

# Budget TRACK

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## Foreword

The second issue of the second volume of Budget Track is coming out at a time when the air is pregnant with all kinds of expectations regarding the forthcoming union budget. The UPA Government at the centre has spent more than six months in power with its coalition partners, which shares diverse interests and varied economic agenda. The influence of these larger political processes on the functioning of the government is manifested in almost all the policy formulations it is making. While the progressive forces in the coalition are trying to pressurise the government to go for such policies, which were laid down in the National Common Minimum Programme, the Government is clearly trying to strike a balance between its commitments towards the neo-liberal agenda and the pro people needs. In this issue of Budget Track, we are trying to capture some of these developments in the overall macro economic scenario over last six months of UPA governance. Tracking these developments as the context, the present issue highlights the implications of the Ordinance on patents for the domestic economy, the issues relating to the commitments the Government has made regarding universalisation of education and the employment guarantee in the rural sector. The Guest column by economist and activist Smita Gupta on the National Rural Employment Guarantee Bill tabled in the Parliament on 21st December 2004, highlights the major lacunae in the Bill in its present form and exposes the hypocrisy of the present government in dealing with the most critical concern of our times - "job for all"

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The ouster of the NDA government in 2004 was clearly a verdict against pro-market neo-liberal policies. The different constituents of the UPA coalition have framed a National Common Minimum Programme (NCMP) as the guiding framework for Government policy. The UPA government has promised to maintain a higher rate of economic growth and that growth process must generate more employment, must be equitable, socially just and humane.

The Finance Minister in his Budget Speech enumerated the following objectives as laid down in the NCMP as key thrust areas in the Budget viz,

- Maintaining a growth rate of 7-8% per year for a sustained period;
- Providing universal access to quality basic education and health;
- Generating gainful employment in agriculture, manufacturing and services, and promoting investment;
- Assuring 100 days of employment to a person from each poor household; focusing on infrastructure development;
- Accelerating fiscal consolidation and reform and ensuring higher and more efficient fiscal devolution.

The UPA government has also promised in the NCMP for *doubling agricultural credit* in three years,

levied an education cess of 2 % over all types of taxes including income tax, corporation tax, excise duties, custom duties and service tax. *This cess is expected to yield about Rs. 4910 crore during the fiscal year 2004-05.* The total collections from the cess would be earmarked for education including providing a nutritious cooked mid-day meal. However, the UPA government has actually allocated only Rs. 559.8 crore over the revised estimates of 2003-04 budget. Under Sarva Shiksha Abhiyan, the only comprehensive scheme for universalisation of elementary education, the government has released less than 25 % of the meager spent amount during 2004-05.

Table 1

Approvals Made Under SSA (in Rs. Crore)

Year	Total Outlay	Amount Released by GoI
2001-02	1106	499.9
2002-03	3411	1569.3
2003-04	8547	2732.3
2004-05	10973	2600.0

This clearly shows the apathy of the government towards crucial sectors like education despite the enactment of *Right to Education Bill* in 2002. Let us have a look at some of the promises the government had made in its NCMP and the progress done so far as education is concerned.

**Public Expenditure on Education Upto 6% of GDP:** The total budgeted expenditure (both Centre and States taken together) on Education, Sport,

# Six Months of UPA Governance

-Ramanand Ram

accelerating the completion of irrigation projects and *investing in rural infrastructure*, providing farm insurance and livestock insurance, improving agricultural product markets, and promoting agri-businesses, drinking water for all, expanding water harvesting, watershed development and minor-irrigation and micro-irrigation schemes etc.

It has been more than six months that the UPA government has come in power. In this issue of Budget Track, our attempt is to review the policies of the government in terms of issues that affect the common people in a more significant way.

## EDUCATION

The Government in its NCMP has promised to increase public spending on education up to 6 % of GDP in a phased manner. In order to provide basic education to all children, the government

Art and Culture during the year 2003-04 was around Rs. 80444 crore which increased to around Rs. 84728 crore during 2004-05. As a proportion of GDP at current market prices (projected value) it declined from around 3.05 in 2003-04 to 3.01 in 2004-05.

**Reversing the Trend of Communalisation of Education:** As a clearly laid out principle in the NCMP, the government should have been very cautious against the infringement of communal elements in the educational system in India. However, the recent report of the D.Bandhopadhyay Committee provides disturbing evidences on not only how deep the RSS has penetrated into the premier academic institutions of the country but also gives an insight into how public funds were misappropriated for rabidly communal, unscientific and illogical researches to

suit the communal and *brahminical* outlook of the Hindutwa forces.

**Education for all irrespective of the paying capacity:** Notwithstanding the precarious situation of higher education in India, even in the age group 6-14 years, around 4 crore children and around 14 crore children in the age group 14-18 are out of school due to several reasons including financial and social conditions.

**Central Government to fund substantially for national cooked nutritious mid-day meal scheme:** However, the present UPA government has not raised even a single rupee on the scheme when we compare the allocations made in the interim budget of the previous government for 2004-05.

## HEALTH

The UPA government has stated in the NCMP that it will raise public spending on health to at least 2-3% of GDP over the next five years with focus on primary health care. However, the UPA government has not spent anything more than what was proposed in the interim budget of the previous government.

To our further disappointment, the budgeted expenditure on health and family welfare as a proportion of GDP at current market prices has gone down from 0.84 to 0.83 between 2003-04 (RE) to 2004-05 (BE).

Only 17 per cent of all health expenditure in India is borne by the government, the rest being borne privately by the people, making it one of the most highly privatised healthcare system of the world.

Also, the UPA government has promised to introduce a national scheme of health insurance for poor families. The present design of the Universal Health Insurance Scheme (UHIS) is skewed in the favour of non-poor. Till May 2004, only a very small number (11408) of poor families living below the poverty line have been covered by this scheme.

## EMPLOYMENT GUARANTEE ACT-2004

On 21<sup>st</sup> December 2004, the Ministry of Rural Development tabled the National Rural Employment Guarantee Bill in the Parliament. For a long time now, rural unemployment has been a serious concern in the context of rural poverty. However, the draft bill on National Rural Employment Guarantee does not give a legal guarantee of employment at the statutory minimum wage. This is against all ethics of an employment guarantee. In the latter part of this issue of Budget Track, we have discussed the relevant concerns in detail for the purpose here, let us focus on some of the steps taken by the present government in this regard.

- The Union Government has actually cut down the expenditure on rural development from Rs. 15518.76 crores in 2003-04 (RE) to Rs. 11455.96 crore in 2004-05(BE) –a reduction of around 26 %.
- In case of rural employment programmes, the major reductions have been in the food grain component and special component of the Sampoorna Gramin Rozgar Yojana. In the scheme, the estimated allocations got almost halved from around Rs. 9640 crores in 2003-04 (RE) to Rs. 4590 crores in 2004-05 (BE).
- A reduction in foodgrains components of SGRY has been by around 75 % -from Rs. 1038 crores in 2003-04 (RE) to Rs. 260 crores in 2004-05 (BE). It is well acknowledged that the provision for food grains as a part of wage has been very crucial in rural areas especially in draught prone areas to provide food security among the poor. A step back in this direction at the same time when FCI godowns are piling up in excess grains is quite unfortunate.

