
UNIT 9 RIGHT TO WORK – NATIONAL RURAL EMPLOYMENT GUARANTEE ACT, 2005

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9.0 INTRODUCTION

Right to work is at the core of all human rights though labour jurisprudence developed rather independently of human rights discourses. Because “labour” was perceived as a means of earning livelihood, work was taken as a necessary part of survival strategy (Madhava Menon, 1998, p.1).

The right to work has been regarded by *Harold Laski* as the most important of the rights of the individual. In spite of the constitution of the Soviet Union, he pleaded that this must be given to each citizen. In his own words “The citizen has a right to work... to leave him without access to the means of existence is to deprive him of that which makes possible the realization of personality” (books.google.co.in/books).

Work is a bodily or mental effort exerted to do something or perform a purposeful activity. It includes labour, employment, occupation, business, trade, craft, profession, duty or a task; something that has been made or done specifically. A person may or may not have remunerative employment, but has manner, style and quality of working. In other words, work involves three states, namely, *action*, *performance* and *achievement*. In the *first state*, action, work is to perform a function, to operate or to act which leads to *second state*, performance effectively or to ferment which leads to *third state*, achievement, to produce results or to exert an influence. So, it is a change of specified condition by repeated movement.

Work is a means of earning income. Employment needs physical or mental activity to achieve the result after accomplishing a predetermined plan. Thus, from the above said meaning, work can be defined as ‘an activity involving mental or physical effort done in order to achieve a purpose or result in an effective manner producing the desired effect or result’ (Advanced Oxford Dictionary, 2011).

Employment, the act of being engaged in a work or occupation for wages, determines the standard of living, dignity and the status of human beings. Work or employment provides the source of livelihood as it generates income and purchasing power in the form of wages with the help of which one can secure the basic necessities of life such as food, clothing, shelter, education, health and other comforts of life (Ramadass, 1998, p.1).

Realising the importance and necessity of work or employment for everyone, efforts have been made at national and international level to ensure every one the right to work. These efforts present national and international perspective of an individual’s right to work. In India, the National Rural Employment Guarantee Act, 2005 is a landmark legislation that guarantees every one with reasonable work or employment to ensure proper income to the individuals and the families below the poverty line.

In this Unit, we, therefore, attempt to touch upon different perspectives of right to work with an emphasis on the National Rural Employment Guarantee Act, 2005.

9.1 OBJECTIVES

After going through this Unit, you should be able to:

- Explain the significance of work and evolution of right to work;
- Describe the constitutional perspectives of right to work in India;
- Analyse the attitude and approach of the judiciary in treating right to work as a fundamental right; and
- Evaluate the salient features of the National Rural Employment Guarantee Act, 2005.

9.2 RIGHT TO WORK: INTERNATIONAL AND INDIAN PERSPECTIVES

Work is core aspect of every one’s life; since without work as means of income or source of livelihood one’s life will be miserable. It is essential that such ‘work’ is provided, protected and promoted to ensure quality of life and improvement in living standards of the people. A brief look at the legal measures that have been taken at the national and international levels will provide us an understanding of the perspectives at these levels. We will discuss these perspectives, in brief, below.

9.2.1 International Perspective

The whole concept of human rights is based on the premise that there are certain human values, which do have universal application. These include such basic aspects of human existence as the right to life and freedom from arbitrary

detention, torture or fear. The Universal Declaration of Human Rights, 1948 reflects the philosophy of modern welfare state — the right to social security, right to work, equal pay for equal work, right to form and join trade unions, right to rest and leisure, and so on. The United Nations Organisation (UNO) has played a very important and crucial role in promoting the common language of humanity. Right to work is at the core of all human rights, though work jurisprudence developed rather independently of human rights discourses. Because, 'work' was perceived as a means of earning a livelihood, work was taken as a necessary part of survival strategy. When work was taken as a commodity and exploited by those who employ people, conflicts arose and justice was sought in terms of improving conditions of labour. International Labour Organisation (ILO) endeavoured to define, protect and promote human rights in the world of work. In 1944, the ILO Declaration at Philadelphia stated that:

- Labour is not a commodity;
- All human beings have the right to pursue both their material well-being and their spiritual development in condition of freedom and dignity, economic security and equal opportunity.

Other important ILO Conventions that laid emphasis on work, employment and related aspects include the following.

