CHAPTER - THREE

THE SALIENT FEATURES OF N.R.E.G. ACT, 2005
The National Rural Employment Guarantee Act (NREGA), 2005, which confers legal right to employment on the rural citizens, is a landmark in the history of independent India. It seeks "to provide for enhancement of livelihood security of the households in rural areas of the country (except Jammu & Kashmir state) by providing at least one hundred days of guaranteed employment in every financial year for every household whose adult members volunteer to do the unskilled work with the schemes made under the Act". The emergence of this Act was due to the agenda item of the government lead by different political parties in the name of United Progressive Alliance (UPA) formed at central level in the year 2004. The UPA Government has a political agenda by the name ‘Common Minimum Programme’. Indeed, the first pledge of the Common Minimum Programme reads: “the 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 works programmes every year at minimum wages for at least one able-bodied person in every rural, urban poor and lower middle class household”. In July 2004, a draft National Rural Employment Guarantee Act was prepared by concern citizens and sent to the National Advisory Council (NAC). Within a month, the NAC revised this draft in line with the pledge made in the Common Minimum Programme and sent the revised version to the Government for urgent consideration. The NAC proposed to enact a new legislation through the “National Rural Employment Guarantee Bill, 2004” which was tabled in Parliament on 21 December, 2004. The National Rural Employment Guarantee Act was passed by the Parliament on 23 August, 2005.
and it was promulgated on 7 September, 2005. Based on the Act, the “National Rural Employment Guarantee Scheme (NREGS)” was ceremoniously launched by the honorable Prime Minister of India Dr. Manmohan Singh on February 2, 2006. The same UPA government has introduced an amendment bill to the main act, called the National Rural Employment Guarantee (Amendment) bill in Parliament on November 26, 2006. The amendment seeks to rechristen the NREG Act as the “Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA)
.

The State Governments are empowered to start any scheme as per the statues laid down in the NREG Act. Since the Government of Andhra Pradesh has started the Scheme accordingly, this scheme is being called as “Andhra Pradesh Rural Employment Guarantee Scheme (APREGS)” or MGNREGS-AP or, in simple, as NREGS. Hence, NREGS is a Scheme which is being implemented in tune with the statues laid down by NREG Act (MGNREG Act). There is a difference between a Scheme and an Act. Schemes come and go, but laws are more durable. A Scheme can be trimmed or even cancelled by a bureaucrat, where as changing a law requires an amendment in Parliament. If an Employment Guarantee Act is passed, labourers will have durable legal entitlements. Over time, they are likely to become aware of their rights and learn how to defend themselves.
SALIENT FEATURES OF THE N.R.E.G. ACT:

The NREGA is a unique act which provides a legal guarantee for employment to the adult members of any rural household. This Act gives assurance to the labour force, fix responsibility on the executives, and exact several implementing agencies to monitor the programmes as per the amendments. It empowers the central and state governments to design and implement several employment schemes within the frame work of laid down statute. It provides a comprehensive frame work for planning and decision making on various aspects like design and implementation of schemes, conditions for providing employment, fixation of wage rate, establishment of council at central and state level, monitoring at state level, establishment of funds, transparency and accountability, powers of central and state governments, audit of accounts, social audit of works, establishment of grievance redressal mechanism, disbursement of wages, payment of unemployment allowance, power to amend schedules, fixation of responsibilities of the various executives, etc,. The Ministry of Rural Development (MRD), Government of India will monitor the different employment schemes implemented by the state governments from time to time. As per the Gazette of India, published by the Government of India on September 7, 2005, the main features of the NREGA are as under:

1. The Basic Theme: This is an act to provide for the enhancement of livelihood security of the households in rural areas of the country by
providing at least one hundred days of guaranteed wage employment in every financial year to every household whose adult members volunteer to do unskilled manual work with the schemes made under the act. Here, the “household” 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. The unskilled manual work means any physical work which any adult person is capable of doing without any skill or special training.

