

Bills Galore !

Politicians in India are in a habit of making promises and subsequently breaking them when their political ends are fulfilled. So when, in 2004, India voted in favour of UPA, along with the hope that UPA Government will pay due respect to its poll promises, there was a nagging feeling that the poll-time promises of bringing smile on the face of the common man might never be honoured. But the initial steps taken by the UPA government dispelled this feeling. For a month or so it looked as if the new UPA government knew well its business of implementing a pro-people agenda. Certain factors did help in getting this impression. One factor was the outside support being extended by the left parties which still retain certain amount of credibility. The other factor was the drafting of the Common Minimum Programme, whose thrust was the governance for the common man and whose USPs were the adherence to secular values and upliftment of the poor through the Employment Guarantee Programme by providing at least 100 days work to poor rural households whose adult members volunteer to do unskilled manual work.

As is clear from the use of the word 'Guarantee' in the name of the programme, it intended to provide a safety net by enhancing livelihood security. No doubt, since the introduction of the process of "reforms" the problem of unemployment and associated problem of poverty has grown manifolds, particularly in the rural areas. The rural poverty has been identified on the basis of a definition which links poverty to the intake of calories and this calorie "norm" is 2400 calories per capita per day in rural areas and 2100 calories in urban areas. As Utsa Patnaik says - 'On this criterion, 75 per cent of the rural population in India is 'poor' compared to 56 per cent in 1973-74.' That's why an Employment Guarantee Act was the need of the hour. The main purpose of this Act is to enable people to claim from the state a basic aspect of their constitutional right to work.

But, unfortunately, the Bill tabled in parliament by the UPA government is much diluted version of the draft prepared by the National Advisory Council (NAC), thus reaffirming our apprehensions regarding the poll-promises made by the Indian politicians.

The most important feature of the NAC draft was that it was based on the principles of universality and self-selections. In it all households were eligible to apply for work, and the Act was to be extended to the whole of India within five years. But the Bill talks about only rural India, that too parts of rural poverty only. It completely excludes the urban poor and the lower middle classes, while most of the urban poor are, in fact, the rural migrants in search of jobs. Thus, in a way, it excludes even sizable sections of the rural poor. Moreover, there is no guarantee of time-bound extension of the Act to the whole of rural India. Besides, which area is to be covered and which is to be left has entirely been left to the whims and fancies of the government. Similarly the Bill restricts the employment guarantee and unemployment allowances to 'poor households' only but it is difficult to identify who 'poor households' are. Besides, the Act, in the present form, sees employment only as unskilled labour, and that too digging and carrying mud and stones. It should be noted that promoting unskilled manual work will erode even the little existing base and productivity villagers have today, as small farmers and producers will also be attracted more towards unskilled work as it provides work security. Another significant dilution, it is said, is in relation to the wages payable under the Act. Moreover, the Bill is so designed as to put heavy financial obligations on the states. At the same time it leaves labour at the mercy of the benevolence of the state. It has also been pointed out that the Bill fails to address gender-sensitive issues of extending the benefits of employment guarantee to women.

In this issue of **Infopack**, we are giving the summary of **National Rural Employment Guarantee Bill, 2004** and its comparison with the NAC draft. We are also giving the summaries of the **Scheduled Tribes and Forest Dwellers Act, 2005** and Civil Society drafted **Communal Crimes Act, 2004**.

- Piyush Pant

The National Rural Employment Guarantee Bill, 2004

By

The Government of India

Bird's Eye View

The National Rural Employment Guarantee Bill, 2004, has been drafted by GOI in order to provide livelihood security to the poor households in the rural areas of the country by providing at least 100 days of guaranteed wage employment in every financial year to every household whose adult members volunteer to do unskilled manual work.

This Bill is likely to be introduced in the Budget Session of the Parliament and if passed the Bill would become an Act.

The document consists of twenty pages and is divided into six chapters. Besides these six chapters the document also includes 'Notes on Clauses', 'Financial Memorandum; and 'Memorandum Regarding Delegated Legislation'.

Chapter I of the document gives short title, extent, and commencement of the Bill, and also gives definitions of some of the important words contained in the draft. Chapters II, III, IV, and V deal with Guarantee of Employment in Rural Areas, Employment Guarantee Schemes and Unemployment Allowance, Implementing and Monitoring Authorities, Establishment of National and State Employment Guarantee Funds and Audit respectively in details.

In chapter-I the document says that the Bill may be called the National Rural Employment Guarantee Act, 2004. It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. It says that different dates may be appointed for different states or for different areas in a State.

