

A critique of the National Rural Employment Guarantee Act, 2005

The following paper was written by me for the book "Capturing Imagination of Stakeholders – National Rural Employment Guarantee Act" by K .S. Gopal, Director of the Centre for Environment Concerns (CEC), a non-Government organisation based in Hyderabad. My paper forms Chapter 7 of that book. Copies of this book, which details the findings of the Social Audit that the CEC is conducting in some districts of Andhra Pradesh, are available at the CEC, 3-4-142/6, Barkatpura, Hyderabad, India. It may be added here that I was closely associated with the formulation of the Employment Assurance Scheme, which is referred to in this paper, and the implementation of which was started in the year 1993 when Mr. P. V .Narasimha Rao was India's Prime Minister. The main conceptual failure of the **National Rural Employment Guarantee Act, 2005 (NREGA)** lies in its protagonists harking back to the **Maharashtra Employment Guarantee Act of 1975** instead of taking a leaf out of the more dynamic Employment Assurance Scheme, 1993.

7. Equity*

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7.1. Implementation problems inherent in the Act

By far the "best" answer to emerge so far to the problem of rural unemployment in the context of rural poverty has been the National Rural Employment Guarantee Act, 2005 (NREGA or the Act hereafter) that promises to guarantee at least 100 days of unskilled manual wage employment in every financial year to every rural household in select districts of the country with a daily wage rate of not less than sixty rupees. Andhra Pradesh offers Rs.80 as the daily wage rate. Does this Act represent a real answer to the

problem of unemployment and therefore to rural poverty and can this “best” be bettered in any way is the question we have to ask and answer even as the Rural Employment Guarantee Schemes (REGS) drawn up by the State Governments, according to the Operational Guidelines issued by the Government of India under this Act, complete a year’s implementation. The answer to this would lie in finding out if the issues of implementation in the NREGA, 2005 that we encounter are actually intrinsic to the provisions of the Act itself and if so what remedies can be proposed.

7.1.1. Constitutional Rights – the touchstones

Obviously the subject or the focus of all the goals that the NREGA sets out to achieve is the rural, manual labourer who lives in poverty. Therefore, the acid test that would decide whether the NREGA is, or has been, fully relevant to the rights and needs of the rural poor will lie in examining whether the Act has been conceived and designed appropriately enough to deliver to the rural poor their fundamental needs and rights as guaranteed in the Constitution through guaranteed work in the manner promised to them. The passing of this test by the NREGA would depend on the following criteria being fulfilled as if the wage-seeking labouring poor indeed mattered:

- 1) adequacy of the number of days of employment it provides for the household.
- 2) adequacy of wages per day.
- 3) rational cash: kind ratios in wages.
- 4) timeliness of payment of wages.
- 5) mode of delivery of the wages.
- 6) payment of unemployment allowance.
- 7) the gender concerns it shows, particularly in regard to the work-site facilities that have fundamental gender implications for the rights of the female labour in the context of their infants and children.
- 8) appropriateness of the work provided for the differently-abled and
- 9) how Government understands all these issues as a responsible employer under this Act.

If all these criteria are fulfilled keeping the needs and rights of the participating labour in view, together that would constitute the fulfillment of the right to life with dignity, to work, livelihood, health, shelter, privacy and labour welfare enshrined in Article 21 of the Constitution; the concomitant rights mentioned in Articles 41, 42 and 43 of the Constitution that help understand and interpret the fundamental right guaranteed in Article 21 to work, humane conditions of work and wages; and Article 243 which is the expansion of the right given in Article 40 which commands that “the State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-governance”. It is important to mention here that it is settled law (AIR 1976 SC in Mumbai Khamgar Sabha case) that in interpreting the provisions of Part III of the Constitution the social philosophy of Part IV will have preference. Even more importantly, in the United Labour case (AIR 1997 SC), it has been held that the Directive Principles of State Policy in Part IV are forerunners of the UNO convention on the Right to Development, are inalienable, fundamental human rights and are justiciable by themselves. Against this background, what is the likelihood of the above mentioned criteria being fulfilled under the NREGA as it presently is?

