

## The National Rural Employment Guarantee Bill, 2004

*The National Common Minimum Programme (CMP) states: "The United Progressive Alliance (UPA) government will immediately enact a National Employment Guarantee Act. This will provide a legal guarantee for at least 100 days of employment to begin with on asset-creating public work programmes every year at minimum wages for at least one able-bodied person in every rural, urban poor and lower middle-class household."*

*Does the National Rural Employment Guarantee Bill 2004 that was tabled in parliament on December 21, 2004, promise to ensure all these? This brief takes a look at some of the pros and cons of the Bill.*

### The Bill at a Glance

#### Highlights

- ◆ Focuses mainly on the improvement of rural areas.
- ◆ To an extent, helps in reducing rural under-employment.
- ◆ Establishing employment as a right would add substance to the concept of entitlements.
- ◆ Workers to be engaged in productive activities, thus improving the provision of important social and economic services.
- ◆ Additional income will help greatly in raising the living standards of people, particularly the large majority of poor households living below the poverty line.
- ◆ Unemployment allowance provided if an eligible applicant is not provided work as per the provisions of this law within the prescribed time limit.
- ◆ Central Government shall establish 'National Employment Guarantee Fund' and States shall constitute 'State Employment Guarantee Funds'.

#### Lowlights

- ◆ Bill does not guarantee when and where it will apply. It gives a very wide discretion to the government to switch off the employment guarantee provisions at any time.
- ◆ The scheme, restricted to poor households, is not of universal application, which may be interpreted to mean as those below poverty line (BPL).
- ◆ No guarantee for minimum wages; these could be superseded by a central notification, which is against public policy.
- ◆ Inadequate safeguards for women. Care should be taken not to exclude them.
- ◆ Only one member, even from among the members of the joint family, will be eligible as per the present scheme. A very vague definition of 'household' is given.
- ◆ The Bill is highly conditional, depending on the states economic capacity. Each state has to meet 30-40 percent of the total cost. Most of the states in our country are nearly bankrupt.
- ◆ Focus of the Bill is only on specific types of works.
- ◆ The Bill gives maximum discretion and power to the Central Government to modify or restrict almost every aspect of the law.
- ◆ The Bill does not cover urban areas, whereas the CMP promised so.

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#### Action Points

- The Bill should specifically lay down the period within which the Act shall come into force.
- The Bill should be made for universal application rather than being restricted to the 'poor household'. It should gradually cover the whole country in a specified time frame – say five years.
- There should be a provision for individual work entitlement or at least 30-40 percent of the total employment generated should be reserved for women.

- Total funding should be meted out by the Central Government, rather than asking State Governments to provide the matching half.
- Wages fixed by the Central Government should not go below those fixed by the Minimum Wages Act.
- The Bill should contain a strong Preamble, objects clause and provisions for incremental extension.
- The role of *panchayati raj*, social audit and transparency must be ensured.
- Need for bringing out an effective Right to Information Act, for its proper implementation.

## Introduction

People can claim from the state a basic aspect of their constitutional right to work once 'The National Rural Employment Guarantee Act' comes into effect. Someone ready to work manually can go to the court if the government does not provide him a job.

The ultimate benefits of rural welfare as a result of an employment guarantee scheme are huge. The work involved in such a programme would build infrastructure, such as roads, irrigation, health facilities etc, thus bringing out considerable changes towards the uplift of rural infrastructure and playing a crucial role in regenerating the rural economy.

Providing guaranteed employment would also have a good impact on health, education and other determinants of social welfare, by breaking the cycle of rural poverty. The benefits would be even greater if women are also given due primacy to work.

By opening the doors to rural employment, there would certainly be a reduction in migration to urban centres. This will help in reversing the urban drift, thus revitalising the villages. In short, it would be a unique opportunity to enhance economic security and social equity in rural India. It certainly does have the potential to significantly improve the livelihood of millions of rural poor in India.