- 1) Freedom of Association and Protection of the Right to Organize Convention, 1948.
- 2) Right to Organise and Collective Bargaining Convention, 1949.
- 3) Equal Remuneration Convention, 1951.
- 4) Abolition of Forced Labour Convention, 1957.
- 5) Discrimination in Employment Convention, 1958.
- 6) The Employment Policy Convention, 1964
- 7) Minimum Age Convention, 1973.
- 8) The Employment Policy Convention & Recommendations, 1984.

As mentioned above, the Universal Declaration of Human Rights, 1948 reflects the philosophy of modern welfare state. Article 23 of this Declaration presents the essence of right to work as follows.

- Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

Under the International Convention on Elimination of All forms of Racial Discrimination, 1965 the State parties undertook to prohibit and eliminate social discrimination in all its forms and to guarantee the right of every one, without distinction as to race, colour or national or ethnic origin, to equality before law in the enjoyment of certain economic, social and cultural rights which include the following (Art.5):

- 1) Right to work.
- 2) Right to free choice of employment.
- 3) Right to protection against exploitation in employment.

- 4) Right to equal pay for equal work.
- 5) Right to just and favourable remuneration.

The International Covenant on Economic, Social and Cultural Rights, 1966, under Articles 6 and 7, lays down that the State Parties to the present Covenant recognise the right to work which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right. In order to achieve full realisation of this right the State shall provide for:

- Technical and vocational guidance and training programmes;
- Politics and techniques to achieve steady economic, social and cultural development; and
- Full and productive employment under conditions safeguarding fundamental political and economic freedom to the individual.

With this international perspective of right to work/employment, you will better understand the Indian perspective presented below.

9.2.2 Indian Constitutional Perspective

Article 19(1)(g) under the Fundamental Rights (Part-III) of Indian constitution guarantees to all citizens of India the right to practise any profession or to carry on any occupation, trade or business. The Directive Principles of State Policy (Part-IV of the Constitution of India) spell out the right to work under certain Articles. Article 41 of the Constitution provides that “the State shall within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want” (See also Article 6 of the ICESCR). Article 38 states that the state shall strive to promote the welfare of the people, and Article 43 states that the State shall endeavor to secure a living wage and a decent standard of life to all workers. One of the contexts in which the problem of enforceability of such a right was posed before the Supreme Court was of large-scale abolition of posts of village officers in the State of Tamil Nadu in India. In negating the contention that such an abolition of posts would fall foul of the Directive Principles of State Policy (DPSP), the court said:

It is no doubt true that Article 38 and Article 43 of the Constitution insist that the State should endeavour to find sufficient work for the people so that they may put their capacity to work into economic use and earn a fairly good living. But, these Articles do not mean that everybody should be provided with a job in the civil service of the State and, if a person is provided with one he should not be asked to leave it even for a just cause. If it were not so, there would be no justification for a small percentage of the population being in Government service and in receipt of regular income and a large majority of them remaining outside with no guaranteed means of living. It would certainly be an ideal state of affairs if work could be found for all the able-bodied men and women and everybody is guaranteed the right to participate in the production of national wealth and to enjoy the fruits thereof. But, we are today far away from that goal.

The question, whether a person who ceases to be a government servant according to law should be rehabilitated by giving him an alternative employment, is, as the law stands today, a matter of policy on which the court has no voice (*K. Rajendran v State of Tamil Nadu*, 1982, p.294). But, the court has since then felt freer to interfere even in areas which would have been considered to be in the domain of the policy of the executive. Where the issue was of regularizing the services of a large number of casual (non-permanent) workers in the posts and telegraphs department of the government, the court has not hesitated to invoke the DPSP to direct such regularization. The explanation was:

Even though the above directive principle may not be enforceable as such by virtue of Article 37 of the Constitution of India, it may be relied upon by the petitioners to show that, in the instant case, they have been subjected to hostile discrimination. It is urged that the State cannot deny at least the minimum pay in the pay scales of regularly employed workmen even though the Government may not be compelled to extend all the benefits enjoyed by regularly recruited employees. We are of the view that such denial amounts to exploitation of labour. The Government cannot take advantage of its dominant position, and compel any worker to work even as a casual labourer on starvation wages. It may be fact that the casual labourer has agreed to work on such low wages. That he has done, because he has no other choice. It is poverty that has driven him to that state. The Government should be a model employer. We are of the view that, on the facts and in the circumstances of this case, the classification of employees into regularly recruited employees and casual employees for the purpose of paying less than the minimum pay payable to employees in the corresponding regular cadres, particularly in the lowest rungs of the department where the pay scales are the lowest, is not tenable ... It is true that all these rights cannot be extended simultaneously. But, they do indicate the socialist goal. The degree of achievement in this direction depends upon the economic resources, willingness of the people to produce and more than all, the existence of industrial peace throughout the country. Of those rights the question of security of work is of utmost importance.