7.2. Rural Distress and Gender

7.2.1. Employment Adequacy basic to Guarantee

Debate on this Act all over the country has highlighted the fact that the Act guarantees only 100 days of employment for the entire household. In rural India the Labour and Work Force Participation Rates reflect greater participation of women than men. Also, the over all Labour Force and Work Force participation of both men and women are on the decline emphasizing the dwindling availability for the rural poor of manual labour. The continuing existence of a large incidence of poverty in rural India; rural employment growth slowing down in the late 1990s; deceleration in the growth rate of the work force in rural India in the period 1993–1999 and how in the same period employment stagnated or declined in several States like Andhra Pradesh, Karnataka, Maharashtra, Tamil Nadu and Himachal Pradesh are well-documented facts. The Current Daily Status data on unemployment indicates that in the 1990s in rural areas unemployment levels were very high in Kerala, West Bengal and Tamil Nadu. These were even higher for women in Kerala, West Bengal and Assam. While this rural distress was general, the distress was greater among rural women than men. For example, the Economic Survey for 2004-05 of the Government of Andhra Pradesh acknowledges, based on NSSO data that the rural Labour Force participation rates in the State declined in 1999 - 2000, compared to 1993 - 94. This is not an encouraging scenario, admits the Survey. Still, participation rates for women remained high indicating dependence on wage labour. Whereas for all India the rural female Labour Force participation rate was 220 in 1999 -2000, for Andhra Pradesh it was as high as 387. The same goes for the Work Force participation rates which were for rural Andhra Pradesh women 355 in 1999 – 2000 against 204 for all India. Thus, rural distress is high, both men and women participate in work but women's participation as also their distress level is higher. Against this background the NREGA 2005 restricts the work opportunity to just one person in the household. This deprivation of full employment for the household in this programme, therefore, acts as a discrimination more cruelly against the needs and rights of women. The NREGA 2005 also represents regression in regard to workers' rights and welfare compared to the past. For the sake of a proper perspective, let us look at the Employment Assurance Scheme (EAS) that Prime Minister Narasimha Rao framed for the country in 1993 for 1752 most backward blocks in 257 districts. It assured employment for two adults in the household for 100 days each. Admittedly, the word guarantee was not used nor was that concept even conceded in the EAS. However, the EAS spelt out what an employment programme should be like for the poor. Yet, 12 years after that scheme which was a harbinger, the poor get a scheme in 2005 that actually reduces their entitlement by half! There is another significant and fundamental difference between the NREGA and the EAS, which impacts adversely on the poor. The EAS laid down that whenever at least 20 adult persons demand work during the lean season they should be provided employment by opening new works. It also provided that the Block Development Officer may, in his discretion, open new works even if only 10 such persons demanded wage employment. While this was the concept in 1993 in the EAS, the NREGA of 2005 stipulates that a new work shall be commenced only if at least 50 labourers become available for such work and if such labourers can not be absorbed in the ongoing works. This again is regressive compared to the provisions of the EAS formulated 12 years earlier. Thus, the criterion relating to adequacy of the number of days of employment an employment guarantee programme of this kind should provide for the household stands unfulfilled. Therefore, it is essential to change the provisions in the NREGA in regard to two basic issues, namely, from guaranteeing just 100 days of employment to the entire household to guaranteeing 100 days of employment to every adult in a household and to provide for commencement of works whenever at least 20 adult persons demand work, including a provision

for discretion for the Intermediate Panchayat to open new works even if only 10 such persons demanded wage employment. This would restore to the rural poor the rights which had been recognized in the EAS of 1993.