2. Design and Implementation of Schemes: This act enforces the central and the state governments, within their economic capacity, to design and implement various employment schemes or projects for any period in the rural areas. The scheme means a scheme notified by the state government under sub- section (1) of section 15 of NREGA. The project means any work taken up under a scheme for the purpose of providing employment to the applicants or job seekers.

3. Conditions for providing guaranteed employment: The persons employed under any scheme made under the NREG Act shall be entitled to such facilities not less than the minimum facilities in the Second Schedule. If the implementing agencies fail in providing such facilities, the engaged labour is entitled to get compensation.
4. Wage Rate: The central government is empowered to specify the wage rate from time to time by notification and can exact the state governments to follow it strictly while making payments to the participated labour. Until such time as a wage rate is fixed by the central government in respect of any area in a state, the minimum wage fixed by the state government under section 3 of the Minimum Wages Act, 1948 for agricultural labourers, shall be considered as the wage rate applicable to that area.

5. Establishment of a Council: The Act enforces the Central government, by notification, to constitute “The Central Employment Guarantee Council” as an apex monitoring agency. This council is to establish a central evaluation, monitoring system and to advise the Central Government on all matters concerning the implementation of NREG Act, review the monitoring and redressal mechanism from time to time, promote the widest possible dissemination of information, preparation of annual reports to be laid before the Parliament, and to discharge any other duty or function as may be assigned to it by the Central Government. The members will represent various central ministries, Panchayat Raj institutions, organizations of workers and the non-official embers belonging to Scheduled Castes, the Scheduled Tribes, Other Backward Classes and Minorities.

6. Monitoring at State Level: For the purposes of regular monitoring and reviewing the implementation of the act at the State level, every State
Government shall constitute a State Council to be known as the ……(name of the State) State Employment Guarantee Council with a Chairperson and such number of official members as may be determined by the State Government. The State Council shall have the power to undertake an evaluation of the Schemes operating in the State and for that purpose to collect or cause to be collected statistics pertaining to the rural economy and the implementation of the Schemes and Programmes in the State.

7. Establishment of Fund: As per the act, the Central Government shall, by notification, establish a fund to be called the “National Employment Guarantee fund” and the amount standing to the credit of this fund shall be utilized in such a manner and subject to such conditions and limitations as may be prescribed by the central government. The Central Government may, after due appropriation made by Parliament by law in this behalf, credit by way of grants or loans such sums of money if it is considered necessary to the National Fund. From this fund, the Central Government will meet the different expenditures. The major items of expenditure are: the amount required for payment of wages for unskilled manual work under the scheme, up to three-fourths of the material cost of the scheme and the administrative expenditure including the salaries and the allowances to the programme officers and their supporting staff.
8. Fund at State Level: The State Government shall also, by notification, establish a fund to be called the “State Employment Guarantee Fund” for the purposes of the implementation of employment schemes at the state level. The amount standing to the credit of the State Fund shall be expended in such a manner and subject to such conditions and limitations as may be prescribed by the state government for the purpose of the implementation of the act. The State Government shall meet the expenditure on: the cost of unemployment allowance payable under the scheme, one-fourth of the material cost, payment of wages to skilled and semi-skilled workers and the administrative expenses of the State Council.

9. Transparency and Accountability: The Act compels the implementing agencies to function with more transparency and accountability. The District Coordinator and all implementing agencies shall be responsible for the proper utilization and management of funds placed at their disposal for the purpose of implementing a scheme. The State Government may prescribe the manner of maintaining proper books and accounts of employment of labourers and the expenditure incurred in connection with the implementation of the provisions of the act and schemes made there under. The State Government may, by rules, determine the arrangements to be made for the proper execution of schemes and programmes under the schemes and to ensure transparency and accountability at all levels in the implementation of the schemes.
10. Power of Central Government: The Central Government is empowered to give necessary directions to the State Government for the effective implementation of the provisions of the act. Without prejudice to the provisions of sub-section(1), the Central Government may, on receipt of any complaint regarding the issue or improper utilization of funds granted under this act in respect of any Scheme if *prima facie* satisfied that there is a case, cause an investigation into the complaint made by any agency designated by it and if necessary, order stoppage of release of funds to the Scheme and institute appropriate remedial measures for its proper implementation within a reasonable period of time.

