

**INTERNATIONAL CONFERENCE
ON
EMPLOYMENT AND INCOME SECURITY IN INDIA**

New Delhi, April 6-8, 2005

EMPLOYMENT GUARANTEE ACT: PROMISE AND REALITY

by

Jean Drèze

G.B. Pant Social Science Institute
Allahabad

Organised by



INSTITUTE FOR HUMAN DEVELOPMENT

NIDM Building, 3rd Floor, I.P. Estate
Mahatma Gandhi Marg, New Delhi - 110002
Phones: 23358166; 23321610; Fax: 23765410
Email: ihd@vsnl.com; Website: ihdindia.org

EMPLOYMENT GUARANTEE ACT: PROMISE AND REALITY*

*Jean Drèze**

The Employment Guarantee Act has recently entered national policy debates like a wet dog at a glamorous party. The idea of an Employment Guarantee Act is not new, but a series of unlikely events has catapulted it from obscurity to the top of the political agenda. Indeed, the first pledge of the Common Minimum Programme reads: "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 programmes every year at minimum wages for at least one able-bodied person in every rural, urban poor and lower middle-class household."

Employment as a Social Responsibility

In July 2004, a draft National Rural Employment Guarantee Act was prepared by concerned citizens and sent to the National Advisory Council (NAC). Within a month, the NAC revised this draft in line with the pledge made in the Common Minimum Programme and sent the revised version to the government for urgent consideration.

The proposed Act gives a legal guarantee of employment in rural areas to anyone who is willing to do casual manual labour at the statutory minimum wage. Any adult who applies for work under the Act is entitled to being employed on public works within 15 days. Failing that, an unemployment allowance has to be paid. In the draft Act prepared by the National Advisory Council, guaranteed employment is subject to an initial limit of 100 days per household a year, in line with the Common Minimum Programme.

The need for an Act has been questioned. Why is it not enough to initiate massive employment schemes? The main answer is that an Act places an enforceable obligation on the state, and gives bargaining power to the labourers. It creates accountability. By contrast, a scheme leaves labourers at the mercy of government officials.

There is another major difference between a scheme and an Act. Schemes come and go, but laws are more durable. A scheme can be trimmed or even cancelled by a bureaucrat, whereas changing a law requires an amendment in Parliament. If an Employment Guarantee Act (EGA) is passed, labourers will have durable legal entitlements. Over time, they are likely to become aware of their rights and learn how to defend them.

Opposition to an EGA often arises from a failure to appreciate its far-reaching economic, social and political significance. To start with, an EGA would go a long

* This is based on three earlier articles, published in *The Hindu* and *Financial Express* in November and December 2004. For further material on this subject, see the "employment guarantee" section at www.righttofoodindia.org.

* The author is Visiting Professor at the G.B. Pant Social Science Institute, Allahabad.

way towards protecting rural households from poverty and hunger. In fact, a full-fledged EGA (with no cap on the number of days of employment per person per year) would enable most poor households in rural India to cross the poverty line. Second, it would lead to a dramatic reduction of rural-urban migration: if work is available in the village, many rural families will stop heading for the cities during the slack season. Third, guaranteed employment would be a major source of empowerment for women. A large proportion of labourers employed under an EGA are likely to be women, and guaranteed employment will give them some economic independence. Fourth, an EGA is an opportunity to create useful assets in rural areas. In particular, there is a massive potential for labour-intensive public works in the field of environmental protection: watershed development, land regeneration, prevention of soil erosion, restoration of tanks, protection of forests, and related activities. Fifth, guaranteed employment is likely to change power equations in the rural society, and to foster a more equitable social order. Finally, an EGA is a unique opportunity to activate and empower the Panchayati Raj Institutions, including Gram Panchayats and Gram Sabhas. It will give them a new purpose, backed with substantial financial resources.

Having said this, an EGA would not come cheap. Even those who are otherwise sympathetic to the idea often wonder whether it is affordable. It is interesting that similar concerns have seldom been raised with respect to the "interlinking of rivers" project. The cost of this project is far greater, and its benefits (if any) far more speculative, than those of an EGA. Yet the project easily mustered support from some of the country's most prestigious institutions and personalities, based on the flimsiest possible arguments. It would be surprising if this had nothing to do with the fact that the interlinking project is a potential bonanza for the corporate sector.