In *Bandhua Mukti Morcha v Union of India* (1984, p.161), a PIL by an NGO highlighted the deplorable condition of bonded labourers in a quarry in Haryana, not very far from the Supreme Court. A host of protective and welfare-oriented labour legislation, including the Bonded Labour (Abolition) Act and the Minimum Wages Act, were being observed in the breach. In giving extensive directions to the state government to enable it to discharge its constitutional obligation towards the bonded laborers, the court said: The right to live with human dignity enshrined in Article 21 derives its life-breath from the Directive Principles of State Policy and particularly clauses (a), (e) and (f) of Article 39 and Article 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State has the right to take any action which will deprive a person of the enjoyment of these basic essentials. Since the Directive Principles of State Policy contained in clauses (e) and (f) of Article 39, Articles 41 and 42 are not enforceable in a court of law, it

may not be possible to compel the State through the judicial process to make provision by statutory enactment or executive fiat for ensuring these basic essentials which go to make up a life of human dignity, but where legislation is already enacted by the State providing these basic requirements to the workmen and, thus investing their right to live with basic human dignity. Article 21 of the Indian Constitution under part III, Fundamental Rights, spells that no person shall be deprived of his life or personal liberty except according to procedure established by law. Right to life under Article 21 includes right to livelihood in turn right to work because there is no meaning of life without livelihood.

In *Olga Tellis v Bombay Municipal Corporation* (1986, p.180), popularly known as *pavement dwellers case*, the Supreme Court held that the right to life includes right to livelihood.

Check Your Progress

Notes: a) Space given below the question is for writing your answer.

b) Check your answer with the one given at the end of this unit under “Answers to ‘Check Your Progress’ Questions”.

1) Present, in brief, the Indian constitutional perspective of the Right to Work

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9.3 THE NATIONAL RURAL EMPLOYMENT GUARANTEE ACT, 2005

A majority of the poor in rural areas of the country depend mainly on the wages they earn through unskilled, casual manual labour. They are often on threshold levels of subsistence, and are vulnerable to the possibility of sinking from transient to chronic poverty. Inadequate labour demand or unpredictable crises that may be general in nature, like natural disaster or personal ill-health, all adversely impact their employment opportunities.

History of wage-employment programmes: The need to evolve a mechanism to supplement existing livelihood sources in rural areas was recognized early in development planning in India. The Government implemented work-fare programmes that offered wage-employment on public works at minimum wages. The wage employment programmes started as pilot projects in the form of Rural Manpower Programme (RMP) (1960-61), Crash Scheme for Rural Employment (CSRE) (1971-72), Pilot Intensive Rural Employment Programme (PIREP) (1972), Small Farmers Development Agency (SFDA), Marginal Farmers & Agricultural Labour Scheme (MFAL) to benefit the poorest of the poor. These experiments were translated into a full-fledged wage-employment programme

in 1977 in the form of Food for Work Programme (FWP). In the 1980's this programme was further streamlined into the National Rural Employment Programme (NREP) and Rural Landless Employment Guarantee Programme (RLEGP), Jawahar Rozgar Yojana (JRY) (1993-94), and Employment Assurance Scheme (EAS). Later, the Jawahar Rozgar Yojana (JRY) was merged with Jawahar Gram Samridhhi Yojana (JGSY) from 1999-2000 onwards, and was made a rural infrastructure programme, which was later merged with Sampoorna Grameen Rozgar Yojana (SGRY) from 2001-02 onwards, and thereafter with National Food for Work (NFFWP) (2005). These wage-employment programmes implemented by State Governments with Central assistance were self-targeting, and the objective was to provide and enhance livelihood security, specially for those dependent on casual manual labour. At the State level, the Government of Maharashtra formulated the Maharashtra Employment Guarantee Scheme under Maharashtra Employment Guarantee Act, 1977 to provide wage employment to those who demanded it.

The National Rural Employment Guarantee Act, 2005 (NREGA): At the Central level, NREGA aims at enhancing the livelihood security of the people in rural areas by guaranteeing hundred days of wage employment in a financial year to a rural household whose members volunteer to do unskilled manual work. The objective of the Act is to create durable assets and strengthen the livelihood resource-base of the rural poor. The choice of works suggested in the Act addresses causes of chronic poverty like drought, deforestation, soil erosion, etc so that the process of employment generation is maintained on a sustainable basis. The Act is applicable to areas notified by the Central Government and will cover the whole country.

