

## Constitutional Vision of Right to Livelihood and Right to Work through MGNREG Act, 2005 — An Overview

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### I. Introduction:

The principle aim of socialism is to eliminate inequality of income and status and standards of life, and to provide a decent standard of life to the working people<sup>3</sup>. Democratic socialism aims to end poverty, ignorance, disease and inequality of opportunity<sup>4</sup>. More than 70% of our people live in villages and 80% of our people are poor and live in rural areas. The benefits of economic growth are not percolating to more than 2/3<sup>rd</sup> of our population. The divide between the rural and urban areas in terms of economic infrastructure is widening by the day. Crop failures due to unpredictable climatic variations inability to meet the rising cost of cultivation and increasing debt burden, are among the factors that lead our farmers to growing frustration that is being expressed in extreme ways<sup>5</sup>. In this context the legal frame work and the concept of legal empowerment through institutional reforms become imperative. The five estates<sup>6</sup> of the state would inevitably play an important and significant role in determining what constitutes the basic requirements of the people and how they are enforced. The National Rural Employment Guarantee Act, 2005<sup>7</sup> (here-in-after called as NREGA) is one of the examples made to provide basic entitlements of the rural unemployed.

The Indian Constitution is a social document and Supreme law of the land. The founding fathers of the Constitution have incorporated a well planned constitutional manifesto under Part IV of the Constitution to achieve socio-economic justice. Articles 39 (a) and 41 require the state to secure to all the citizens an adequate means of livelihood and right to work. The Supreme Court of India on number of occasions categorically affirmed that right to livelihood is an integral part of the right to life under Article 21 of Constitution. Though the State introduced a number of poverty alleviation programmes, this colourful dream still remained a utopia in the lives of the millions of people in this great country.

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3 *D.S. Nakara v. Union of India*, AIR, 1983 SC 130

4 *G.B. Panth, University of Agriculture and Technology v. State of Uttar Pradesh* (2000)7 SCC 109

5 *Somnath Chatterjee, The Hind, Monday, May 12, 2008, Hyd.*

6 Legislature, Executive, Judiciary, Media and Civil Society.

7 *It was renamed by the Govt. of India as Mahatma Gandhi National Rural Employment Guarantee Act, 2005 w.e.f 2nd October, 2009.*

The Government of India in order to bring a significant transformation in the economic conditions of rural population has realized that the subject of employment and livelihood in rural area is an issue of top priority as Common Minimum Programme and therefore enacted National Rural Employment Guarantee Act, 2005.

In recent times no legislation has received as much importance as NREG Act, 2005 in the context of socio-economic justice. The proposed programmes (here-in-after called as NREGP) under this Act are completely different from earlier endeavours made by the State and Central Governments, to the requirements of the constitutional vision of right to livelihood and work. The Act ensures a stable economic base with an intention of capital investment by creating valuable rural assets. The prime object of the Act is to increase substantial participation of the local people by assuring 100 days of employment during a season. Obviously this improves the bargaining capacity of the rural workers and tried to transform the rural socio-economic relations to the expectations of the Directive Principles of State Policy of the Indian Constitution. In fact this is one of the social welfare legislations made to render economic justice to the poor. During the working of this Act from 2005 to 2010 it faced substantial criticism like mis-management, corruption, diversion of funds, mis-use of funds, etc. The proposed research paper enquires into the vision of Constitution to guarantee right to livelihood and right to work and how this has been carried out through National Rural Employment Guarantee Act, 2005.

## **II. Poverty and Problems of the Rural Poor:**

The theme of the World Food Day, 2010 is *united against hunger*. This theme was chosen to recognize the efforts made, first against the world hunger at national, regional and international levels. “...with the population of just one billion, India is with the world’s largest democracy. In the past decades, the country has witnessed accelerated economic growth, emerged as a global player with world’s 4<sup>th</sup> largest economy in purchasing power parity terms, and made progress on most of the millennium development goals. However poverty remains a major challenge. According to the revised official poverty line 37.2% of the population (about 410 million people) remains poor making India home to one third of the world’s poor people”<sup>8</sup>.

