

The Employees' Pension Scheme 1995

**GOVERNMENT
MUST
ACT**

A CITU Publication

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INTRODUCTION

Pension is basically a social security to ensure a steady income for people when they are no longer in a position to earn income from employment. The history of the struggle of the working class of India for a pension scheme is a long one and CITU was always in the forefront in this struggle.

India does not have a universal social security system to protect the elderly against economic deprivation. Retirement benefits in India in one form or other, are available to only 11% of the working population. CITU has been persistently demanding pension as a third retirement benefit in addition to the contributory provident fund and gratuity. But much to the disappointment of the industrial workers, the government introduced a scheme by name Employees' Pension Scheme (EPS 1995) w.e.f. 15th November 1995 replacing the then existing Family Pension Scheme 1971 for them by diverting a major portion of the employers' contribution to the Provident Fund to EPS thereby reducing the PF benefit of the employee to make provision for an insignificant amount towards retirement pension.

EXISTING PENSION SCHEMES:

► Pension Scheme for Central & State Government Employees – In the older scheme, the government was not required to deposit any amount in the PF account of the employees. In exchange, the government employees received

superannuation pension as a defined “benefit” which was equivalent to 50% of the last drawn basic wage plus DA at the prevalent rate as applicable to the serving employees.

There was provision of pension to the nominee in case of premature death of the employee. As a part of neoliberal economic agenda, the government forced a New Pension Scheme (NPS) as a defined contribution based pension scheme with effect from 1st January 2004. This is mandatory for all Government servants joining government service on or after 01.01.2004. Here the government employee has to make a contribution of 10% of employee’s basic pay and DA which is deducted from his salary every month and the government makes an equal matching contribution. These assets are being managed by professional pension fund managers in line with investment guidelines of the government applicable to non-government Provident Fund. On exit after reaching 60 years of age, the subscriber would be required to invest at least 40% of pension wealth to purchase an annuity which would provide pension for the life time of the employee and his/her dependent parents and spouse. If the subscriber exits before 60 years of age, he/she has to invest 80% of accumulated savings to purchase a life annuity from a regular life insurer approved by IRDA. The remaining 60% or 20% as the case may be, can be withdrawn as lump sum. If a subscriber dies, the nominee has the option to receive the entire pension wealth as a lump sum. Pension Fund Regulatory and Development Authority (PFRDA) is the prudential regulator for the New Pension Scheme.

Thus the pension benefit in NPS is not defined and guaranteed by the government and is totally dependant on market driven annuity scheme.

► Employees’ Provident Fund and Employees’ Pension Scheme for the industrial workers – The Provident Fund & Miscellaneous Provisions Act 1952 is specifically for the industrial workers both in the public and private Sector. As

per this Act deduction @ 12% (w.e.f. 22/07/1997, earlier it was 8.33%) of the total wage of an employee is compulsorily made and an equivalent amount is required to be deposited by the employer in the fund managed by Employees' Provident Fund Organisation. Though there was a provision as per para 6(a) of the Act to formulate a pension scheme in due course, Family Pension Scheme (FPS 1971) was only started in 1971 to arrange payment of some amount as pension to the nominee wife/husband of any employee dying in harness. Here an amount equivalent to 1.16 % of wages of an employee and a matching grant of 1.16% from employer out of the Provident Fund contributions was diverted to the Pension Fund with a Government contributing further 1.16 %. There was provision of some withdrawal benefit after superannuation too. This scheme was withdrawn w.e.f. 15.11.1995 with the introduction of Employees' Pension Scheme 1995 (EPS 1995) which was made compulsory for the FPS 1971 members. In the new scheme, 8.33% out of the employer's contribution towards Provident Fund is required to be diverted to the Pension Fund with the remaining 3.67% deposited in the PF account. The government's contribution to the Pension Fund continued to remain static at 1.16 % of the wage. Thus PF benefit was reduced substantially and at the cost of PF benefits provision for superannuation or widow and children pension was made. There was widespread resentment amongst the workers against the scheme though the trade union movement in the country was not united to fight the case. It was CITU only and a few independent unions who organised movement through out the country, several court cases were filed by various unions in different parts of the country all of which were brought to the Supreme Court for hearing. The hearings were completed in May 2001 but the judgment which surprisingly remained undelivered for a long 30 months was finally in favour of Government.