This Act consists of 34 sections; though small Act but very useful and effective.

9.3.1 Definitions of Certain Key Terms under the Act

Section 2 of the Act defines certain terms used in this Act. We will, however, present the definitions of select terms.

- 2(a): “adult” means a person who has completed his eighteenth year of age;
- 2(b): “applicant” means the head of a household or any of its other adult members who have applied for employment under the Scheme;
- 2(f): “household” means the members of a family related to each other by blood, marriage or adoption and normally residing together and sharing meals or holding a common ration card;
- 2(k): “preferred work” means any work which is taken up for implementation on a priority basis under a Scheme;
- 2(n): “project” means any work taken up under a Scheme for the purpose of providing employment to the applicants;
- 2(o): “rural area” means any area in a State except those areas covered by any urban local body or a Cantonment Board established or constituted under any law for the time being in force;
- 2(r): “unskilled manual work” means any physical work which any adult person is capable of doing without any skill or special training.

9.3.2 The Gist of the Act

The essential features of this Act are presented below.

9.3.2.1 Guarantee of Employment in Rural Areas

Section 3 of this Act provides a guarantee of rural employment to households as follows.

- 1) Save as otherwise provided, the State Government shall, in such rural areas in the State as may be notified by the Central Government, provide to every household whose adult members volunteer to do unskilled manual work not less than one hundred days of such work in a financial year in accordance with the Scheme made under this Act.
- 2) Every person who has done the work given to him under the Scheme shall be entitled to receive wages at the wage rate for each day of work.
- 3) Save as otherwise provided in this Act, the disbursement of daily wages shall be made on a weekly basis or in any case not later than a fortnight after the date on which such work was done.
- 4) The Central Government or the State Government may, within the limits of its economic capacity and development, make provisions for securing work to every adult member of a household under a Scheme for any period beyond the period guaranteed under sub-section (1), as may be expedient.

9.3.2.2 Employment Guarantee Scheme for Rural Areas

Section 4 provides for employment guarantee scheme for rural areas. It states:

- 1) For the purposes of giving effect to the provisions of section 3, every State Government shall, within six months from the date of commencement of this Act, by notification, make a Scheme for providing not less than one hundred days of guaranteed employment in a financial year to every household in the rural areas covered under the Scheme and whose adult members, by application, volunteer to do unskilled manual work subject to the conditions laid down by or under this Act and in the Scheme:
 - Provided that until any such Scheme is notified by the State Government, the Annual Action Plan or Perspective Plan for the Sampoorna Grameen Rozgar Yojana (SGRY) or the National Food for Work Programme (NFFWP) whichever is in force in the concerned area immediately before such notification shall be deemed to be the action plan for the Scheme for the purposes of this Act.
- 2) The State Government shall publish a summary of the Scheme made by it in at least two local newspapers, one of which shall be in a vernacular language circulating in the area or areas to which such Scheme shall apply.
- 3) The Scheme made under sub-section (1) shall provide for the minimum features specified in Schedule I of the Act.

9.3.2.3 Conditions for Providing Guaranteed Employment

Section 5 of this Act stipulates conditions for providing guaranteed employment. These conditions are mentioned under Schedule II. They include the adult members of every household who:

- i) reside in any rural areas; and
- ii) are willing to do unskilled manual work.

9.3.2.4 Payment of Unemployment Allowance

Section 7 makes a provision for payment of unemployment allowance as follows.

- 1) If an applicant for employment under the Scheme is not provided such employment within fifteen days of receipt of his application seeking employment or from the date on which the employment has been sought in the case of an advance application, whichever is later, he shall be entitled to a daily unemployment allowance in accordance with this section.
- 2) Subject to such terms and conditions of eligibility as may be prescribed by the State Government and subject to the provisions of this Act and the Schemes and the economic capacity of the State Government, the unemployment allowance payable under sub-section (1) shall be paid to the applicants of a household subject to the entitlement of the household at such rate as may be specified by the State Government, by notification, in consultation with the State Council:
 - Provided that no such rate shall be less than one-fourth of the wage rate for the first thirty days during the financial year and not less than one-half of the wage rate for the remaining period of the financial year.
- 3) The liability of the State Government to pay unemployment allowance to a household during any financial year shall cease as soon as:
 - a) the applicant is directed by the Gram Panchayat or the Programme Officer to report for work either by himself or depute at least one adult member of his household; or
 - b) the period for which employment is sought comes to an end and no member of the household of the applicant had turned up for employment; or
 - c) the adult members of the household of the applicant have received in total at least one hundred days of work within the financial year; or
 - d) the household of the applicant has earned as much from the wages and unemployment allowance taken together which is equal to the wages for one hundred days of work during the financial year.
- 4) The unemployment allowance payable to the household of an applicant jointly shall be sanctioned and disbursed by the Programme Officer or such local authority (including the Panchayats at the district, intermediate or village level) as the State Government may, by notification, authorise in this behalf.
- 5) Every payment of unemployment allowance under sub-section (1) shall be made or offered not later than fifteen days from the date on which it became due for payment.
- 6) The State Government may prescribe the procedure for payment of unemployment allowance under this Act.

