Chapter-IV

Constitutional, Legislative and Judicial analysis of Right to work
4. GENERAL

In India, even 59 years of independence, no meaningful changes have been brought in the service-oriented education. It is amazing and regrettable too that even those who come out of the professional institutions with degrees and diplomas go about hunting for jobs instead of pursuing the appropriate line of self-employment. This attitude of Indian young men and women is responsible for the mounting number of unemployed. Yet another no-less important criticism against Indian educational system in India is that at every stage it prepares the alumni to seek the next higher degree or diploma, instead of imparting the necessary training and skills which would help them work independently and contribute to the prosperity of the country, besides providing for themselves. One other unintended casualty in this academic rat race is that while the more fortunate few climb up the ladder of higher academic pursuits, the rest are dropped midway and left high and dry.

The worst part of it all is doctors and engineers, even lawyers, compete with one another to enter the Civil Service, and in this unseemly melee, the less fortunate competitors have perforce to reconcile with clerical posts even in certain institutions\(^1\). This exodus of professional degree and diploma-holders into the civil services, irrespective of the cadres and ranks, has the

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\(^1\) Panchayat Raj Institutions
side-effect of thwarting the chances of the really deserving aspirants. There is a limit to the State going to the rescue of its unemployed citizens. With the rapid advances made by science and technology, the human labour is gradually and steadily being replaced by mechanical devices. Here arises a conflict between human labour and mechanical labour. If the human labour is given any preference, scientific and technological progress will automatically be arrested, leading to certain economic stagnation, and consequent widening of the gap between the demand and supply of material comforts. For basically and essentially, all human desire and efforts are directed towards the acquisition and enjoyment of comforts and happiness.

It will thus be seen what a formidable and gigantic task is to generate employment opportunities in such a vast, populous country like India. It must be recognised that the era of labour-intensive development projects is over. Mechanisation permeated all human activities to such an extent that the services of even domestic servants have become superfluous with the availability of several electronic devices and gadgets. In such a situation where employment opportunities are fast decreasing with the machines usurping the place of human labour, it is difficult to imagine 'how right to work can become a realisable Fundamental Right in the foreseeable future. With a population of over 1000 million, India has been rated as one of the largest contributors to the world's growing population. The bulk of India's population resides in villages and their mainstay is agriculture. But, with the growth in population the pressure on land has risen manifold and those depending on agriculture have perforce to seek other jobs to make both ends meet since agriculture has reached a saturation point. This has led to a
situation where the rural population has begun to gravitate towards cities and towns in larger numbers in search of better jobs. Consequently, work in the form of unemployment and underemployment in cities and towns have increased by leaps and bounds.

Gandhi, Nehru and Ambedkar were the three most important leaders of the modern India. The three leaders have been important not only because they played a critical role in India’s struggle for freedom from colonial rule, and have become symbols of India’s independent nationhood, but their legacy is also imbibed in the perspectives they articulated on India, its pasts and its possible futures. The reformist vision of Gandhi, who wanted to construct a harmonious and self contained village, uncorrupted by the modern life of the city and western technology continues to find its echoes in present times. It was only through the reconstruction of the village that India, for Gandhi, could recover its lost self and attain true freedom. Nehru’s modernist vision of the Village has been the source of much of the official policies and programmes of rural development initiated by the government of India after independence, particularly during the 1950s and 1960s. His vision was to develop the village and the agriculture through the new technology and abolition of outdated structures of agrarian relations. Various programmes of rural development that took modern technology and new seeds to the cultivators have significantly transformed Indian agriculture. Ambedkar, in his writings articulated a subaltern view on the village so called virtues of traditions living turn into oppressive structures. In his view he thought that the village where it was impossible to escape from one’s caste identity.
4.1 POST INDEPENDENCE PLANNING

The idea of planning as a cornerstone of economic reconstruction of free India was first outlined by a national leader\(^2\) in his presidential address at the Haripura session of the Indian National Congress held in February 1938. In his address Netaji envisaged that the first task of the Government of Free India would be to set up a 'National Planning Commission', whose primary task would be to prepare a blueprint for the socio-economic reconstruction of India with emphasis on eradication of poverty, providing a sound base to the agricultural economy and industrial infrastructure. This objective inaugurated in 1938 the Committee\(^3\) under the aegis of the Indian National Congress and Pandit Jawaharlal Nehru was appointed as the chairman of the committee. This committee became the precursor of the Board\(^4\) set up by the interim Government of India in 1946 and the first planning commission of Free India which was constituted in 1950. As one goes through thrusts of various five-year plans, the process of evolution of planning based on needs of the economy and political structure becomes discernible.

In the post-partition period, in the first Five Year Plan, the thrust was inevitably on economic stability and consolidation of the economy. To provide the necessary infrastructure for development, the second plan gave emphasis on heavy and basic industries. To achieve this goal, in the third and fourth plans, stress was given on the public sector. For the first time, in the

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\(^2\) Netaji Subhas Chandra Bose  
\(^3\) National Planning Committee  
\(^4\) Advisory Planning Board
fifth plan, exercises were undertaken to consider redistributive aspects of economy and poverty estimation. The agricultural strategy was for food self sufficiency. The Sixth plan emphasised the schemes and programmes for employment as a sequel to the exercises undertaken in the previous plan. The seventh plan concentrated on efficiency aspect of industries and for this purpose a thrust was given to science and technology. The eighth plan showed a pronounced shift from public sector to private sector. The perspective appeared to be that whatever could not be managed by the private sector should be left to the public sector. The ninth plan had concentrated on decentralisation, cooperative federalism and a more rational methodology of estimation of poverty that would bring the computed poverty ratio estimations closer to the ground realities.

The constraints on the Indian economy have been vast unemployment and inequalities, and consequent poverty, inadequacy of capital and lack of sufficient technological inputs. To overcome these constraints, the economic system is bound to be multiform in nature. For instance, it is generally found that to fulfil social obligations the public sector, no matter whatever be its expanse, becomes unavoidable since the emphasis of private sector is more on profits and not on meeting social obligations. Similarly, the object of egalitarianism in economy can be better served by an incorruptible and efficient cooperative system in which middlemen are eliminated. It is worthwhile remembering that in Scandinavian countries, where vast cooperative systems operate in several fields, least economic disparities have been achieved. This aspect of the cooperative movement cannot be ignored and was stressed by the economist and a protagonist of the cooperative
movement, who was once Deputy Chairman of the Planning Commission. Even with the presence of an efficient public sector and a cooperative sector meeting social obligations, many of the problems cannot be resolved unless there is also a coexistence of a private sector and induction of foreign capital in essential sectors in which large technological gaps exist. Thus under the peculiar conditions of Indian economy, the Indian economic system is bound to be juxtaposition of various moulds and not a single rigid mould. Under such a multidimensional system the process of planning, coordination and consolidation has great relevance. This relevance is all the more increased when there are efforts in India to have mindless globalisation, liberalisation and privatisation affecting particularly the interests of poor. Structural economic reform has unfolded piece by piece in quick succession. First, a two step devaluation of the rupee was announced, it involves a downward revision of more than 20 per cent in its external value. Second a trade reform was mooted, it eliminates 7000 licenses and relates export incentives to the trade deficit through tradeable REP licences. Third a tight money policy was put into place to dampen inflationary pressures by raising interest rates. Fourth an industrial policy liberalised the terms and conditions of FERA foreign investment and transfer of technology, it allows foreign equity upto 51 per cent allows privatisation of the public sector to the extent of 20 per cent of equity being sold to Mutual Funds and workers, scraps MRTP limits, and abolishes industrial licensing for all but 18 strategic industries. Fifth, the fiscal policy narrows down the range of customs duties, especially reducing the customs duties on capital goods and reducing the fiscal deficit by 2 per

3 Gadgil, D.R
4 Foreign Exchange Regulation Act
5 Monopolies Trade Restrictive Practices Act
cent of GDP. As a result of this policy package a major casualty will be the Right to work. Privatisation will directly lead to retrenchment of jobs in the public sector units at least by 5 per cent, about one million jobs, through work rationalization. Further liberalisation of trade and foreign investment would lead to a substantial reduction in jobs all-round through further encouraging capital intensive technology. Exports create new jobs while imports destroy them. Every Rs. 1000 crores of exports or imports are equal to 6 lakhs jobs. This means that a trade deficit of Rs. 11,000 crores now destroys 6.6 million jobs in the country. Thus, privatisation and import liberalisation could prevent the creation of about 8 millions jobs in the next year. Even as it is the right to work is far from being realised in practice. After 59 years of independence and ten five year plans, the problem of unemployment remains a grave one. Persons without gainful employment have, in fact, been increasing decade after decade. We believe that unemployment and poverty are two sides of the social misery that they are not inevitable, that they are aggravated by wrong policies and that a lasting solution of this human misery lies in creating a people oriented system of production that ensures and enlists the widest participation of the masses.

It enjoins upon the government not only to recognise the right to work as a fundamental right of every citizen but also to discharge the inalienable responsibility associated with this right of creating jobs and other opportunities of employment for each person by developing economic activities in such a manner than along with the creation of socially desirable goods, the necessary and sufficient conditions for full employment are

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8 Gross Domestic Product
9 Annual Survey of Industries
created. The industrial sector and other non-agricultural sectors, which received lion's share of developmental resources, generated job opportunities at a much lower rate\(^{10}\) than growth rate\(^{11}\) of work for per decade. The growth of industries and the associated five star urban cultures have not only been encouraged but also provided monetary and other incentives to adopt more and more capital intensive technology. To prevent the growing unemployment from attaining a socially explosive dimension the government usually resorts to short-term palliatives of public works programmes. This tactic is not only wasteful and breeds corruption but fails to provide durable and socially satisfying employment. When the government spends 90 per cent of its resources for shrinking the growth of employment and 10 per cent to generate 'direct' but unsustainable employment, then the right to work clearly becomes a casualty and a receding goal.