The recent report of the World Food Programme, the United Nation’s Food Agency, which states that 18,000 children die of hunger and mal-nutrition everyday underscores the urgent need for all Governments to respond to poverty in all its manifestations. Poverty is probably the most serious human rights and development challenge both advanced and development countries faced<sup>9</sup>. The

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8 Indian Country - an overview April, 2010, <http://www/WorldBank.org.in>

9 Rajkumar C, “Poverty Human Rights and Development” *The Hindu*, Thursday, February 22, 2007, Hyd.

large majority of our people live in rural areas and rural labour constitutes about 80% of the total labour force. The urban labour is to a large extent organized because it is concentrated in identifiable pockets and is easy to organize. This is particularly true of industrial labour which is by and large well organized as a result of trade union movement. But rural labour is mostly unorganized subjective to mass exploitation and injustice. The real problem is how to end this exploitation and injustice to unorganized rural labour? The problems which the rural labour faces are almost entirely problems arising from poverty, ignorance and illiteracy. They are symptomatic of a feudal, traditional, status oriented, in-egalitarian and economically back ward society marked by extreme poverty of large masses of people and intolerable social and economic equalities<sup>10</sup>

The Indian Peasant is born in debt, live in debt and bequeaths debts. This was the post-independent saying. Unfortunately it remains without change. Agricultural and non-agricultural activities in rural areas are typically seasonal. After 60 years of post independence's planning through 5 years development plan India still remains in the list of developing countries, at its heart - its villages. These are the conditions of rural poor. The question is how the law will help in this context to come out from poverty and put an end to the human exploitation and ensure social justice?

### **III. Constitution Vision of Right to Livelihood and Right to Work:**

The Constitution of India embodies a distinct thought, philosophy and declared that India will be a social welfare state. The concept of welfare State is reflected in the Directive Principles of State Policy which mandates the State the economic, social and political goals to be achieved. Article 38(1) directs the State "to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political shall inform all the institutions of national life". Article 38(2) directs the state to strive "to minimize the inequalities in income and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also groups of people residing in different areas or engaged in different occasions". The importance given to part-IV of the Constitution is reflected in the speech of Dr. B.R. Ambedkar who insisted to the use of word "**Strive**" in Article 38(2):

*"We have used it because it is our intention, that even when there are circumstances which prevent the Government, or which stand in the way of the Government giving effect to these directive principles, they shall even under hard and unpropitious circumstances, always strive in the fulfillment of these directives,..... Otherwise it would be open for any Government to say that the circumstances are so bad, that the finances are so inadequate that we cannot even make*

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10 Justice P.N. Bhagawati "Unorganized Rural Labour" (1984) 3 SCC (Jour) 44.

*an effort in the direction in which the Constitution asks us to go<sup>11</sup>.”*

In the drafting of the Indian Constitution the members of Drafting Committee disliked the Directive Principles as mere precepts and in the end they supported them in the belief that half-a-loaf was better than none. Obviously Article 38 envisages a device to mitigate the sufferings of the poor, weak or under privileged, suppressed and oppressed sections of the people and to elevate them to the level of equality to lead a life with human dignity. Article 39(a) requires the state to direct its policy towards securing to all citizens irrespective of sex, equally the right to an adequate means of livelihood. Article 39 sounds the intention of the framers of Constitution to provide means of livelihood which supports the minimum substance of human life as such the citizens in the country are not constrained to take up such avocations which are detrimental to their health and strength. The same can be read as fundamental right under Article 21 which reads “no person shall be deprived of his life or personal liberty except according to the procedure established by law”. Therefore, Articles 38 and 39 embody the distributive justice. The Supreme Court in *Central Inland Water Transport Corporation’s* case<sup>12</sup> affirmed that the Constitution permits and directs the state to administer the distributive justice. According to the concept of distributive justice in the sphere of law making connote, inter alia, the removal of economic inequalities rectifying the injustice resulting from dealings and transactions between unequals in society.