Be that as it may, the economic viability of employment guarantee needs to be examined in its own terms, and not by comparison with extravagant projects. In the note on this issue prepared by the National Advisory Council, the cost of employment guarantee is anticipated to rise from 0.5 per cent of GDP in 2005-06 to 1 per cent of GDP in 2008-09. This is based on the assumption that the scheme is gradually extended to the whole of India within four years, starting with the 150 poorest districts.

The anticipated cost of 1 per cent of GDP is a financial cost. It is arguable that the "real" cost would be much lower. For instance, the financial cost of employing a labourer on public works is the statutory minimum wage, but the economic cost (the real resources foregone) may not be so high, if the labourer is otherwise unemployed. However, even if the real cost of employment guarantee is as high as 1 per cent of GDP, there is no cause for panic.

The challenge of financing employment guarantee has to be seen in the light of the fact that India's tax-GDP is quite low in international perspective: about 15 per cent (for the Centre and the States combined) compared with, say, 37 per cent in OECD countries. Further, India's tax-GDP ratio has declined in recent years. For instance, the ratio of Central taxes to GDP was only 9.3 per cent in 2003-04, compared with 10.6 per cent in 1987-8. These are some indications, among others, that there is much scope for raising India's tax-GDP ratio to finance an Employment Guarantee Act and related social programmes.

On the nuts and bolts of enhancing tax revenue, there are useful hints in the recent "Kelkar 2" report submitted to the Ministry of Finance. Some aspects of this report are questionable, including its fixation with uniform taxes and its touching faith in the scope for raising revenue by lowering tax rates. Nevertheless, the report also suggests many sensible ways of raising the tax-GDP ratio, such as introducing value-added taxes, extending taxation to most services, using information technology to broaden the tax net, eliminating arbitrary exemptions, and (last but not least) fighting tax evasion. If these opportunities are well utilised, Plan expenditure can be raised by much more than one per cent of India's GDP.

Further, there is no need to stop at "Kelkar 2". Many other financing options can be considered. For instance, a recent World Bank study estimates that lifting the anachronistic cap on the Professions Tax would enable State Governments to collect additional tax revenue to the tune of 0.9 per cent of GDP.

Similarly, much revenue could be generated from "green taxes" on environmentally harmful consumption, or more generally, on anti-social activities. There is also much scope for pruning unnecessary public expenditure, starting with military expenditure and subsidies for the rich — there are many. In short, the fundamental ability of the Indian economy to sustain employment guarantee is not in doubt. What is required is imagination and commitment in tapping that potential.

Some of these proposals are likely to be opposed by those who stand to gain from the status quo, as happened with the introduction of VAT as well as with the "capital transactions" tax. One way around this is to link tax reforms more clearly with positive initiatives such as the Employment Guarantee Act. Instead of piecemeal reforms, often derailed by vested interests, the need of the hour is for a comprehensive "new deal", involving a higher tax-GDP ratio but also better use of tax revenue. A package of this kind has a greater chance of success than piecemeal reform.

"Tax the rich" would be a useful guiding principle for this package. During the last 20 years or so, the so-called "middle class" (read the top five per cent of the income scale) has become rich beyond its wildest dreams. It has literally transplanted itself to the first world without even applying for a visa. The time to share is long overdue. Indeed, the continuation of mass poverty in India, with all its dreadful manifestations, is not just a tragedy for the victims, but also a deep scar on the national fabric. It affects everything — from the self-respect of the nation to the quality of democracy.

To put it differently, there are two ways of thinking about the proposed Employment Guarantee Act. One is to see it as a pitched battle between the working class and the privileged classes. Another is to regard it as a national endeavour — a visionary initiative in which most citizens have a stake in one way or another. There is some truth in both perceptions, but so far the first one has dominated public debates. Better recognition of the wide-ranging social benefits of an Employment Guarantee Act is likely to put the issue in a different light.

Three Common Fears

Ambitious as it may look, the proposed Employment Guarantee Act can be seen as one element of a larger vision for social policy in India. This vision involves both a major increase in social spending as well as radical improvements in its composition.