We must strive to reverse the past split of anti-employment and anti-people economic policies that have reduced the right to work to only a privileged section of population. The highest priority must now be assigned to agriculture in allocating investible resource. Rural infrastructure should be created by investing in irrigation, roads, technical training centers, primary schools, post offices, extension centers, marketing yards, poly-techniques, etc. The creation of irrigation potential will itself provide massive employment if small projects are taken up. Big dams are costly and also compel large scale destruction of forests and submerge sizeable areas, displacing villages. Minor irrigation projects cost one-tenth of the major irrigation projects. Afforestation is, therefore, very necessary to ensure the right to work to

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\(^{10}\) 15 per cent

\(^{11}\) 25 per cent
adivasis and women living in forest areas. It is important in respect of improving ecological balance for preventing soil erosion, preserving subsoil water, preventing silting of dams and rivers and even promoting forest based industries. There is a considerable shortage of housing for the poor in rural as well as urban areas. A country wide programme of housing for the poor will create substantial number of jobs every year. In any case it is most urgent that we make a clear choice in favour of labour intensive technology against capital intensive technology in several fields. No consumer item which can be produced by the masses in small scale industries should be allowed to be manufactured by large-scale industries. The greatest emphasis on agriculture, afforestation and rural infrastructure will, of course, necessitate universal education and training. It will also require security of tenure in agriculture. And above all, it will require area planning from below so that decision making is brought nearer to the people. For, if these requirements are not met, a top heavy administration, willing to take more and more responsibility without having adequately fulfilled even the old ones, will become even more centralized this additional burden imposed on centralized administration cannot become a guarantor of more employment. For this, effective and real system of decentralized industrialisation and management is necessary. We believe that there should be a new tier of Planning Commission specifically charged with the responsibility preparing and implementing employment oriented objects. All schemes of poverty reduction and employment generation should be transferred to this second tier the Commission. The tasks of rural infrastructure, agricultural development and social overheads should also be assigned to this tier. It would then cover all development

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12 Finance Planning Commission
schemes which are labour intensive. Since considerable gaps have emerged in these aspects, 60 per cent of total planned resources should also be allotted to his level. The quest for right to work is indeed a quest for reorienting Indian economic policies and a quest for radically reversing the trend of capital intensive technology, elitist production, privatisation and growing influence of trans-national corporations. It is clear now that the right to work is relegated to the background. In this context, what is required is the development of an irresistible pressure from below in favour of full employment policies. The potential beneficiaries of this right need to be organised every where, in rural areas as well as urban areas. It is only through an organised pressure from below that the right to work can be realised in practice.

The right to work is in fact a totalitarian euphemism for the obligation or compulsion to work for one's livelihood. It came more as a reaction to the feudal order under which the rulers landholders, the feudal lords, the hereditary barons and the landed aristocracy exploited the poor have - not's and enjoyed the fruits of their hard labour. In other words, there was a class of people who did no work for but lived on property, in comfort and luxury, by making the poor, depressed serfs and slaves to work in this context means an obligation for these propertied classes to work for a living and agree to do without questioning any work that may be demanded by the state. It mean that the State had a right to extract socially and economically useful work from every individual. In other words, duty of the state to provide work really mean also right to the state to take work from every citizen, and prepared to concede to the state the right of determining the nature of work.
In modern times the right to work has been recognised by many a political philosopher and social thinker, Fichte (1762-1824), who was perhaps the first to propound the revolutionary principal during the Eighteenth Century, the right to work is one if the elementary rights of the individual which must be protected by the state. In his opinion, the rights to be protected by the state are a) right to live and b) right to work. Without the later there can be no duty to recognise the property of others. The State has, therefore, the duty of see:

(a) that the necessities of life are produced in a quantity proportionate to the number of citizens,

(b) that everyone can satisfy his needs through work.

The right to work also includes the right to a wage which is adequate for a decent living. Creative citizenship is not possible for a man languishing in want. This right further implies "the right to reasonable hours of work". Without proper leisure, the rich resources of human mind cannot be explored. Every worker must have sufficient leisure to relax his mind and physique, strained by modern factory work. The constitutional recognition of these rights, it is believed by some will transform the 'order' state into a 'welfare' state and today or tomorrow, the governing class in every country will be pressed by the weight of circumstances created by industrial civilization to enshrine these rights in the fundamental law of the land.
The right to work has been regarded by Harlod Laski13 as the most important of the rights of the individual. Inspired by the constitution of the soviet union, he pleaded that this must be given to each citizen. In his own words, “the citizens has a right to work... to leave him without access to the means of existences is to deprive him of that which makes possible the realisation of personality.”

The founding fathers of Indian Constitution spelt out the following theme governing poverty. The social order to be the one, where would be gainful employment to every one, leading to prosperity, individual liberty and justice, the state to create necessary conditions in respect of economic and social development in order to build up such an order. Thus, the concept of social justice is enshrined in our Constitution. Equality before law14, prohibition of discrimination15, opportunities in public employment16, right to life17, are the fundamentals on which one can build the concept of social justice, similarly, concept of the material resources, power to acquire property for public purposes18, grant of living wages and conditions of work19, go to lay the foundations of economic justice.

Thus, the whole scheme of Indian Constitution is built upon the concept of justice; political social and economic. It is on this context, that efforts were made in the past in to introduce several plans and schemes of providing gainful employment to around 40 per cent of rural population the

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13 1894-1950
14 Article 14
15 Article 15
16 Article 16
17 Article 21
18 Ceiling on land holdings
19 Article 43
majority of whom were land less labourers. However, benefits of rural employment scheme was subject to several factors, the chief among these being absence of right to work as a fundamental right enforceable in a court of law. Before going into the realm of right to work, let us have a look at the Indian Constitution. The Constitution provides for six freedoms — one of these being freedom to practice any profession or to carry on any occupation, trade or business but this articles would come into operation when someone tries to prevent a person in perusing his profession, trade or business if he/she has one.

In Kesavananda Case the Supreme court held that the fundamental rights occupy a unique place in the lives of civilized societies and have been variously described in their judgements as "transcendental" "inalienable" and "primordial" and are declared to have primacy over the directive principles. But in Minerva Mills case, Chief Justice Chandrachud corrected this view by stating that rights under parts III and IV are take as two wheels of a chariot one no less important than the other to give absolute primacy over the other is to disturb the harmony of the Constitution. These two decisions of the Supreme Court are of great Constitutional importance. They raised the hopes of the protagonists of the right to work incorporated in Art 41. They kindled the hopes of the educated unemployed who are suffering from frustration and roused their optimism. But their hopes have become dupes in 1992 as a result of the decision of the Supreme Court in the case of Delhi Development Horticulture Employees' Union Vs Delhi Administration. The employees

20 Article 19
21 AIR 1973 SC 1461
22 AIR 1992 SC 789
were the daily wage workers under the Scheme the food for the work" approached the Supreme Court, as their services were terminated after the completion of fifth five year plan for which prescribed period only they were appointed. The scheme was meant only to provide daily wage employment and the workers were paid only for actual working days. This scheme came to an end after the completion of the 5th five year plan. Hence the daily wage workers' services were terminated. The workers approached the Court and claimed to continue in service or employment under Art 21 and 41 of the Constitution. But the Supreme Court dismissed their writ petitions holding that "this country has so far not found it feasible to corporate the right to livelihood as a fundamental right is because the Country has so far not attained the capacity to guarantee it, and not because it considers it any the less fundamental life. Advisedly, therefore, it has been placed in the chapter of Directive Principles.23 Thus even while giving the direction of the State to ensure the right to work, the Constitution makers thought it prudent not to so without qualifying it". The fifty nine year's experience of the Directive principles especially one of the provisions24 of the Constitution broadcasts that the government, whatever be of its political table have not been prepared to make effective provision for securing the right on the pretext that the country has not attained the financial capacity to guarantee it. It cannot even say as to when it will attain the financial capacity. Even if they approach the Courts for the implementation of provision25, the justifiability of this directive, stands in the way and the decision of the Supreme Court in a case26

23 Art 41 of which enjoins upon the state to make effective provision for securing the same "within the limits of its economic capacity and development".
24 Article 41
25 Article 41 of Indian Constitution
26 AIR 1992 SC 789
will be echoed. Even Justice Chandrachud eulogised the efficacy of right to life but when the question of implementation of the directive principles especially the right to work incorporated in part IV came, his Lordship said that the state may not be compelled by affirmative action to provide adequate means of livelihood and work as assured by the Constitutional provisions.

Of course have no grievance against his judgement of the Supreme Court in Delhi Development Horticulture Employees' case. With a fond hope that they can get some relief, the significantly a small number of these sufferers approach the High Courts and the Supreme Court, on being advised by advocates who gaining much hope and support from the lofty, Directive Principles State Policy and inspiring ideals contained in the illustrations preamble but became disappointed after hearing the judgments of the High Courts and Supreme Court that these ideals adumbrated in the preamble and the goals enshrined in the Directive Principles are not enforceable by the Courts, however, great or Supreme, they may be and whatever powers they possess under the Constitution but they are the doctrines and guiding principles reminding the rulers and parliament members about their obligations towards the people of India and it is for them, to make laws in implementation of the directive principle. The mother India have been soothing her have-not children, poverty stricken children, unemployed children, half starving children and children, crying for food, raiment, shelter and for employment, showing the moon of the Directive principles and preamble. All those children ho are suffering from hunger, and unemployment

27 Article 21
28 Article 41
29 Article 39(a) and Art 41 Indian Constitution
30 AIR 1992 SC 789
31 Chapter IV of Indian Constitution
are not prepared to be soothed by the sugar-coated promises. They have become adults. Million and millions amongst them are educated youths. They are, therefore, demanding to make the Right to work as fundamental right and for that, their demand is for Constitutional amendment. The executive and Legislature should, therefore, wake up from their slumber and take early steps to amend the Constitution by providing the right to work, of Art. 41 in the chapter of fundamental rights by transfer from the chapter of directive principles, in the same language and with same limits of economic capacity. The High Courts and the Supreme Court can play their effective, may, powerful job. The High courts and especially the supreme Court can review the economic capacity of the Country visa is the peoples' needs and requirements, and pass appropriate orders as is being done now in the protection of the fundamental rights of the citizens for which the High Courts and the supreme Court have been receiving the admiration of all sections of the people of India. Let the executive and the legislature realise that the need to the day is the Right to work. If you the executive and legislature poor, soon the demand on the pretext of economic in capacity, then beware of the consequences. Time and tide wait for no man. Accept graciously the demand of the for non man. Accept graciously the demand of the millions and millions of the educated unemployed in the country. If the flow of the representations of these sections of the people develop into uncontrollable flood, there is the danger of washing away, the democracy of the country so labouringly built-by the founding fathers of Indian Constitution. The people are the makers of History. The History of humanity has taken number of turns. One of the important terms in the history is the French Revolution, with established the Paris commune with the slogans of equality, freedom and fraternity. It is
termed as revolution. Because, it fought against the theory of Pre-destiny and the divine right of the kings of rule and the theory of taking birth, as Kings or Rich persons because of their good deeds in previous birth and taking birth as poor because of misdeeds in their previous birth. These Dogmas which were dominating the minds of the people were shattered to pieces by the French revolution. So, also the Russian Revolution of 1917 which dethroned the Kings and Chinese revolution. So, also the Russian Revolution of 1917 which dethroned the Kings and Chinese revolution which established the peoples democracy. Therefore, it is relevant to have a glance of the freedom struggle of India. The native kings fought against foreign aggressors before the East India Company entered the field. Till to-day the names of Prithviraj, Ranapratap, Shivaji and number of other who fought for freedom against the domination of others are remembered. After the East India Company started Establishment, its political power to safeguard its economic interest, many of Indian native rulers fought against the Britisher's.