EPS 1995 – WHERE IT STANDS AFTER 14 YEARS:

► Though as per the scheme 8.33% of wage out of

employers' contribution towards Provident Fund is to be diverted to the Pension Fund, factually there is an upper cap of monthly wage which stands at Rs.6500/- as of now. At this rate of contribution to Pension Fund what maximum pension a pensioner can get or what exactly is the amount of pension now being received by the retirees can be revealed from the examples given below.

◆ **Example 1** – For getting maximum pension one has to be a member of the Scheme for 35 years. Effective from 15.11.1995 if a person remains in employment for 35 years as per the pension formula, he/she will be entitled for maximum pension from December 2030 which would be = Rs.3250/- only. One can easily imagine what would be the value of this small amount in 2030 and how a pensioner would be able to maintain his/her family then with this paltry amount.

◆ **Example 2** – With the advent of neoliberal economic regime since 1991, several lakhs of employees have lost their livelihood both in the private and in the public sector and the pension relief granted to them ranges between Rs. 265 & Rs.1200 only.

◆ **Example 3** – The maximum pension, the workers who have just superannuated after 30/35 years of service, say in 2005, are getting is hardly Rs.2000/- a month.

This is what the real face of the much publicised social security for the industrial worker, is.

► Unabated price rise has already made the lives of common people miserable and the plight of the industrial workers after superannuation is even worse as the pension is not linked with price rise/increase in cost of living. As EPS-1995 is not indexed, the paltry pension which is stagnant since 2000 is hardly of any help to the present pensioners. Usually the money received through PF or Gratuity by a retired worker is dried up to meet the expenses towards education and marriage of

children or for constructing a small house. The money with which he has now to pull on is the pension, the amount of which is so meager that a family cannot survive on it.

► While giving its ruling in favour of EPS 1995, the Hon'ble Supreme Court relied on several aspects including the provisions of 1/3rd commutation of pension, facility for return of capital, reduced pension at even the age 50 years, provisions for valuation of pension fund every year for enhancement of pension rate etc. The said ruling as we know was given on 11th November 2003 and within 5 years of this judgment.

But the government made several changes after this judgement.

(a) the 1/3rd commutation benefit of pension as per Para 12(a) of the scheme by which the pensioner was to get 100 times the original pension is no longer in existence.

(b) Benefit of 100 times the original pension as Return of capital on death of the pensioner to the widow by surrendering 10% of the original pension as per Para 13(1), 13(2) & 13(3) of the scheme also stands unilaterally withdrawn and

(c) Para 12(7) of the scheme provided the facility of reduced pension to a worker losing service before superannuation for which reduction of original pension would have been @ 3% for each year. This has now been modified and has been made 4%.

(a) & (b) was deleted and (c) was modified vide GSR 688(E) dated 26.09.2008.

(d) Vide para 32 of the pension scheme, there shall be annual valuation of the fund to facilitate upward revision of pension. Though it is supposed to be carried out every year, it is revealed from government data that during last 14/15 years there have been 8 valuations only and the rates at which

pension has been enhanced in the first four valuations are as follows: 1) 16/11/1996 – 4 %, 2) 31/03/1998 – 5.5 %, 3) 31/03/1999 – 4 %, 4) 31/03/2000 – 4 %. According to the government there was no allocable surplus during the next four valuations and hence no enhancement was made.

Thus the Union Government has in fact reduced the benefits instead of enhancing the same to the already distressed workers under the scheme.

BASIC FLAWS IN THE SCHEME:

The present scheme has failed to provide social security to the workers for the following basic flaws which have to be corrected immediately.

- ◆ The amount of pension is meager.
- ◆ The maximum amount remittable in the pension fund is Rs.6500/- per annum.
- ◆ The Government contribution in the fund is very meager.
- ◆ There is no component of linkage with Dearness Allowance.
- ◆ Valuation of pension funds is irregular.
- ◆ Commutation Benefit is withdrawn.
- ◆ Benefit of Return of Capital is withdrawn.
- ◆ Percentage reduction enhanced for reduced pension.

GOVERNMENT LOOKING FOR AN ESCAPE ROUTE:

The plight of the pensioners has repeatedly been brought to focus by the Trade Union representatives in the Central Board of Trustee (CBT). The issues were raised explicitly in the floor of the Parliament and the Parliamentary Standing Committee of Labour placed its 39th report on this issue in Parliament in February 2009.

In March 2008, the Government of India constituted a committee for comprehensive review of EPS 1995, giving it the mandate to look into all possible ways and means to meet the demands of the beneficiaries while ensuring the long term

viability of the scheme.