At a time when government is taking credit for introducing employment guarantee, the actions it is taking in the policy direction is exactly the opposite to the desired one.

## FRBM ACT

The Finance Minister in his budget speech 2004-05 proposed that the government is obliged to wipe out the revenue deficit by 2008-09 under the FRBM Act 2003(see following table). It is argued that the elimination of revenue deficit will open up fiscal space by up to 3% of GDP for enhanced public investment without undermining fiscal prudence.

However, if the government fails to achieve this target through higher tax revenues then the necessary adjustment would be made through cutting expenditures.

Any cut in expenditure to comply with the Act means that even the low and inadequate provisions for employment, education and other goals listed in the National Common Minimum Programme will be further sliced down.

Further, under this Act the Central Government cannot borrow even from the Reserve Bank of India (i.e., deficit financing being ruled out) to meet its deficit except for temporary cash advances. This forces the government to borrow at much higher rate of interest from other sources.

The implications of the working of the Act are very serious and potentially adverse. The compliance conditions in the act that require cut in expenditures is a matter of worry in the present Indian context with very high rates of unemployment and poverty.

## Six Months of UPA Governance

“Only 17 % of all health expenditure in India is borne by the government, the rest being borne privately by the people, making it one of the most highly privatised healthcare system of the world”

Six Months of UPA Governance

Table 2  
FRBM RULES

<b>Revenue deficit</b>	
Date for elimination	31-3-2008 (now 31-3 2009)
Minimum Annual Reduction	0.5 % of GDP
<b>Fiscal deficit</b>	
Ceiling	3 % of GDP by 31-03-2008
Minimum annual reduction	0.3 % of GDP
Total debt	Increase capped at 9 % of GDP in 2004-05
Annual reduction	1 % of GDP
<b>RBI primary market purchases of GOI bonds</b>	<b>To cease on 1-4-2006</b>

Source: Macroscan 2004.

**ISSUES RELATED TO PATENTS:**

On 27<sup>th</sup> December 2004, the UPA government issued an ordinance to amend the Indian Patents Act, 1970 to allow product patents in pharmaceutical, food and chemical industries.

The Ordinance has substantially diluted the pre-grant opposition process which will have adverse impacts on the welfare of the common people. The pending applications in the mail box would be granted patents on their product unopposed and drug prices will shoot up.

The level of production of many essential drugs will be completely in the hands of the patent holders. This may create a demand –supply gap in our domestic market and eventually result in exorbitant rise in prices.

The domestic exporters of several generic drugs will suffer huge loss, as they cannot supply drugs

produced in India to any other country, which are presently not under any patent regime. Apart from an income loss to our domestic exporters, it will create a great hue and cry in many third world countries of Africa which depend substantially on the import of cheap Indian drugs related to HIV and other diseases. This is an issue that needs to be dealt with a philanthropic perspective.

The Indian Pharmaceutical Alliance (IPA) has cautioned against the possibility of a steep increase in the prices of several fast moving drugs. It also argues that in the absence of a clear definition for patentability, ever-greening of pre-1995 drugs would happen in the country.

**INVESTMENT ISSUES**

The Commerce and Industry Minister Kamal Nath is reviewing the Press Note 18 to provide foreign

“The level of production of many essential drugs will be completely in the hands of the patent holders. This may create a demand – supply gap in our domestic market and eventually result in exorbitant rise in prices”

**ACCESS TO ESSENTIAL DRUGS IN INDIA (2000)**

Based on the Statistical estimates received from WHO's country and regional offices and through the World Drug Situation Survey carried out in 1998-99, the Department of Essential Drugs and Medicines Policy of the WHO divided country into four categories.

1. Good Access to Essential Drugs-Countries in which 95-100 per cent of the population had access to essential drugs.
2. Medium Access to Essential Drugs- Countries in which 80-94 per cent of the population had access to essential drugs.
3. Low Access to Essential Drugs- Countries in which 50-79 per cent of the population had access to essential drugs.
4. Very Low Access to Essential Drugs- Countries in which 0-49per cent of the population had access to essential drugs.

While countries like the US, UK, Australia and even Sri Lanka fell under the best (95-100 per cent) categories; China, Indonesia, etc. fell under the second (80-94 per cent) category; and even Pakistan, Myanmar and Bangladesh were in the third (50-79 per cent) category; India fell in the last (0-49 per cent) category.<sup>1</sup>

<sup>1</sup> UNDP, Human Development Report 2002.

investors greater flexibility in executing expansion and new investment plans in India.

The government will do away with the restrictive provisions for all future joint ventures with foreign partners.

The new joint ventures and collaborations will be based on the free will of partners without any government interference, while existing joint ventures will continue to be protected by limited provisions.

The UPA government in its attempt to attract FDI is ignoring the interests of the domestic industry.

The domestic industrial lobby is of the view that modifying Press Note -18 would allow "back-door" entry for the foreign investors at the cost of domestic investors. The RBI report on Trend and Progress of Banking in India (2004) clearly admits that a major chunk of profits in the banking sector (37.1 percent of total operating profit) has come from the treasury income due to declining interest rate scenario. At a time, when the banking sector is holding government securities in large scale, in the form of sovereign debt, any attempt to allow FDI in this sector will certainly not be a move in right direction.

The government had announced in the last budget that FDI would be hiked in the telecom, civil aviation and insurance sectors. FDI cap has already been hiked in the civil aviation sector from 40 per cent to 49 per cent. The UPA government on February 2, 2005 has also cleared the proposal to

hike FDI in telecom sector from the current 49 per cent to 74 per cent. The telecom sector is a very sensitive, very strategic sector that has tremendous implications on our national security. If we recall the issue of 13 December 2003 attack on Parliament, the entire investigation process revolved around tracking telephone calls. Even the Intelligence Bureau has registered strong reservations against the proposal of foreign ownership in the telecom sector.

There is no guarantee that foreign investment would help improve network coverage and make phones available to those in villages and remote areas.

In the last six months of UPA regime the aspirations it brought in while coming to power were betrayed. Certainly in a democracy like ours where the sovereign power ultimately rests with the people, raising pro-poor issues and apparent support towards popular concerns, is a compulsion for the government. However, the real test of the governments' promises lies in its financial commitments towards those issues. The UPA government has certainly not been successful in their test.

Apart from all these issues, there are many other concerns, which are associated with the present government's performance over last six months. The Civil Society should act as a watchdog in tracking government policies in these issues. In the following sections we have discussed some of these issues highlighted above in a much more detailed manner.

## Six Months of UPA Governance

"Any attempt to allow FDI in banking sector will certainly not be a move in right direction"

*The third Amendment to the Indian Patents Act, 1970, if passed in its present form, is likely to adversely affect the availability, accessibility and affordability of medicines- three important components of people's right to health. The public campaign against the proposed legislation is heating up.*

*" We urge that before the Draft Bill is made into law, it must be altered, taking advantage of the leeway that already existed and which has been somewhat increased by Doha Declaration of 2001, to protect the interests of the Indian people against the MNCs".*

*- The Fourth People's Commission on Review of Legislations Amending Patents Act, 1970, October 2004.*

### MOVING TOWARDS TRIPS

On May 6, 1981, Indira Gandhi declared India's patent policy when she said her "idea of a better world is one in which medical discoveries would be free from patent and there will be no profiteering from life and death". Thus, Patent Policy in our country intended to create a balance between ensuring access of innovations to consumers at reasonable prices and protecting the rights of the innovators. Rather, it can be argued that for nearly two-and-a half decades of its existence, India's patent policy (The Indian Patents Act, 1970) was very favourable for the public at large. But for the last one decade, there has been a major shift in the Patents Policy towards greater protection of Intellectual Property Rights (IPRs).