The role of the people in the freedom struggle is dominant and decisive under the Leadership of Indian patriotic, sincere, dedicated and devoted leaders. The poverty, starvation, below standard of living, famines etc. were found due to the British Rule and the People moved to overthrow the Britisher's so, that they will have advantages of using all the natural resources of Indians.

22 Surejodola, Janski Laxmi Bai, Veerapandyan Katta Bomman, Tipau sultan and others
Indian Constitution is adopted by the people of India to constitute India into Sovereign, Socialist, Secular, Democratic Republic, Justice-Social, Economic and Political, equality of status and of opportunity. These are the reflections of the aspirations of Indian people in the freedom struggle. The aspirations of Indian People are mentioned in the Part-IV of the Constitution under Directive principle. The Supreme Court held that Equal pay for Equal Work as assumed the character of Fundamental Rights. The latest decision of the Supreme Court reported is one of the important decisions. It held comprehensively about the Articles under part-IV of the Constitution and about the social justice and equality.

The Supreme Court held that the Right to Economic equality is a Fundamental right are languishing and to require positive opportunities and facilities as individuals and groups of persons for development of human personality in Indian civilized democratic setup so that every individual would strive constantly to higher level. The effects of unemployment is dangerous feature to Indian society. It may be noted that the "education is given by the parents and the student who complete the education feels frustrated and despair and discouraged and also dejected. It is also to be noted that there is no security for the children of employers. The person is constrained to follow unfair methods in acquiring the wealth for safeguarding his children. The youth educated and uneducated whose services were not utilized for the welfare of the nation are easily attracted towards the negative tendency of regionalism etc., created hatred among the sections of people.

33 Article 39 (D) of Part-I of the Constitution
34 1982 SC-876
35 AIR 1997 SC 645
36 AIR 1995 2834, 1996 (4) JT (SC) 555
Therefore, it is in the interest of the nation that the manpower of millions of Indian should be used for the development of India. Every citizen of India should be secured of livelihood, which can be done by providing work. All the resources of India should be channeled to guarantee the work to everyone and all the evils of negative tendencies, such as corruption, nepotism, hatred among Indians in the name of religion, region, caste etc., will be eliminated. There is a tendency of thinking that the guarantee of work may lead people to eliminated etc. This aspect of the issue has to be tackled by raising the consciousness of the citizen that is having the right over the means of production and resources of India like any other citizens and also duty to work for the nation.

4.2 CONSTITUENT ASSEMBLY AND THE RIGHT TO WORK

In the debates of the Constituent Assembly, only a scanty reference to right to work is available. The speech of Shri.H.V.Kamath is very relevant and to the point. Referring to Articles 34,32 and 31 of Draft Constitution he observed. "I am happy that Articles 34,32 and 31 have been incorporated in this part dealing with directive principles of state policy. They will provide a new charter, the charter of a new life for the exploited the disinherited and the underprivileged and they will provide the basis or the framework for the blueprint of economic and social democracy in India. With respect to article 34 of the Draft Constitution, Shri.H.V.Kamath remarked. "The State Shall endeavour to secure, by suitable legislation or economic organization or in any other way, work etc. Explaining the importance of this right, the further observed."
4.3 CONSTITUTIONAL PROVISIONS DEALING WITH RIGHT TO WORK

4.3.1 State: The term 'State' includes 'the Government and Parliament of India and the Government and the Legislature of each State and all local or other authorities within the territory of India or under the control of the Government of India'\(^{37}\). Thus the executive as well as the legislative organs of the Centre and the States shall be 'State' within the meaning of Article 12 of Constitution of India. The term 'Government' includes a Department of the Government or any institution under the control of a Department of the Government, e.g., Department of Income Tax\(^{38}\) or Forest Research Institute\(^{39}\). A private body, which is an agency of the State, may be a 'State' within the meaning of Article 12\(^{40}\).

4.3.2 Fundamental rights: Articles 12-35: Part III of the Constitution of India provides fundamental rights, which are enforceable. They are basic and natural rights. The remedy for the enforcement itself is declared as a fundamental right.

According to Article 14

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

\(^{37}\) Article 12
\(^{38}\) Bidi Supply Co. v. Union of India AIR 1956 SC 479
\(^{39}\) Purushottam Law v. Union of India AIR 1973 SC 1088
\(^{40}\) Star Enterprises v. City and Industrial Development Corp. of Maharashtra 1990 3 SCC 280
According to Article 21

No person shall be deprived of his life or personal liberty except according to the procedure established by law.

According to Article 23

- Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
- Everyone, without any discrimination, has the right to equal pay for equal work.
- Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
- Everyone has the right to form and to join trade unions for the protection of his interests.

4.3.3 RIGHT TO LIFE AND DIGNITY: According to Article 21, every person has a right to life and personal liberty. The worth of human life is more than the worth of the animal life. Right to life means the right to live decently as a member of a civilized society. Thus, right to live with human

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41 Maneka Gandhi v. Union of India AIR 1978 SC 597
dignity is the fundamental right of every person. The right to life and personal liberty under Article 21 is available to both citizens and non-citizens. It applies only to natural persons. This right can be claimed only when the right to life or personal liberty is deprived by the State and not by a private individual. However, the State can interfere with the life and liberty of persons only through a valid law.

The Constitution guarantees to all the citizens of India the right to practice any profession or to carry on any occupation, trade, or business. This right is subject to reasonable restrictions which can be imposed in the interest of general public. Under the provisions of the Constitution, state may also prescribe the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade, or business. It guarantees the right to livelihood because without a livelihood, life is not possible. Thus the state would be able to deprive a person of his right to life by denying him the right to work if it not considered as an essential element of right to life.

Article 41 interalia provides that the state shall within the limits of its economic capacity and development make effective provision for securing the right to work to public assistance in cases of unemployment etc. There are other articles also in the Chapter which provide support and sustenance to this right and make it more meaningful and effective.

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44 Vidy Verma v. Shivanarayan, AIR 1956 SC 106
45 Article 19(1)(g)
46 Clause (6) of Article 19
47 Article 21
48 Part IV of Indian Constitution
4.3.4 DIRECTIVE PRINCIPLES OF STATE POLICY: Part IV of the Constitution of India set out the aims and objectives to be taken up by the States in the governance of the country. These directives impose a moral duty on the State to apply them while making laws for the purpose of establishing a Social Welfare State. Unlike fundamental rights, these directives are not enforceable. Thus Part IV provides that.

Article 39 The State shall direct its policy towards securing:

a. Equality between men and women, have the right to an adequate means of livelihood
b. Ownership and control and distribution of the material resources of the for the common good
c. Prevention of concentration of wealth
d. Equal pay for equal work for both men and women
e. The health and strength of workers
f. Development of children

Article 41 The State shall make effective provisions for securing the right to work, education and public assistance in cases of unemployment, old age, sickness and disablement.

Article 42 The State shall make provisions for securing just and humane conditions of work and for maternity relief.

Article 43 The State shall secure living wages for workers, a

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4 Part IV of the Constitution of India, Articles 36-51
50 Articles 39(a) and (d). 42 and 43. Article 39
decent standard of life and full enjoyment of leisure and social and cultural opportunities, and promote cottage industries on an individual or cooperative basis in rural areas.

Article 43(A) The State shall secure the participation of workers in management of industries.

Article 47 The State shall take steps to raise the level of nutrition and the standard of living and to improve public health

"The state shall, in particular, direct its policy towards securing:

a) That the citizens, men and women equally, have the right to an adequate means of livelihood;

b) That there is equal pay for equal work for both men and women..." It requires the states to make provision for securing just and human conditions of work and for maternity relief.

The Constitution provides that the state shall endeavour to secure by suitable legislation or economic organisation or in any other way, to all workers agricultural, industrial or otherwise, work, living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the state shall endeavour to promote cottage industries on an individual or cooperative basis in rural areas.

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1 Article 42
2 Article 43
A Prominent Constitutionalist\textsuperscript{32}, has pointed out near about thirty “outstanding features” of the Constitution. A very innovative feature among them is the provision of “Directive Principles of State Policy” contained in Part-IV of the Constitution\textsuperscript{34}. The provisions of Directive Principles are borrowed from the Irish Constitution's Chapter entitled “Directive Principles of Social Policy\textsuperscript{35}” the attention of the members of the Assembly. Gandhians and Socialist members were influenced and attracted very much towards it. However, at the initial stage the proposed directives were also named as “Directive Principles of Social Policy”-which was later changed to the present title: Directive Principles of State Policy. Chief Justice Chandrachud vehemently defended the right to livelihood in 1986 in Olga Tellis Case\textsuperscript{36}. His Lordship propounded that the right to life provided in Art. 21 includes the right to livelihood. His Lordship observes that the sweep of the right to life conferred by Art 21 is wide and far reaching. Art 21 says that life cannot be taken away except according to procedure established by Law. That is but one aspect of the right to life.

An equally important face of that right is the right to livelihood, because, no person can live without the means of living, that is the means of livelihood. If the right to livelihood is not treated as part of the Constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of arrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet such

\textsuperscript{32} Durga Das Basu
\textsuperscript{34} Articles 35-51
\textsuperscript{35} Part IV
\textsuperscript{36} AIR 1986 SC 180
deprivation would not have to be in accordance with the procedure established by Law, if the right to livelihood is not regarded as part of the right to life. That which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life. In this context, this Lordship considered the two important rights, namely the citizen's right to an adequate means of livelihood guaranteed under Art. 39(a) and the right to work incorporated in of the Directive Principles, and held unequivocally that the principles contained in Constitution and 41 must be regarded as equally fundamental in the understanding and interpretation of the meaning and content of fundamental rights. If there is an obligation upon the State to secure to the Citizens and adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life. But in the end, his Lordship held that the state may not be comparable by affirmative action, to provide adequate means of livelihood and work as assured by the provisions. In this judgement, his Lordship answered in the affirmative on the question whether the right to life includes right to livelihood. When the right to life includes right to livelihood. A person should work to have his livelihood. By work only, a man can earn his livelihood. Thus the work provides means of livelihood, which in the language of Chief Justice Chandrachud, makes a person possible to live. It is in this view that store that the right to live includes right to livelihood arid also right to work. These two rights must be deemed to be integral

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57 Article 41
58 Art.39(a)
59 Articles 39 (a) and 41
60 Article. 21
components of right to life. In the light of his Lordship's unequivocal findings, we expect that the unemployed who are suffering from hand to mouth or from half starvation's can, by affirmative action, compel the state to provide adequate means of livelihood or work. But his Lordship dissuaded them holding that they are not entitled to compel the state because the right to adequate means of livelihood incorporated in Part IV and right to work incorporated in Article 41 are non-justifiable and unenforceable fundamental rights.

