

Livelihood Security with Special Reference to National Rural Employment Guarantee Act 2005 – A Legal Analysis

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Poverty is one of the most important concerns of this century. It is atrocious that there are still people in rural area who are still living in poverty, and their conditions of extreme poverty is such that and they are not even in a position to provide enough food for their family members. India claims self-sufficiency in production of grains. Right to Food is an entitlement to be free from hunger which derives from the assumption that the society has enough resources, both economic and institutional to ensure that everyone is adequately nourished. Right to livelihood can be corollary of the fundamental right to life under Article 21 of the Constitution. When one scans the literature on agrarian crisis, many changes that have happened in the rural society are mainly attributed to the commercialization of agriculture, incidentally, machines were used for cultivation, farming, etc, so the Poor Rural people who are landless farm workers lost their job and it leads them to starvation, vagrancy.² Livelihood of the rural farm workers were forced to suffer, and here it is essential to know that *Right to Livelihood* which guarantees as the fundamental right in our constitution.

The Universal Declaration of Human Rights by the United Nations affirms that everyone has the right to life.³ The International Covenant on Civil Political Rights 1966, which India has ratified, affirms that Every human being has the inherent right to life⁴ the Declaration on the Right to Development adopted by the UN General Assembly in 1986 affirms that equality of opportunity to development is a prerogative of Individuals within a nation and that states have a duty to formulate appropriate development policies that aim at the wellbeing of all individuals on their Meaningful participation in development and in the fair distribution of the benefit resulting there from. It also calls for State Intervention for the realization of the right to development by ensuring equality of opportunities for all their access to basic resources.

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2 BARDHAN PRANAB, *Poverty, Agrarian Structure, Political Economy in India*, OUP, New Delhi, See also N. PURENDRA PRASAD, *Right to Farmers in the context of suicide in Andhra Pradesh*, Indian Journals of Human Rights. Vol.7, Nos.1 & 2, UPE 2003

3 Article 3 of the Universal Declaration of Human Rights, 1948

4 Article 6 of the International Covenant on Civil and Political Rights, 1966

Indian constitution guarantees Right to Life in Article 21.⁵ The Judiciary widened the scope of Article 21 and guarantees Right to Livelihood, Shelter and Clothing, etc. The *Francis Coralie vs Union Territory of Delhi*⁶ Supreme Court held that Right to Life includes the Right to Live with human dignity and all that goes along with it, namely, the basic necessities of the life such adequate nutrition, clothing and shelter. In *Shantistar Builders vs Narayan Khimalal Totame*⁷, the Supreme Court said, “Basic needs of Man have traditionally been accepted to be three – food, clothing, shelter”.

“In *Unnikrishnan vs State of Andhra Pradesh*⁸ case states that in order to treat a right as a fundamental right, it is not necessary that it should be expressly stated as in part III, of the Constitution. The provision of part III⁹ and part IV¹⁰ are supplementary and complementary to each other.”

“The effect of holding all such basic rights as fundamental rights are not that every hungry man will knock at the door, or a job-less, unemployed man will seek for a livelihood through court. In *Olga Tellis*¹¹ case Court said, “If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way to deprive him of his means to livelihood to the point of abrogation.”

Right to life means, living with dignity and this dignity can come only with employment. India is a welfare state where the Government cannot abdicate its responsibility towards the weaker sections of the society. Our Constitution has provision under Article 41¹² and Article 43¹³ and both these Articles and the preamble are the basis of the National Rural Employment Guarantee Act 2005.¹⁴

Under this Act it guarantees for the enhancement of livelihood, security of the poor households in rural areas by providing at least one hundred days of guaranteed wages employment in every financial year to every household, whose adult members volunteer to do unskilled manual work and for matters connected there with or incidental thereto.¹⁵ Every person who has done work given to him under the scheme shall be entitled to receive wages at the wage rate for each

5 Protection of Life, and personal Liberty.

6 AIR 1981 SC 1746

7 AIR 1990 SC 630

8 (1993) 1 SCC 646 in para 165

9 Article 12-35 of Indian Constitution

10 Article 36-51 of Indian Constitution

11 AIR 1986 SC 180

12 Right to work, to education and to public assistance in certain cases.

13 Living wage etc, for workers.

14 NREG ACT is an ideas that was first evolved through National Food for Work Programme that was launched in November 2004, Employment Guarantee Bill was tabled in Parliament on December 21, 2004.

15 Section 3(1) of National Rural Employment Guarantee Act.

day work¹⁶ and daily wages paid weekly or in any case not later than a fortnight after the date in which such work was done¹⁷. It is the Central Government or State Government that makes provision for securing work to every adult, member of a household. According to this Act, it guarantees employment only for the member (or) head of a household who has completed 18 years of age¹⁸. Member of household includes relation by blood, marriage or adoption and residing¹⁹ together sharing meals or holding a common ration card, and they have to apply for employment under this scheme. The speciality of the Act directs the State Government to publish about the scheme in local Newspapers, which shall be in the vernacular language circulating in the area or areas to which such scheme shall apply.²⁰ The act also guarantees the minimum wages to the rural employees who are employed under the scheme²¹. National Rural Employment Guarantee Act is a boon for rural unskilled labourers. It provides right to life but at the same time when a person is registered under the scheme and is not provided such employment²² within 15 days of the submitting application for employment, is entitled to receive $\frac{1}{4}$ of the wage for first thirty days and not less than $\frac{1}{2}$ of the wage rate for the remaining period of the financial year²³.