This shift in the public policy on IPRs has occurred gradually over the past one and a half decade. In the initial stages of the "Uruguay Round" of negotiations under the aegis of the then General Agreement on Trade and Tariffs

Patent Laws to provide for a TRIPS compliant regime by January 1, 2005. A first attempt of 1995 by the Government of India to amend the patent law lapsed in parliament. After a dispute settlement procedure at the WTO – requested by the United States against the Government of India – another Indian attempt to get parliament approval failed. In order to comply with WTO/TRIPS, the Government of India finally issued in 1999 the Patents (Amendment) Ordinance, establishing a "mailbox" facility to accept product patent applications from 1 January 1995 onwards, and to provide Exclusive Marketing Rights (EMR) to such applicants. The Patents Second Amendment Bill, 1999, was finally cleared by Parliament in May 2002. However, as far as pharmaceuticals are concerned, Indian law continued to recognise only process patents.

Thus, the concept of what is patentable, protection for both product and process patents, the period of protection of 20 years, the provision of the mailbox facility for product patent applications to be opened only after December 31, 2004 and, in

# TRIPs – Compliance, Legislations and their Implications

-Nandan Kumar Jha

(GATT), India had been extremely vocal in opposing the inclusion of Patent laws in the negotiations. While the Uruguay Round was initiated in 1986, it was only in 1989 that India, succumbing under the pressure from the USA and European countries, agreed to include Trade Related IPR (TRIPs) in the negotiating agenda. These negotiations finally led to the formation of World Trade Organisation (WTO) and TRIPs agreement was adopted in 1994 as one of a package of agreements that WTO member-countries had to adhere to.

As per the provisions of the TRIPs agreement under the WTO, India was required to amend its

the interim period, between January 1, 1995 and January 1, 2005, for the granting of EMRs, and compulsory licences, have already been incorporated. Now, the present UPA government, in its zeal to meet this deadline has issued an Ordinance to this effect. This Patents (Amendment) Ordinance, 2004 was issued on 27 December 2004 when the Winter Session of the Parliament had just concluded, thus bypassing the more democratic and Constitutional mechanism to enact laws and policies of this nature. Thanks to earlier amendments, the term of patent protection has been extended from 7 to 20 years and Exclusive Marketing Rights (EMR) are available for drugs and

agro-chemicals, allowing manufacturers a monopoly over products even before their patent applications are approved.

To understand the implications of these amendments, we must compare the model act of 1970 with the changes that have been brought about through amendments.

### THE INDIAN PATENTS ACT, 1970

It may be remembered that the 1970 Patents Act, replacing the Colonial Patents Act of 1911, was formulated after an exhaustive process of discussions within the country- both inside and outside Parliament- starting from the Patent Enquiry Committee (1948-50) and subsequently, the Justice N. Rajgopala Ayyangar Committee (1957-59). These committees suggested that a patent system that focused on access to resources at lower prices would be beneficial to India. And indeed, the Patents Act, 1970 was, to a large extent, based on these recommendations. Indian Patent Act, 1970 regulates patents for products processed or manufactured in India. It allows product patents for non-chemical substances and process patents for chemical substances, including pharmaceuticals, agro-chemicals and food products.

One of the main provisions of the 1970 Act was that only process and not product patents could be granted in pharmaceutical, food and chemicals. Indian research institutes utilised this provision to reverse engineer technologies, build capabilities in them, and disseminate them cheaply to industry. Domestic industry used this clause to introduce imitated products to the Indian market, and in the case of drugs, this took place just four or five years after their appearance in the world market. Thus, the Indian patent structure enabled India to achieve self-sufficiency in the production of bulk drugs and prices of most drugs in India are lower than other countries. Through the provisions provided in the patent act and other measures, the pharmaceutical industry in India grew from just a handful of MNC players to today's approximately 16,000 licensed pharmaceutical companies. Today, India is the world's fourth-largest drug market in volume, and drugs often cost seven to ten percent of what they do in the USA or Europe. India's many generic drugs producers, such as Cipla and Ranbaxy, have thrived in an environment of limited patent protection on pharmaceuticals and exported cheap essential drugs around the world.

In case of Agriculture, India's patent policy allowed very little scope for grant of patents. Agricultural resources operated under the common heritage regime where agricultural goods were freely exchanged. The debate on the implications

of TRIPs on agriculture in India has focused more on plant variety protection; another form of IPR, rather than patents, as TRIPs allows India to exclude plant varieties from patent protection. However, the new patent regime will affect India's agricultural policy in following ways:

- Firstly, although TRIPs does exclude plant varieties, there is confusion internationally on what would require patent protection, for example, plant parts.
- Secondly, India has revised its patent law to allow applications for product patents in agro-chemicals, opening up an important field to patent protection.
- Thirdly, several multinational firms have begun filing patent applications in various areas related to agriculture and agricultural biotechnology in India. The lack of capability of domestic actors to acquire patents in this field would have enormous implications that have so far not been widely recognised.

Thus, it becomes imperative for any government to promote dialogue and debate on the proposed changes/amendments in the Patents Act, 1970, which has proved to be very favourable for our citizens as well as industry. In fact, the public, as an affected party, has every right to be consulted and heard on a subject so directly related to its health and welfare. The following table compares the major provisions under the Indian Patent Act, 1970 and the corresponding provisions under the TRIPs-compliant policy in next page.

Our present Patent Act as stated earlier strikes a balance between the property rights of a patentee and the public interest involved in cheap availability of medicines. It empowers the controller of patents to grant a licence to produce any such product to any person on terms as he thinks fit, even if the patentee has refused to do so. Doha Declaration has also accepted this equitable provision. Following this, Brazil, Canada, China provide for compulsory licence being granted on reasonable terms if the patentee has refused to comply in spite of commercial terms having been offered.

Now let us look at the various amendments incorporated in the Indian Patents Act, 1970 and their implications.

### AMENDED PATENTS ACT

The recent Patents (Amendment) Ordinance, 2004, as mentioned earlier, has been issued by the Government of India to meet the January 1, 2005 deadline. It may be noted that 2001 Doha declaration on public health stated that TRIPs should be interpreted and implemented in a

### TRIPs - Compliance, Legislations and their Implication

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TRIPs -  
Compliance,  
Legislations  
and their  
Implication

Comparison of India's Patent Act and TRIPs	
INDIAN PATENT ACT OF 1970	TRIPs
Only process not product patents in food, medicines, chemicals	Process and product patents in almost all fields of technology
Term of patents 14 years; 5-7 in chemicals, drugs	Term of patents 20 years
Compulsory licensing and license of right	Limited compulsory licensing, no license of right
Several areas excluded from patents (method of agriculture, any process for medicinal, surgical or other treatment of humans, or similar treatment of animals and plants to render them free of disease or increase economic value of products)	Almost all fields of technology patentable. Plant varieties excluded from patent protection, but confusion exists on protection in some areas of agriculture and biotechnology.
Government allowed to use patented invention to prevent scarcity	Very limited scope for governments to use patented inventions

manner supportive of WTO members' rights to protect health and promote access to medicine for all. In this context, 'compulsory license' and 'license of right' become important instruments in the hand of the Government to facilitate accessibility of resources at affordable price.