11. Audit of Accounts: The Central Government may, in consultation with the Comptroller and Auditor general of India, prescribe appropriate arrangements for audits of the accounts of the Schemes at all levels. The accounts of the Schemes shall be maintained in such form and in such manner as may be prescribed by the State Government.

12. Social Audit of work: The ‘Gram Sabha’ (village meeting) shall monitor the execution of works within the Gram Panchayat. The Gram Sabha shall conduct regular social audits of all the projects under the Scheme taken up with the Gram Panchayat. The Gram Panchayat shall make available all relevant documents including the muster rolls, bills, vouchers,
measurement books, copies of sanction orders and other connected books of accounts and papers to the Gram Sabha for the purpose of conducting social audit. The District Programme Coordinator/Programme Officer can carry the audit programme through any agency or qualified persons. He has to ensure that regular social audits of all works within the jurisdiction of the Gram Panchayat are carried out by the Gram Sabha and that prompt action is taken on the objections raised in the social audit.

13. Grievance Redressal Mechanism: The State Government shall, by rules, determine appropriate grievance redressal mechanism at the Block level and the District level for dealing with any complaint by any person in respect of implementation of the Scheme and lay down the procedure for disposal of such complaints. The Programme Officer shall entry every complaint in a complaint register maintained by him and shall dispose off the disputes and complaints within seven days of its receipt and in case it relates to a matter to be resolved by any other authority it shall be forwarded to such authority under intimation to the complainant. Section 19 of the act lays down the procedure to be followed in establishing the grievance redressal mechanism at the Block level and the District level.

14. Power to Delegate: The Central Government may, by notification, direct the powers exercisable by it may, in such circumstances and subject to such conditions and limitations, be exercisable also by the State
Government or such officer subordinate to the Central Government or the State Government as it may specify in such notification. The State Government may, by notification, direct that the powers exercisable it may, in such circumstances and subject to such conditions and limitations, be exercisable also by such officer subordinate to it as it may specify in such notification.

15. Disbursement of Wages: Every person who has done the work given to him under the Scheme shall be entitled to receive wages at the determined wage rate for each day of work. The disbursement of daily wages shall be made on a weekly basis or in any case not later than a fortnight after the date on which such work was done. The Programme Officer shall ensure prompt and fair payment of wages to all labourers employed under a programme of the Scheme within the Block. All payments of wages in cash and unemployment allowances shall be made directly to the person concerned and in the presence of independent persons of the community on pre-announced dates.

16. Payment of Unemployment Allowance: If any applicant for employment under the Scheme is not provided employment within fifteen days of his application seeking employment or from the date on which the employment has been sought in the case of an advance application, Whichever is later, he shall be entitled to a daily unemployment allowance in accordance with
Section 7 of the Act. Subject to such terms and conditions of eligibility as
may be prescribed by the State Government and subject to the provisions
of the act and the Schemes and the economic capacity of the State
Government, the unemployment allowance payable under sub-section (1)
shall be paid to the applicants of a household subject to the entitlement of
the household at such rate as may be specified by the State government,
by notification in consultation with the State council. Provided that no such
rate shall be less than one-fourth of the wage rate for the first thirty days
during the financial year and not less than one-half of the wage rate for the
remaining period of the financial year. If the Programme Officer is not in a
position to disburse the unemployment allowance in time or at all for any
reason beyond his control, he shall report the matter to the District
Programme Coordinator and announce such reasons in a notice to be
displayed on his notice board and the notice board of the Gram Panchayat.
Every case of non-payment or delayed payment of unemployment
allowance shall be reported in the annual report submitted by the District
Programme Coordinator to the State Government along with the reasons
for such non-payment or delayed payment.