Article 41 directs that the state should provide the right to work within its economic capacity and development and make effective provision for securing the right to work; to education and public assistance in case of unemployment; old age; sickness; and disablement and in other cases of underserved want. Article 41 contemplates the State to formulate its policy in respect of securing the means as well as ends of economic justice. Prima facie Article 41 requires the state to make out the ways and means to ensure the right to work which is a vital measure of economic security. Further it also envisages that the State should bestow its attention and efforts in securing education to its citizens because education generates opportunities for all citizens to improve their skills. Further the Constitution requires the State for the distribution of ownership and control of the material resources of the community to the common good<sup>13</sup> and to ensure the economic system does not result in concentration of wealth and means of production to the common detriment<sup>14</sup>.

Right to livelihood is embodied in the International Human Rights. Article

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11 Constituent Assembly Debates, 19-11-1948, vol. VII, p.495.

12 *Central Inland Water Transport Corporation v. Brojo Nath Ganguly*, (1986) 3 SCC 156.

13 Article 39 (b) of the Indian Constitution.

14 Article 39 (c) of the Indian Constitution.

25 of Universal Declaration of Human Rights (UDHR) stipulates that everyone has right to a standard of living adequate for the health and well being of himself and his family including food. This provision is further elaborated in the International Covenant on Economic, Social and Cultural Rights, ratified by 151 countries including India. Right to food is recognized in the Convention on Rights of the Child 1989 and Convention on the Elimination All Forms of Discrimination Against Women. Right to food of indigenous people is implicit in the ILO Convention No.169 which is approved by 17 countries. Around 151 nations have ratified the ICESCR-1966 having a primary obligation to implement the right to food for their people. Approximately 20 countries in the world have incorporated right to food in their national laws<sup>15</sup>.

#### **IV. Poverty Jurisprudence – Indian Judiciary:**

Article 21 is the celebrity provision of the Constitution and occupies a unique place as a fundamental right for the people of India. It protects the life and liberty of an individual which reads as “no person shall be deprived of his life or personal liberty except according to the procedure established by law”. Prof. Sathe comments “The Supreme Court of India in its post emergency judicial activism expanded the rights of the people through liberal interpretation of the constitutional provisions. Post emergency judicial activism was inspired by a philosophy of the constitutional interpretation that looked at the Constitution not as mere catalogue of rules but as statements of constitutional governance<sup>16</sup>”. In *Maneka Gandhi’s* case<sup>17</sup> Supreme Court in its creative interpretation has ruled that the phrase ‘procedure established by law’ in Article 21 does not mean ‘any procedure’ laid down in a statute but ‘just, fair and reasonable procedure; and that the term ‘law’ in Article 21 envisages not only any law but a law which is right, just and fair, and not arbitrary, fanciful or oppressive. This ruling of the Supreme Court influenced the entire constitutional jurisprudence in India and is responsible for several implied fundamental rights under Article 21 of the Constitution.

*Olga Tellis* case<sup>18</sup> the court held that the ‘right to life’ guaranteed by Article 21 includes the ‘right to livelihood’. The Supreme Court has ruled that the eviction of a person from pavement or slum inevitably leads to deprivation of his means of livelihood and, therefore, reasonable fair and just procedure must be followed for the purpose. The Supreme Court while ruling on the right to livelihood categorically said:

*“It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and*

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15 Right to food security bill is pending before the Parliament of India.

16 S.P. Sathe, *Judicial Activism in India*, Oxford University Press, New Delhi (2002) p.12

17 *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

18 *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180

*execution of death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because no person can live without the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest ways of depriving a person of his right to life would be to deprive him of his means of livelihood. In view of the fact that Articles 39(a) and 41 require the State to secure to the citizen an adequate means of livelihood and the right to work, it would be sheer pendency to exclude the right to livelihood from the content of the right to life”.*

The Supreme Court has reiterated in several decisions that right to life includes right to food, clothing and shelter. In case of *Madhu Kameshwar v. State of Bihar*<sup>19</sup> the court ruled that on the death of last male holder in an agricultural tribal family, the dependant family members have the constitutional remedy of continuing to hold the land so long as they remain dependant on it to earn their livelihood. The court has protected the economic interest of the tribal women depending upon the agriculture for their livelihood. In *All India Imam organization v. Union of India*<sup>20</sup>, *Imams* who performed religious functions in the mosques were not paid any remuneration for their work. The Supreme Court held that the right to life enshrined in Article 21 means the right to live with human dignity and therefore the *Imams* are entitled to get remuneration. The Court directed the *Wakf* Boards to pay remuneration to all whole time *Imams*.