7.3. Government, the Model Employer

7.3.1 A Living Wage

In the NREGA Government has assumed the role of an employer. In the specific context of the REGS, three issues are relevant – the quantum or adequacy of wages; the period within which the wages are paid; and the cash: kind ratio in the daily wages. In regard to all these, as an employer, the Government has a fundamental responsibility to the labouring poor including in regard to the conditions in which they work. In regard to the adequacy of wages payable and the conditions of employment, the Constitution of India is clear. The Government is talking of the NREGA as an important step towards the realization of the right to work. For the workers, for that right to be meaningful, the wages must be as defined in the Constitution. Article 43 clearly lays down that it shall be the endeavour of the State to secure, including through suitable legislation, to all workers agricultural, industrial or otherwise, a living wage. The Supreme Court has clarified (*R.B. Employees Association v Reserve Bank - AIR 1966*) that a living wage means that every earner should be able to provide for the family not only the essentials of food, clothing and shelter but also a fair measure of frugal comfort and an ability to provide for old age or evil days. The Supreme Court in its rulings has distinguished between a minimum wage, a fair wage and a living wage in that order and has said that the political aim in India is a “living wage”. The minimum wage concept is incorporated in the Minimum Wages Act, 1948. The Constitution of India came into force in 1950 and the Constitution speaks of a living wage and not a mere minimum wage. It is, therefore, deplorable that the Act is still stuck on the so-called minimum wages instead of providing for them the constitutional living wage. Put simply, the minimum wage itself, after the Constitution came into being, should be a living wage based on the principles laid down by the Supreme Court. If this is not done, the Right to Work to which the NREGA Guidelines refer is rendered meaningless. Right to Work can not exist with out adequate wages. A living wage alone can guarantee the Right to Work. The NREGA is thus very adverse to the poor rural worker in regard to wages as it still talks of a minimum wage instead of a living wage and prescribes as a standard a low wage rate of Rs. 60.

7.3.2. Pay Daily wages Daily

The Supreme Court has also laid down (*Surinder Singh AIR 1986 SC*) that the Central and State Governments are expected to function like model and enlightened employers even in the employment of persons on daily-wage basis. For the labouring poor in an employment guarantee programme a question as crucial as the adequacy of the wages is also how punctually the participating labourer will get her wage for her toil. Section 3 (3) of NREGA says that “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”. This is highly ambiguous. In Schedule II to the Act, which lays down the conditions for minimum entitlement of labourers, condition 32 reads that “the State Government may prescribe that a portion of the wages in cash may be paid to the labourers on a daily basis during the period of employment.” Which of these three alternatives will constitute an “entitlement”? Only payment of wages on a daily basis will, which is what

even a village landlord does. However, the NREGA has left this basic issue to the State Governments by giving three choices and obviously the latter will choose what is administratively most convenient to them, which is a fortnightly payment. This is what many States have done. A fortnightly payment of wages is not going to protect any poor woman from hunger. It will only drive her to the usurious village money lender for her consumption loans. That can not be the objective of a National Rural Employment Guarantee Act which wants to change the geography of poverty. The right course of action is to ensure that daily wages are paid daily.

7.3.3. Cash: Kind ratio in Wages

Condition 31 in the same schedule states that wages may be paid either wholly in cash, or in cash and kind, provided that at least one-fourth of the wages shall be paid in cash only. Payment of 75% of the wages in kind actually takes away the promised wage guarantee from the poor worker. In any kind of employment programme cereals and other ingredients of every day nutritive value, whose price is affordably fixed, should form part of the wages for such wages to be real and guarantee food security. So, there is nothing wrong in the payment of wages in cash and kind. In this context it would be worth recalling that in the corresponding provision in the EAS of 1993 receipt of wages in food grains was made optional depending on the price in the open market, the objective being that the workers would be enabled to obtain food grains at prices not higher than those that may be notified by the Government of India from time to time. Nevertheless, the food component in the daily wage should never be more than what corresponds to the daily intake needs of a household. In other words, what has been called “entitlement” in condition 31 in Schedule II encouraging 75 percent of wages as food grains is really a disenfranchisement because this disproportionate quantity of food grains in the total wages of a poor worker preempts her accessing her non-cereal and non-food needs which can be bought only with the cash component of the wages. A concept of this kind is a violation of the Right to Food and therefore of Life of the participating rural labourer. Such a provision as this irrationally disproportionate use of food grains was actually responsible for the several irregularities witnessed in the erstwhile National Food for Works Programme (NFFWP) in the country, especially in Andhra Pradesh in the early 2000s.