Two types of licences may be given to companies interested in manufacturing a patented product. These are compulsory licence and licence of right. If a company is interested in manufacturing a product that is under patent, it has to prove that the reasonable requirement of the public for the product has not been satisfied, or the particular product is not available at a reasonable price. In such a case, the company is allowed to apply for a 'compulsory licence' after three years of the grant of the original patent. Patents granted for foods, medicines or drugs and other substances prepared by chemical processes were automatically deemed to have been endorsed with the words 'Licence of Rights', three years after the grant of the patent. However, the clause on 'Licence of Rights' has been deleted now.

Also, the ordinance does not take full advantage of WTO provisions to allow countries with little or no pharmaceutical capacity to import cheap generic versions of drugs still under patent protection. The ordinance's compulsory license requirement for importing countries would prevent a least developed country (LDC) from requesting the export from India of generic versions of a medicine that is not under patent in the LDC in question. The absence of such provision will only enable MNCs to charge monopoly prices, as Indian drug companies cannot export to the LDCs, which have to comply with TRIPs by 2016.

Another serious concern regarding the ordinance is that it proposes to do away with the effective pre-grant opposition procedure. At present, there are approximately 6,000 pending applications (received in the mailbox during 1995-2004). Though formally permitting a pre-grant opposition to the grant of patent, the 2004 ordinance states that the controller will not give a hearing to a person opposing the grant.

This denial will lead automatically to the grant of patent to most of these 6,000 mailbox applicants and expose local manufacturers to patent infringement charges. A provision should be made that the products already in the market between 1995 and 2004 should be immune from challenge for patent infringement as a result of patents being granted to any of these 6,000 applicants.

It is to add further that the decree states that 'mere new use' of existing drugs is unpatentable. This provision is ambiguous about what kind of 'new use' will indeed be patentable and could potentially allow companies to receive new patents for a drug that is already patented, simply by making minor changes such as adding a new chemical reactant for a marginally different purpose. This would allow companies to extend their monopoly on a drug for much longer than the standard patent protection period.

Thus, in light of the above inadequacies of the third amendment to the Patents Act, 1970, we must have a detailed debate in Parliament. The manner in which the ordinance was issued is itself objectionable. The facile explanation that had the ordinance not been issued, it would have violated

the January 1, 2005, deadline – by which time India was expected to change patent law to comply with TRIPs and incur penalty if it didn't – is an unsubstantiated imagination. UK, France, Argentina delayed making amendments to conform to TRIPs by three years, one year and four years, respectively, without incurring any penalty.

#### Amartya Sen says...

Addressing a meet-the-press programme at the Calcutta Press Club on 24th February, 2005, Nobel Laureate. Economist and Professor Amartya Sen articulated that the Government of India had conceded too easily on the drug patent issue. He added further that 'exemption from the patent law (The Indian Patents Act, 1970) had served the public as well as the countries well - we don't want to lose that advantage'

#### THE PATH AHEAD

The Ordinance has to be debated and passed in Parliament in the Budget Session itself, otherwise it will lapse. We must have a detailed discussion on various issues and concerns; explore all the permissible provisions within TRIPs, which would help promote public interest and negotiate further with the developed world so that the welfare of our 1 billion population is not compromised.

The law that will be enacted by the Parliament should deliberate over the following issues:

- India needs to follow China's example whereby if a patent monopolist does not respond to production on reasonable commercial terms within a stipulated period, a compulsory license to manufacture will be granted in India.
- Following the lead of other countries, the royalty should not be more than 4%. It cannot

be overlooked that such a royalty would accrue to the monopolist patent holder without investing a rupee.

- Although, a manufacturing license will be 'predominantly' for India's domestic market, it is necessary to permit exports to other markets of those least developed and developing nations with insufficient or no capacity to manufacture drugs. The Government's current stand necessitating a compulsory license for export to such nations plays back into the hands of the patent holders. Third world countries can only access cheap medicine from countries such as India.
- India must permit pre-grant opposition so that spurious applications with doubtful antecedents can be rigorously scrutinised.
- Where an Indian has commenced substantial production on a mailbox patent, he cannot be asked to arbitrarily stop production with the commencement of product patent regime. A provision should be made that the products already in the market between 1995 and 2004 should be immune from challenge for patent infringement as a result of patents being granted to any of these 6,000 applicants.
- The controversial clause which might lead to perpetual patent ("mere new use") should be done away with and what would constitute "new" should be defined clearly so that no ambiguity and room for manoeuvrability is left open.

One can only hope that our representatives would look into these matters of grave concern and address the anomalies that might impede welfare of our people.

#### TRIPs - Compliance, Legislations and their Implication



One of the most important policy initiatives towards human capital formation in India has been the 86th Amendment Act of the Constitution of India. The major aim of this initiative has been the universalization of education and making education a fundamental right. The previous NDA government after ensuring sufficient escape routes to wash off its responsibility, presented Right to Education Bill as the 93rd amendment bill which became the 86th Amendment Act of the Constitution on 12th December 2002.

Though there are many loopholes in the Act, it made certain commitments by the state for providing free and compulsory education to all children in the age group of six to fourteen.

Prior to the enactment of this Act the Union Government launched a major scheme as the National Programme for Universalisation of Elementary Education (NPU EE) which later became Sarva Siksha Abhiyan (SSA) on November 2000. The intention was to facilitate the realization of

All these goals are most welcome. But these goals should be tested in terms of achievements. After two years of enactment of the *Right to Education Bill* and after four years of announcement of SSA, which the government claimed to implement in a mission mode, it is surprising to note that nothing substantial has yet happened in this direction. In the absence of any substantial data in terms of educational achievements, we may for the time being concentrate on the progress the government has made in this direction towards providing sufficient allocation for the implementation of the SSA.

### FINANCIAL REQUIREMENTS FOR UNIVERSAL EDUCATION

In 1999, the Government of India constituted the Tapas Majumdar Committee to estimate the funds required to provide elementary education of eight years to all children. The Committee estimated that an additional investment of Rs. 1.37 lakh crores (See Table-1) would have to be made over a 10-year period to bring all out-of-school children

# Whatever Happened to the Right to Education

-Siba Sankar Mohanty

the objective of universal literacy. This scheme incorporated all hitherto existing literacy and elementary education schemes and an initial amount of Rs. 500 crores has been allocated in the Budget 2001-02. The amount was enhanced to Rs. 1512 crores in Budget 2002-03 in anticipation of the 86<sup>th</sup> Amendment Act.