The Supreme Court expressed serious concern about the increasing number of starvation deaths and food insecurity despite overflowing food in FCI godowns across the country. The Bench comprising Justices Kirpal and K.G. Balakrishnan even broadened the scope of the petition from the initially mentioned six drought-affected States, to include the entire country. In its several hearings, the Court directed State Governments to ensure that all public distribution shops are kept open with regular supplies and stated that it is the prime responsibility of the Government to prevent hunger and starvation. Further the court held :

*“ In our opinion what is of utmost importance is to see that food is provided to the aged, infirm, disabled, destitute women and destitute children, especially in cases where they or members of their family do not have sufficient funds to provide food for them. In case of famine, there may be shortage of food, but here the situation is that amongst plenty there is scarcity. Plenty of food is available, but distribution of the same amongst the very poor and the destitute is scarce*

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19 AIR 1996 SC 1864

20 AIR 1993 SC 2086

*and non-existent leading to malnourishment, starvation and other related problems”<sup>21</sup>.*

According to the Court the Food Security Schemes are entitlements of poor. The Court directed the Government to submit compliance reports to the programmes like Antyodaya Anna Yojna, the National Old Age Pension Scheme, the Integrated Child Development Services (ICDS) Programme, the National Midday Meals Programme (NMMP), the Annapurna Scheme and several employment schemes providing food for work.

#### **V. National Programmes for Alleviation of Poverty:**

Social Justice and poverty alleviation has been primary objectives of the Indian Planning since its inception. The strategy of direct attack on poverty through rural development and rural employment was first initiated in the year 1970. With V<sup>th</sup> plan, poverty alleviation came to be accepted as one of the principle objectives of economic planning in this country. During 1970s a number of special programmes for the rural poor were undertaken of which the important were Small Farmers’ Development Agency (SFDA), Marginal Farmers’ and Agriculture Labourers’ Agency(MFAL), Draught-Prone Areas’ Programme (DPAP), Crash Scheme for Rural Employment (CSRE), Pilot Intensive Rural Employment Project (PIREP) and Food for Work Programme (FWP). None of these programmes comprehensively covered the whole country though in certain parts of the country some of these programmes operated simultaneously for the same target group<sup>22</sup>. In the light of these experiences the Government of India from 1979 onwards brought comprehensive programmes to fight against the rural poverty. They are discussed as under :

- **IRDP-1979** : Integrated Rural Development Programme was conceived as anti-poverty programme aimed at helping the small and marginal farmers, landless labourers and artisans. It was thought by the planners that these people were poor because they possessed neither any productive assets nor any special skill. Therefore, the IRDP was designed to help the poor by creating new assets for them. These assets would include sources of irrigation, bullocks and implements besides inputs like seeds and fertilizers for farming, animals for dairy and other animal husbandry activities and tools and training for cottage industries and handicrafts. The basic strategy was self-employment of the poor with the help of these assets so that they may manage to earn enough to rise above the poverty line.
- **TRYSEM-1979** : Training Rural Youth for Self-Employment was started with an objective of tackling unemployment problem among the rural youth. Under this scheme 40 youths were to be selected

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21 *People’s Union for Civil Liberties v. Union of India* W.P(C) 196 of 2001.

22 Misra and Puri, *Indian Economy*, Himalaya Publication House(2009) p.216.

from each block and for being eligible for selection, the persons should belong to a rural family having an income less than Rs.3,500/- p.a. In making selection, members of scheduled castes and scheduled tribes were given preference. Under the scheme, a minimum of one third of the rural youths trained were to be women. Later this scheme was merged into *Swarna Jayanthi Gram Swarozgar Yojana*.