Subsequent to the recommendation of this committee, an expert committee on EPS 95 was constituted on 12.06.2009 under the Chairmanship of the Special Secretary, Ministry of Labour & Employment with one Employer representative one employees representative, the consultant actuary and the valuing actuary and representatives from the Labour Ministry and CPFC.

This committee has submitted its report to the Government on 05.08.2010 with following two recommendations:

Recommendation 1: Introduction of Provident Fund-cum-Pension Annuity Scheme – This is a defined contribution scheme with a mix of appropriate insurance. It has been suggested that two accounts shall be maintained in respect of each member: Provident Fund Contribution Account (PFCA) and Annuity Contribution Account (ACA). The committee has suggested diversion of 11.5% of the employer's contribution to the Pension Fund and remaining 0.5% to the Employees Deposit Linked Insurance Fund. The Government contribution in EPS has been suggested to be enhanced to 2% in place of existing 1.16%, thereby making the total contribution in the Pension Fund as 13.5%. The establishments where the employer's and employee's contribution is restricted to 10%, in their case 9.5% of the employer's contribution and 2% of the employee's contribution are to be diverted to EPS fund. They have also suggested that there shall be a statutory salary limit for coverage under the scheme upon which the contributions shall be calculated and to start with this salary limit is fixed at Rs.10,000/- per month. Provident Fund Contribution Account (PFCA) shall cater to the Provident Fund benefit for the members under the Scheme. The old age regular benefit to the members shall be provided in the form of annuity purchased through the accumulation in Annuity Contribution Account which will be allowed only at superannuation. In case of premature death, the spouse will be entitled to get accumulation in PFCA

and purchase annuity from the accumulation in Annuity Contribution Account. In addition, the spouse will also get a lump sum from EDLI for purchasing annuity. Pensioners existing as on cut-off date (say 01.04.2011) shall be compensated by providing a lump sum commensurate with the age and amount of pension of the pensioner.

Recommendation 2: Modification in the existing Employees' Pension Scheme, 1995. – To ensure a package of benefits consisting of a minimum pension of Rs.1000/- to all categories of pensioners and a provision of annual relief of 3%, the following modifications in the existing scheme has been suggested;

- a) Increase in wage ceiling from Rs.6500/- to Rs.10,000/- per month
- b) Diversion of the entire 12% or 10%, as the case may be, of the employer's contribution to the Pension Fund. The government contribution in EPS has been suggested to be enhanced to 2.75% in place of existing 1.16%, thereby making the total contribution in the pension fund as 14.75%. The establishments where the employer's and employee's contribution is restricted to 10%, in their case 10% of the employer's contribution and 2% of the employee's contribution are to be diverted to EPS Fund.
- c) Pensionable salary to be calculated as an average of last 3 years service in place of the existing 1 year.
- d) Withdrawal option to be deleted
- e) Bonus of 2 years to be disallowed
- f) Nominee Pension to be disallowed
- g) The age of superannuation to be raised from 58 to 60 years and
- h) The age for early pension to be raised from 50 to 55 years

WHY WE OPPOSE THE RECOMMENDATIONS OF THE EXPERT COMMITTEE:

CITU has strongly resented and flayed these

recommendations and sent a detailed note to the Chairman, Central Board of Trustees protesting against government's intention to abrogate its responsibility in strengthening a social security scheme like pension. CITU has demanded that the recommendation of the committee should be rejected and government and the employers should contribute more to make the Employees' Pension Scheme 1995 viable. Following are the salient points of the note which have been sent to the Labour Minister who is also the Chairman of CBT.

1. The EPS 1995 was challenged by several unions and some employers in the Court of Law. Finally the case was moved to the Supreme Court through several SLPs.

Against all the SLPs, the Affidavit submitted by the Solicitor General had asked for judicial approval on all the provisions of the scheme and the Bench having relied upon the perceived beneficial aspects of the scheme, had opined that it was a "good scheme". The EPS 1995 thus got endorsement of the Apex Court and all the SLPs were dismissed.

It therefore is imperative to get clearance from the Supreme Court before withdrawal of any benefit from the scheme. However, the benefits of Return of Capital and Commutation of Pension by exercising option have been withdrawn w.e.f. 26.09.2008. Similarly for the persons opting for early pension, the rate of reduction have been enhanced from the original 3% per year to 4% with effect from the same date. Withdrawal or reduction of any benefit of the original EPS 1995, which got due endorsement of the Apex Court, should not have been unilaterally done or modified without consent of Supreme Court or re-legislation. So all the measures of withdrawal of benefits should be revoked.