The major preliminary targets envisioned by the SSA were;

- To bring all children in the age group 6-14 years to school / Education Guarantee Centre/ Alternate Schools by 2003 and all children to complete five years of primary schooling by 2007 and eight years of elementary schooling by 2010.
- To focus on elementary education of satisfactory quality with emphasis on education for life.
- Bridging all gender and social category gaps at primary level by 2007 and at elementary level by 2010.
- Zero dropouts by 2010.

(6-14 years) into the school system (not parallel streams) and enable them to complete the elementary stage. This amounted to around 0.72 percent of GDP over a ten years time frame. However, the Financial Memorandum to the Constitution (93rd) Amendment Bill, 2001 estimated a sum of Rs.98,000 crores for implementing the fundamental right to education for children in the age group of 6 to 14 years. It is about 30 per cent less than that estimated by the Tapas Majumdar Committee.

### ALLOCATIONS OVER THE YEARS:

When we analyse the role of the government in terms of allocations for implementing the right to education, we find that the government has actually done much less than what financial commitments towards such a crucial issue deserved. From the year it was initiated, the total amount spent till 2004-05, was Rs. 24037 crores where as the amount actually released by the Government of India was to the tune of only Rs.

**Table 1**  
Financial Commitment Needed for  
Universalisation of Elementary Education during 1998-99 to 2007-08

Year	recurring (in Rs Crore)	non-recurring (in Rs crore)	total (in Rs Crore)	Cumulative Expenditure Over the years	total expenditure as % of GDP
1998-99	100	0	100	100	0.007
1999-00	1500	2000	3500	3600	0.24
2000-01	4000	3000	7000	10600	0.46
2001-02	6000	4000	10000	20600	0.62
2002-03	8500	4000	12500	33100	0.73
2003-04	10000	4000	14000	47100	0.78
2004-05	13000	4000	17000	64100	0.9
2005-06	16000	4000	20000	84100	1.01
2006-07	20000	4000	24000	108100	1.16
2007-08	27250	1572	28822	136922	1.32
Total	106350	30572	136922	136922	0.72

Source: India Education Report, A Profile of Basic Education, NIEPA

4801.51 crores till that time (See Table-2). This is completely against the Centre-State financial norms under SSA, which envisages a burden of 75:25 sharing arrangement during the Tenth Plan period. In an answer to an unstarred question raised by the Rajya Sabha MP Shri. Sanjay Rajaram Rout, the Minister of State in the Ministry for Human Resource Development, Shri M. A. A. Fatmi on 16. 8. 2004 answered that during 2002-04,

around 18 % of the children in the age group 6-14 were not attending school. This in absolute terms amounts to around 4 crore out of school children. Though there is no concrete information on the exact tangible progress in this direction it can be drawn from the meagre expenditure that the achievement of the proposed goals in SSA are still far from reality.

**Table-2**  
Approvals made under Sarva Shiksha Abhiyan (SSA) in India

Item	2001-02	2002-03	2003-04	2004-05
No. of Districts for which Annual Work Plan Approved	512	592	596	597
Outlay (Rs. in Crore)	1106	3411	8547	10973
Amount Released by GOI (Rs.in Crore)	499.96	1569.26	2732.29	2600.00*
No. of New Schools approved	7779	18059	67190	-
No. of New Teachers Appointed/Sanctioned	33921	25782	398189	-
Construction of New School Building	1937	8095	40960	-
Construction of Additional Classrooms in Existing School	10651	29969	68779	-
No. of Toilets Constructed	21344	39304	46272	-
No. of Drinking Water Facilities	8127	26515	33161	-
No. of School Receiving Maintenance Grants	NA	515700	733000	-
No. of Children Receiving free Text Books (in Lakhs)	NA	311.4	169.59	-
No. of Teachers Receiving Grants for Teaching Aids (in Lakh)	NA	21.62	29.67	-

Source: Rajya Sabha, Unstarred Question No. 1256, dated 16.8.2004

Whatever Happened to the Right to Education

"This is completely against the Centre-State financial norms under SSA, which envisages a burden of 75:25 sharing arrangement during the Tenth Plan period"

### Whatever Happened to the Right to Education

Making elementary education a fundamental right certainly raised the hopes of many social activists and the civil society regarding the educational sector in the country. The UPA government after assuming power announced in the National Common Minimum Programme that the public expenditure on Education would be raised to up to 6 per cent of GDP in a phased manner. However, the Government could not spend even

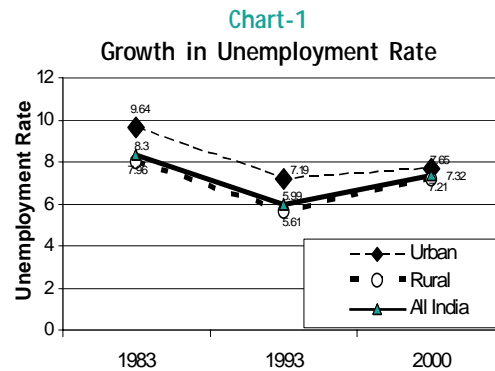
0.72 per cent of GDP, as recommended by Majumdar Committee. Now that it is a fundamental right, it should have some kind of legal safe guard to protect the citizens against violation of that right. The Right to Education Act holds the parents responsible for their children not going to school. The Civil Society should rethink over these issues and demonstrate a mass dissent on the hypocrisy of policy makers.



With the emergence of the neo-liberal regime, the Indian economy witnessed shrinking of employment opportunities both in urban and rural areas. Throughout the 1990s, India witnessed growing unemployment even though the economy experienced an annual average growth of GDP by around 6 per cent. The Economic Survey has estimated an increase in unemployment rate from 5.99 per cent during 1993-94 to around 7.32 per cent during 1999-2000. The estimates based on the 55<sup>th</sup> Round of NSS shows an all India unemployment rate of around 12 per cent among the rural households.

The fact that the size of the labourforce is around one third of the total population in India, growing unemployment signifies growing impoverishment of the population. Table-1 shows clearly that during 1980s and early 1990s there had been drastic reduction in unemployment in the rural sectors. The neglect of rural India in the later part of the 1990s resulted in a reversal of the trend and accounted for massive unemployment

to the tune of around two crore in absolute numbers. Chart-1 depicts that though urban unemployment rate has remained consistently high during 1990s, the rural unemployment rate as well as the All India rate have increased substantially during the last decade.



A sectoral analysis of employment in India (Table-2) shows that the absolute number of people employed in the agriculture sector has remained the same and the contribution of the sector in

# National Rural Employment Guarantee Bill-2004: Issues and Concerns

-Siba Sankar Mohanty

Table-1

**Growing Unemployment in the 1990s**

All India	1983	1993-94	1999-2000
Labourforce as % of Population	36.4	37.6	36.2
No of Persons Employed in All Sectors (in million)	239.57	315.84	336.75
Unemployment Rate in %	8.3	5.99	7.32
Number of Unemployed (in million)	21.76	20.13	26.58
<b>Rural</b>			
Labourforce as a Proportion of Population	37.35	38.8	37.2
No of Persons employed in All Sectors (in million)	187.92	241.04	250.89
Unemployment Rate in %	7.96	5.61	7.21
Number of Unemployed (in million)	16.26	14.34	19.5
<b>Urban</b>			
Labourforce as a Proportion of Population	33.3	34.3	33.6
No of Persons Employed in All Sectors (in million)	51.64	74.8	85.84
Unemployment Rate in %	9.64	7.19	7.65
Number of Unemployed (in million)	5.51	5.8	7.11

Source: Economic Survey 2003-04

**NREG Bill-2004: Issues and Concerns**

total employment has gone down from 60.4 % in 1993-94 to 56.7 % in 1999-00. While there has been an increase in the labourforce by around 27.3 million (from 335.9 million to 363.3 million) and in the rural economy by 15.01 million (from 255.38 to 270.39) during the same period, the agricultural sector could absorb only around 0.2 million of those.