Check Your Progress

Notes: a) Space given below the question is for writing your answer.

b) Check your answer with the one given at the end of this unit under “Answers to ‘Check Your Progress’ Questions”.

2) Elucidate the conditions prescribed under the Act for providing guaranteed employment.

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9.3.2.5 Implementing and Monitoring Authorities

There are implementing and monitoring authorities provided for in this Act, which are as follows.

Section 10: Central Employment Guarantee Council: It is as follows.

- 1) With effect from such date, as the Central Government may by notification specify, there shall be constituted a Council to be called the Central Employment Guarantee Council to discharge the functions, and perform the duties, assigned to it by or under this Act.
- 2) The headquarters of the Central Council shall be at Delhi.
- 3) The Central Council shall consist of the following members, to be appointed by the Central Government, namely—
 - a) a Chairperson;
 - b) not more than such number of representatives of the Central Ministries including the Planning Commission not below the rank of Joint Secretary to the Government of India as may be determined by the Central Government;
 - c) not more than such number of representatives of the State Governments as may be determined by the Central Government;
 - d) not more than fifteen non-official members representing Panchayati Raj Institutions, organisations of workers and disadvantaged groups:
 - Provided that such non-official members shall include two chairpersons of District Panchayats nominated by the Central Government by rotation for a period of one year at a time;
 - Provided further that not less than one-third of the non-official members nominated under this clause shall be women;
 - Provided also that not less than one-third of the non-official members shall be belonging to the Scheduled Castes, the Scheduled Tribes, the Other Backward Classes and Minorities;

- e) such number of representatives of the States as the Central Government may, by rules, determine in this behalf;
 - f) a Member-Secretary not below the rank of Joint Secretary to the Government of India.
- 4) The terms and conditions subject to which the Chairperson and other members of the Central Council may be appointed and the time, place and procedure of the meetings (including the quorum at such meetings) of the Central Council shall be such as may be prescribed by the Central Government.

Section 11: Functions and Duties of Central Council: These are as given below.

- 1) The Central Council shall perform and discharge the following functions and duties, namely:
 - a) establish a central evaluation and monitoring system;
 - b) advise the Central Government on all matters concerning the implementation of this Act;
 - c) review the monitoring and redressal mechanism from time to time and recommend improvements required;
 - d) promote the widest possible dissemination of information about the Schemes made under this Act;
 - e) monitoring the implementation of this Act;
 - f) preparation of annual reports to be laid before Parliament by the Central Government on the implementation of this Act;
 - g) any other duty or function as may be assigned to it by the Central Government.
- 2) The Central Council shall have the power to undertake evaluation of the various Schemes made under this Act and for that purpose collect or cause to be collected statistics pertaining to the rural economy and the implementation of the Schemes.

Section 12: State Employment Guarantee Council: It states as follows.

- 1) For the purposes of regular monitoring and reviewing of the implementation of this Act at the State level, every State Government shall constitute a State Council to be known as the (name of the State) State Employment Guarantee Council with a Chairperson and such number of official members as may be determined by the State Government and not more than fifteen non-official members nominated by the State Government from Panchayati Raj institutions, organisations of workers and disadvantaged groups:
 - Provided that not less than one-third of the non-official members nominated under this clause shall be women;
 - Provided further that not less than one third of the non-official members shall be belonging to the Scheduled Castes, the Scheduled Tribes, the Other Backward Classes and Minorities.
- 2) The terms and conditions subject to which the Chairperson and members of the State Council may be appointed and the time, place and procedure of the meetings (including the quorum at such meetings) of the State Council shall be such as may be prescribed by the State Government.