Thus, in the matter of payment of wages the Act disenfranchises the poor comprehensively in regard to the adequacy of wages, the period within which the wages are to be paid and the cash: kind ratio in the wages. Since this cancels the very concept of guarantee, the Government of India should start immediate redress of this distortion in regard to all these aspects on the lines suggested here including making the payment of wages in food grains optional depending on the prices in the open market, the objective being that the workers would be enabled to obtain food grains at prices not higher than those that may be notified by the Government of India from time to time. The Planning Commission of India should simultaneously initiate pro-active steps in this context to construct with out delay a living wage for the poor in India, consistent with the Supreme Court’s guidelines referred to here.

7.4. Role of Panchayats in Decentralized Self-governance

7.4.1. Payment of Wages – Gram Panchayats, Post offices and Banks

Section 13 of the NREGA states that the Panchayats at all the three levels shall be the principal authorities for planning and implementation of the Schemes under the NREGA and the Act goes on to assign responsibilities to the Gram Panchayat in Sections 16 and 17 of the Act. The Operational Guidelines issued by the Government of India have also reiterated that at least 50 per cent of the works in terms of costs will be allotted to the Gram Panchayat for execution, that this is the statutory minimum, and that the Programme Officer or the District Programme Coordinator may allot more works if deemed feasible. As mentioned earlier the central point in the Act as far as the poor are concerned is the quantum of wages they will get for their toil and whether they will get those wages in time, that is, on the same day. Daily receipt of daily wages should be the touchstone to evaluate whether or not the NREGA has meaning for the poor. This can be best ensured by this responsibility to disburse the wages being unambiguously entrusted to a local institution, viz., the Gram Panchayat, with out any qualifications. While the central government's Operational Guidelines say that payment of wages is the responsibility of the implementing agencies, major part of who are the Gram Panchayats, it is significant that the Gram Panchayat is not exclusively empowered under the Act to disburse the wages to the participating poor at the village level. The Guideline on this is that provision may be made to facilitate payments through the post office and other financial institutions. It is not clear at all why the post offices or banks should be used in the REGS when the Act itself does not mention post offices at all. It is not clear either why the post offices should be used to disburse wages to the participating labourers, when we have a Gram Panchayat, which is a locally available institution. Importantly, it should be pointed out that it is not as if every village, leave alone every habitation in the country has a post office. In an advanced State like Andhra Pradesh we had 13,681 branch post offices in 2004, same number as in the year 1996, against a total number of 28,123 inhabited villages and 21, 176 gram panchayats. The number of habitations will be very many more. There are areas where the participating labour will have to go several kilometers away from their place of residence or the worksites to the Mandal headquarters where alone a branch post office is located to receive their wages.

We cannot have an arrangement in a programme that claims to stop migration for work, by which people go long distances spending money once every fortnight to receive their wages. While post offices or banks may afford safety to the nervous bureaucrats in the Government in terms of accounting for the money meant as wages, it is doubtful if the branch post offices or bank branches are even today really poor people's institutions and readily accessible to the poor in a user-friendly sense in physical or administrative terms. State Governments and the people have very little control over the branch post office, just as in the case of the banks. Since the Act repeatedly says that the Gram Panchayat is the principal authority for implementation of the REGS the Gram Panchayats should be made responsible to disburse the wages exclusively at the work spot, preferably daily. This would be the logical culmination and final proof of successful implementation of a wage guarantee programme. With out doubt we have plenty of problems with the Panchayats given the feudal attitudes and discrimination in some places but we have to make a beginning some day of trusting our Gram Panchayats as part of our fight for genuine poor people's participation, empowerment and self-governance at the grass roots level. If the powers