**Table-2**

**Sectoral Analysis of Employment (in Million)**

Employment in Different Sectors	1983	1993-94	1999-2000
Agriculture	151.35 (63.2)	190.72 (60.4)	190.94 (56.7)
Industry	37.43 (15.6)	49.99 (15.8)	59.15 (17.6)
Services	50.78 (21.2)	75.11 (23.8)	86.65 (25.7)

# Figures in the Bracket indicate the proportion of the total workforce

Source: Economic Survey

Many economists argue that the reason behind such a deterioration in the employment scenario in India has been the sluggish growth in agriculture as well as substantial reduction in rural developmental expenditure of the union government. It is noteworthy that expenditure towards rural development as a proportion of GDP has gone down from an average of 13 per cent during the Eighth Five Year plan to only 5 per cent unemployment in the Tenth Plan. In the post 1993 era, in all the States in India, the rate of growth in employment has been much lower than the rate of growth of GDP, signifying a seriously deteriorating demand situation in the overall economy.

**The Context of an Employment Guarantee:** All these set the context in which the crisis in employment emerged as a major concern among the masses and it got reflected in the popular mandate of the Lok Sabha Elections 2004 in rejecting the anti people policies of the previous NDA medley. After assuming power, the newly elected UPA Government announced its first ever popular announcement in the form of a set of promises called the National Common Minimum Programme (NCMP), which immediately became very popular. The first promise of the NCMP states that –

*“The UPA Government will immediately enact a National Employment Guarantee Act. This will provide a legal Guarantee for at least 100 days*

*of employment, to begin with, on asset creating public works programme every year at minimum wages for at least one able bodied person in every rural, urban poor and lower middleclass household. In the interim a massive food for work programme will be started.”*

Surprisingly, the first ever activity of the UPA Government has been the endorsement of the Fiscal Responsibility and Budget Management Act which has potential to limit the role of state even in crucial social sectors. In the guise of the Act, the government can actually cut down expenditure on social and economic sectors and at the same time give the logic of *deficit control* for its activities. However, with growing pressure from the common public, the coalition partners especially the Left parties and from the Civil Society Organisations including the Right to Food Campaign, the Government finally came out with a draft Bill called the National Rural Employment Guarantee Bill 2004 (henceforth NREGB-2004) on 16<sup>th</sup> December 2004. However, NREGB-2004 in its present form not only undermines the government's commitment towards providing 100 days of employment to all rural, urban poor and lower middleclass households, but fundamentally disregards all logical and ethical principles of an employment guarantee.

**MAJOR SHORTCOMINGS OF THE NREGB-2004**

**The Financial Provision:** The financial memorandum of the NREGB-2004 estimates the total financial requirement of the scheme to be around Rs. 38, 600 crore. The State wise results of BPL census calculated the number of BPL households to be around 5.4 crore in India as on 17 March 2001. A comparison of the number of BPL households is given in Table-3. Given that the wage to material ratio in the programme will be 60:40 and the estimated expenditure per diem per person will be Rs. 100, the total amount required for an employment guarantee to all rural poor households will be to the tune of Rs. 53847.4 crore per annum. With the provision of Rs. 38600 crores, employment can be provided to around 3.86 crore families. This means that around 1.5 crore families will remain untouched from the employment guarantee. These families will be liable for unemployment allowance.

**A Guarantee??:** NREGB 2004 states that the “Act shall come into force on such date ....and areas” as may be notified by the Central Government. This raises the apprehension that the Central Government can ‘switch off’ the employment guarantee at any time. Again, there is no provision for the time bound extension of the so-called *guarantee* to the whole of rural India.

“NREGB-2004 in its present form undermines the government's commitment towards providing 100 days of employment to all rural, urban poor and lower middleclass households”

Table-3

## State-wise Results of BPL Census for Ninth Plan in India (As on 17.03.2001)

States/UTs	Total No. of Rural Families	No. of Rural Families below poverty Line	% age of below poverty Line
Andhra Pradesh	10484028	4184628	39.91
Arunachal Pradesh	102852	80627	78.39
Assam	3607241	2164416	60
Bihar	18933813	9399281	49.64
Goa	135816	23101	17
Gujarat	5587768	1980879	35.45
Haryana	2074615	503019	24.25
Himachal Pradesh	1036996	286112	27.59
Jammu & Kashmir	1047251	606545	57.92
Karnataka	6479832	2202756	34
Kerala	Not reported	Not reported	-
Madhya Pradesh	11651082	5111874	43.87
Maharashtra	11010022	3860675	35.07
Manipur	365670	246980	67.54
Meghalaya	282362	156646	55.48
Mizoram	110570	74154	67.07
Nagaland	146615	88541	60.39
Orissa	6790202	4445736	65.5
Punjab	2330725	650209	27.9
Rajasthan	6768541	2097560	30.99
Sikkim	Not reported	Not reported	-
Tamil Nadu	9388118	2737921	29.16
Tripura	595397	397798	66.81
Uttar Pradesh	20430204	7541494	36.91
West Bengal	11076686	4918296	44.4
Admn & Nic Islands	Not reported	6421	-
Dadra & Nagar Haveli	26237	17231	65.67
Daman & Diu	10735	395	3.68
Lakshadweep	8625	885	10.26
Pondicherry	133555	63262	47.36
<b>India</b>	<b>130615558</b>	<b>53847442</b>	<b>41.23</b>

Source : Lok Sabha Unstarred Question No. 2688, dated 8.8.2001

**Defining a Household:** The NREGB-2004 defines a household as a social entity where, the members are related to each other by blood relation, marriage or adoption, normally staying together, sharing meals or a common ration card. Such a definition is very vague and unscientific in the

context of selecting beneficiaries in any poverty alleviation scheme. This would further restrict the scope of the guarantee. Again the average size of rural households varies across different States, from around 4.5 persons per household in States like Tamilnadu, Andhra Pradesh and Chandigarh to around 6-6.5 in states like Bihar, Rajasthan, Jammu & Kashmir and Uttar Pradesh. The enactment of NREGB-2004 in its present form will certainly discriminate against the states having a higher family size unless the definition of the term household is restricted to that of a nuclear family.

**Finding a Poor Volunteer Worker:** The NREGB 2004 restricts the scope of the employment guarantee to "poor households" –i.e., those below the poverty line in a particular year. In India, the identification of the poor is not satisfactory. Many argue that even on the basis of per capita calorie intake equivalent income, the actual number of poor households is much higher than the official estimates of BPL households. Again, identifying the eligible households who come under BPL, will necessarily add to the administrative burden and nepotism. In this regard, the criteria of self selection should be adopted along the lines of the NCMP.