- **RLEGP-1983** : Rural Landless Employment Guarantee Programme was conceived with an objective of expanding employment opportunities for the rural landless. The programme aimed at providing guarantee of employment to at least one member of the landless household for about 100 days in a year. Under this scheme, infrastructural development was undertaken with a view to create employment opportunities for the rural landless. Though the programme was to be fully financed by the Central Government, the implementation of the programme was entrusted to the States.
- **JRY-1989** : *Jawahar Rozgar Yojana* was the scheme for the intensive employment creation in 120 backward districts. However, later on it felt that there was no need to have separate NREP, RLEGP and *Jawahar Lal Nehru Rozgar Yojana*. These wage employment programmes had the same objectives and similar thrust. Therefore, these programmes were merged into a single rural employment programme and was renamed *Jawahar Rozgar Yojana*.
- **NREP-1989** : The National Rural Employment Programme was meant to help that segment of rural population which largely depends on wage employment and has virtually no source of income during the lean agricultural period. Under the NREP development projects and the target group oriented employment generation projects were closely intertwined. The programme was implemented as a centrally-sponsored scheme. But its financial burden was to be shared between the Central Government and the State Governments on 50:50 basis.
- **SGRY – 2001** : *Sampoorna Grameen Rozgar Yojana* was scheme of Jawahar Gram Samridhi Yojana and Employment Assurance Scheme were fully integrated with SGRY. SGRY aims at providing additional wage employment in rural areas. This scheme was cash and food grains components and centre bears 75 per cent and 100 per cent of the cost of the two with the balance borne by the States and Union Territories.

The above community development programmes aimed at all round development of villages. The emphasis on agriculture extension, minor irrigation, poverty alleviation and other development activities. But these programmes could not yield progress on various reasons.



## **VI. National Rural Employment Guarantee Act, 2005:**

The National Rural Employment Guarantee Act, 2005 is an outcome of the commitment of the Central Government to bring significant and positive changes in the structural, functional and normative aspects of the unemployment of rural masses. The State has solemn constitutional responsibility to provide means of livelihood and right to work to its citizens. This endeavour reflects in the preamble of the Act with opening words “an Act to provide for the enhancement of livelihood security of the households in the rural areas of the country ...” Productive absorption of under employed and surplus labour force in rural sector has been major focus of planning for rural development. In order to provide direct supplementary wage-employment to the rural poor through public works, many activities were undertaken by the Government of India through National Rural Employment Guarantee Act, 2005<sup>23</sup>. It is a programme based on constitutional right to demand work, not dependent on whimsical largesse of the State<sup>24</sup>. The Act is made to bring a radical change in the affairs of rural labour, employment, wage and legal entitlements.

**VI. I. Aims and Objectives of the Act :** The intention of the Central Government’s Minimum Common Programme is to achieve social welfare and social justice through the National Rural Employment Guarantee Act, 2005. The aims and objectives are<sup>25</sup>:

- To provide a legal guarantee for one hundred days of employment in every financial year to adult members of any rural household willing to do public work-related unskilled manual work at the statutory minimum wage.
- To improve the purchasing power of the rural people, primarily semi-skilled or un-skilled work to people living below poverty line in rural India. It attempts to bridge the gap between the rich and poor in the country. Roughly one-third of the stipulated work force must be women.
- To recognize employment as a right (even if it is limited to 100days for household), and Government’s obligation to meet the demand.
- To create durable assets and strengthening the livelihood resources in the villages.
- To provide substantial participation of the local people in the villages in the monitoring of the specific schemes of work proposed by the respective Governments.
- To strengthen local self Governments by assigning specific

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23 Statement of objects and reasons of the Act.

24 Mihir Shah, “The real radicalism of NREGA” *The Hindu* Thursday, May 22, 2008, Hyderabad.

25 For detailed discussion see the provisions of the National Rural Employment Guarantee Act, 2005.

responsibilities in implementation of various provisions of the legislation at *Gram Panchayat*, Block and District levels.