- 3) The duties and functions of the State Council shall include:
 - a) advising the State Government on all matters concerning the Scheme and its implementation in the State;
 - b) determining the preferred works;
 - c) reviewing the monitoring and redressal mechanisms from time to time and recommending improvements;
 - d) promoting the widest possible dissemination of information about this Act and the Schemes under it;
 - e) monitoring the implementation of this Act and the Schemes in the State and coordinating such implementation with the Central Council;
 - f) preparing the annual report to be laid before the State Legislature by the State Government;
 - g) any other duty or function as may be assigned to it by the Central Council or the State Government.
- 4) The State Council shall have the power to undertake an evaluation of the Schemes operating in the State and for that purpose to collect or cause to be collected statistics pertaining to the rural economy and the implementation of the Schemes and Programmes in the State.

Section 13: Principal authorities for planning and implementation of Schemes: These are as follows.

- 1) The Panchayats at district, intermediate and village levels shall be the principal authorities for planning and implementation of the Schemes made under this Act.
- 2) The functions of the Panchayats at the district level shall be:
 - a) to finalise and approve block-wise shelf of projects to be taken up under a programme under the Scheme;
 - b) to supervise and monitor the projects taken up at the Block level and district level; and
 - c) to carry out such other functions as may be assigned to it by the State Council, from time to time.
- 3) The functions of the Panchayat at intermediate level shall be:
 - a) to approve the Block level Plan for forwarding it to the district Panchayat at the district level for final approval;
 - b) to supervise and monitor the projects taken up at the Gram Panchayat and Block level; and
 - c) to carry out such other functions as may be assigned to it by the State Council, from time to time.
- 4) The District Programme Coordinator shall assist the Panchayat at the district level in discharging its functions under this Act and any Scheme made thereunder.

Section 14: District Programme Coordinator: It provides as follows,

- 1) The Chief Executive Officer of the District Panchayat or the Collector of the district or any other district level officer of appropriate rank as the State Government may decide shall be designated as the District Programme Coordinator for implementation of the Scheme in the district.
- 2) The District Programme Coordinator shall be responsible for implementation of the Scheme in the district in accordance with the provisions of this Act and the rules made thereunder.
- 3) The functions of the District Programme Coordinator shall be:
 - a) to assist the district Panchayat in discharging its functions under this Act and any scheme made thereunder;
 - b) to consolidate the plans prepared by the Blocks and project proposals received from other implementing agencies for inclusion in the shelf of projects to be approved by the Panchayat at district level;
 - c) to accord necessary sanction and administrative clearance, wherever necessary;
 - d) to coordinate with the Programme Officers functioning within his jurisdiction and the implementing agencies to ensure that the applicants are provided employment as per their entitlements under this Act;
 - e) to review, monitor and supervise the performance of the Programme Officers;
 - f) to conduct periodic inspection of the works in progress; and
 - g) to redress the grievances of the applicants.
- 4) The State Government shall delegate such administrative and financial powers to the District Programme Coordinator as may be required to enable him to carry out his functions under this Act.
- 5) The Programme Officer appointed under sub-section (1) of Section 15 and all other officers of the State Government and local authorities and bodies functioning within the district shall be responsible to assist the District Programme Coordinator in carrying out his functions under this Act and the Schemes made thereunder.
- 6) The District Programme Coordinator shall prepare in the month of December every year a labour budget for the next financial year containing the details of anticipated demand for unskilled manual work in the district and the plan for engagement of labourers in the works covered under the Scheme and submit it to the district panchayat.

Section 15: Programme Officer: It is as follows.

- 1) At every Panchayat at intermediate level, the State Government shall appoint a person who is not below the rank of Block Development Officer with such qualifications and experience as may be determined by the State Government as Programme Officer at the Panchayat at intermediate level.
- 2) The Programme Officer shall assist the Panchayat at intermediate level in discharging its functions under this Act and any Scheme made thereunder.

- 3) The Programme Officer shall be responsible for matching the demand for employment with the employment opportunities arising from projects in the area under his jurisdiction.
- 4) The Programme Officer shall prepare a plan for the Block under his jurisdiction by consolidating the project proposals prepared by the Gram Panchayats and the proposals received from intermediate panchayats.
- 5) The functions of the Programme Officer shall include:
 - a) monitoring of projects taken up by the Gram Panchayats and other implementing agencies within the Block;
 - b) sanctioning and ensuring payment of unemployment allowance to the eligible households;
 - c) ensuring prompt and fair payment of wages to all labourers employed under a programme of the Scheme within the Block;
 - d) ensuring that regular social audits of all works within the jurisdiction of the Gram Panchayat are carried out by the Gram Sabha and that prompt action is taken on the objections raised in the social audit;
 - e) dealing promptly with all complaints that may arise in connection with the implementation of the Scheme within the Block; and
 - f) any other work as may be assigned to him by the District Programme Coordinator or the State Government.
- 6) The Programme Officers shall function under the direction, control and superintendence of the District Programme Coordinator.
- 7) The State Government may, by order, direct that all or any of the functions of a Programme Officer shall be discharged by the Gram Panchayat or a local authority.