Section 5 of Schedule II of the Act imposes certain conditions for guarantee of employment under Rural Employment Scheme. It is that every adult member of every household resident of rural areas and also who is willing to work as unskilled manual worker is only eligible to seek employment under this Act. This provision guarantees the right to work in gram level so that the economy of the village may increase. It may also guarantee that the rural people may utilize this opportunities to give better standard of life to their family members. The guarantee of Rural employment may directly help the children below 14 years in the villages as they may get right to education guaranteed under Article 21-A of the Indian Constitution. This is the result of the elders going to work and curbing child-labour, an unerasable menace. Literacy rate will definitely increase.

The State under its constitutional power has formulated a number of legislations pertaining to women engaged in unorganized sectors, or as unskilled labourers. The women's rights are protected under the purview of Article 15(3)²⁴

16 Section 3(2) of National Rural Employment Guarantee Act

17 Section 3(3) of National Rural Employment Guarantee Act

18 Section 2(a) of National Rural Employment Guarantee Act

19 Section 2(b) of National Rural Employment Guarantee Act

20 Section 4(2) of National Rural Employment Guarantee Act

21 Section 3 of the Minimum Wages Act, 1948. Minimum wages must not only provide for bane subsistence of life but also for presentation of efficiency or workers. It must also provide for some measures of medical requirements and amenities.

22 Section 7(1) of National Rural Employment Guarantee Act

23 Section 7(2) of National Rural Employment Guarantee Act

24 State shall make provision for the advancement of women.

and Article 16.²⁵ As per the Equal Remuneration Act 1976 imposes a duty on the employers not to pay less payment to the women workers than the men.²⁶ The Act also assured minimum 33% participation for women at the work sites. Special preferential treatment was given to the Women Employees. The untiring efforts taken by the International Labour Organisation to bring about significant changes in the work place conditions have resulted in the ILO guidelines regarding employment of women, which is also incorporated in this scheme. The provision of Factories Act 1948 relating to safe drinking water, shelter for children and periods of rest, first aid boxes and also emergency treatment for minor injuries and other health hazards connected with the work being performed shall be provided at the work site²⁷. In case the number of children below the age of 6 years accompanying their mothers, the women working at any site less than five or more in number. As per the Act there is a provision to depute one of the women workers to look after children. If any person who is working under the scheme suffered minor injuries, the State Government shall arrange for such hospitalization including accommodation, treatment, medicine and payment of daily allowance not less than half of the wage rate paid for the injured. If a person employed under this scheme dies or become permanently disabled by accident arising out of and in the course of employment he (or) she is entitled to receive ex-gratia payment at the rate of Twenty Five Thousand Rupees.²⁸ In case of death the amount shall be paid to the legal heirs of the disabled,²⁹ as the case may be.

Conclusion:

The National Rural Historic Employment Act is a boon for the rural poor, unskilled labourers. This Act paved way for the Rural Development as well as the upliftment of downtrodden, indigenous people. After the implementation of the Act at least one or two crore people may be given guaranteed 100 days employment in a financial year for two months. The Right to development includes development of the poor, illiterate, suppressed people. The dream of the Father of our Nation Mahatma Gandhi about Rural development – (as villages are the heart of our country) – to achieve socio – economic justice - is within our reach.

The Act includes the nature of work such as development and improvement of water conservation and water harvesting, irrigation or canals, land development, flood control and protection works including drainage of storm-water clearing in

25 State has to provide equal opportunity in employment

26 Section 4 of the Equal Remuneration Act 1976

27 Section 5, Schedule II conditions for guaranteed Rural Employment under a scheme and Minimum Entitlement of Labourers. See also Section 18 of the Factories Act 1948.

28 Section 3 of the Workmen Compensation Act 1923.

29 Section 3 of the Workmen Compensation Act 1923.

water– logged areas, Rural connectivity to provide all weather access. These are all welcome measures under the scheme directly helpful for the sustainable development. The Act has emerged itself and to-day a vast change is taking place. The people have now realized that the Act enshrines work as a right of the people of rural areas. It also puts the onus on the people to demand work. If the government as well as panchayats monitor this scheme, then definitely it would help in the rural development and it would eradicate the concept of starvation, and gradually poverty can be pushed to an unknown planet. Awareness of such scheme is the first step. Utilization is the next step. Bettering oneself and the state is the final step which would illumine the lives of the poor ignorant rural people. The policies of the government are only then achieved 100% on overall growth and development can then be definitely claimed.