The Preamble of the Bill states: "A Bill that provides for the enhancement of the livelihood security of the poor households in rural areas of the country by providing at least 100 days of guaranteed wage employment in every financial year to every household whose adult members volunteer to do unskilled manual work and for matters connected therewith or incidental thereto."

This briefing tries to examine

- How far the objects of this Bill can be successfully implemented, once it is brought into force.
- Whether it will in any way help to enhance the livelihood of households in rural areas and ensure the peoples' right to work.
- Whether its implementation will in any way help in reducing the burning

problems, like poverty, unemployment and illiteracy, which are prevalent widely.

## Employment Guarantee

The Bill promises a minimum of 100 days of employment to every poor household whose adult members volunteer to do unskilled manual work. It gives people work entitlement as a matter of right, indeed a legal right.

But this guarantee at present is highly conditional. As per Section 1(3), the Bill comes into force only in specified rural areas for a particular period, on such dates as the Central Government may notify in the official gazette.

This is in contrast to the National Advisory Committee (NAC) draft, wherein the Act was to be gradually extended to the whole of rural India within five years; so that every rural household would be covered.

The present form leaves it entirely to the discretion of the Central Government to select areas for notification of the schemes under the Act. It also does not propose a time-bound framework within which the schemes shall be notified. Therefore, the Central Government may select areas as it deems fit for notifying the National Employment Guarantee Schemes through rural areas across India. Thus, the Bill converts a guarantee scheme into a discretionary programme, similar to its non-statutory predecessors.

## Households

Section 2(f) defines the term household, which means the members of a family related to each other by blood, marriage or adoption and normally residing together and sharing meals or holding a common ration card.

This definition is too wide and excludes several independent nuclear family units (of a husband, wife and their children) that may be part of a joint family living under a common roof and sharing the same kitchen.

Apart from it, the guarantee has been restricted only to poor households. This defeats the basic principle of an Employment Guarantee Act – universal entitlement and "self selection". In the NAC draft, there was no "targeting" – all

households are entitled to the employment guarantee and the unemployment allowance.

Moreover, a 'poor household' is defined as one living below the poverty line. On that account, the State Governments are likely to restrict the employment guarantee schemes to households with a BPL (below poverty line) card. The restriction is bound to exclude many poor households from the scheme.

The BPL list is known to be highly unreliable, as its surveys in India lack all credibility. So, targeting the employment guarantee to the 'official' poor will leave out millions of really poor people in rural India. This defeats the main purpose of the guarantee, namely, to protect rural households from economic insecurity.

Several really poor people, who could not make it to the official BPL list, would be deprived of the employment they need and deserve. In times of distress, these households slip below subsistence levels. So, restricting the entitlement to BPL families would deprive other deserving households when they most need state support.

Likewise, the Bill limits itself to a few districts, without setting a time frame for a nationwide employment guarantee. This limit has no logical basis. The coverage should be extended to the whole country within a well-defined time period. In fact, it should be based on the principle of universality and all households should be made eligible to apply for work. The willingness to perform casual manual labour at a minimum wage is itself a strong indicator of need.

Besides, by not having a specified future plan for the expansion of the programme, the draft loses much of its strength. In other words, the Bill allows the government to switch off the employment guarantee anywhere, at any time.

## Wages

Under the Bill, though the workers are entitled to the statutory minimum wage for agricultural labourers in the state, in all circumstances it is to be superseded if the Central Government by notification, specifies the wage rate. Hence, the wages are no longer linked to the statutory minimum wages fixed by the state. It is

liable to be changed by the Central Government.

As the objective of the programme is to ensure a minimum income from work, so as to guarantee livelihood, wages should be high enough to meet the daily subsistence needs of the workers' households.

Likewise, a statutory minimum wage linked to a certain standard of living is an important component of labour laws in India. The government, through this Bill, proposes to do away with this principle. In the NAC draft, this was not the case. The labourers were entitled to the statutory minimum wage of agricultural labourers in the state, in all circumstances.

In the *Asiad* construction case (1982), the Supreme Court had clearly laid down that anything short of the minimum wages would be exploitative and forced labour, within the meaning of Article 23 & 24 of the Constitution. So, to talk of wages less than minimum is irresponsible and wrong.