17. Disentitlement to receive unemployment allowance: An applicant who-(a)
    does not accept the employment provided to his household under a
    scheme; or (b) does not report for work within fifteen days of being notified
    by the Programme Officer or the implementing agency to report for the
work; or (c) continuously remains absent from work, without obtaining a permission from the concerned implementing agency for a period of more than one week or remains absent for a total period of more than one week in any month, shall not be eligible to claim the unemployment allowance payable under this act for a period of three months but shall be eligible to seek employment under the Scheme at any time.

18. Power to amend Schedules and laying of rules: If the Central Government is satisfied that it is necessary or expedient so to do, it may, by notification, amend Schedule I or Schedule II, shall be deemed to have been amended accordingly. A copy of every notification made under sub-section (1) shall be laid before each House of Parliament as soon as may be after it is made. In the same manner, every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament and both the houses should agree in making such rules and modifications in the rule and there after they will come into effect. Similar to this, every rule or Scheme made by the State Government under this Act shall, as soon as may be after it is made, be laid before each house of the State Legislature and both the houses should accept the newly formed rules or changes to the existing one. If any difficulty arises in giving effect to the provisions of the Act, the Central government may, by order published in the Official Gazette, remove such inconsistent provision.
19. Principal authorities for Planning and Implementation of Schemes: The Panchayats at the district, intermediate and village levels shall be the principal authorities for planning and implementation of the schemes made under this Act. The functions of the Panchayats at the District level shall be: (a) to finalize and approve block wise shelf of projects to be taken up; (b) to supervise and monitor the projects taken up at the Block level; and (c) to carry out such other functions as may be assigned to it by the State Council, from time to time. The functions of the Panchayats at the intermediate level shall be: to approve the Block level Plan for forwarding it to the District Panchayat for final approval, to supervise and monitor the projects taken up the Gram Panchayat and Block level, and carry out such other functions as may be assigned to it by the State Council from time to time. The Gram Panchayats have to prepare the developmental plans, identify the activities to be taken up, and execute the activities.

20. Responsibilities of the Gram Panchayats: The Gram Panchayats shall be responsible for identification of the projects in the Gram Panchayat area to be taken up under a Scheme as per the recommendations of the Gram Sabhas and for executing and supervising such works. They may take up any project under a Scheme within the area of the Gram Panchayats as may be sanctioned by the Programme Officers. Every Gram Panchayat shall, after considering the recommendations of the Gram Sabha and the Ward Sabhas, prepare a developmental plan and maintain a shelf of
possible works to be taken up under a Scheme as and when demand for work arises. The Gram Panchayat shall forward its proposals for the development projects including the order of priority between different works to the Programme Officer for scrutiny and preliminary approval prior to the commencement of the year in which it is proposed to be executed.

21. The functions of the District Programme Coordinator: The Chief Executive Officer of the District Panchayat or the Collector of the district or any other district level officer of Programme Coordinator (DPC) for the implementation of the Scheme in the district in accordance with the provisions of the Act and the rules made there under. The functions of the DPC shall be: to assist the district panchayat in discharging its functions under the Act and any Scheme made there under, to consolidate the plans prepared by the Blocks and project proposals received from other implementing agencies for inclusion in the shelf of projects to be approved by the panchayats at district level, to accord necessary sanction and administrative clearance wherever necessary, to coordinate with the Programme Officers functioning within his jurisdiction and the implementing agencies to ensure that the applicants are provided employment as per their entitlements under the Act, to review, monitor and supervise the performance of the Programme Officers, to conduct periodic inspection of the works in progress, and to redress the grievances of the applicants. The State Government shall delegate such administrative and financial powers
to the DPC as may be required to enable him to carry out his functions under the Act. The DPC shall prepare, in the month of December every year, a Labour Budget for the next financial year (containing the details of anticipated demand for unskilled manual work in the district) and the plan for engagement of labourers in the works covered under the Scheme and submit it to the District Panchayat.