The document, in this chapter also defines the following words like:

- 'adult' means a person who has completed his eighteenth year of age;
- 'applicant' means the head of the household or any of its other adult members who has applied for employment under the Scheme;
- 'Block' means a community development area within a district comprising a group of Gram Panchayats;
- 'Central Council' means the Central Employment Guarantee Council;
- 'District Programme Coordinator' means an officer of the State Government for implementation of the Scheme in a district;
- 'household' means the members of a family 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, and authorized Non-Government Organization;
- 'minimum wage' means the minimum wage fixed by the State Government under Minimum Wage Act 1948 for agricultural labourers applicable in that area;
- 'National Fund' means National Employment Guarantee Fund;
- 'notification' means a notification published in the Official Gazette;
- 'poor household' means a household living below the poverty line and also includes the households of all primitive tribal groups;
- 'preferred work' means any work which is taken up for implementation under this Scheme on a priority basis;
- 'Programme Officer' means an officer appointed for implementing the Scheme in a Block;
- 'project' means any work taken up under a Scheme in order to provide employment to applicants;

- 'rural area' means any area in a State except those areas covered by any urban local body;
- 'Scheme' means a Scheme notified by the State Government;
- 'State Council' means the State Employment Guarantee Council ;
- 'unskilled manual work' means any physical work without any skill or special training;

In chapter II the document says that according to the Scheme under this Act the State Government shall provide work to every poor household in notified rural areas, whose adult members volunteer to do unskilled manual work not less than 100 days in a year.

The document further says that the labourer shall be entitled to receive wages for each day of work and the wages shall be made on a weekly basis or in any case not later than a fortnight. Under this Scheme the Central Government or the State Government may make provisions for securing work to every adult member of a household for any period beyond the period guaranteed under sub-section (1).

In chapter III the document talks about some relevant points regarding the proposed Act. The points are:

- Every State Government shall within six months from the date of commencement of this Act, make a Scheme providing one hundred days of guaranteed employment in a financial year to every household, whose members volunteer to do unskilled manual work as per the conditions laid down by the Act in the Scheme.
- The State Government shall publish a summary of the Scheme at least in two newspapers, of which one shall be in a vernacular language circulating in the areas concerned.
- 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: provided that different rates of wages may be specified for different areas.
- In case the rate is not yet fixed by the Central Government in respect of any area in a State, the wage rate can be fixed by the State Government on the basis of Minimum Wage Act, 1948 for agricultural labourers.
- If an applicant for employment under the Scheme is not provided such employment within fifteen days or the date sought for in advance, whichever is later, he/she shall be entitled to a daily unemployment allowance at a rate specified by the State Government, by notification, in consultation with the State Council: provided no such rate shall be less than one-fourth of the wage rate for the first thirty days during the financial year and not less than one-half of the wage rate for the remaining period of the financial year.

The document further says that the liability of the State Government to pay unemployment allowance shall cease under the following conditions:

- the applicant is directed by the Gram Panchayat or the Programme Officer to report for work either by himself or depute at least one adult member of his household: or
- the period for which employment is sought comes to an end and no member of the household of the applicant had turned up for employment: or
- the adult members of the household of the applicant have received in total at least hundred days of work in a year: or
- the household of the applicant has earned as much as the wages of

hundred days work from the wage and unemployment allowance together.

The document also says, in this chapter, that the unemployment allowance payable to the household of an applicant jointly shall be sanctioned and disbursed by the Programme Officer or local authority authorized by the State Government. And if the Programme Officer is unable to pay the unemployment allowance in time or at all for any reason beyond his control, he shall report the matter to the District Programme Coordinator and the reasons shall be displayed on the notice board.

The District Programme Coordinator shall report about every case of non-payment or delayed payment in the annual report and shall submit to the State Government mentioning the reasons for non-payment or delayed payment. And the State Government shall take every measure to expedite the payment

The document further tells that in case an applicant does not accept the employment provided to his household under the Scheme : or does not report for work within fifteen days of being notified by the Programme Officer: or continuously remain absent from work without obtaining permission from the authority, he/she shall not be eligible to claim the unemployment allowance under this Act for a period of three months but shall be eligible to seek fresh employment at any time.

Chapter IV of the document states that with effect from such date as the Central Government may specify, there shall be constituted a Council to be called the Central Employment Guarantee Council, whose headquarters shall be at Delhi, to discharge the functions, and perform the duties under this Act.