Public social spending in India is barely 6 per cent of GDP, compared with 17 per cent in the United States, 26 per cent in the United Kingdom, and 36 per cent in Sweden. Further, whatever is spent often has little impact. Yet there is no dearth of effective, low-cost interventions, whether in the field of health care, or elementary education, or child nutrition, or social security. The way forward is both to raise social spending and to refocus it on interventions that work.

The Employment Guarantee Act fits in this approach. A universal entitlement to relief employment on demand (combined with direct transfers for those who are unable to work) is the only known way of protecting most rural households from economic insecurity. This approach has worked relatively well in the context of drought relief: we should never forget that many famines would have occurred in India during the last fifty years in the absence of massive employment generation in times of crisis. Maharashtra's Employment Guarantee Scheme has shown the possibility of putting in place a permanent system of employment-based social security. The proposed Employment Guarantee Act builds on these experiences – it is not a jump in the dark.

Three fears about the Employment Guarantee Act need to be addressed. One is that the money will be wasted due to widespread corruption. Rajiv Gandhi's statement that only 15 paise out of every rupee of public expenditure on anti-poverty programmes actually reach the poor is often quoted in this context. Aside from the fact that this much-cited figure has never been substantiated, it is important not to interpret it as a "law" of public expenditure in India. For one thing, the effectiveness of public spending varies a great deal between different programmes. While leakages are certainly rife in many cases, there are also important examples of anti-poverty programmes that have done relatively well, and relief works are among them. For another, the culture of corruption is not immutable. Recent experience, in Rajasthan and elsewhere, has demonstrated the possibility of eradicating corruption from public works using a combination of legal action (including strong Right to Information Acts) and social action.

The second fear is that the Employment Guarantee Act will lead to financial bankruptcy. As mentioned earlier, the cost of employment guarantee is anticipated to rise from 0.5 per cent of GDP in 2005-6 to 1 per cent of GDP in 2008-9 as the geographical coverage is gradually extended to the whole of India. However, these estimates are based on a relatively optimistic scenario whereby the Employment Guarantee Act lives up to its promise. If it does, then one per cent of GDP would seem to be a reasonable price to pay to protect most rural households from extreme poverty. More likely, the government will find ways of containing the expenditure, in spite of the formal legal guarantee: it will try to complicate the application procedures, provide work far away from the applicants' villages, pay less than the minimum wage, and use other means of making it harder for people to claim their

entitlements. This is what has happened in Maharashtra, where the cost of the Employment Guarantee Scheme has been driven down to barely 0.2% of GDP.

The central government has wasted no time in following this example, notably by introducing a new clause whereby the Act would come into effect only "in such areas and for such periods as may be notified". This would defeat the very purpose of an employment guarantee, by allowing the central government to "switch off" the programme anywhere at any time. Seen in this light, the appropriate fear to have is not that the Employment Guarantee Act will lead to financial bankruptcy, but rather that it will take many years before public expenditure on guaranteed employment comes anywhere near the anticipated one per cent of GDP.

The third fear is that the government will get entangled in endless litigation, as hordes of aggrieved labourers take the local authorities to court. This, again, is contrary to practical experience. Has it happened in Maharashtra? Has it happened in the context of minimum wage laws, brazenly violated not only in the private sector but also in the public sector? Has it happened with Right to Information Acts, which are no less vulnerable to abuse? Has it happened when elementary education was made a fundamental right? Not at all. The fact is that ordinary Indian citizens are terrified of the courts, for good reason, and would not want to come anywhere near them if they can avoid it. Some public interest litigations may happen, but that may not be a bad thing.

Fears about the Employment Guarantee Act tend to be based on a misunderstanding of how this law works. There is a naive perception that the employment guarantee will operate in an instantaneous and automatic manner as soon as the law comes into force. In practice, the law is likely to do nothing more than to give a little bargaining power to labourers who are constantly struggling against the overwhelming power of private employers and government officials. I doubt that anyone with first-hand experience of this tremendous disempowerment would hesitate to give unorganised labourers the morsel of bargaining power offered to them in the Employment Guarantee Act.

Unemployment Guarantee Bill?

