal Pension</i>	<i>Informal Support</i>
<p><b>IGNOAPS</b></p> <p>Coverage-2.29 crore pensioners Payments-Rs 9,314 crore</p> <p><b>State Schemes</b></p> <p>Coverage-1.40 crore pensioners Payments-NA</p>	<p><b>Old DB schemes for central / state government and PSUs</b></p> <p>Coverage-0.54 crore pensioners, 0.23 crore subscribers Payments-Rs 95,810 crores</p>	<p><b>EPFO, CMPF, ATPPF, Seamen's PF, superannuation funds</b></p> <p>Coverage-0.56 crore pensioners 3.63 crore subscribers AUM-Rs 8.77 lakh crore</p> <p><b>NPS for central and state government employees</b></p> <p>Coverage-0.51 crore subscribers AUM-Rs 1.52 lakh crore</p>	<p><b>NPS for Corporates, NPS Lite, APY</b></p> <p>Coverage-1.03 crore subscribers / AUM-Rs 22,845 crore</p> <p><b>Mutual Funds</b> 4 schemes, 3271 crore AUM</p> <p><b>Insurance Plans</b> Coverage-0.35 croresubscribers, 0.26 crore pensioners AUM-Rs 2.69 lakh crore</p> <p><b>PPF</b> Coverage-0.24 crore subscribers / AUM-Rs 6,607 crore</p>	<p><b>Family and other individual assets</b></p> <p>Traditional bias, reducing in recent years</p>

<sup>232</sup> This has been adapted in its entirety from CRISIL, 'Crisil Inclusix 2018: Financial inclusion surges driven by Jan-Dhan Yojana' (February 2018, Vol 4) <<https://www.crisil.com/content/dam/crisil/crisil-foundation/generic-pdf/crisil-inclusix-financial-inclusion-surges-driven-by-Jan-Dhan-yojana.pdf>> accessed 21 December 2018, 44.



# Annexure III<sup>233</sup>

## *A summary of Investment Guidelines across major pension schemes in India<sup>234</sup>*

Scheme	Relevant Investment Guidelines	Salient Features
NPS	<ul style="list-style-type: none"> <li>Investment Guidelines for Private Sector NPS<sup>235</sup></li> <li>Investment Guidelines for NPS Schemes (Scheme CG, Scheme SG, Corporate, NPS Lite and APY)<sup>236</sup></li> <li>Investment Guidelines for NPS Schemes (Other than Government Sector, Corporate CG, NPS Lite and APY)<sup>237</sup></li> </ul>	<ul style="list-style-type: none"> <li>In relation to investment guidelines for Private Sector NPS, the main categories of permissible investments further depend on the nature of the scheme viz. E, C or G. Depending on the sub-nature of the scheme, investments have been prescribed. For instance, for 'E' schemes, while investment is permitted in Index Funds/Exchange Traded Funds, for 'G' schemes, government bonds are permissible investments. While this may be due to the nature of the schemes themselves, no limits on investment have been mentioned (in relation to the particular investment option in question). Additionally, no specific obligation on pension fund managers to act in the best interest of subscribers are reflected in these Guidelines.</li> </ul>

		<p>best interest of subscribers are reflected in these Guidelines.</p> <ul style="list-style-type: none"> <li>In relation to investment guidelines (both for NPS Schemes applicable to Scheme CG, Scheme SG, Corporate CG and NPS Lite schemes of NPS and Atal Pension Yojana and other than Govt Sector, Corporate CG and NPS Lite and APY), investment is permitted in G-Secs, debt instruments (both short-term and long-term), equities and asset-backed/other investments. The highest proportion is towards G-Secs (up to 50 per cent), followed by long-term debt (up to 45 per cent). Broad fiduciary responsibilities are imposed on the NPS Trust and Pension Funds in relation to the investment of funds, though no specific penalty has been imposed for violation of these investment guidelines. Further, these Guidelines specify the nature of investments alone (based on the nature of the scheme in question) and not the percentage of permitted investments specifically, which could be made clearer.</li> </ul>
<b>EPF/EPS</b> <sup>238</sup>	<ul style="list-style-type: none"> <li>Investment Guidelines for Incremental Accretions belonging to the EPF<sup>239</sup></li> <li>Investment Pattern for Board of Trustees for Exempt Establishments and Employees<sup>240</sup></li> </ul>	<ul style="list-style-type: none"> <li>Investment is permitted in G-Secs, Debt Instruments (short-term and long-term), equities and asset-backed/other investments. The highest proportion is towards G-Secs (45 to 50 per cent), followed by long-term debt<sup>241</sup> (35 to 45 per cent). Broad fiduciary responsibilities are imposed on Trustees, but no penalty has been imposed for violation of these investment guidelines.</li> </ul>
<b>Non-Government Provident Funds, Superannuation Funds, Gratuity Funds</b>	<ul style="list-style-type: none"> <li>Investment Guidelines for Non -Government Provident Funds, Superannuation Funds and Gratuity Funds<sup>242</sup></li> </ul>	<ul style="list-style-type: none"> <li>Investment is permitted in G-Secs, Debt Instruments (short-term and long-term), equities and asset-backed/other investments. The highest proportion is towards G-Secs (45 to 50 per cent), followed by long-term debt<sup>243</sup> (20 to 45 per cent). Broad fiduciary responsibilities are imposed on Trustees, but no penalty has been imposed for violation of the investment guidelines</li> </ul>