that we do not want to go the whole hog even at this late hour, we can start at least with those Panchayats that have as their Presidents dalits, Scheduled tribes, backward classes and women and other panchayats who want to make an honest job of it. Though the post office idea is part of the Central Guidelines, State Governments can consider whether they can make a start with the Gram Panchayats on their own in this regard in the interest of upholding the spirit of the Constitution 73rd amendment. This will also act as a corrective to the line of control of key agencies in this programme which prima facie appears top heavy including at the field level. State Governments can have a non-intrusive, supportive, training-oriented watch on the wage disbursements made by the Gram Panchayats by a NGO-Government set up as part of the Social Audit capacity building and checks and balances needed in the Scheme. The advantage here will also be that wages would be received every day by the labouring poor, which is the most essential of all fundamental rights in the context of an employment guarantee. In the worst case scenario the poor labouring class should at least have a choice – the Gram Panchayat or the branch Post Office (only where branch post offices are located within a radius of 1 kilometer of the habitation), both helped by the supportive watch of the joint NGO-Government set up, for receiving their wages.

The choice regarding the branch post offices must be made by the workers after they evaluate their experience with their own locally elected representatives in the first instance and not preempted by the central Government's preferences for mobilizing savings. In the problem relating to payment of wages the bottom line is the recognition by Government that it is incorrect on its part to expect the rural working class, especially women to wait for a fortnight or even a week to get their wages. If one takes a look, for example, at the well-written guidelines framed in the Andhra Pradesh Government's Operational Manual pertaining to payments by the post offices one will find that they involve some 30 steps. It is likely those steps are all legitimate to safeguard public funds. If, instead, the wages disbursement responsibility were entrusted to the Gram Panchayats and even if they involved 30 similar steps and even a few more, we would have achieved a huge milestone in the honest empowerment of our panchayats in financial terms and trained them in the management of development works. We should not miss this opportunity of promoting decentralization and village self-governance.

Empowering Gram Panchayats is also empowering the poor in terms of their realizing their own power in the context of deepening democracy, the power of their vote and the benefits of reservation in electoral politics including for women electives at the grass roots level. It is high time, therefore, the Government of India entrusted financial powers to Gram Panchayats in the REGS. The NREGA should be amended to provide direct responsibility to the Gram Panchayats in regard to the physical disbursement of wages to the participating labour at the village level. That will be the first step taken in genuine village self-governance and fighting graft in the programme. That step should be taken at once because the feedback received about the post office arrangement in certain States is particularly disturbing as seen also in Mr. Gopal's findings described elsewhere in this book. In some areas the working poor themselves have had to open accounts in post offices by paying Rs. 50 in each case of an adult and obtain their wages from the branch post master in the presence of two witnesses putting up with all the bureaucratic hurdles placed in their way. Gross delays have also been experienced in the receipt of wages. Continuance of this post office arrangement will be a blow delivered both at the concept of decentralized governance and at the wage earning poor.

7.4.2. Issue of Work Orders

Another measure the Government of India needs to take in genuinely empowering Gram panchayats is to strictly scrutinize the guidelines issued by the State Governments to see if they are consistent with the spirit of its own instructions. The Guideline of the Government of India in the matter of sanctioning of works in regard to those to be implemented by the Gram Panchayats is that, after the administrative sanction and technical sanction had all been obtained in advance by December of the year preceding the proposed implementation, “the Gram Panchayats are the appropriate authorities empowered to ‘start’ works by issuing work orders and to allocate employment among persons who have applied for work”. However, one State Government has laid down in its guidelines that the “Gram Panchayats are the appropriate authorities empowered to ‘start’ works “after receiving work commencement orders from the programme officer.” This is in complete contradiction of the powers sought to be conferred on the Gram Panchayats in the Central Guidelines and demotes the Gram Panchayat to a virtual nullity. Once the administrative sanction and technical sanction had all been obtained in advance, there should be no further need for any bureaucrat to again issue work orders, sidelining the Gram Panchayat. That power of issuing work orders should be with the Gram Panchayat as the implementing agency. This helps also in reducing delays and speedy execution of works through elimination of one bureaucratic tier. The Centre should safeguard the interests of the Gram Panchayats through strict scrutiny of the REGS guidelines the States issue so that other parallel structures created by the NREGA or State Governments do not eat into the powers of the Gram Panchayats.