- To establish a Central and State employment guarantee councils for review, monitoring and effective implementation of the programmes.
- To provide transparency and accountability, audit, establishment of governance and redressal mechanisms and penalty of non-compliance of the provisions of the Act.
- To provide minimum wage to the workers as per the Minimum Wages Act, 1948.
- To provide unemployment allowance in case the job seeker does not get employment within 15 days of submitting the application to the respective *Gram Panchayat*.
- To make the Ministry of Rural Development (MRD), Government of India responsible to monitor the entire implementation of this scheme in association with state governments

**VI. II. Creating Durable Assets and Sustainable Development :** Apart from the above aims and objectives, the Act is designed to create durable assets and sustainable development. Much emphasis was made on construction of earthen dams, bunds and ponds as a part of watershed development strategy. The Act also concentrated to provide irrigation facilities to the lands belonging to Scheduled Castes and Scheduled Tribes. The works undertaken are<sup>26</sup>:

- Water conservation and water harvesting;
- Drought proofing (including afforestation and tree plantation);
- Irrigation canals including micro and minor irrigation works;
- Provision of irrigation facility to land owned by households belonging to the Scheduled Castes and Scheduled Tribes or to land beneficiaries of land reforms or land of the beneficiaries under the *Indira Awas Yojana* of the Government of India;
- Renovation of traditional water bodies including distilling of tanks;
- Land development;
- Flood control and protection works including drainage in water logged areas;
- Rural connectivity to provide all-weather access. The construction of roads may include culverts where necessary and within the village area culverts may be taken up along with drains.
- Any other work which may be notified by the Central Government in consultation with the State Government.

**VI. III. Social Security and Labour Welfare :** The Act incorporated a number of social security and labour welfare measures and complied the minimum

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<sup>26</sup> See Schedule-I of the Act.

requirements of labour Legislations<sup>27</sup>:

- Every person working under the scheme shall be entitled to wages at the Minimum Wage Rate fixed by the State Government for agriculture labour under the Minimum Wages Act, 1948.
- Equal wages shall be paid to both men and women workers, under the provisions of Equal Remuneration Act, 1976.
- Safe Drinking water, shades for children, periods of rest and first-aid box shall be provided at every work site by the implementing agency.
- A person preferably a woman should be engaged to attend to children if there are more than five children on a work site. This person will be paid wages in the same way as the other workers on site.
- If any labourer gets bodily injury during the course of employment at work site, the person is entitled for free medical treatment from the State Government.
- In case of hospitalization of the injured labourer, the respective State Government shall provide complete treatment, medicines, hospital accommodation without any charge and the injured person will be entitled for daily allowance which shall not be less than 50% of wage rate applicable.
- In case of death or permanent disability to the registered labourer due to accident at work site, an *exgratia* payment of Rs.25,000 or such amount as may be notified by the Central Government shall be paid to the legal heir of the deceased or to the disabled as the case may be.
- If the workers are willing then the State Government may consider dovetailing wage payments under Rural Employment Guarantee Scheme with Social Security arrangements.

**VI. IV. Unemployment Allowance :** If the worker who has been applied for work under the Act is not provided employment within 15 days from the date on which the worker is requested, an unemployment allowance shall be payable by the State Government at the rate prescribed in the Act. The programme officer shall be responsible for prompt payment of an employment allowance. In the event of any delay the recipients shall be entitled to compensation based on the same principles as compensation under the Payment of Wages Act, 1936<sup>28</sup>.

**VI. V: Right to Information:** The Right to Information Act should be followed both in letter and in spirit in all matters relating to NREGA. Sec.4 of the Act which concerned protective disclosure of information should be strictly complied with at all levels. Key documents related to NREGA should be protectively disclosed to the public. Therefore, the people under this Act have Right to

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<sup>27</sup> See the operational guidelines of the Act.

<sup>28</sup> *Ibid.*

Information and Right to Access to Information<sup>29</sup>.