<p><b>Recognised Provident Funds (under the Income Tax Act)</b></p>	<ul style="list-style-type: none"> <li>• Rule 67 of the Income Tax Rules, 1962</li> </ul>	<ul style="list-style-type: none"> <li>• Investment is permitted in G-Secs, Debt Instruments (short-term and long-term), equities and asset-backed/other investments. The highest proportion is towards G-Secs (45 to 50 per cent), followed by long-term debt (35 to 45 per cent). However, broad fiduciary duties are not provided for here.</li> </ul>
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<sup>233</sup> **Note 1:** This is a summary of selected investment guidelines across certain major pension schemes, and is only intended to be illustrative.

**Note 2:** The investment guidelines mentioned herein are as what could be obtained the public domain, and which accordingly been relied upon for the purposes of analysis.

<sup>234</sup> **Note 1:** This is a summary of selected investment guidelines across certain major pension schemes, and is only intended to be illustrative.

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<sup>235</sup> See, PFRDA, 'Circular: Investment Guidelines for Private Sector NPS (applicable to E (Tier I & II), C (Tier I & II), and G (Tier I & II))' (29 January 2014, New Delhi)  
<<https://www.pfrda.org.in/myauth/admin/showimg.cshtml?ID=433>> accessed 18 February 2019.

<sup>236</sup> See, PFRDA, 'Circular: Investment Guidelines for NPS Schemes (Applicable to Scheme CG, Scheme SG, Corporate CG and NPS Lite schemes of NPS and Atal Pension Yojana)' (3 June 2015, New Delhi)  
<<https://www.pfrda.org.in/myauth/admin/showimg.cshtml?ID=705>> accessed 18 February 2019.

<sup>237</sup> See, PFRDA, 'Circular: Investment Guidelines for NPS Schemes (Other than Govt Sector (CG&SG), Corporate CG and NPS Lite and APY)' (4 May 2017, New Delhi)  
<<https://www.pfrda.org.in/writereaddata/links/xyz123305fe622-0679-4127-a47a-483063aa70e2.pdf>> accessed 18 February 2019.

These Guidelines have been amended from time to time, such as in May 2018, when the cap on equity investment was increased from 50% to 75% in active choice for private sector subscribers under the NPS. See, PFRDA, 'Amendment to Investment Guidelines for NPS Schemes (Other than Govt Sector (CG&SG), Corporate CG and NPS Lite and APY)' (22 May 2018, New Delhi)  
<[https://www.npscra.nsdl.co.in/download/Amendment\\_to\\_Investment\\_Guidelines\\_for\\_NPS\\_Schemes.pdf](https://www.npscra.nsdl.co.in/download/Amendment_to_Investment_Guidelines_for_NPS_Schemes.pdf)> accessed 18 February 2019.

<sup>238</sup> **Note:** Paragraph 26 of the Employees' Pension Scheme, 1995 stipulates that the investment of money shall be in accordance with the provisions of paragraph 52 of the Employees' Provident Fund Scheme, 1952.

<sup>239</sup> Ministry of Labour and Employment, 'Notification S.O. 1071(E)' (23 April 2015, New Delhi)  
<<http://egazette.nic.in/WriteReadData/2015/163810.pdf>> accessed 12 February 2019.

<sup>240</sup> Ministry of Labour and Employment, 'Notification S.O. 1433(E)' (29 May 2015, New Delhi)  
<[https://www.epfindia.gov.in/site\\_docs/PDFs/Circulars/Y2015-2016/IMC\\_InvestmentPattern\\_12937.pdf](https://www.epfindia.gov.in/site_docs/PDFs/Circulars/Y2015-2016/IMC_InvestmentPattern_12937.pdf)> accessed 12 February 2019.

<sup>241</sup> It should be noted that there has been a reduction in the minimum investment limit applicable on such instruments (in relation to the EPF) from the earlier limit of 35% to 20%. See, EPFO, 'Circular: Amendment in Investment Pattern in the category (ii) of the New Investment Notification No. S.O. 1071(E) dated 23 April 2015 of Ministry of Labour and Employment - Regarding' (23 February 2018, New Delhi)  
<[https://www.epfindia.gov.in/site\\_docs/PDFs/Circulars/Y2017-2018/Exem\\_InvestmentPattern\\_Amend\\_20128.pdf](https://www.epfindia.gov.in/site_docs/PDFs/Circulars/Y2017-2018/Exem_InvestmentPattern_Amend_20128.pdf)> accessed 12 February 2019.