7.5. Unemployment Allowance

7.5.1. Pay full compensation

A disturbing feature of the Act in the context of the claim made to guaranteed employment is the one in Section 7 of the Act relating to payment of unemployment allowance. It is full of reservations and what is more the quantum of payment is so unreasonably restricted that it is a travesty of the concept of guarantee. It is obvious that if a person is not provided with employment despite the existence of a law providing a guarantee, the person denied employment by the failure of the state can not be faulted or penalized but should actually be more than fully compensated by the state. Instead the Act provides in Section 7 (2) for an unemployment allowance at a rate that shall not be less than “one-fourth of the wage rate for the first thirty days during the financial year and not less than one-half of the wage rate for the remaining period of the financial year.” If the wage rate per day, guaranteed in the previous section 6, “shall not be at a rate less than sixty rupees per day”, it is not clear why the poor labourer should be denied this guaranteed wage rate if the Government fails to keep its promise made to her in law and instead pay her only Rs. 15 for the first 30 days of unemployment and Rs. 30 for the rest of the period of her unemployment. It is not the poor woman’s fault that the Government broke its contractual obligation and promise of guaranteed employment to her that she has to be penalized. This is violation both of the promised guarantee and even the rule of law. This also violates the right to life of the participating poor. In fact, if a Government fails to fulfill its promise of a certain wage rate, it should pay a rate higher than what it had promised by way of a wage rate to the deprived

person including a penalty amount, and not the other way round. Such a provision would also act as a deterrent to non-fulfillment of the promised guarantee of employment by the government and compel the political establishment to properly oversee the functioning of its bureaucratic machinery so as to ensure that the promised guaranteed employment is indeed generated and provided to the poor. Far from this, the Act does not even intend to punish delays in payment of unemployment allowance or pay a penalty for the delays. This is clear from Section 8 of NREGA where all that the poor are promised is a mere assurance that the State government shall take all measures to make the payment to the concerned household “as expeditiously as possible”. Also objectionable in this context is the rider in Section 7(2) that the Act stipulates in regard to the payment of unemployment allowance by making a reference to this payment being subject to the “economic capacity” of the State Government. Surely, the Government could not have enacted the NREGA without assessing its own economic capacity! This kind of reservations detracts from the philosophy governing the guarantee concept in this Act. This position emphasizes again the obligation of the Government to provide a living wage in the work programme under the NREGA, a wage well higher than the so-called minimum wage and pay appropriate unemployment allowance to those denied their right to work. The Government should amend the Act to provide for full unemployment allowance based on a living wage with appropriate penalty and fix a time frame of no more than a fortnight for making payment for every week of employment denied.