**Minimum wages:** NREGB-2004 states that the Central Government would specify the wage rate notwithstanding anything contained in the Minimum Wages Act, 1948. The penalty for a eligible person who does not offer his/her labour for such arbitrary wage rate fixed by the central government is forfeiting his/her claim for the unemployment allowance for three months. This is something, which raises doubt on the intentions of the government.

**Role of PRIs:** The earlier draft prepared by the National Advisory Council (NAC) gave a critical and justified role to the Panchayati Raj Institutions in planning and monitoring of the Employment Guarantee Programme. In the present Bill, the role of PRIs has been reduced substantially. The local planning and monitoring authorities namely the Block-level *Programme Officer* and the *District Coordinator*, as envisaged by the NREGB-2004, are not accountable to the elected PRI bodies. Such centralisation of planning process in the hands of bureaucracy bypassing the elected bodies will erode the effectiveness of the employment guarantee programme.

**Financial Burden on the State Governments:** In NREGB 2004, the State Governments are supposed to bear 25 per cent of the material cost, the unemployment allowances and the overhead cost of the employment guarantee programme. Chart-2

## NREG Bill-2004: Issues and Concerns

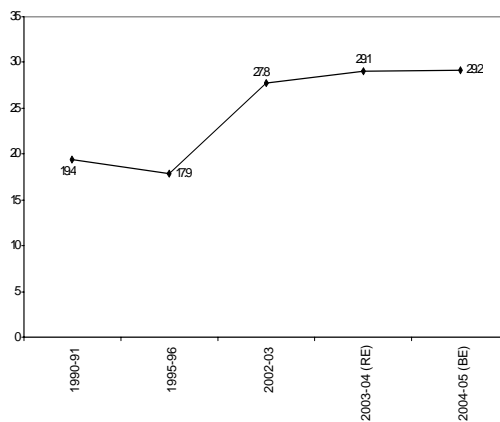
"there is no provision for the time bound extension of the so-called guarantee to the whole of rural India"



**NREG Bill-2004: Issues and Concerns**

shows that the outstanding liabilities of the state governments as a proportion of GDP are increasing over the last fifteen years. Any further contribution towards the implementation of the scheme will further burden the exchequer of the State Governments. On ethical grounds also, the employment guarantee was a promise of the Central Government made in the NCMP –there is no reason to justify the compulsory contribution of the State Governments towards the implementation of the scheme.

**Chart-2**  
States' Outstanding Liabilities as % to GDP at Current Market Prices



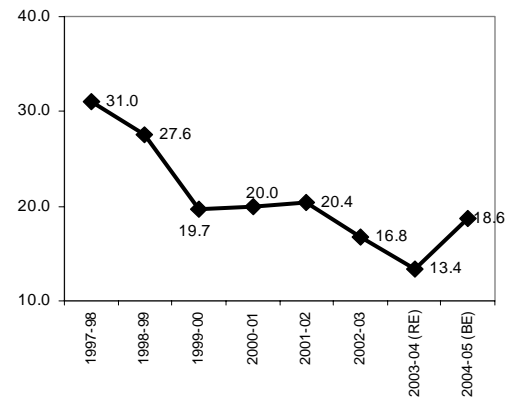
Source: Drawn on the basis of information provided in the State Finances: A Study of Budgets (2004-05), RBI.

When we discuss the financial condition of the State Governments, we should also examine the role of the Central Government in worsening the fiscal situation in the States. Chart-3 shows clearly the decline in the net transfers from the Central government as a proportion of the total expenditure of the state governments. With such precarious condition of the States, the Centre has no legitimate ground to ask the State Governments for substantially contributing towards the programme promised by the Union Government itself. Resource poor states like Bihar and Orissa will not be able to comply the matching contribution for the programme and will not be able to ensure effective implementation of the scheme.

The bigger question is of course about the unemployment allowance. The Bill not only places the burden of unemployment allowance on the state governments, but also links the payment of unemployment allowances to the economic capacity of the State Governments. Given the fiscal clutter the state governments are in, such a clause will eventually result in non payment of the unemployment allowances. Unless the Central

**Chart-3**

**Net Transfer from the Centre as a Proportion of Total Expenditure of the State Governments**



Source: Drawn on the basis of information provided in the State Finances: A Study of Budgets (2004-05), RBI

Government pays the unemployment allowances as well the employment guarantee will be meaningless. We have already discussed that around 1.5 crore rural BPL families will not be covered under the programme. These families will be eligible for unemployment allowance, which will be paid by the State governments.

This will cost the state governments around Rs 686 crores in the first 30 days and Rs. 3202 crores in the last 70 days, over and above Rs. 3900 crore State contribution towards the scheme. In total, the extra burden on the State governments will be around Rs. 7788 crore in a year not including the overhead and administrative cost.

**Whether Gender Safeguard:** By incorporating the 'household' clause for employment, the NREGB – 2004 does not provide any safeguard against the exclusion of women from the employment programmes. Our experience shows that even in those schemes where there is a clear preference for women or a clear reservation for women, they are not given the opportunity. Such a phenomenon has a lot to do with the patriarchal form of our society and lack of safeguards against exclusion of women.

Table –4 shows that the share of women in employment generated under poverty alleviation programmes in the rural areas is much lower than their male counterparts. While the proportion of women in the total labourforce is around 37 per cent, they could actually get around 27 per cent of the total mandays generated under wage employment programmes during 1999-2000.

“ the Centre has no legitimate ground to ask the State Governments for substantially contributing towards the NREGB promised by the Centre itself”

Table-4

Share of Women in the Schemes Under Wage  
Employment Programmes  
(NREP+RLEGP+JRY+EAS)

Year	Total Number of Mandays Created (in Million)	Share of Women (in %)
1994-95	1225.7	22.25
1995-96	1239.4	29.67
1996-97	730.1	30.52
1997-98	639.4	33.4
1998-99	221	27.94
1999-00	137.01	27.13 <sup>#</sup>

# Jawahar Gram Samndhi Yojana +EAS

Source: Women and Men in India 2000, CSO,  
Ministry of Statistics and Programme  
Implementation, Government of India.

Therefore, the limit of "100-days per household per year" as set by the NREGB –2004 may lead to marginalisation of women. Individual work entitlements instead of households should be adopted in the Act. In the absence of individual entitlements, a clear cut reservation of at least 33% should be reserved for women labourers.

A deeper analysis of NREGB-2004 therefore unearths a lot of issues obstructing successful and effective implementation of the Employment Guarantee. The civil society should be very careful towards any attempt by the policymakers to escape from their responsibility towards formulating an effective Employment Guarantee policy and then towards its successful implementation.

NREG Bill-2004:  
Issues  
and Concerns

In the last General Elections, the people of India clearly rejected the anti people policies of NDA conglomeration and gave an opportunity to the United Progressive Alliance to take up issues promised in the manifestos of all the political formations who joined hands as UPA. Soon after assuming power, the UPA, primarily because of the pressure from the left parties, upheld the promises it made and announced the National Common Minimum Programme with many forward looking initiatives in the interest of the marginalized sections of Indian society. Of those initiatives, the first and foremost was the promise for a National Employment Guarantee Act. The initial idea was that the Act would provide a legal guarantee for at least 100 days of employment every year at minimum wages for at least one able-bodied person in every rural, urban poor and lower middle class household. After almost six months of that promise, the government has now come out with a Bill named "The National Rural Employment Guarantee Bill, 2004" which was tabled in the Parliament on December 21, 2004. The purpose of the present note is to highlight the key features of the Bill and to presume the possible implications of the Bill in the light of the intentions of providing legal guarantee for livelihood to millions of poor households, while framing the NCMP.