Apprehension is also expressed of a situation where the minimum wages will be fixed at an unrealistically high level by the government through the notification. Such an action would not only raise the cost, but also provoke the labourers to divert from other productive activities, particularly agricultural operations.

Accordingly, to guarantee a minimum income and meet the legal obligation, the payment of statutory minimum wages is unexceptionable. The government has to fix minimum wages at a level it considers realistic and reasonable, thereby guaranteeing both minimum income and preventing diversion of labour from other productive works.

#### Authorities

It should be ensured that there is adequate participation of local communities. The local institutions should be more involved in the scheme, so that the assets created are need-based. The NAC draft had given a central role to *panchayati raj* institutions in the planning and monitoring of the Employment Guarantee Programme.

In the proposed Bill, the role of *panchayati raj* institutions has been considerably

diluted. The Block-level "Programme Officer" and the District Coordinator are not made accountable to elected bodies like *panchayat* and *zila parishad* (village council and district council, respectively). The role of *gram panchayats* and *gram sabhas* (village meetings) has also been reduced, when compared to their roles assigned in the NAC draft.

Greater involvement of *gram sabhas*, non-governmental organisations (NGOs) and private agencies in the planning and implementation stage should be encouraged, to ensure its successful implementation.

There is a need for grassroots peoples' organisations to assist *gram sabhas*, so that they may truly reflect the will of the most disadvantaged and needy sections within the village.

#### Funds & Expenditure

One of the biggest drawbacks in the Bill is the sharing of expenditure between the centre and the state. There is an extensive financial burden on the state government, which is expected to provide for nearly 25 to 30 percent of the material cost, especially when most of the states in the country are either bankrupt or financially unstable.

The states are to bear expenses on matters relating to administration, state council's expenses, appointment of programme officers, welfare, unemployment allowance irrespective of who is responsible (a person may be denied employment either due to the fault of the State or the Central Government), one-fourth of the material cost of the scheme, payment of wages etc.

Also, there is no provision anywhere in the Bill to ensure the smooth flow of funds from the centre to the state at the appropriate time. Even if the centre fails to ensure the timely supply of funds to the state, the state is legally bound to provide work or pay the unemployment allowance.

Some form of transparency should be ensured to a greater extent in the usage of funds. Monitoring, either through social audits or by the effective implementation of the right to information, is very much needed for the effective and proper utilisation of funds.

#### Social & Economic Issues

Providing employment as a matter of right to rural folks does create a beneficial impact on both economic as well as social factors. The benefits are huge. But this is possible only when the Bill itself emphasises on these matters in a wider perspective, rather than restricting itself to a few.

Like, much emphasis is given to specific types of works in the Bill. Some of the works identified for providing employment include water conservation and harvesting, drought proofing, irrigation canals (including micro and minor irrigation works), renovation of traditional water bodies (including desilting of tanks), land development, flood control and rural connectivity.

This is too rigid and highly limiting, when compared to the NAC draft, where the "productive works" were broadly defined as works that contribute directly or indirectly to the increase of production, the creation of durable assets, the preservation of the environment, or the improvement of the quality of life.

Thus, the restrictive focus on works should be widened and made more flexible. Inclusive definition could be adopted so as to cover a range of productive services for a broad-based economic growth of the rural areas.

Such measures would help reverse the recent neglect of rural infrastructure, and play a crucial part in regenerating the rural economy. This revival would also keep a check on the migration of rural folks to urban centres.

#### Women's Empowerment

The government, in the proposed Bill, has greatly ignored women's empowerment. The restriction of 100 days of work per household would inevitably result in households sending only men to work under the scheme. Nowhere does the Bill ensure that a minimum percentage of workers in each block should be women.

Besides, the definition of "work" as physical manual work in the Act would eliminate women from being employed. To overcome this, the Bill should include soft-skill jobs such as nursery, forestry and social service schemes. By such

inclusion, the services of women could be utilised in social service and rural health schemes.