7.6. Women and Work Sites

7.6.1. Crèche – a Gender and Child Right

An important strategy for defending and expanding the rights of the poor, especially of women, is to fine-tune schemes in a manner that they pull together and incorporate the various rights that are due to the various participants in such schemes. NREGA could have been an excellent example of this in regard to gender and child rights but has sadly failed to be one because of the manner in which it has been drafted. In the NREGA 2005 the Government’s claim relates to right to life with dignity of the working people and changing the geography of poverty. Poverty is multi-dimensional. For the poor, fundamental rights are actually their basic needs. As explained earlier, in rural areas women’s participation in employment is very high. Poor rural women work till late in to their pregnancy and from days immediately after delivery. The former require rest while at work and the latter need to breastfeed their infants – both these in privacy. These are verily the inalienable rights of these women and their infants and these entitlements of theirs are part of their right to work and right to life with dignity. These are rights that come under Article 21 of the Constitution in Part III and under Articles 42 and 43 in Part IV. In the context of the labouring women these rights can be protected through the provision of a crèche at the worksite or, depending on circumstances, in the village of residence of the participating labour including by modifying the terms of reference of the mandate of the existing ICDS anganwadis. These rights were indeed sought to be protected by the EAS of 1993, which stipulated that the facilities that should be provided at each work site should include, in addition to drinking water and first aid, “crèches for the small children of workers”. Whereas the 1993 EAS stipulated a crèche, 12 years later the NREGA of 1995 does not even mention the crèche. It wants, merely, in addition to the drinking water and first aid needs, provision of a “shade for children”. A shade can presumably be even that of a tree or a tarpaulin and that is not just what the labouring woman at work or her infant children are entitled to.

The need for a crèche in this context is vital as its absence is a serious violation of the Constitutional commitment made in Article 42 which stipulates that the State shall make provision for securing just and humane conditions of work and for maternity relief. A crèche can definitely be designed to provide in the REGS women and child care related facilities including nutrition and micro-nutrition even if the government may not fully provide maternity benefits to the women EGS workers, though according to the case law benefits under the Maternity Benefits Act 1961 can not be denied to the women employees engaged on muster roll on the ground that they are not regular employees [Municipal Corporation of Delhi v Female Workers (Muster Roll) – AIR 2000 SC].

A crèche that provides services during the day for 8 to 9 hours, six days in a week, when the female working mothers are away at their work, to the children especially in the crucial 0–3 years cohort; a cohort that hardly benefits today in the centrally sponsored ICDS programme in any worthwhile manner, is what we need in the NREGA and the Rural Employment Guarantee Schemes of various States as a real help and an entitlement to the rural working women labourers. The rights of the women labourers to rest in privacy while at work especially during pregnancy, and to breastfeed their infants, and the right of the infant to her mother's breast, as also the safety and security of the children when their mothers are at work are fundamental ingredients to the right to work and the right to life of a woman. These will be violated if all that a law can provide is a mere "shade" and not a properly designed crèche. Since this has crucial relevance to the concept of guaranteed employment to women, the Government of India should redress this serious omission by promoting the setting up of crèches at the work spots. While it can be argued that providing crèches at different work spots is logistically difficult, a beginning should be made in the long-delayed start for converting the ICDS anganwadis into crèches all over India, beginning from the NREGA Districts, - a reform that is a crying need to make the ICDS programme relevant to the rights both of the rural working class mother and her child. It will be a great boost to women in realizing the benefits of the NREGA. Even if the Government of India fails to show the will to set this omission right, at least certain State Governments, who often lay claims to being "progressive", can show the initiative required. There is no reason why a State REGS should not provide services that are more progressive than what is indicated in the NREGA. Workers groups should demand this.

While on this, mention needs to be made of a reference to crèches in the Operational Guidelines issued by the Government of India on the worksites, though the Act itself does not mention crèches. The relevant Operational Guideline states: "Worksite facilities are to be ensured by the Implementing Agency. Medical aid, drinking water, shade, and crèche if there are more than five children below the age of six years will have to be provided (NREGA, Schedule II, Sections 27 and 28)." The actual position, however, is that the NREGA does not mention the crèche at all in conditions 27 and 28 of Schedule II. When the law itself does not speak of what should be done to safeguard the interests of women and children, and in fact states that something inferior to the crèche may be provided in the form of a "shade", the State Governments would prefer to follow the provisions of an Act rather than the guidelines on implementation. Even the effect of this reference to the crèche is cancelled as the next Guideline states: "If more than five children below the age of six years are present at the worksite, a person (preferably a woman) should be engaged under REGS to look after them. Suitable provisions should be made for this in the cost estimates". This is not the same thing as the provision of a crèche. It must also be pointed out that the current economic fact is that today India, more than at any time before, can afford the outlays to expand the ICDS anganwadis into crèches to serve the interests of the rural working women participating in the benefits under the NREGA and their infants and children. A