About the efficacy of the Fundamental rights and Directive Principles His Lordship Chandrachud discussed exhaustively in Minerva Mills case and held in Para 61 pages 186 that the significance of the perception that parts III and IV together constitute the core of commitment of social revolution and they, therefore, are the conscience of the Constitution. His Lordship observed Granville Austin's observation brings out the true position that parts III and IV are like two wheels of a chariot one no less important than the other. If you stop one, the other will lose its efficacy. They are like twin formulae for achieving the social revolution, which is the ideal which the visionary founders of the Constitution set before themselves. In other words, the Indian Constitution is founded on the bedrock of the balance between parts III and IV. To give absolute primacy to one over the other is to disturb the harmony of the Constitution. This harmony and balance between Fundamental Rights and Directive Principles is an essential feature of the basic structure of the Constitution. "We, therefore, put part III in Indian

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64 Article 39(a)
65 AIR 1980 SC 1789
66 AIR 1980 SC
67 Granville Austin
Constitution conferring those rights on the people. Those rights are not an end in themselves but are the means to an end. The end is specified in part IV. The goals set out in para IV have, therefore, to be achieved without the atroision of the means provided for by part III. It is in this sense that parts III and IV together constitute core of Indian Constitution and combine to form its conscience.

Anybody can go to court challenging the government, the state or the union for the non-fulfilment of the right and demand its full and immediate implementation, along with a such compensation as is appropriate. This will keep the government authorities in a constant state of preparedness, though review and updating of data by district, mandal and village, on the state, employment and unemployment in each locality, together with provision through a shelf of work projects in each block to meet this demand for work or, in the alternate make adequate social security provisions to maintain the unemployed person and his/her family with the needed food, clothing and housing. The rights has to be justiciable, if it is to be effective and operational.

4.4 RIGHT TO WORK AS FUNDAMENTAL AND HUMAN RIGHT

There is a growing controversy whether the right to work should be made a fundamental right. It is submitted that by merely incorporating right to work in the chapter on fundamental rights would not solve the country's unemployment problem. Even China which recognised the right to work in its
Constitution has not been able to solve its unemployment problem. There is no quarrel.

4.4.1 INDEPENDENT AND IMPARTIAL JUDICIARY: The Constitution of India has established an independent and impartial judiciary with a power of judicial review. Judiciary is the custodian of the rights of citizens. In Vishakha & others v. State of Rajasthan the Supreme Court held that the right of working women against sexual harassment in working places relying on the provisions of the CEDAW and the fundamental rights conferred by Articles 14,15,19(1)(g) and 21 of the constitution of India. The court declared that "in the absence of domestic law occupying the field to formulate effective measures to check the evil of sexual harassment of working women at all workplaces, the contents of international covenants and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14,15,19(1)(g) and 21 of the constitution and safeguard against sexual harassment implicit thereon. Any international convention not inconsistent with the fundamental rights and in harmony with its spirit must be read in to these provisions to enlarge the meaning and content thereof to promote the object of the Constitutional guarantee.

The Constitution of India deals with right to equality. Law prohibits unreasonable discrimination between persons. Right to equality is the basic structure of the Constitution and is an essential feature of democracy or rule of law. Rule of law requires that no person shall be subjected to harsh,  

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45 1997:SC 145  
46 Article 14 to 18
uncivilized or discriminatory treatment even when the object is the securing of the paramount exigencies of law and order. It does not speak of mere formal equality but speaks of real and substantive equality, which strikes at the inequalities arising on account of vast social and economic differentiation and thus becomes an essential ingredient of social and economic justice. Article 14 gives the meaning of equal treatment in equal circumstances. Article 14 was held to be a 'founding faith' of the Constitution and 'the pillar' on which rests securely the foundation of our democratic republic. Equal justice and reasonableness are the essential elements of equality.

4.5 PROVIDING EMPLOYMENT: With the principle that everyone should have work, but the right to work is established as a fundamental right, then every individual would be entitled to approach the courts to enforce that right. There are millions of unemployed people in India. This will prove that the problem of unemployment cannot be solved through writ petitions. Such an expansion of writ jurisdiction may result in further erosion of public esteem for the court because if the court cannot fulfil those expectations there would be disillusionment. Providing employment to unemployed people is not the function of the court, until and unless there are sufficient job opportunities and financial viability, the judicial redress is bound to remain perfunctory, inadequate and sporadic. The very basis of fundamental rights and directive principles into two distinct categories, was made just to obviate administrative and other financial difficulties that might

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67 Rubinder Singh v. Union of India AIR 1983 SC 65
68 Secretary, MEH v. Suresh AIR 1981 SC 1160
69 Maneka Gandhi v. Union of India AIR 1978 SC 597, 624
arise at the time of their implementation. It was because of this reason that right to work, was placed in the category of directive principles.

Several socialist countries have recognised the right to work, but they have not given the individual the right to approach the courts for the enforcement of that right. Only some non-socialist countries has mentioned the right to work in their Constitutions. They are Japan, Ireland, Portugal, Italy and Denmark. However, the Constitutions of socialist countries and France prescribe a simultaneous duty to work. One should not have rights without duties. They must go together. The debate that in order to guarantee full employment ‘Right to Work’ should be included in the list of Fundamental Rights in the Constitution of India, is drawing the attention of the nation.

The difference between the two is that the rights contained in part-III are justifiable and enforceable in courts whereas the ones mentioned in part-IV cannot be so enforced. Article 39 which is in part-IV already provides that the state shall, in particular direct is policy towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood. Principles contained in Part-IV are fundamental in the governance of the country, but cannot be enforced by any court. Dr.Ambedkar, while introducing the draft Constitution as settled by the drafting committee of the constituent assembly, said as follows: “If it is said that the Directive Principles have no legal force...I am prepared to admit it. But I am not prepared to admit that they have no sort of binding force at all. Nor am I prepared to concede that they are useless because they have no binding force
This Draft Constitution as framed only provides as machinery for the government of the country. It is not a contrivance to install any particular party in power as has been done in some countries. Who should be in power is left to be determined by the people as it must be if the system is to satisfy the tests of democracy. But whoever captures power will not be free to do what likes with it. In the exercise of it, he will have to respect these instruments of instructions which are called Directive Principles. He cannot ignore them. He may not have to answer for their branch in a Court of Law. But the will certainly have to answer for them before the electorate at election time. What great value these directive principles possess will be realised better when the forces of right contrive to capture power.

It appears that it was hoped that there will be sound parliamentary democracy in this country and those failing to implement the directive might receive a rude awakening at the polls. But this hope that those failing to implement shall receive such as awakening at the polls has not been fulfilled why? Austin in “The Indian Constitution corner stone of a nation” said “The Directive Principles of State Policy set forth the humanitarian socialist precepts that were and are, the aim of the Indian Social Revolution. Shiva Rao says in “The Framing of India’s Constitution” in the Chapter on Directive Principles of State Policy as follows: “The formulation of Social an Economic objective in national Constitutions owe its origin eventually to the realization that the content of political freedom is impaired by the absence of social justice and that without adequate protection for social and economic rights Constitutional guarantees of what are known as classical individual liberties” such as the right to equality, liberty of person and freedom of speech.
and association may lose much of their 'significance'. Accordingly, most modern Constitutions contain declarations of social and economic principles which emphasize among other things the duty of the State to strive for social security, and to provide work education and other conditions of employment for its citizens.

The political parties and elite of this country have failed the teeming millions, by not taking up the cause of educating the people about their rights contained in the Constitution and get the same implemented under the political pressure of the people. The feasibility of any proposition of inclusion of "Right to work" in the list of Fundamental Right has to be done politically by raising mass awareness and conciseness, and not through the instrumentality of courts. There should be nationwide debate to find as to why chapter IV of the Constitution is not being enforced and how can it be enforcement. Hence their totally contradictory conclusions, though both sets of authors while writing were looking at the situation as it existed at the end of 1985. The trade unions instead of winning the right to work or its enforceable alternative of unemployment benefit are likely to the rewarded with a perverse version of the right to work that has been given legislative sanction in anti labour laws in the United State. Right to work in this context has come to mean the duty of the complex to give work and the right of the worker to do in an establishment that has been closed down by a strike called by its union. All the restrictions on the workers right to strike like pre-strike ballot are pointers to what the organized workers in the where in this decade when employment in the low-wage service sector is supported to be going up.

*Part IV of the Constitution of India*
Even the historical even of the May day centenary cannot hide the ebb in the affairs of the labor movement signified by this unhistorical twist of Right to Work. Far from accepting the labour movement as a progressive and humanizing force, capitalism in its current crisis is increasingly depicting trade unions as irresponsible, obstructionist and backward looking when for all purposes it post industrial phase in its development. It is a measure of its superior strength and grasp that capitalism has been better able to cope, with the process and consequences of internationalization of the national economics than the labour movement, through trade unions realising the need for establishing international links had built up international organizations, general as well industry wise, earlier than the employers. But far from abiding by their faith in international solidarity trade unions, now that the crunch has come, are finding it difficult to maintain solidarity even within the narrow limits of national economies.

Trade unions in India have made laughing stock of themselves by proliferating into a baker's dozen of "National Centres" in the last ten years. But even in Britain working class unity has been wearing thin. Though the tradition of trade union solidarity there has been long as well as equally strong, the 1984 coalminers strike showed up how vulnerable employment had become for the most militant section of the working class and how isolated a strong fighting union can be when its militancy fails to measure upto the ruthless exercise of coercive power by an anti-labour Government. While building up a national consensus for the Right to Work or its more realizable right to unemployment compensation, divided labour Movement
would do well to realize the limits of its power to wrest anything from an establishment observed with staggering growth in numbers in the unorganized sector.

4.6 EMPLOYMENT GUARANTEE BILL

The National Rural Employment Guarantee Bill, 2004, leaves labourers at the mercy of the benevolence of the state. The National Rural Employment Guarantee Bill 2004 was tabled in parliament on December 21. This is, in principle, a welcome step. Unfortunately, the bill is so watered down that it defeats the purpose of an employment guarantee act. The main purpose of an employment guarantee act is to enable people to claim from the state a basic aspect of their Constitutional right to work. For this to happen, the act must give them effective and durable entitlements. It should aim at empowering the disadvantaged, and include extensive safeguards against any dereliction of duty by the authorities. This is the spirit in which a draft act had been prepared by concerned citizens and revised by the NAC\textsuperscript{71}. The bill tabled in parliament earlier this month is a travesty of the NAC\textsuperscript{72} draft. It has been extensively reworked from the point of view of a bureaucrat who is anxious to minimise the responsibility of the state. Now the government can modify the rules of the game at any time. An essential feature of the NAC draft is that it was based on the twin principles of universality and self-selection. All households were eligible to apply for work, and the act was to be extended to the whole of rural India within five years. Eligibility criteria

\textsuperscript{71} National Advisory Council

\textsuperscript{72} Ibid
were deemed unnecessary since the willingness to perform casual manual labour at the minimum wage is itself a strong indicator of need. The effectiveness of the self-selection mechanism is borne out by India's long experience with relief works.