2. The study and recommendation of the Expert Committee is severely flawed and unreliable because the sample size is "small" as it represents only 5.4% of membership. Any recommendation for change of the scheme

particularly when the change is of basic nature must be substantiated by actual figures and not notional one based on such a small "sample size".

3. The Expert Committee has found that out of 4.45 crores of EPF members, information of about only 24.39 lakh, just 5.5% of the total members, is consistent and complete, thus raising the following issues: -

a) It has to be clarified what is meant by 'incomplete'. There may be several possibilities for incomplete records eg:-

- ◆ Names are enrolled but contributions are not deposited in either in both EPF & EPS-95 accounts or in EPS 1995 accounts only.

- ◆ Names are enrolled in EPF account but not in EPS-95 account. Contributions of employees are deposited but contributions by employers are not forthcoming in EPS-95.

- ◆ Contributions are deposited by employers in both the funds but without proper documents, rendering it incomplete.

b) Similarly the word "Consistent" may be defined and nature of inconsistencies should be spelt out.

c) There are as many as 79,509 defaulting establishments as reported in the Annual report of EPFO for the year 2008-09 and in terms of money the total defaulting amount for Provident Fund is Rs.2,206.99 crores and that of Pension fund is Rs.771.66 crores.

The defaulting establishments are going scot free without any punishment. For example in the case of M/s Hiranandani Properties Pvt. Ltd., as per CBI the Hiranandani Brothers and eight others cheated the Employees Provident Fund Organisation by not paying Rs.168 crore in PF dues of site workers employed through contractors in various projects of the Hiranandani Group. In conspiracy with EPF officials, they deposited a meager Rs.2.92 lakh as PF dues and closed the

matter illegally. Still the owners got anticipatory bail disclaiming any responsibility passing on the same to unnamed contractors. In such a situation the government has drastically reduced the penalty to be paid by the employers for default thereby encouraging the defaulter employers.

In view of the above, the observation by the Expert Committee on data and membership can not be an authentic basis for assessing the deficiencies and / or sustainability of the EPS-95.

4. Recommendations for Conversion to Annuity Scheme:

a) The idea of Annuity Scheme makes EPFO/Government free from the responsibility of providing Pension to the employees or their families. EPFO will only be a caretaker of the contribution made under EPS-95.

b) There is no guarantee that compliance will improve and/or the employers will be too enthused to get their employees registered under any Annuity Scheme.

c) Annuity Scheme does not serve any purpose in case of early death of an employee.

d) There will be rampant misuse of fund by the Annuitant fund manager because of lack of checks and balances and a question will be always coming up – if EPFO decides to opt for a diminishing role, why should employees opt to go for Annuity Scheme through EPFO? In this system the liability will rest on EPFO but the administration of fund, with all the associated dangers of fund management will be entrusted to others with little control over them.

The Employees Pension Scheme 1995 has been conceived as a defined benefit social security scheme. Any departure from this criterion and to put it into a market driven annuity scheme is not acceptable.

5. Recommendation for modification in the existing EPS-95

a) Raising wage ceiling to Rs. 10,000/- or to Rs. 15,000/- means transfer of money from a member's personal PF to EPS-95.

This will only lead to diversion of workers PF money to pension fund. As a consequence, the benefit of the worker towards PF is going to be reduced and pension will not also be substantially increased.

b) Moreover, the number of high paid workers is continuously decreasing, substituted by lower paid contractors' workers and out-sourced workers. So, this 'subsidy' by high paid workers will get reduced progressively with time. Hence periodical revision of wage ceiling will have little effect on the finances of EPS-95 but it may have a disastrous effect on the whole EPF system as there may be large scale exit from EPF by the higher salaried employees. The entire process will be counter productive.

c) This exercise shows that the government has no intention to increase their contribution beyond 2-2.75% and will also not ask the employer to make some additional contribution for the social benefit of the employees. The contribution of employers towards PF and Pension Fund collectively remains static and the suggestion of the Expert Committee now is to divert its entire contribution of 12% to Pension Fund means further robbing of the provident fund accumulations of the members. The PF benefit is already under severe strain in view of the diversion of 8.33% of employer's contribution to EPS and any further diversion will add to the misery and is thus not acceptable.

d) The recommendation does not say a single word on the revision of pension for the existing pensioners rather they have suggested in their recommendation that the pensioners existing as on cut-off date (say 01.04.2011) shall be

compensated by providing a lump sum commensurate with the age and amount of pension of the pensioner.

The number of pensioners who are getting pension on the following brackets as on 31.03.2008 is a clear example of how meager the pension amount is.