The Central Council shall consist of the following members to be appointed by the Central Government namely:

- a Chairperson,
- such number of representatives of the Central Ministries, including the Planning Commission not below the rank of Joint Secretary as may be determined by the Government;
- such number of representatives of the State Government as may be determined by the Central Government;
- more than 15 non-official members representing Panchayat Raj Institutions, organizations of workers, and disadvantaged groups including two chairpersons of District Panchayats nominated by the Central Government by rotation for a period of one year.
- one-third of the non-official members nominated under this clause shall be women, and also not less than one third of the non-official members shall be belonging to the Scheduled Casts, the Scheduled tribes and Minorities.

The document also says that the terms and conditions, functions and duties of the Central Council shall be prescribed by the Central Government. The Central Council shall perform and discharge a number of functions and duties such as:

- establish a central evaluation and monitoring system;
- advise the Central Government on all matters concerning the implementation of this Act;
- promote the widest possible dissemination of information about the Scheme made under this Act;
- preparation of annual reports to be laid before the Parliament by the Central Government on the implementation of the Act;

The Central Council shall have the power to undertake evaluation of the various Schemes made under this Act.

The document further says in this chapter that for the implementation of this Act at the State level, every State Government shall constitute similar Council to be known as State Employment Guarantee Council, whose constitution, functions and duties shall be the same as the Central Council.

At the district level, the Panchayat shall constitute a Standing Committee. The number of its members will be subject to such terms and conditions as may be prescribed by the State Government. The Standing Committee shall be assisted by the District Programme Coordinator in discharging its functions and duties regarding implementation of the Scheme under this Act.

Similarly the Programme Officer for each Block shall also be appointed by the State Government. The Programme Officer shall prepare a plan for the Block under his jurisdiction by consolidating the project proposals prepared by the Gram Panchayats and the proposals received from intermediate panchayats.

A Programme Officer appointed under sub-section of section 15 and all other officers of the State Government and local authorities and bodies within the district shall be responsible to assist the District Programme Coordinator in carrying out his functions under this Act.

Some of the important functions of the Programme Officer shall include the following functions:

- sanctioning and ensuring payment of unemployment allowance to the eligible poor households;
- ensuring prompt and fair payment of wages to all labourers employed under a programme of the Scheme within the Block;
- ensuring that regular social audits of all works within the jurisdiction of the 20 Gram Panchayats are carried out by the Gram Sabha and that prompt action is taken on the objections raised in the social audit;

The Programme Officer shall function under the direction, control and superintendence of the District Programme Coordinator.

The document also says that under this Act the Gram Panchayat shall be assigned a number of functions and the Gram Sabha shall monitor the execution of works within the gram Panchayat by conducting regular social audits of all the projects. It further says that

the Gram Panchayat shall make available all relevant documents including the muster rolls, bills, vouchers, copies of sanction orders and other connected books of account and papers to the Gram Sabha.

The State Government shall make available to the District Programme Coordinator and the Programme Officer necessary staff and technical support as may be required for the effective implementation of the scheme. The State Government shall also determine appropriate grievance redressal mechanism at the Block level and at the district level for dealing with any complaint by any person in respect of the implementation of the Scheme.

In Chapter V the document says that the Central Government and the State Government shall, by notification, establish funds to be known as the National Employment Guarantee Fund and the State Employment Guarantee Fund respectively for the purpose of implementation of this Act and the Schemes.

The document also says that after due appropriation made by the Parliament by law the Central Government may credit as grants or loans

such amount of money as the Central Government may consider necessary to the National Fund and the amount shall be utilized in 30 ways and subject to such conditions and limitations as may be prescribed by the Central Government for the purpose of the implementation of the Act.

The amount standing to the credit of the State Fund shall be utilized in 40 ways and by such authority as may be prescribed by the State Government. Subject to the rule, the Central Government shall meet the cost of the following, namely:

- the amount required for payment of wages for unskilled manual work;
- up to three-fourths of the material cost of the Scheme including payment of wages to skilled and semi-skilled workers, and expenses towards the administrative works including the salary and allowances of all the members and staffs.

The State Government shall meet the cost of unemployment allowance, including wages to skilled and semi-skilled workers and the administrative expenses of the State Council.

The district Programme Coordinator and all the implementing agencies in the district shall be responsible for the proper utilization and management of the funds placed at their disposal.

The document also says that all the payments of wages in cash and unemployment allowances shall be made directly to the person concerned and in the presence of independent persons on pre-announced dates.

The Central Government may, in consultation with the Comptroller and Audit General of India, prescribe appropriate arrangements for audits of the accounts of the Scheme at all levels.