<sup>242</sup> See, Ministry of Finance, Department of Financial Services 'Notification F/11/14/2013', (2 March 2015, New Delhi)  
<[https://financialservices.gov.in/sites/default/files/Investment%20Pattern\\_0.pdf](https://financialservices.gov.in/sites/default/files/Investment%20Pattern_0.pdf)> accessed 12 February 2019.

<sup>243</sup> It should be noted that there has been a reduction in the minimum investment limit applicable on such instruments from the earlier limit of 35% to 20%.  
See, Ministry of Finance, Department of Economic Affairs, 'Office Memorandum: Investment Pattern for Non-Government Provident Funds, Superannuation Funds and Gratuity Funds – relaxations sought by the Ministry of Labour and Employment', (16 February 2018, New Delhi)  
<[https://www.epfindia.gov.in/site\\_docs/PDFs/Circulars/Y2017-2018/Exem\\_InvestmentPattern\\_Amend\\_20128.pdf](https://www.epfindia.gov.in/site_docs/PDFs/Circulars/Y2017-2018/Exem_InvestmentPattern_Amend_20128.pdf)> accessed 12 February 2019.

<b>Seamens' Provident Fund</b>	<b>Note:</b> In terms of the Seamens' Provident Fund Scheme, 1966, the money belonging to the Fund is to be invested in accordance with the directions of the Government. Additionally, the Central Government is to determine the rate of interest payable. <sup>244</sup>
<b>Pension Fund of the Reserve Bank of India</b>	<b>Note:</b> Under the Reserve Bank of India (Employees' Provident Fund) Regulations, 1935, the RBI is to credit interest to subscribers' accounts half-yearly, at a rate fixed by the RBI, having regard to the returns available on investment of other provident, charitable, religious and trust and quasi-trust funds in accordance with the rules or directions made by the Central Government in this behalf. <sup>245</sup> In terms of the Reserve Bank of India (Employees' Gratuity and Superannuation Fund) Regulations, 1975, the RBI is required to credit to the Fund a rate of interest similar to that paid on the RBI Employees' Provident Fund. <sup>246</sup>
<b>Public Provident Fund</b>	<b>Note:</b> Interest rates are to be notified by the Central Government. <sup>247</sup>
<b>General Provident Fund (for civil servants, railway and defence personnel)</b>	<b>Note:</b> Interest rates are to be notified by the Central Government on a quarterly basis, subject to a minimum of four percent. <sup>248</sup>
<b>Coal Mines Provident Fund</b>	<b>Note:</b> The monies belonging to the Coal Mines Provident Fund are to be deposited in certain mentioned banks, or invested in specified securities alone. <sup>249</sup> Additionally, interest rates which are credited to member accounts, are to be notified by the Central Government. <sup>250</sup>

<sup>244</sup> See, the Seamen's Provident Fund Scheme, 1966, ¶44, 51.

<sup>245</sup> See, the Reserve Bank of India (Employees' Provident Fund) Regulations, 1935, Regulation 9.

<sup>246</sup> See, the Reserve Bank of India (Employees' Gratuity and Superannuation Fund) Regulations, 1975, Regulation 5.

<sup>247</sup> See, the Public Provident Fund Scheme, 1968, ¶8.

<sup>248</sup> See, the General Provident Fund (Central Services) Rules, 1960, ¶11.

<sup>249</sup> See, the Coal Mines Provident Fund Scheme 1948, ¶54.

<sup>250</sup> See, the Coal Mines Provident Fund Scheme 1948, ¶61.

# Annexure IV

## *Regulatory framework relating to various Provident Funds<sup>251</sup>*

S. No.	Act	Organisation
1.	The Employees' Provident Funds and Miscellaneous Provisions Act, 1952	Employees' Provident Fund Organisation (Ministry of Labour and Employment)
2.	The Coal Mines Provident Funds and Miscellaneous Provisions Act, 1948	Coal Mines Provident Fund Organisation (Ministry of Coal)
3.	The Assam Tea Plantations Provident Fund and Pension Fund and Deposit Linked Insurance Fund Scheme Act, 1955	Assam Tea Employees Provident Fund Organisation (Government of Assam)
4.	The Seamen's Provident Funds Act, 1966	Seamen's Provident Fund Organisation (Ministry of Shipping)
5.	The Provident Funds Act, 1925	---

<sup>251</sup> This has been adapted entirely from the Standing Committee Report (n131) 4.

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