22. The functions of the Programme Officer: At every Panchayat at intermediate level, the State Government shall appoint a person who is not below the rank of Block Development Officer with such qualifications and experience as may be determined by the State Government as Programme Officer (PO) at the Panchayat at intermediate level. The PO shall assist the Panchayat in discharging his functions under this Act and Scheme made there under. He shall be responsible for: matching the demand for employment opportunities arising from the projects in the area under his jurisdiction, prepare a plan for the Block under his jurisdiction by consolidating the project proposals prepared by the Gram Panchayats, monitoring of projects taken up by the Gram Panchayats and other implementing agencies within the Block, ensuring prompt and fair payment of wages to all labourers employed, ensuring that regular social audits of all works within the jurisdiction of the Gram Panchayats, dealing promptly with all complaints that may arise in connection with the implementation of the Scheme, and any other work as may be assigned to him by the DPC or the
State Government. The State Government may, by order, direct that all or any of the functions of a PO shall be discharged by the Gram Panchayat or a local authority.

MINIMUM REQUIREMENTS TO BE FULFILLED:

The intention of the NREGA is to provide basic employment guarantee in rural areas. The Act proposes certain requirements to be fulfilled and indicates the kind of works that may be taken up for the purpose. The minimum requirements / features of any NREG Scheme, as mentioned in Schedule I of NREG Act, are as follows:

- The focus of the Rural Employment Scheme shall be on: water conservation and water harvesting, drought proofing (including afforestation and tree plantation), irrigation works, provision of irrigation facility to land owned by households belonging to Scheduled Castes and Scheduled Tribes and other downtrodden, renovation of traditional water bodies including desilting of tanks, land development, flood control and protection works including drainage in water logged areas, rural connectivity to provide all-weather access, micro irrigation, and any other works approved by the Ministry of Rural Development.
- The Schemes shall enable the creation of durable assets and strengthening the livelihood resource base of the rural poor.
The works taken up under the Scheme shall be under the jurisdiction of Gram Panchayats or rural areas.

The State Council shall prepare a list of preferred works for different areas based on their ability to create durable assets.

The Scheme shall be subject to appropriate arrangements as may be laid down by the State Government under the rules issued by it for proper maintenance of the public assets created under the Scheme.

Under no circumstances shall the labourers be paid less than the wage rate. When wages are directly linked with the quantity of work, the wages shall be paid according to the schedule of rates fixed by the State Government for different types of works every year, in consultations with the State Council.

The cost of material component of projects including the wages of the skilled and semi-skilled workers taken up under the Scheme shall not exceed 40.00 per cent of the total project cost.

The Scheme shall not permit engaging any contractor for implementation of the projects under it. As far as possible, a task funded under the Scheme shall be performed by using manual labour and not machines.

Every Scheme shall contain adequate provisions for ensuring transparency and accountability at all levels of implementation.

Provisions for regular inspection and supervision of works taken up under the Scheme shall be made to ensure proper quality of works as well as to
ensure that the total wages paid for the completion of the work is commensurate with the quality and quantity of work done.

- The authorities, DPC/PO/ Gram Panchayats, shall prepare annually a report containing the facts and figures and achievements relating to the implementation of the Scheme within his jurisdiction and a copy of the same shall be made available to the public on demand and on payment of such fee as may be specified in the Scheme.

- All accounts and records relating to the Scheme shall be made available for public scrutiny and any person desirous of obtaining a copy or the relevant extracts there from may be provided on demand after paying specified fee.

- A copy of the Muster Rolls (attendance particulars of the labourers who participated in the works) of each Scheme or a project under a Scheme shall be made available in the offices of the Gram Panchayat and the Programme Officer for inspection by any person interested after paying such fee specified in the Scheme.

To sum up, NREGA is by far the most ambitious attempt of the Government of India to tackle the unemployment problem positively. The provisions of the Act provide a comprehensive framework for planning, decision making, policy formulation, and implementation. An Act of this type is more required to the Indian rural society which is facing severe unemployment problems. An employment revolution of this type will change the face of rural
poverty. Though there are comprehensive guidelines and provisions, issues are to be properly addressed and included as provisions prospectively.