We live in very strange times indeed, when progressive ideas come in the guise of policies that entail their exact opposite implications. The Bill tabled in Parliament is neither national, nor ensures

into force on such date as the Central Government may notify in the Official Gazette.

- Para-2, while defining the different terms and concepts used in the Bill, states that a "household" means the members of a family related to each other by blood, marriage or adoption and normally residing together and sharing meals or holding a common ration card. "Implementing agency" includes any department of the Central Government or a State Government, a Zila Parishad, Panchayat Samiti, Gram Panchayat or any local authority or Government undertaking or non-governmental organization authorized by the Central Government or the State Government to undertake the implementation of any work taken up under a Scheme;
- It defines a "poor household" as a household living, during the relevant financial year, below the poverty line.
- It explains "unskilled manual work" as any physical work which any adult person is capable of doing without any skill or special training; .
- In Para-3, the Bill provides that the State Government shall provide unskilled manual work not less than one hundred days per year to every poor household whose adult members volunteer to do so in accordance with the Scheme made under this Act.
- In Chapter -3 of the Bill, while explaining the schemes and the provision of unemployment allowances, specifies that every State



## Guest Column: *Ms. Smita Gupta*

# NREG Bill 2004: Elusive Guarantee, Little Employment, Lower Wages

minimum wages rather it contravenes the very notion of a guarantee. This trumpeted flagship of the UPA government has an unbelievably large number of deficiencies. Let us first outline the basic features of the present Bill for supposedly employment guarantee for the rural households.

### MAIN FEATURES OF THE BILL

- Para-1 of the Bill states that the Act will be applicable to the whole of India except in the State of Jammu and Kashmir and it shall come

Government shall, make a Scheme, for providing not less than one hundred days of guaranteed employment in a financial year to every household in the rural areas covered under the Scheme within six months from the date of commencement of this Act.

- Para-4 of the Bill says that until any such scheme is identified, the Annual Action Plan *Sampoorna Grameen Rozgar Yojana* (SGRY) or the National Food for Work Programme (NFFWP) whichever is in shall be considered as the action plan.

- Para-6 states that notwithstanding anything contained in the Minimum Wages Act, 1948, the Central Government, may, by notification, specify the wage rate for the purposes of this Act and different rates of wages may be specified for different areas.
- Para-7 states that if an applicant is not provided employment within fifteen days of receipt of his application seeking employment or from the date on which the employment has been sought in the case of an advance application, whichever is later, he shall be entitled to a daily unemployment allowance which will be at least one fourth of the notified wage rate. And such allowance shall be given by the State Governments only.
- Para-8 of the Bill states that if the unemployment allowance is not disbursed in time then, the reasons for that delay shall be displayed on the notice board of the Programme Officer and the notice board of the Gram Panchayat; and it will be the responsibility of the State Governments to expedite the payment of unemployment allowances to the concern household.
- Para-10 talks of constituting a Central Employment Guarantee Council at Delhi, and the number of representatives of the State Governments shall be determined by the Central Government;
- Para-12 states that every State Government shall constitute a State Council to oversee the monitoring and implementation of the Act at the State Level.
- Para-13 endorses formation of a Standing Committee at district level in every district within which a Scheme is being implemented shall constitute a Standing Committee consisting of such number of its members and subject to such terms and conditions as may be prescribed by the State Government to supervise, monitor and oversee the implementation of the Scheme within the district.
- Para -14 states that the Chief Executive Officer of the District Panchayat or the Collector of the district or any other district level officer of appropriate rank as the State Government may decide shall be designated as the District Programme Coordinator for the implementation of the Scheme in the district. S/He will be responsible for the implementation of the Act and shall assist the Standing Committee.
- Para-15 For every Block, the State Government shall appoint a person with such qualifications and experience as may be determined by the State Government, as Programme Officer for implementing the Scheme in that Block and assist the District Programme Coordinator. However, under the direction of the State Government, all or any of the functions of a Programme Officer shall be discharged by the Gram Panchayat or a local authority.
- Para-16 states that the Gram Panchayat shall identify the projects in the Gram Panchayat area to be taken up under a Scheme as per the recommendations of the Gram Sabha and the Ward Sabhas and for executing and supervising such works.
- Chapter-V talks of establishing National and State Employment Guarantee Funds.
- Para-20 states that a National Fund shall be created by due appropriation by the Parliament. Para 21 talks of forming a State Fund for the purpose.
- Para-22 states that the Central Government shall meet the cost of the amount required for payment of wages for unskilled manual work under the Scheme, upto three-fourths of the material cost of the Scheme including payment of wages to skilled and semi-skilled workers and some percentage of the total cost of Scheme as may be determined by the Central Government towards the administrative expenses. The State Government shall meet the cost of unemployment allowance payable under the Scheme, one-fourth of the material cost of the Scheme including payment of wages to skilled and semi-skilled workers and the administrative expenses of the State Council.
- Para-29 states that no suit, prosecution or other legal proceedings shall lie against the District Programme Coordinator, Programme Officer or any other person who is a public servant within the meaning of section 21 of the Indian Penal Code.
- Para-34 states that the Central Government may, by notification, amend the Schedules of this Act as per the requirements and exigencies of the implementation of the Scheme.

### SOME PROBLEMATIC CLAUSES AND THEIR IMPLICATIONS

Though the Common Minimum Programme (CMP) of the UPA government promised an immediate enactment of a legal employment guarantee of at least a hundred days per rural household in all parts of India, there has been a consistent dilution of the provisions of the proposed Employment Guarantee Act. The draft as it stands today is a mere formality and a farce that makes a mockery of the Common Minimum Programme. The Act is effectively a narrowly targeted scheme that can move from district to district at any wage for any duration, all at the whims and fancies of the Central Government. The main revisions in the final draft, their implications and alternative formulation are summarized below.

- The Bill as it was tabled, will convert a bulk of the universally accessible rural employment

NREG Bill  
2004: Elusive  
Guarantee,  
Little  
Employment,  
Lower Wages

“The Draft  
Employment  
Guarantee Act  
is a mere  
formality and  
a farce that  
makes a  
mockery of the  
Common  
Minimum  
Programme”

NREG Bill  
2004: Elusive  
Guarantee,  
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Lower Wages

programmes into targeted ones, and supersede the very notion of a statutory minimum wage. This will institutionalise a regime of targeted wage flexibility in most government employment programmes. This has two implications. First, the Central Government will merge all the existing schemes/programmes for rural employment and second, the government will have a free hand for not abiding to the Minimum Wages Act 1948. The Financial Memorandum as presented along with the Bill states that the Government proposes

to spend Rs 10,000 crore per annum to provide 100 days of employment to all the poor households at the rate of Rs. 100 per diem (Rs. 60/- wage + Rs. 40/- material cost). This means that the Act may cover around one crore households in a year.

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