Section 16: Responsibilities of the Gram Panchayats: These are as provided below.

- 1) The Gram Panchayat shall be responsible for identification of the projects in the Gram Panchayat area to be taken up under a Scheme as per the recommendations of the Gram Sabha and the Ward Sabhas and for executing and supervising such works.
- 2) A Gram Panchayat may take up any project under a Scheme within the area of the Gram Panchayat as may be sanctioned by the Programme Officer.
- 3) Every Gram Panchayat shall, after considering the recommendations of the Gram Sabha and the Ward Sabhas, prepare a development plan and maintain a shelf of possible works to be taken up under the Scheme as and when demand for work arises.
- 4) The Gram Panchayat shall forward its proposals for the development projects including the order of priority between different works to the Programme Officer for scrutiny and preliminary approval prior to the commencement of the year in which it is proposed to be executed.
- 5) The Programme Officer shall allot at least fifty per cent of the works in terms of its cost under a Scheme to be implemented through the Gram Panchayats.

- 6) The Programme Officer shall supply each Gram Panchayat with:
 - a) the muster rolls for the works sanctioned to be executed by it; and
 - b) a list of employment opportunities available elsewhere to the residents of the Gram Panchayat.
- 7) The Gram Panchayat shall allocate employment opportunities among the applicants and ask them to report for work.
- 8) The works taken up by a Gram Panchayat under a Scheme shall meet the required technical standards and measurements.

9.3.2.6 Establishment of National and State Employment Guarantee Fund and Audit

This Act provides for establishment of National and State Employment Guarantee Fund and Audit as follows.

Section 20: National Employment Guarantee Fund: It is as follows.

- 1) The Central Government shall, by notification, establish a fund to be called the National Employment Guarantee Fund for the purposes of this Act.
- 2) The Central Government may, after due appropriation made by Parliament by law in this behalf, credit by way of grants or loans such sums of money as the Central Government may consider necessary to the National Fund.
- 3) The amount standing to the credit of the National Fund shall be utilised in such manner and subject to such conditions and limitations as may be prescribed by the Central Government.

Section 21: State Employment Guarantee Fund: It is as follows.

- 1) The State Government may, by notification, establish a fund to be called the State Employment Guarantee Fund for the purposes of implementation of the Scheme.
- 2) The amount standing to the credit of the State Fund shall be expended in such manner and subject to such conditions and limitations as may be prescribed by the State Government for the purposes of implementation of this Act and the Schemes made thereunder and for meeting the administrative expenses in connection with the implementation of this Act.
- 3) The State Fund shall be held and administered on behalf of the State Government in such manner and by such authority as may be prescribed by the State Government.

Section 22: Funding pattern: It is as given below.

- 1) Subject to the rules as may be made by the Central Government in this behalf, the Central Government shall meet the cost of the following, namely:
 - a) the amount required for payment of wages for unskilled manual work under the Scheme;
 - b) up to three-fourths of the material cost of the Scheme including payment of wages to skilled and semi-skilled workers subject to the provisions of Schedule II;

- c) such percentage of the total cost of the Scheme as may be determined by the Central Government towards the administrative expenses, which may include the salary and allowances of the Programme Officers and his supporting staff, the administrative expenses of the Central Council, facilities to be provided under Schedule II and such other items as may be decided by the Central Government.
- 2) The State Government shall meet the cost of the following, namely:
 - a) the cost of unemployment allowance payable under the Scheme;
 - b) one-fourth of the material cost of the Scheme including payment of wages to skilled and semi-skilled workers subject to the provisions of Schedule II;
 - c) the administrative expenses of the State Council.

Section 23: Transparency and accountability: It provides as follows.

- 1) The District Programme Coordinator and all implementing agencies in the District shall be responsible for the proper utilisation and management of the funds placed at their disposal for the purpose of implementing a Scheme.
- 2) The State Government may prescribe the manner of maintaining proper books and accounts of employment of labourers and the expenditure incurred in connection with the implementation of the provisions of this Act and the Schemes made thereunder.
- 3) The State Government may, by rules, determine the arrangements to be made for the proper execution of Schemes, and programmes under the Schemes and to ensure transparency and accountability at all levels in the implementation of the Schemes.
- 4) All payments of wages in cash and unemployment allowances shall be made directly to the person concerned and in the presence of independent persons of the community on pre-announced dates.
- 5) If any dispute or complaint arises concerning the implementation of a Scheme by the Gram Panchayat, the matter shall be referred to the Programme Officer.
- 6) The Programme Officer shall enter every complaint in a complaint register maintained by him and shall dispose of the disputes and complaints within seven days of its receipt and in case it relates to a matter to be resolved by any other authority it shall be forwarded to such authority under intimation to the complainant.