Pension amount per month	Number of pensioners
Upto Rs.300/-	1,82,790
Between Rs. 301/- and Rs. 400/-	2,26,807
Between Rs. 401/- and Rs. 500/-	2,43,654
Between Rs. 501/- and Rs. 1000/-	8,66,705

While the number of member pensioners as on 31.03.2008 was 18,05,012, number of pensioners getting less than Rs.500/- per month was 6,53,251 i.e more than one third of the pensioners are in receipt of monthly pension at the rate of Rs.500/- or less. Similarly the number of pensioners receiving pension below Rs.1000/- per month was 15,19,956 which accounted for 84% of the total pensioners. There must therefore be arrangement for enhancement of the minimum pension for all old and existing pensioners to a level by which one can sustain his/her livelihood instead of giving him/her a token amount as recommended by the Expert Committee.

CONCLUSION:

► Fast track mechanism should be immediately set up to make all contribution records to EPS-95, "COMPLETE" & "CONSISTENT".

► There is a general trend from the government as well as employers corners to publicise that there is employer's contribution in the EPS 95 which is not at all correct. The Employees' Provident Fund Scheme when first introduced, envisaged, the same rate of contribution by the employee and employer to the provident fund account. In fact, the

employers' contribution to PF is a part of employees' earning paid in different form (through PF). With the introduction of FPS 1971, much to the objection of the trade union movement, 1.16% of contribution of the employee and employer were both diverted to the family pension fund. In the EPS 95 again in spite of strongest resistance, the Government arranged diversion of 8.33% of the employer's share in the provident fund to pension fund. Historically therefore this cannot be treated as employers contribution, it is only diversion of the fund from one account to the other. It is imperative therefore to ensure some significant contribution of the employers in true sense to the pension fund for strengthening the scheme.

► Further, recovery of outstanding dues from the defaulting establishments will also strengthen the scheme. There must be stringent punishment for the defaulting establishments. The officials having connivance with the defaulting establishments should be identified and severely punished.

► It has now become clear to all the employees that Employees' Pension Scheme 1995 is not at all beneficial to the workers. Within the framework of defined benefits, EPS 1995 can be made beneficial only through enhancement of employer's as well as government's share without affecting the present rate of contributions in the EPF as well as enhancing the wage ceiling. All withdrawn or curtailed benefits i.e., the benefits of Return of Capital and Commutation of Pension and enhanced rate of reduction for early pension are required to be restored immediately. The Parliamentary Standing Committee on Labour in its 39th Report has also strongly recommended that the formula regarding rate of contribution should be revised at periodic intervals wherein the rate of contribution from the government should at least be fixed at half of the rate of contribution which is being made by the employer. The Committee has also recommended restoration of the withdrawn/curtailed benefits. CITU demands that in line with the recommendations government/employer should increase their contribution to 6% minimum.

► The Expert Committee has based their calculations on the basis that interest return on investments will be around 7.5 – 8.0%. In a scenario of economic downturn the market rate of interest may plummet to any level, as we know in USA it is 1% and in Japan it is 0.5% and in some cases the establishments are big defaulters. Yet the social security schemes are operating because governments' contributions have made the schemes sustainable. The government must decide whether to have a social security scheme at all for the workers. If the answer is positive then such a scheme cannot be framed upon present 1.16% contribution and market rate of interest earning on deposits. The government must come forward to meet the biggest and most important social responsibility to provide adequate social security benefit to workers. The social security of workers issue has earned utmost importance and priority internationally by all governments, ILO and even some corporate, because economic downturns have made the workers most vulnerable. The question is not of mathematical calculations by actuaries but a major policy decision of social security by the govt.

In the name of the exercises of the so called Expert Committee, the government has been in reality making an exercise to dilute further the Employees' Pension Scheme 1995, to the gross disadvantage of the employees themselves. Also government is making exercise to bring about a paradigm shift by way of converting a "defined benefit" scheme to a "defined contribution" scheme, throwing employees and workers to the vagaries of market forces and forcing them to purchase their own pension while abdicating its basic responsibility to provide a minimum social security net for those who produce wealth for the nation, and more so profit for the employers. Thirdly, the whole exercise is designed to slash down the employees' provident fund by half by way of diversion of the entire employer's contribution in PF to pension fund, that too for being invested in the market through annuity route, with the prospect of uncertain/undefined return.

Therefore, a countrywide strong movement has to be organised by all the Central Trade Unions to make the scheme workable for the social security of the workers by forcing the government /employer to enhance their contribution to the scheme, a prerequisite to strengthen the present EPS-1995.