The Bill tabled in parliament involves a radical departure from universality and self-selection. To start with, there is no guarantee of time-bound extension of the act to the whole of rural India. The guarantee of employment applies only "in such rural area in the state and for such period as may be notified by the central government." In other words, the guarantee can be withdrawn anywhere at any time.

In a similar vein, the Bill allows both the employment guarantee and the unemployment allowance to be restricted to "poor households." How are "poor households" to be identified? The bill defines poor households as those below the poverty line in the relevant financial year, but this is little more than a tautology, devoid of any practical guidance. In practice, state governments are likely to restrict the employment guarantee schemes to households with a BPL\textsuperscript{72} card. But the BPL list is known to be highly unreliable, and this restriction is bound to exclude many poor households from the scheme. This would defeat the main purpose of the employment guarantee, namely, to protect rural households from economic insecurity. Further, this approach is likely to intensify the pernicious social division between BPL and non-BPL households. For good measure, the bill dispenses with minimum wages. In the NAC draft, labourers were entitled to the

\textsuperscript{72} Below Poverty Line
statutory minimum wage of agricultural labourers in the relevant state. In the bill tabled in parliament, this can be superseded by a central norm, without restriction.\textsuperscript{74} Aside from the dubious legal and ethical justification for paying less than the statutory minimum wage, this provides the central government with another opportunity to backtrack at any time if it so desires: the demand for work can be made arbitrarily low through suitable reduction of the wage rate. The tendency to make the act "safe" for the state can also be seen in many other aspects of the bill. For instance, the transparency provisions have been severely diluted. In the NAC draft, muster rolls and other records were to be made available for public scrutiny, either free of charge or at cost price. By contrast, the Bill states that these documents will be available on demand "after paying such fee as may be specified in the scheme." Similarly, the basic features of the "Employment Guarantee Schemes" to be initiated by state governments, and the entitlements of labourers under these schemes, have been shifted from the body of the act to a pair of appended "schedules." These schedules can be modified by notification of the central government, without amending the act itself. This gives the central government sweeping powers to derail the schemes or to reduce the entitlements of labourers. The bottom line is that the National Rural Employment Guarantee Bill 2004 leaves labourers at the mercy of the benevolence of the state. A benign state could certainly use this legislation with good effect to provide massive work opportunities to the rural poor. However, the state's discretionary powers under the act can also be used at any time to phase out the whole project. Trusting the benevolence of the state in this context would be the triumph of hope over experience. This is not to say that the struggle for an effective

\textsuperscript{74} The central government, may, by notification, specify the wage rate for the purposes of this act.
employment guarantee act should be given up. In principle, the bill can still be repaired and passed in the budget session of parliament. However, this is unlikely to happen without a strong expression of popular demand for a full-fledged employment guarantee act. There is an interesting challenge here for the labour movement and all organisations committed to the right to work.

4.7 NATIONAL RURAL EMPLOYMENT GUARANTEE ACT, 2004

This is enacted to safeguard the right to work by providing guaranteed employment at the statutory minimum wage to at least one adult per household who volunteers to do casual manual labour in rural areas. The effective provision for safeguarding the right to work is a duty of the state\textsuperscript{73}; Safeguarding the right to work is also essential for the realisation of other Constitutional rights such as the right to life, the right to food and the right to education. Providing guaranteed employment in rural areas would be a major step towards the realisation of the right to work. A programme of guaranteed employment could also contribute to other important objectives such as infrastructural development, social equity, environmental protection, and the empowerment of women. A decentralised approach to the provision of guaranteed employment would help to promote people's participation in development planning and local governance. It is also necessary to make certain supplemental, incidental and consequential provisions. The Act extends to all rural areas of India, including fifth and sixth schedule areas, except the state of Jammu and Kashmir. It shall come into force in a state on such date as the central government may by notification in the official gazette.

\textsuperscript{73} Article 41 of the Constitution of India
appoint in this behalf, for such state, and different dates may be appointed for different states or for different areas of a state. Provided that it shall come into force in all rural areas of India within two years of enactment of this act.

4.8 GUARANTEE OF EMPLOYMENT TO ALL HOUSEHOLDS IN RURAL AREAS

Every household in the rural areas of India shall have a right to at least 100 days of guaranteed employment every year for at least one adult member, for doing casual manual labour at the statutory minimum wage, and to receive the wages thereof within 7 days of the week during which work has been done, in accordance with the provisions of this act and the programme made thereunder. In order to have a periodical review and supervision of the implementation of the act at the national level, a central employment guarantee council shall be constituted by the central government. The central government shall appoint the chairperson, member secretary, and other members of the central council. The central council shall have requisite numbers of members from various central ministries/planning commission/state governments and also from workers' organisations and disadvantaged communities. At least one third of the members shall be women, and one third shall be from scheduled castes and scheduled tribes. Adequate representation of other minorities shall also be ensured. The central council shall perform the following functions: (i) establishment of central evaluation and monitoring systems; (ii) advising the central government on all matters concerning the implementation of the act; (iii) reviewing the monitoring and redressal mechanisms from time to time and recommending
improvements if appropriate; (iv) promoting the widest possible dissemination of information about the act and the programme; (v) monitoring the implementation of the act and preparing annual reports to be submitted to parliament; (vi) any other responsibilities that may be specified in the rules.

4.9 CONDITIONS FOR GUARANTEED EMPLOYMENT.

(1) every adult person who

(i) resides in any rural area;

(ii) is willing to do casual manual work at the statutory minimum wage;

May submit his/her name and address to the gram panchayat and apply for registration. It shall be the duty of the gram panchayat to register him/her and issue him/her a job card with date and photograph. The registration shall be for such period as may be laid down in the programme, but in any case not less than five years, and may be renewed from time to time. Different persons belonging to the same household shall share the same job card. Every registered person shall be entitled to employment at the statutory minimum wage; in accordance with the programme for the time being in force, for as many days as the applicant requests, up to 100 days per household in a given financial year. It shall be the responsibility of the state government to provide employment in accordance with the provision of the programme to every such person within 15 days of receipt of an application. Applications must be for at least 14 days of continuous work. There shall be no limit on the number of days of employment for which a person applies, or on the number of days of
employment actually provided to him or her. Applications may be submitted in writing either to the gram panchayat or to the programme officer, through such procedures as may be prescribed in the programme rules. The gram panchayat and programme officer, as the case may be, shall be bound to accept valid applications and to issue a dated receipt to the applicant. Group applications may also be submitted as prescribed in the programme rules.

Applicants who are provided with work shall be so notified in writing, by means of a letter sent to the address given in the job card and of a public notice displayed at the gram panchayat bhawan, through such procedures as may be specified in the rules. As far as possible, employment shall be provided within a radius of 5 kilometers of the village where the applicant resides at the time of applying. In cases where employment is provided outside such radius, it must be provided within the block, and transport allowances and daily living allowances shall be paid in accordance with the programme rules. If the applicant is not provided with employment in the manner\(^\text{76}\) within 15 days of applying, he or she shall be entitled to a daily unemployment allowance, unless the applicant or his/her household has already received 100 days of employment during the current financial year. The unemployment allowance shall be paid at such rate as may be fixed by the state government from time to time with the approval of the state council, but not less than one third of the prevailing statutory minimum wage of agricultural labourers in the state.

\(^{76}\) Sub-section 9(2)
If any personal injury is caused to any person employed under the programme by accident arising out of and in the course of his employment, he shall be entitled, free of charge, to such medical treatment as is admissible under the programme. Where hospitalization is necessary, the state government shall arrange for such hospitalization including accommodation, treatment, medicines, and a daily allowance not less than half of the statutory minimum wage of agricultural labourers. In case of death or disability of such a person, an ex-gratia payment shall be made to his legal heirs in the manner laid down in the workmen compensation act.

The following facilities shall be available at the worksites: (i) safe drinking water; (ii) shade for small children and periods of rest; (iii) a first-aid box with adequate material for emergency treatment of minor injuries, strokes, body aches and other health hazards connected with the work being performed. (3) in cases where at least twenty women are employed on a worksite, a provision shall be made for one of them to be deputed to look after any children under the age of six who may be brought to the worksite, if the need arises. The person deputed for child-minding shall be paid the statutory minimum wage of agricultural labourers in the state. (4) in case of any delay in the payment of wages, that is, in the event where wages are paid later than 7 days beyond the week during which work has been done, labourers shall be entitled to the payment of compensation as per the payment of wages act. (5) wages may be paid in cash or in kind or both, taking into account the
guidelines and recommendations of the state council on this matter. (6) a proportion of the wages, not exceeding 5 per cent, may be deducted as a contribution to welfare schemes organized for the benefit of labourers employed under the programme, such as health insurance, accident insurance, survivor benefits, maternity benefits and social security schemes. The relevant procedures, including stringent provisions for transparent and accountable use of these funds for the benefit of labourers employed, and possible provisions for matching grants from state governments, shall be spelt out in the rules and reviewed from time to time by the state council. No deduction from wages shall be made until such time as the relevant social security schemes are functional.

4.9.2 GENDER DIFFERENCE

In no circumstances shall there be any discrimination on the basis of gender in the provision of employment or the payment of wages, as per the provisions of the Act. The facilities may be provided for the employment of persons unable to do any casual manual work on account of physical or mental disabilities in activities that are compatible with their abilities. Such disabilities shall be recorded at the time of registration.

7 The Equal Remuneration Act 1976
4.9.3 UNEMPLOYMENT ALLOWANCE.

(1) The liability of the state government to pay unemployment allowance\(^{78}\) shall commence after the expiry of 15 days from the date of application\(^{79}\). It shall cease as soon as (i) the applicant is directed by the gram panchayat or programme officer to report for work, (ii) the period for which employment is sought comes to an end, or (iii) the applicant's household has received 100 days of work within the financial year. (2) any applicant who is provided with employment and does not report for work within 15 days of being notified under sub-section 8(5), or who is absent from work for more than one week without a valid application for exemption, shall stand debarred from applying for work or receiving unemployment allowance for a period of fifteen days. (3) The unemployment allowance to be paid to an eligible applicant\(^{80}\) shall be sanctioned by the programme officer or such local authority as may be empowered by the state government for this purpose. The state government may prescribe such procedure as it deems fit for the payment of unemployment allowances, provided that the allowance is paid not later than 7 days beyond the week for which it is due.