Crèche is a fundamental institutional need for employment security and therefore for employment guarantee for the rural female labour. People's Constitutional rights belong in the realm of the law and not in the operational guidelines. The crèche should, therefore, be made an entitlement in the NREGA and the provision for it should be shifted from a casual reference in the Operational Guidelines to the Act itself.

7.7. The Differently Abled

7.7.1. Self Employment, the Answer

The National Human Rights Commission of India had written to the Government when the NREGA was being drafted seeking inclusion of the disabled in the NREGA. This was done by way of a provision in the Guidelines issued by the Government of India. One of the State Governments in its Operational Manual refers to disabled women being engaged to take care of children below 6. This is a great risk to the children considering that the physically disabled women in reality can not be in a position to physically keep pace with the children of that age group. This problem would remain with those who would be lame or would not have the full use of their hands etc., The hearing-disabled may not have the same problems but in their case children who are playing behind their backs or not within their sight and may get into trouble, can not draw their attention for help. Thus, the concept of the disabled looking after the children in the 0-6 cohort or any cohort is not a safe one and is indeed a risky one and needs to be dropped. The same goes for old men or women who may have disabling conditions such as acute arthritis, impaired vision and hearing etc., as those conditions restrict mobility and quick, reflex responses that are so essential for child care. There is need for the Government of India and the states to consult the representatives of the differently-abled to understand their problems and to spell out details of the work that can be entrusted to the differently-abled so that they can discharge safely items of work like dispensing drinking water, accounts keeping, disbursing of wages, muster roll maintenance, working at computers etc., keeping their literacy levels as also their physical limitations in view. All this apart, the most relevant and substantial step that the Government of India needs to take in regard to the differently abled is to promote a Self Employment Guarantee Scheme (SEGS) for them within the NREGA with adequate margin money and bank credit to be administered at the Intermediate Panchayat level. A variant of this, to begin with, could be to ensure the right of all the disabled to shelter under Articles 19 and 21 of the Constitution by sanctioning them houses that can be built under their own supervision with guaranteed wages to them for their work. The NREGA, 2005 needs to be amended to include a guarantee for the differently-abled on these and similar lines.

7.8. The Future

7.8.1. Role of Activists

An important promise of the present Government in the 2007-2008 Budget is that this Act currently under implementation in 200 Districts of the country will be extended to 330 districts in the year 2007-2008, though the financial outlays commensurate with this have not been made in the budget. This is part of the Government's earlier commitment to extend the NREGA to the entire country within five years. It is, however, clear that a view of the NREGA, 2005 from a rights perspective highlights the fact that the problems in implementation that are

faced at present and would be faced in the future are intrinsic to the provisions of the Act itself and that, therefore, all those provisions in the Act that are unfriendly to the poor need to be removed or changed on the lines suggested here to defend and expand the rights of the poor and provide the poor with an employment guarantee that truly promotes a genuine right to work for them. The problems in implementation brought out so clearly and in such detail in the foregoing chapters by Dr. K.S. Gopal including especially those seen at the time of the implementation of the CEC's pilot in Anantapur district of Andhra Pradesh in 2006 validate the points made here in this chapter. An urgent task, therefore, awaits the activists to ensure that these rights denials are not perpetuated in the Act as it gets extended to the rest of India in the years to come. In this struggle to ensure the most basic rights of the poor it would be essential for the activists to be prepared to take recourse to the mechanism of the Public Interest Litigation (PIL) available to them on the basis of the provisions of the Constitution and the evolving case law as laid down by the Supreme Court of India.