In addition, the present draft omits an important clause of the NAC draft, which made explicit provisions for a possible transition to individual entitlements in due course. There should be provisions for individual work entitlements. Else, measures ought to be taken to ensure that at least 40 percent of workers employed in a particular block are women, so that they are not pushed disproportionately out of the scheme.

On the other hand, an arbitrary reservation of 40 percent employment to women in each block may probably end up being un-realistic, as it would be either far above or far below the demand, as the case may be, at least in some places.

For this reason, it is advisable to shift employment to individual basis and look at the proportion of male and female workers, in the areas where the scheme is in operation. Providing higher levels of female labour participation, especially in rural areas, is closely associated with lower infant mortality rates and higher primary school enrolment rates.

### Amending Power

The government has wide latitude to modify or restrict almost every aspect of the employment guarantee through suitable notifications, rules, guidelines, etc.

The proposed Bill has two schedules. Schedule I on "Minimum Features of a Rural Employment Scheme" and Schedule II on "Conditions for Guaranteed Rural Employment under a Scheme and Minimum Entitlements of

Labourers". Any changes to be brought about in future in the provisions of these schedules do not require an amendment of the Act, but only a notification from the Central Government.

This gives the Central Government the extreme power to derail the schemes or to reduce the entitlements of the beneficiaries. In short, the Bill gives maximum discretion and power to the Central Government.

### Transparency

The transparency provisions are also severely diluted. The muster rolls of each scheme or project under a scheme and other records or documents relating to the scheme are available for public scrutiny or inspection on demand, after paying a requisite fee, as specified. This is incorporated just to provide protection to bureaucrats at the level of the centre and the states.

Such a protection should be done away with. The public or any interested person should have easy access to the records so as to keep themselves abreast with the affairs of the government and thus keep a check on them.

A monitoring committee could be constituted in each block to assist *gram sabhas* in monitoring the entire programme. The members and schoolteachers of the village, representatives of voluntary organisations, local journalists etc need to be included in the committee to ensure transparency. Also, the payment of wages must be made in public in a transparent and accountable manner. It could be paid either at the work site or at a public place most convenient to the beneficiaries.

### Conclusion

The very concept of livelihood protection disappears, by diluting the employment guarantee schemes. The scheme has been made excessively selective and discretionary, in terms of its content and areas of application that the concept of guarantee is lost.

If the Bill is passed in the present form, it will just end up being neither national, nor providing sufficient employment, nor being a guarantee.

The Bill has a highly centralised administrative and decision-making structure, with concentration of power in the centre. It contravenes the federal spirit that must guide Bills pertaining to matters on the concurrent list. In most matters, the power to override the state governments rests with the centre. The most incongruent factor is that the whole power rests with the Central Government, while its financial contribution is not total.

This Bill is far below than what was visualised. If the government is serious about ensuring the success of this programme, and more broadly on the development of the economy and improvement of the conditions of the poor, then it should come out with a stronger law.

The whole point of an Employment Guarantee Act must be to provide work to people as a matter of right, when their need is the greatest. We require an Employment Guarantee Act that enshrines this commitment and a system by which work could be channelled to the most productive avenues in a socially accountable manner.

### Other Bill Blowups

<b>1. Competition Bill of India, 2001</b> <i>A Right Step in the Right Direction</i>	<b>4. The Infant Milk Substitutes... Amendment Bill, 2002</b> <i>More a Formality than an Attempt to Address the Real Concerns?</i>
<b>2. Communications Convergence Bill, 2001</b>	<b>5. 98<sup>th</sup> Constitutional Amendment Bill, 2003</b> <i>Seeking to Create a National Judicial Commission</i>
<b>3. Biological Diversity Bill, 2000</b> <i>A blueprint for the monopolisation of biodiversity or its beneficial use?</i>	<b>6. Small Enterprises Development Bill</b> <i>A Step in the Right Direction?</i>
	<b>7. Patent (Amendment) Ordinance, 2004</b>

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