Extension of work entitlements: (1) it shall be open to the central government to raise the household entitlement of 100 days of work per year beyond 100 days, or extend it to every adult (or to urban areas), in some or all areas of India, through suitable provisions made in the rules. (2) it shall be open to the state governments to raise the household entitlement of 100 days

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\(^{78}\) Sub-section 8(7)

\(^{79}\) 15 days from the date from which employment is sought, in the case of advance applications

\(^{80}\) Sub-section 8(7)
of work per year beyond 100 days, or extend it to every adult (or to urban areas), in some or all areas of the state, through suitable provisions made in the rules; provided that the additional financial requirements shall be borne by the state government. State legislation exists dealing with employment guarantee for casual manual work, a person will have the right to seek employment under the state law as well as under this act. Workers' organisations have been demanding a National Employment Guarantee Act for many years. This "primer" was prepared to facilitate public discussion of this issue at all levels -- from remote villages to the national capital. The answers are based on a draft National Rural Employment Guarantee Act prepared by concerned citizens, dated 1 September 2004

4.9.4 THE BASIC IDEA OF AN EMPLOYMENT GUARANTEE ACT

The proposed act gives a legal guarantee of employment to anyone who is willing to do casual manual labour at the statutory minimum wage. Any adult who applies for work under the act is entitled to being employed on public works within 15 days. Thus, the employment guarantee act provides a universal and enforceable legal right to the most basic form of employment. The biggest problem in our country today is unemployment. If our vast natural resources and the large, human resources are fully utilized, production can be increased many times and the unemployment and poverty can be eliminated. An act provides a legal guarantee of employment. This places a judicially enforceable obligation on the state, and gives bargaining power to the labourers. It creates accountability. By contrast, a scheme does not involve

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Note: Justice Dr. K. Purushotham, President, Forum for Right to Work AP
any legal entitlements, and leaves labourers at the mercy of government officials. There have been numerous employment schemes in the past — the employment assurance scheme, national rural employment programme, jawahar rozgar yojana, sampoorna grameen rozgar yojana, among others. Most of them have failed to bring any security in people's lives. Often people are not even aware of them. There is another important 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, whereas 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 to learn how to claim their due.

4.9.5 THE SOCIAL BENEFITS OF AN EMPLOYMENT GUARANTEE ACT

There are many. To start with, an employment guarantee act would go a long way in protecting rural households from poverty and hunger. In fact, a full-fledged Employment Guarantee Act would enable most poor households in rural India to cross the poverty line. Secondly, it would lead to a dramatic reduction of rural-urban migration: if work is available in the village, many families will stay in place instead of heading for the cities. Thirdly, guaranteed employment would be a major source of empowerment for women. Based on past experience, a large proportion of labourers employed under Employment Guarantee Act are likely to be women, and guaranteed employment will give them some economic independence. Fourthly, the employment guarantee act is an opportunity to create useful assets in rural
areas. Fifthly, guaranteed employment is likely to change power equations in the rural society, and to foster a more equitable social order. Last but not least, the process of mobilising for an employment guarantee act (and for effective implementation of the act after it is passed) has much value in itself. It could give a new lease a life to the labour movement in large parts of India.

4.9.6 PERSONS ENTITLED TO WORK UNDER THE EMPLOYMENT GUARANTEE ACT

The right to work under the employment guarantee act is a universal entitlement. Any adult is entitled to apply. The act is based on the principle of self-selection: anyone who is willing to do casual manual labour at the minimum wage is presumed to be in need of public support, and must be provided employment on demand. This approach dispenses with the need for any "targeting" system, such as the identification of households "below the poverty line" (BPL). There have been plenty of anomalies in this identification process, and the distinction between BPL and apl households has also been very divisive. The principle of guaranteed employment makes a clean sweep of these anomalies and divisions, and creates a universal entitlement. This is yet another social benefit of the proposed employment guarantee act.
4.9.7 THE PRECEDENT OF THE ACT

The state of Maharashtra passed an Act in 1976. It is still in force today. Although no other state has passed an act since then, there have been numerous campaigns for the adoption of an employment guarantee act in other states. There have also been several initiatives for a national era, which never reached parliament. That is why it is important to ensure that the current initiative gains momentum and leads to the adoption of a National Employment Guarantee Act as soon as possible.

4.9.8 THE POLICY OF THE GOVERNMENT IN RELATION TO ACT

The common minimum programme clearly states that the UPA government will immediately enact a National Employment Guarantee Act. In fact, this is the first item in the list of policy priorities, and it is one of the few items for which there is a commitment to immediate action. A draft National Rural Employment Guarantee Act has been prepared by the national advisory council, and is being revised by the ministry of rural development. The prime minister has announced that the draft would be tabled in parliament in December 2004, and that the employment guarantee act would come into force in a phased manner. Whether these promises actually materialize remains to be seen -- much depends on the strength of public demand for the Act.

* Employment Guarantee Act
* United Progressive Alliance
* Starting on 1 April 2005
4.9.9 LIMIT ON THE NUMBER OF DAYS OF GUARANTEED EMPLOYMENT

The "reference draft" does not include any restriction on the number of days. This draft provides for a universal and permanent guarantee: anyone who applies for work at any time is entitled to being employed, for as many days as he or she desires. However, in the draft prepared by NAC\textsuperscript{33}, the employment guarantee is restricted to "100 days per household per year". This is because the NAC'S work is guided by the common minimum programme of the UPA\textsuperscript{36} government. The common minimum programme promises to "immediately enact a national employment guarantee act", but with an initial cap of 100 days of employment per household. The cap of 100 days is obviously a major restriction. Note, however, that it is only an "initial" cap and that the NAC draft includes explicit provisions for the possible extension of work entitlements (a) beyond 100 days per year, (b) to individuals rather than households, and (c) to urban areas. Even if the cap is retained in the final version, the act can still be used as a stepping stone towards a full-fledged, 365-day work guarantee.

4.9.10 RESTRICTIONS OF EMPLOYMENT GUARANTEE ACT

All available drafts specify that the act will be extended to the whole of India in a time-bound manner e.g. Within two years in the reference draft, five years in the NAC draft. The draft Employment Guarantee Act it applies to all

\textsuperscript{33} National Advisory Council
\textsuperscript{36} United Progressive Alliance
rural areas, including "b" and "c" class municipalities (an important provision). Much thought is required on the extension of employment guarantee in urban areas, including the possibility of a follow-up "urban employment guarantee act". Some work on this has begun. Meanwhile, the rural Employment Guarantee Act itself is likely to be of great value to urban workers, because (1) some of them will be able to stay in their village and get work there instead of migrating to the cities, and (2) the reduction of rural-urban migration will lead to higher wages for those who stay in the urban areas.

4.9.11 RELATION BETWEEN EMPLOYER AND EMPLOYEE

The employment guarantee act is the foundation, and provides the legal guarantee. EGP\(^7\), created under the act, is the means through which employment is provided, so that the guarantee comes into effect. The act directs every state government to prepare an employment guarantee programme within six months, and spells out the essential features of the programme in some detail. Note that the EGP\(^8\) is state-specific, but the Employment Guarantee Act is a national legislation.

4.9.12 IMPLEMENTING THE EMPLOYMENT GUARANTEE PROGRAMME

The employment guarantee programme will be implemented by state governments, with funding from the central government. The act also gives

\(^7\) The Employment Guarantee Programme

\(^8\) Ibid
specific responsibilities to the district administration, the block office, and the gram panchayats. The basic unit of implementation is the block. In each block, a "programme officer" will be in charge. The programme officer is supposed to be an officer of the same rank as the bdo, paid by the central government, and with the implementation of egp as his or her sole responsibility. The programme officer will be accountable to the panchayat samiti as well as to the district administration. The block officer is responsible for the entire programme in the relevant block. One of his/her principal duties is to match the demand for employment with available work opportunities. The block officer is expected to sanction works to be executed by particular departments or panchayats, so that employment is provided in time to the applicants. He or she will monitor the works, verify that all relevant norms are being followed, ensure that regular social audits are carried out, and report to the panchayat samiti and district administration. The block officer is also expected to disburse unemployment allowances (see below), and to act as the first-level redressal authority in the event of public complaints.

4.9.13 GRAM PANCHAYAT IN THE EMPLOYMENT GUARANTEE PROGRAMME

The gram panchayat is the main institution responsible for the implementation of the programme at the local level. To start with, the gram panchayat will be responsible for registering all potential workers, issuing job cards to them, receiving their applications for work, forwarding these to the block officer, and informing the applicants as and when work is available.
The gram panchayat also plays a crucial role in the implementation of projects taken up under the programme. The draft act states that at least half of all project funds will be allocated to the gram panchayats. In such cases, the gram panchayat will be required to plan and execute the works in a transparent manner, with accountability to the gram sabha and block officer. In the case of works carried out by departments within the geographical area of a particular panchayat, the gram panchayat will provide the labour from amongst its applicants and help to ensure that the works are carried out in a fair and transparent manner. The gram panchayat will also ensure that social audits of all works within its area take place regularly, and that the works sanctioned meet the norms of equity and social justice. It will report to the gram sabha on a regular basis, and ensure that records and documents are displayed or available in a convenient form for public scrutiny. The gram sabha is expected to monitor the work of the gram panchayat, and also to participate in the planning process. In particular, the gram sabha will discuss and prioritize the works to be taken up, conduct regular social audits of all works carried out in the panchayat, and verify that all the relevant norms are being observed. Resolutions of the gram sabha will be given priority in the planning of project works by the gram panchayat and the block officer. Contractors are banned in the case of works taken up by the gram panchayats. In other cases, contractors may be used, but only for specific types of work and with case-by-case permission from the concerned monitoring agencies. Even then, workers will be paid by the programme authorities in front of the community, as per Employment Guarantee Act norms and rules.

In the draft act, productive works are 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". This definition is quite broad. It encompasses not only traditional labour-intensive works such as building roads or digging ponds, but also a range of other possibilities such as environmental regeneration, waste disposal, public health activities, child-minding, among others. Even home-based activities may be considered in some circumstances, e.g. To provide suitable employment to disabled persons. The nature of works is bound to vary from region to region. In many areas, there is a massive potential for labour-intensive works in the field of environmental protection: watershed programmes, rainwater harvesting, land regeneration, prevention of soil erosion, restoration of tanks, protection of forests, wasteland development, and related activities. Over time, with large numbers of jobs to be created, the employment guarantee programme is likely to evolve as a means of rapid all-round infrastructural development in rural India.

4.10 WORKERS' ENTITLEMENTS

The first step is to "register" with the gram panchayat. It is the duty of the gram panchayat to register workers and give them a "job card" with their name, address and photograph. The main purpose of the registration process is to facilitate advance planning of works. The job card will ensure that labourers are in possession of a written record of the number of days they have worked, wages paid, unemployment allowances received, and so on, instead of depending on government officials for this purpose. Applications for work may be submitted at any time, either through the gram panchayat or
directly to the block officer. Both have a duty to accept valid applications and
to issue a dated receipt to the applicant. Applications must be for at least 14
days of continuous work. The act provides for group applications, advance
applications, and multiple applications over time. Applicants are supposed to
be told where and when to report for work within 15 days, by means of a
letter as well as of a public notice displayed on the panchayat notice board.