The National Rural Employment Guarantee Bill 2004 was tabled in Parliament on 21 December 2004. This is, in principle, a welcome step. Unfortunately, the Bill is so watered down that it defeats the purpose of an Employment Guarantee Act.

The main purpose of an Employment Guarantee Act is to enable people to claim from the state a basic aspect of their constitutional right to work. For this to happen, the Act must give them effective and durable entitlements. It should aim at empowering the disadvantaged, and include extensive safeguards against any dereliction of duty from the concerned authorities. This is the spirit in which a draft Act had been prepared by concerned citizens and revised by the National Advisory Council (NAC).

Unfortunately, the Bill tabled in Parliament in December 2004 is a travesty of the NAC draft. It has been extensively reworked from the point of view of a bureaucrat who is anxious to minimise the responsibility of the state. All sorts of safeguards

have been put in place to ensure that the government can modify the rules of the game at any time.

An essential feature of the NAC draft is that it was based on the twin principles of universality and self-selection. All households were eligible to apply for work, and the Act was to be extended to the whole of rural India within five years. Eligibility criteria were deemed unnecessary since the willingness to perform casual manual labour at the minimum wage is itself a strong indicator of need. The effectiveness of the self-selection mechanism is borne out by India's long experience with relief works.

The Bill tabled in Parliament involves a radical departure from universality and self-selection. To start with, there is no guarantee of time-bound extension of the Act to the whole of rural India. In fact, even in areas where the Act does come into force, the guarantee of employment applies only "*in such rural area in the State and for such period as may be notified by the Central Government*". In other words, the guarantee can be withdrawn anywhere at any time.

In a similar vein, the Bill allows both the employment guarantee and the unemployment allowance to be restricted to "poor households". This may sound natural, but it is actually quite dangerous. Indeed, how are "poor households" to be identified? The Bill defines poor households as those below the poverty line in the relevant financial year, but this is little more than a tautology, devoid of any practical guidance. In practice, state governments are likely to restrict the employment guarantee schemes to households with a "BPL" card. But the BPL (below poverty line) list is known to be highly unreliable, and this restriction is bound to exclude many poor households from the scheme. This would defeat the main purpose of the employment guarantee, namely, to protect rural households from economic insecurity. Further, this approach is likely to intensify the pernicious social division between BPL and non-BPL households.

For good measure, the Bill dispenses with minimum wages. In the NAC draft, labourers were entitled to the statutory minimum wage of agricultural labourers in the relevant State. In the Bill tabled in Parliament, this can be superseded by a central norm, without restriction ("*the Central Government, may, by notification, specify the wage rate for the purposes of this Act*"). Aside from the dubious legal and ethical justification for paying less than the statutory minimum wage, this provides the Central Government with another opportunity to backtrack at any time if it so desires: the demand for work can be made arbitrarily low through suitable reduction of the wage rate.

The tendency to make the Act "safe" for the state can also be seen in many other aspects of the Bill. For instance, the transparency provisions have been severely diluted. In the NAC draft, muster rolls and other records were to be made available for public scrutiny, either free of charge or at cost price. By contrast, the Bill states that these documents will be available on demand "*after paying such fee as may be specified in the Scheme*". This effectively allows the government to shield embarrassing documents from public scrutiny by raising their price.

Similarly, the basic features of the “employment guarantee schemes” to be initiated by state governments, and the entitlements of labourers under these schemes, have been shifted from the text of the Act to a pair of appended “Schedules”. These Schedules can be modified by notification of the Central Government, without amending the Act itself. This gives the Central Government sweeping powers to derail the schemes, or to reduce the entitlements of labourers.

The bottom line is that the National Rural Employment Guarantee Bill 2004 leaves labourers at the mercy of the benevolence of the state. A benign state could certainly use this legislation with good effect to provide massive work opportunities to the rural poor. However, the state’s discretionary powers under the Act can also be used at any time to phase out the whole project. Trusting the benevolence of the state in this context would be the triumph of hope over experience.

This is not to say that the struggle for an effective Employment Guarantee Act should be given up. In principle, the Bill can still be repaired and passed in the Budget Session of Parliament. However, this is unlikely to happen without a strong expression of popular demand for a full-fledged Employment Guarantee Act. There is an interesting challenge here for the labour movement and all organisations committed to the right to work.