Section 24: Audit of accounts: It states as follows.

- 1) The Central Government may, in consultation with the Comptroller and Auditor General of India, prescribe appropriate arrangements for audits of the accounts of the Schemes at all levels.
- 2) The accounts of the Scheme shall be maintained in such form and in such manner as may be prescribed by the State Government.

9.3.2.7 Penalty for Non-compliance

Section 25 deals with penalty for non-compliance with the provisions of the Act. According to it, whoever contravenes the provisions of this Act shall, on conviction, be liable to a fine which may extend to one thousand rupees.

Reflection

Have you ever thought that work is going to be recognized as a right? Don't you think that poverty, illiteracy and ignorance still persist in rural areas of our country? Don't you think that guaranteeing work through legislation will help the individual improve the quality of life and dignified living? Don't you think that you should have a copy of the National Rural Employment Guarantee Act, 2005 in your home for your reading and reference as well as to help the needy to protect and promote their right to work and to create awareness among the rural people about this Act? After reading this Unit completely, you may just reflect upon these questions and do what you feel is proper and effective in different contexts to help the needy.

Check Your Progress

Notes: a) Space given below the question is for writing your answer.

b) Check your answer with the one given at the end of this unit under "Answers to 'Check Your Progress' Questions".

3) Name the implementing and monitoring authorities under the NREG Act, 2005.

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9.4 LET US SUM UP

We have presented you the concept of work, international and Indian perspectives of Right to Work and the National Rural Employment Guarantee Act, 2005. While presenting the gist or the salient features of the Act, we have touched upon the right to work or guaranteed employment, conditions for guaranteed employment, implementing and monitoring authorities, establishment of National and State Employment Guarantee Councils, and National Employment Guarantee Fund and its Audit, and penalties for non-compliance of the provisions of the Act.

9.5 ANSWERS TO 'CHECK YOUR PROGRESS' QUESTIONS

- 1) The Directive Principles of State Policy, in Part-IV of the Constitution of India, spells out right to work under certain Articles. Article 41 of the Constitution provides that “the State shall within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want”. Article 38 states that the State shall strive to promote the welfare of the people and Article 43 states that the State shall endeavor to secure a living wage and a decent standard of life to all workers. One of the contexts in which the problem of enforceability of such a right was posed before the Supreme Court was of large-scale abolition of posts of village officers in the State of Tamil Nadu in India. In negating the contention that such an abolition of posts would fall foul of the DPSP, the court said: It is no doubt true that Article 38 and Article 43 of the Constitution insist that the State should endeavour to find sufficient work for the people so that they may put their capacity to work into economic use and earn a fairly good living. But, these Articles do not mean that everybody should be provided with a job in the civil service of the State and if a person is provided with one he should not be asked to leave it even for a just cause. If it were not so, there would be no justification for a small percentage of the population being in Government service and in receipt of regular income and a large majority of them remaining outside with no guaranteed means of living. It would certainly be an ideal state of affairs if work could be found for all the able-bodied men and women and everybody is guaranteed the right to participate in the production of national wealth and to enjoy the fruits thereof. But, we are today far away from that goal.

Article 21 of the Indian Constitution, under Part III, Fundamental Rights, spells that no person shall be deprived of his life or personal liberty except according to procedure established by law. Right to life under Article 21 includes right to livelihood in turn right to work because there is no meaning of life without livelihood.

- In *Olga Tellis v Bombay Municipal Corporation* (1986, p.180), popularly known as pavement dwellers case, the Supreme Court held that the right to life includes right to livelihood.

- 2) The conditions of employment guarantee are mentioned under Schedule II of the NAREGA, 2005. They include the adult members of every household who:
- i) reside in any rural areas; and
 - ii) are willing to do unskilled manual work.
- 3) Implementing and monitoring authorities under the Act include the following.
- Central Employment Guarantee Council (Section 10).
 - State Employment Guarantee Council (Section 12).
 - Panchayats at district and intermediate and village levels (Section 13).
 - District Programme Coordinator (Section 14).
 - Programme Officers (Section 15).

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