Workers will be entitled to the statutory minimum wage applicable for
agricultural workers in the state. The draft act clearly states: "in no
circumstances shall labourers be paid less than the statutory minimum wage
of agricultural labourers applicable in the state". Wages are to be paid within
seven days of the week during which work has been done. If wage payments
are delayed, workers will be entitled to compensation under the payment of
wages act. Wages are to be paid on pre-specified dates in front of the
community, to reduce the risk of fraud. Labourers are entitled to basic
worksite facilities such as safe drinking water, shade for periods of rest, first-
aid medical treatment, and also crèche arrangements (if needed) when more
than twenty women are employed. Work must ordinarily be provided within
5 km of the applicants' residence, and in any case within the block. When
work is provided beyond a 5 km radius, workers are entitled to transport and
living allowances. If an applicant fails to report for work within 15 days of
being informed that work is available, he or she stands debarred from
applying for work or receiving the unemployment allowance for a period of
fifteen days. This is to discourage "frivolous applications". Anyone who has
not been provided with work within 15 days of applying (or within 15 days of
the date for which employment is sought, in the case of "advance
applications"). The unemployment allowance has several roles. First, it
provides a limited form of unemployment assistance to those who are waiting for work. Second, it provides a tangible "signal" that the responsible authorities are failing to provide employment to all applicants. Third, it acts as a penalty on the state government for this failure. Various benchmarks have been proposed, ranging from one fourth of the statutory minimum wage to the full minimum wage. In the reference draft, the unemployment allowance is pegged at "not less than one third of the prevailing statutory minimum wage of agricultural labourers in the state". A more recent proposal is that the unemployment allowance should follow a rising scale, e.g. One third of the minimum wage during the first 30 days, one half during the next 30 days, and so on. This would give state governments an added incentive to avoid making people wait for long periods before providing them with work.

The unemployment allowance will be paid by the state government, and disbursed through the block officer. If state governments pay the unemployment allowance, while the bulk of employment costs are met by the central government, state governments will have a strong incentive to provide work. However, it has been proposed that in the event where the failure to provide work is due to inadequate devolution of funds on the part of the central government, the cost of unemployment allowances should be reimbursed to the state government by the central government. This provision is yet to be incorporated in the act. A useful benchmark is "Rs 100 per day". In many states, the statutory minimum wage for agricultural labourers is around Rs 60 per day. A labour-material ratio of 60:40 is quite standard in labour-intensive public works programmes. Putting the two together, we
obtain the benchmark of Rs 100 per day. This is quite difficult to predict. To start with, consider the norm of "100 days per household per year" adopted in the common minimum programme, and suppose that all poor households in rural areas utilise their full quota of 100 days. Remember, the work guarantee is not restricted to poor households, but in practice, those who volunteer to do casual manual labour at the minimum wage are likely to be mainly from poor households. According to official estimates, there are about 4 crore households below the poverty line in rural India. The implication is that about 400 crore person-days of employment would have to be generated each year. To put it another way, a little more than one crore persons would be employed on an average day if about one per cent of the total population. If the cost per day is Rs 100, the total cost becomes Rs 40,000 crores. This is about one per cent of India's anticipated GDP four years from now. In other words, if the employment guarantee act is gradually extended to the whole of India over a period of four years, the total cost of the programme will gradually rise to 1% of GDP over this period. All this is based on the norm of "100 days per household". If this cap is removed, the cost would be correspondingly higher. However, based on past experience with relief works during periods of drought (and with Maharashtra's "employment guarantee scheme"), it is unlikely that work participation would exceed 200 days per poor household, even with a permanent and universal guarantee. In short, the total cost is likely to be somewhere between 1 and 2 per cent of GDP, depending on the extent of the guarantee.

89 At 2004-5 prices
90 Gross Domestic Product
91 At 2004-5 prices
92 Supra note 89
93 Ibid
The employment guarantee programme will be overwhelmingly funded by the central government. What is not entirely clear is whether the state governments should also contribute a share of the costs, however small. One view is that the EGP should be fully funded by the central government. The argument is that any financial burden placed on the state governments would jeopardise the whole project, because state governments are bankrupt. It is also argued that the central government cannot pass an act that unilaterally imposes a financial burden on the state governments. Implementing such an act would require conformity acts in individual states, and this could lead to long delays. On the other hand, full funding from the central government could lead to a breakdown of accountability: state governments would be free to relax work norms, raise wage rates and hire en masse, without any restraint. This issue is yet to be fully resolved. Applications for work are likely to be concentrated in the slack season. This is all the more likely if there is a cap of "100 days per household per year", as proposed by the UPA government. If employment generation is concentrated in the slack season, it is unlikely to cause any shortage of agricultural labour. In fact, small farmers will gain from the introduction of an employment guarantee programme, in so far as they participate in the programme during the lean months. The share of the state governments in the cost of the programme will be very small, if any. As things stand, they already contribute a substantial share of the cost of centrally-sponsored employment programmes. These programmes are likely to be merged with the employment guarantee programme after Employment Guarantee Act comes into effect. The additional cost of Employment

\footnote{United Progressive Alliance}
\footnote{e.g. 25% in the case of sampanna grameen rozgar yojana}
Guarantee Act for the state governments is likely to be small. In fact, this "cost" will be a good investment, considering the wide-ranging economic and social benefits of an employment guarantee programme. There are strong provisions for transparency and accountability at all levels. For instance, job cards are to be issued to all labourers, wages are to be paid in front of the community on pre-specified dates, all relevant documents are to be available in convenient form for public scrutiny; regular social audits of all programme works are to be conducted; muster rolls are to be displayed at the gram panchayat office until the wages are paid; utilisation certificates are to be issued by the gram sabhas; and so on. Further, the demand for an employment guarantee act goes hand in hand with the demand for a strong right to information act. The right to information is an important tool for the eradication of corruption and is essential for the success of the employment guarantee act. If guaranteed employment is an individual entitlement, a majority of labourers employed under Employment Guarantee Act are likely to be women, judging from past experience with labour-intensive public works. On the other hand, if the guarantee is limited to "100 days per household"96, it is possible that women will be marginalized. If individual entitlements are replaced with household entitlements, there may be a case for introducing a quota for women, e.g. At least 50 per cent of all labourers employed in every block.

96 As in the NAC draft
The new UPA\textsuperscript{97} government at the centre has prepared a draft employment guarantee bill that is expected to be tabled in parliament next month. Against this background, sahmat organised a convention to reaffirm the centrality of an employment guarantee act, and to outline the framework of an effective act, which promotes the interests of workingmen and women and ensures that state governments can implement the act without an additional financial burden. Speakers agreed that aside from protecting the rural population from hunger and destitution, an employment guarantee act would also contribute to many other social objectives, including the creation of durable assets, the protection of the environment, the empowerment of women, and the slowdown of rural-urban migration. In addition, of course, there would be strong multiplier effects of such employment, which would therefore have a positive effect upon rural livelihoods. This impact would be much larger than the actual expenditure. Setting the ball rolling, Aruna Roy underlined the political significance of the Employment Guarantee Act in the current regime of neo-liberal economic policies that have resulted in falling employment growth. The introduction of such an act in the current climate is therefore an important avenue for mass mobilisation and resistance against neo-liberal policies. The act is a recognition that the state cannot retreat from pro-poor development and is responsible to ensure livelihood security and employment. Medha Patkar too emphasised the conflict between different policies, which becomes stark when the Employment Guarantee Act is

\textsuperscript{97} United Progressive Alliance.
discussed. She spoke of the loss of control over common property and natural resources for wide sections of the population as an outcome of globalisation, and said that decentralized planning, and land and water management by the people are the prerequisites for an effective Employment Guarantee Act. Most speakers contested the view expressed by Jairam Ramesh, that there was no contradiction between the policies of LPG to the one hand and the guarantee of employment on the other. He in fact argued that the real conflict was between the interests of the unorganised rural workers and the small section of organized government employees. He said that the sixth pay commission would erode the very possibility of an Employment Guarantee Act since the government had a financial constraint. In this way, he posed a choice between government employment and universal employment guarantee.

Sitaram Yechury argued that the Employment Guarantee Act was non-negotiable and the attempt to pose the argument in terms of organised versus unorganised was a red herring. He gave a call to tax the rich, which was the best route to pursue a pro-poor and growth-oriented development policy. A failure to do this would erode the legitimacy of the UPA government to remain in power because it would undermine the mandate. He gave a call to simultaneously extend the universal guarantee to urban areas. D. Raja too wanted the UPA government to recognise the gravity of the situation on the ground, based on which the left parties had originally asked for a universal

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98 Liberalisation, privatisation and globalisation
99 United Progressive Alliance
100 Supra note 98
guarantee of at least 180 days to be included in the CMP\textsuperscript{101}. He said the issue was not one of finances or requirement but of the political will to take the Employment Guarantee Act forward, so that it does not remain a mere formality and becomes an effective livelihood guarantee. He said that CPI would fight for this both within and outside parliament. Dunu Roy fully supported that the Employment Guarantee Act must cover urban areas since the crisis of livelihoods is large here too.

4.12 PLAYING UPON INSECURITIES

Jayati Ghosh refuted claims that this act was unaffordable. The different estimates range between 0.7 and 1.4 per cent of GDP\textsuperscript{102}. The mainstream media and those sections who directly benefited from the policies of neo-liberalism are playing upon the insecurities of the middle class by stating that a universal rural employment guarantee will pose an inordinate tax burden on the middle classes, already burdened by high consumer price inflation. She argued that the “gift” of Rs 5,000 crore to a handful of traders at the stock exchange as a result of the dilution of the turnover tax was a simple measure for raising revenue which should be reinforced. Removal of the capital gains tax was justified on the basis of the higher turnover tax, but even after retracting on the turnover tax front, the capital gains tax has not been reintroduced. She argued that if the TAX-GDP\textsuperscript{103} ratio was restored to the 1991 level, there was enough money not only for a universal urban and rural employment guarantee but also enough left over for mid-day meal schemes.

\textsuperscript{101} Common Minimum Programme
\textsuperscript{102} Gross Domestic Product
\textsuperscript{103} Ibid
free universal primary education, etc. She said that the fiscal responsibility and budget management bill was a dangerous act that ties the hands of the government. She argued that there was no harm in printing money to finance development schemes, since they were not inflationary if wage goods were available in the system.

NAC member Jean Dreze said that the act was mired in myths and misunderstandings. Stating that it was not a 'crackpot' act, he said that though legislation alone would not help guarantee employment and continuous mobilisation was required, the act had great scope to reduce rural poverty by 70 per cent. He warned against settling for a scheme as proposed by some quarters, since this would have far too many loopholes.