**VI. VI: Transparency and Social Audit:** An innovative feature of NREGA is complete transparency in process of administration and decision making. The responsibility of elected representatives and Govt. functionaries to answer questions and provide explanations about relevant action and inaction to concerned and affected people<sup>30</sup>. The Social Audit organized by the Rajasthan Government and conducted by NGO's, found that irregularities amounting to around one crore. Number of FIRs, mostly for using faulty machinery and materials, have been lodged and more are likely to be registered<sup>31</sup>.

**VI. VII. Organizational Setup:** Chapter IV of the National Rural Employment Guarantee Act is a categorical description of an important and key agencies involved in implementation and enforcement of the provisions of the Act. The Ministry of Rural Development is the principal nodal agency for implementation of NREGA. The Ministry will setup the Central Employment Guarantee Council (CEGC) popularly known as Central Council, which is responsible for advising the Central Government on NREGA. The Head quarters of Central Council shall be in Delhi<sup>32</sup>. The Council is not only an advisory body but also monitoring authority to look into the working of the Act. For this reason the central council is the highest body in the functional hierarchy<sup>33</sup>. At the state level there shall be a state Council which is known as State Employment Guarantee Council for the purpose of regular monitoring and reviewing the implementation of the Act within its jurisdiction<sup>34</sup>.

The State Government will designate a district programme coordinator (DPC), who can be either the executive officer of the district panchayat or District Collector or any other district level officer of appropriate rank. The DPC is responsible for overall coordination and implementation of the scheme in the district. Apart from DPC at the district level organizations like NGOs, State and Central Government undertakings, self-help groups can also be identified as implementing agencies. The State Government shall delegate financial and administrative powers to DPC and the programme officer for effective implementation of the scheme. The district panchayats will be responsible for finalizing the district plans and for monitoring the NREGA in the district<sup>35</sup>. At the block level a programme officer appointed with necessary infrastructure

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29 *Ibid.*

30 *Ibid.*

31 Sonia Misra, "Shady Jobs" *The Week*, November 8, 2009, p.16.

32 See Section 10 of NREGA, 2005 for details of administrative setup and the structure.

33 See section 11 of NREGA, 2005.

34 See section 12 of NREGA, 2005.

35 See section 13 & 14 of NREGA, 2005.

and supporting staff for implementation of the work under NREGA. The programme officer is responsible to district programme coordinator with number of powers in dealing with the affairs of NREGA<sup>36</sup>. The gram panchayat place a pivotal role in the implementation of NREGA. It is responsible for planning of works, registering households, issuing of job cards, allocation of employment, identification of beneficiaries, executing 50% of works and monitoring the implementation of the scheme at village level<sup>37</sup>. The NREGA also authorizes to take up, monitor and supervise the works and to conduct social audits to gram sabha<sup>38</sup>.

## VII. Conclusion :

The NREGP under the Act of 2005 is the biggest programme undertaken in the history of India to fulfill the desired constitutional goals of Social Justice and Social Welfare. Social Justice is a dynamic concept of Indian polity to mitigate the sufferings of weak, poor, destitute and deprived sections of the society. NREGA is designed to bring substantial degree of socio-economic equality through legislative process. The Act guarantees employment in rural area only to those who apply for it with a hope to use the surplus labour in nation's building.

Right from the inception of the Act, there is persistent and consistent criticism on the operational aspects of the NREGA by saying that the funds of the scheme are misappropriated, misused and diverted. Recently, the Supreme Court in *Centre for Environmental and Food Security's*<sup>39</sup> case directed the Central Bureau of Investigation to conduct an investigation in working of the

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36 See section 15 of NREGA, 2005.

37 See section 16 of NREGA, 2005.

38 Section 17 of the Act outlines that : (1) The Gram Sabha shall monitor the execution of works within the Gram Panchayat. (2) The Gram Sabha shall conduct regular social audits of all the projects under the scheme taken up within the Gram Panchayat. (3) The Gram Panchayat shall make available all relevant documents including the muster rolls, bills, vouchers, measurement books, copies of sanction orders and other connected books of account and papers to the Gram Sabha for the purpose of conducting the social audit.