Dr Singh also said the foremost requirement is to establish institutional mechanisms for implementing the guarantee. "the panchayati raj institutions, with the assistance of government agencies, are central to this. The Panchayat Raj institutions will have to be geared up for it. You would need to ensure capacity building of these institutions so that they may discharge their responsibilities effectively," he said. The labour that seeks work must understand what is offered, on what terms and demand its full entitlement. Similarly, there should be complete transparency in maintenance of muster rolls and payment of wages. There should be fairness all around," he said. Further, the prime minister said the right to information act would cover every aspect of the implementation of National Rural Employment Guarantee Act. "people will have general access to public records and information pertaining to Employment Guarantee Act. We must not forget that eternal vigilance is
the price of liberty," Dr Singh said. He also said the economy has to grow at 7-8 per cent if Employment Guarantee Act is to yield the desired results. "We must create a climate for enterprise where both private and public sector investment can find a hospitable place. "We must manage our budgets well so that the fiscal health of the government is not impaired. "We must generate the resources that we expend," Dr Singh said. In its common minimum programme the UPA\textsuperscript{104} government promised to tackle unemployment. In September a draft rural employment guarantee act was put together by the national advisory council. Now, however, it appears that vital portions of that draft are likely to be diluted before the legislation is tabled in parliament. The national advisory council appointed by the UPA\textsuperscript{105} government had some weeks ago sent to the prime minister's office a draft version of a rural employment guarantee act. Since then, there has been considerable speculation that its guarantees of employment for a substantial number of the nation's poor would be altered before the legislation is introduced in the winter session of parliament. Some members of the administration wondered whether the cost of such a widespread guarantee would be affordable. Anticipating this concern, the NAC had prepared - along with its draft - a note demonstrating that the cost of the employment guarantees may be as low as 1\% of the GDP\textsuperscript{106}. Despite this, it is now reliably learnt that the 'revised' draft of the national rural employment act to be tabled in parliament in December has radically diluted some key provisions of the initial draft. The most important change from the original draft concerns the time-bound extension of employment guarantee to the whole of India within five years, beginning

\textsuperscript{104} United Progressive Alliance
\textsuperscript{105} Ibid
\textsuperscript{106} Gross Domestic Product
with the poorest districts first. This key provision has now been replaced with the following clause: "the act shall come into force immediately in such areas and for such periods as may be notified and shall be extended to cover all the rural areas of India after evaluating the implementation in the districts chosen." Taken together, these critical revisions to the original draft - postponing full coverage to all areas, and ignoring minimum wage legislation - would amount to a significant dilution of the act, a move certain to be interpreted by advocacy groups as a rollback of the government's promise in the common minimum programme of the administration. According to the world bank, almost 30 per cent of the Indian population are living on less than $1 a day, and the percentage of rural poverty is likely to be much higher. While there have been many attempts to combat poverty in the past, the limited success of such efforts implies that we need a new and innovative strategy. The National Rural Employment Guarantee Act may be just what we need. It certainly has the potential to significantly improve the livelihood of millions of rural poor in India, but for this potential to be realised the government must take some crucial steps.

The National Rural Employment Guarantee Act, which guarantees 100 days of employment to every rural household, could go a long way in reducing rural underemployment, an important contributing factor in rural poverty. More significantly, as studies of the Maharashtra employment guarantee scheme have documented, participation in such schemes does indeed replace unemployment in rural areas, showing that unemployment is a problem to be tackled. Another issue of concern is whether the programme will be effective in targeting the poor and not be captured by relatively
wealthy households. Employment schemes, however, are generally relatively well targeted, due to low wages and the unpleasant nature of the work. Indeed, evidence from miharashtra supports this by showing that a significant majority of participants were below the poverty line. The potential benefits for rural welfare as a result of an employment guarantee scheme are huge.

The work involved in the programme would build infrastructure, such as roads, irrigation, and health facilities. This could help reverse the recent neglect of rural infrastructure, and be a crucial part of regenerating the rural economy. Providing employment would have a beneficial impact on health, education, and other determinants of social welfare, by breaking the cycle of rural poverty. There may also be indirect benefits if more women are given the opportunity to work, as higher levels of female labour force participation are associated with lower infant mortality rates and higher primary school enrolment rates, for example. The revival of rural employment opportunities would reduce migration to urban centres, and help ease congestion and other problems in these areas. Finally, the introduction of an employment guarantee act which establishes employment as a right would give greater bargaining power to traditionally disadvantaged groups and lead to a greater mobilisation of the rural poor. The main criticism of the National Rural Employment Guarantee Act is that it would cost too much. It is estimated to cost between Rs 30,000 crore (Rs 300 billion) and Rs 50,000 crore (Rs 500 billion) annually, which is less than 2 per cent of GDP. To argue that the government lacks the funds is not acceptable. There is mismanagement of resources at all levels; cracking down on this would undoubtedly free up enough funds for the programme. For instance, fertilizer subsidies are known

107 Supra note 105
to be poorly targeted, as they primarily benefit higher-income farmers. In order to hold them accountable, however, there must be greater transparency in the administration of this programme, which can be assured by the introduction of a powerful Right to Information Act.

Thus the main purpose of an employment guarantee act is to enable people to claim from the state a basic aspect of their Constitutional right to work. For this to happen, the act must give them effective and durable entitlements. It should aim at empowering the disadvantaged, and include extensive safeguards against any dereliction of duty by the authorities. This is the spirit in which a draft act had been prepared by concerned citizens and revised by the NAC\textsuperscript{108}. The bill tabled in parliament earlier this month is a travesty of the NAC draft. It has been extensively reworked from the point of view of a bureaucrat who is anxious to minimise the responsibility of the state. Now the government can modify the rules of the game at any time. An essential feature of the NAC\textsuperscript{109} draft is that it was based on the twin principles of universality and self-selection. All households were eligible to apply for work, and the act was to be extended to the whole of rural India within five years. Eligibility criteria were deemed unnecessary since the willingness to perform casual manual labour at the minimum wage is itself a strong indicator of need. The effectiveness of the self-selection mechanism is borne out by India's long experience with relief works. The bill tabled in parliament involves a radical departure from universality and self-selection. To start with, there is no guarantee of time-bound extension of the act to the whole of rural India. The guarantee of employment applies only "in such rural area in the

\textsuperscript{108} National Advisory Council
\textsuperscript{109} Ibid
state and for such period as may be notified by the central government." In other words, the guarantee can be withdrawn anywhere at any time. The preamble has been reformulated to include the word poor before defining the households whose livelihoods are sought to be secured. "an act to enhance livelihood security of the poor households in rural areas of the country by providing at least one hundred days of guaranteed wage employment to every household whose adult member volunteer to do unskilled manual work." This opens the door to targeting (below poverty line) BPL households. Targeting has many problems. The identification of the poor is far from satisfactory, both in terms of the criteria and procedure. The problem of wrong exclusion is rampant and has far more serious consequences than wrong inclusion. The livelihoods of vast sections of the near poor too are extremely precarious and fragile. No matter what measure one uses of hunger or malnutrition, there is no doubt that Indian people suffer pervasive and persistent food insufficiency.

There is an apprehension that women would be excluded from the scheme\textsuperscript{110}, which is dangerous in the context of abysmally low levels of poorly paid employment of women in rural areas. Unfortunately, the act does not provide adequate safeguards against the exclusion of women from the scheme, which becomes relevant in the context of an act that does not provide individual guarantee. The act merely brings grievances relating to discrimination and harassment of women under the purview of the redressal mechanisms which will be prescribed by the state government under the rules. For this the possible recommendation is that the act should safeguard the interests of women and give full attention to their concerns with regard to

\textsuperscript{110} Section 15(1)
availability, location, type and organisation of work. It should be ensured that at least 40 per cent of workers employed in a particular block are women, so that women are not pushed disproportionately on to the unemployment allowance or out of the scheme.

Even as the controversial NREGB\textsuperscript{111} has been passed by parliament with substantial changes, a people's movement is gaining momentum across the country to press for a full-fledged employment guarantee act with assured payment of minimum wages, equal participation of women and national coverage. A movement of concerned citizens under the banner of "people's action for employment guarantee" was conceived shortly after various organisations came down heavily on what they described as the bill's basic weaknesses when it was first tabled in parliament on December 21, 2004.

Basic prerequisites

The legislation in its present form is seen as a dilution of the promises made by the UPA\textsuperscript{112} in its CMP\textsuperscript{113} and, in particular, the "reversibility" of the guarantee for employment has been strongly criticised. The basic prerequisites for an effective employment guarantee act are universal entitlement making any adult eligible to apply for work, irreversibility in that the government cannot "switch off" the guarantee, no restriction on the number of days of employment, national coverage in a time-bound manner and assured payment of minimum wages for men and women equally. But, the standing committee on the National Rural Employment Guarantee Bill

\textsuperscript{111} National Rural Employment Guarantee Bill
\textsuperscript{112} United Progressive Alliance
\textsuperscript{113} Common Minimum Programme
had made several laudable recommendations including those mentioned by Ms. Bhati barring the demand for unlimited guarantee or no restriction on the number of days of employment. Also, congress president Sonia Gandhi had stressed that the bill should incorporate universal eligibility and it should extend to individuals and not just be restricted to one individual per household as this could be disadvantageous to joint families. She also said that the full cost should be met by the central government and that panchayati raj institutions should be the implementing agencies. Referring to the government's notion that this programme is an "experiment" undertaken in anticipation of the employment guarantee act, he argued that the credibility of this experiment depends on it being carried out in good faith, with full political backing and with the safeguards that are required for such a programme to work. However, he also noted that the programme was doing relatively well in Rajasthan, where the right to information movement had fostered a culture of public vigilance.

4.13 UNORGANISED WORKERS' BILL

In May 2006 the Commission\textsuperscript{114} submitted to the Prime Minister a new and modified draft of Bill\textsuperscript{115} to cover 362 million workers in that sector. There have been three draft bills for unorganised workers, including one by the Concil\textsuperscript{116} and another by the Labour Ministry. Another Bill was prepared by the erstwhile National Democratic Alliance Government. The new Bill proposes a national minimum social security scheme for all unorganised workers whose monthly salary is less that Rs 6,500. This would include

\textsuperscript{114} Arjun Sengupta Commission 2006
\textsuperscript{115} The Unorganised Sector Workers Bill
\textsuperscript{116} National Advisory Council.
benefits such as health cover, sickness allowance, maternity benefit and life insurance. There is also a Provident Fund cover with assured returns of 10 percent and old-age pension of Rs 200 per month for below the BPL workers. The cost of the scheme, proposed by the National Commission for Enterprises in the unorganised sector is expected to be Rs 7,367 crore. The large network of post offices in the country are to play a major role in making payments under the new Bill, which proposes the Constitution of NSSB headed by a Chief Executive Officer.

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117 Below the Poverty Line
118 Nodal National Social Security Board
119 The Hindu, Wednesday May 17th 2006 Page 14