39 *Center for Environmental and Food Security (CEFS) v. Union of India and Others* (2011) 5 SCC 668 at pp 674-675. According to Supreme Court a survey was conducted by Delhi based CEFS to assess and evaluate the performance of National Rural Employment Guarantee Scheme (NREGS) under Mahatma Gandhi National Rural Employment Guarantee Act–2005 (MGNREGA) in the State of Orissa. The findings of CEFS survey are shocking, scandalous and outrageous. The survey findings have revealed that there is participatory loot, plunder and pillage in Orissa with regard to funds allotted to NREGS. After hearing from Comptroller and Auditor General of India (CAG), the National Institute for Rural Development (NIRD), the Government of Orissa and from interested parties, the Supreme Court directed the CBI to conduct free and fair investigation in respect of implementation of the provisions of NREGA and submit its first report within six months from the date of the order.

NREGA. Further, the CAG in its report pointed out that there is not even enough staff, and what little there is, is not trained for the work and responsibilities cast upon it by the employment guarantee ; There is also no arrangement for planning at the field level, no annual plans by the *Gram Panchayat*, inadequate system for supervision and control. The legacy of earlier wage employment schemes has continued, with the predominance of official decision making, often in combination with the influence of powerful local interest<sup>40</sup>. The writers are under the opinion that *Gram Panchayats* have been designated as the Chief Implementing Agency but they have not been provided with support structure and required staff to execute the programme. The Supreme Court also lamented that money is not reaching to actual beneficiaries<sup>41</sup> But the situation is now slowly changing. The Supreme Court stated that some states in north eastern region and Andhra Pradesh have done a good job for implementation of the NREGA<sup>42</sup>.

In spite of the criticism, speed breakers and bottlenecks the NREGA is doing well<sup>43</sup>. An empirical data and field reports of the different social organizations reveals that there is an improvement in consumption of benefit by the rural poor, reduction of labour migration, considerable increase of off-season wage rates, increase of community property, sustainable development of natural resources, increase of the bargaining power of the rural labour and revival of rural economy. This shows that the NREGA is a partial fulfillment of the plight of the Directive Principles of State Policy. This needs support from all sections of the society.

### VIII. Suggestions:

- One of the important objectives of NREGA is to improve the community property and sustain development by creating durable assets, on the other hand the criticism on the working of NREGA is the Government is wasting money in the name of repairs and renovations of the projects already undertaken when completed. The writers are under the view that the Government should note that the schemes and NREGA is not meant to meet political unemployment but to fulfill the Constitutional vision of economic justice.
- The budgetary allocations to NREGA are to meet the purpose of social justice. Unfortunately, the funds allotted to this scheme have been diverted by some state governments for other purposes. This was

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40 *Lalit Mathur* "transforming rural India" *The Hindu*, Sunday, May 4, 2008, Hyderabad.

41 *The Hindu* April 7, 2010.

42 *Ibid.*

43 Jayati Ghosh "Far from failure" *Frontline* February 15, 2008 p.88. The writer defended the NREGP is a potential source to transform rural economy and social relations in many ways.

pointed out by CAG in several occasions. In this context, it is appropriate to give specific directions to the states to spend money only for that purpose. Therefore, the state should make an audit mandatory at the end of every financial year with all means of transparency. This should be strictly complied to meet the ends of justice.

- Agriculture in India basically stands in two important seasons namely *Rabi and Kharif*. These seasons strictly differ from region to region. During this period the farmer is busy with agriculture work like nursery bed preparations, transplantations and harvesting. He needs special support from the agriculture labour during this time. Therefore, a Programme Officer and the Programme Co-ordinators should avoid undertaking of works during these seasons.

Due to inflation, the amount of wage allotted by the State Government as the minimum wage is sufficient to meet the needs of the day. Therefore, there is an urgent need of review of the minimum wage offered under NREGA. A uniform minimum wage throughout India is the ideal principle.