The account of the Scheme shall be maintained in such form and in such manner as may be prescribed by the State Government,

In Chapter VI the document talks about some miscellaneous points in respect of the Scheme under this Act.

The document says that whoever contravenes the provisions of this Act shall on conviction be liable to a fine extending to one thousand rupees.

The document further says that the Central Government may, by notification, direct that the powers exercisable by it may also be exercisable, if required, by the State Government or such officer subordinate to the Central or the State Governments. And the Central Government may give necessary directions to the state government for the effective implementation of the provisions of this Act.

The document also says that a State Government shall have the option of implementing its' own enactment provided the State enactment does not exist to provide employment guarantee for unskilled manual work to rural households consistent with the provision of this Act under which the entitlement is not less than or not inferior to what is guaranteed under this Act. In such cases the financial assistance shall be paid to the concerned State Government in such a manner as may be determined by the Central Government. And the State Government shall have to follow some rules prescribed by the Central Government.

The document also states that if the Central Government is satisfied, that it is necessary or expedient to do so, it may, by notification, amend Schedule I or Schedule II.

The document further says that every rule made by the Central Government under this Act shall be laid before each House of Parliament, while it is in session for a total period of 30 days, and every rule made by the State

Government under this Act shall be laid before each House of the State Legislature.

But if any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as appear it to be necessary or expedient for removing the difficulty provided no order shall be made under this section after the expiry of three years from the commencement of this Act.

The Schedule I of the document includes some of the minimum features of a Rural Employment Guarantee Scheme focusing on the following works in their order of priority:

- water conservation and water harvesting;
- draught proofing (including afforestation and the tree plantation);
- irrigation canals including micro and minor irrigation works;
- provision of irrigation facility to land owned by households belonging to the Scheduled Castes and Scheduled Tribes;
- renovation of traditional water bodies including desilting of tanks;
- land development;
- flood control and protection works including drainage in water logged areas;
- rural connectivity to provide all weather access;
- and any other work which may be notified by the Central Government.

Besides the above mentioned features the document lists under Schedule I many more features, some of which are like:

- creation of durable assets and strengthening the livelihood resources base of the poor shall be an important objective of the Scheme;
- the works taken up under the Scheme shall be in rural areas;
- the Scheme shall not permit to engage any contractor for implementation of the projects under it;
- the District Programme Coordinator, the Programme Officer and the Gram Panchayat implementing the Scheme shall prepare annually a report containing the facts and figures and achievements relating to the implementation of the scheme within his or its jurisdiction and a copy of the same shall be made available to the public on demand and on payment specified in the Scheme;
- all accounts and records relating to the Scheme shall be made available for the public scrutiny and any person desirous of obtaining a copy or relevant extracts there from may be provided on demand after paying a fee that may be specified in the Scheme.

Under the heading "Statement of Objects and Reasons" the document says that in order to provide direct supplementary wage-employment to the rural poor, many programmes were initiated by the Government of India, namely, National Rural Employment Programme (NREP), Rural Landless Employment Guarantee Programme (RLEGP), and Jawahar Rozgar Yojana (JRY). Though Sampoorna Gramin Rozgar Yojana (SGRY) is being implemented all over the country, it has been observed that the Scheme was barely adequate to provide on an average 20 days of employment to each Below Poverty Line (BPL) household in rural areas. This section also highlights other prominent features of the Act.

National Rural Employment Guarantee Bill 2004 Comparison with the "NAC Draft"

By
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Bird's Eye View

The National Rural Employment Guarantee Bill 2004 was tabled in Parliament on December 21, 2004. But in September a Draft Rural Employment Guarantee Act prepared by the National Advisory Council (NAC) appointed by the UPA government was sent to the Prime Minister's Office. This document examines the difference between the two. However, the draft says that it does not deal with the shortcomings of the NAC draft itself.

The document points out some of the important changes made by the GOI in the original draft sent by the NAC. The differences are:

1. In the NAC Draft, the Act was to be gradually extended to the whole of rural areas within five years covering every rural household. Whereas, on the contrary, in the GOI Draft, the date, period and areas for the application of this Act will be specified by the Central Government. Different dates may be appointed for different States and different areas. In fact, the revised GOI draft allows the government to switch off the employment guarantee anywhere at any time.
2. In the NAC Draft - all households are entitled to the employment guarantee and unemployment allowance. In the GOI Draft, both are restricted to the households below poverty line during the relevant financial year. This defeats the basic principle of an Employment Guarantee Act - universal entitlement and "self selection".
3. As per the NAC Draft, every household in the rural areas is entitled to at least 100 days of guaranteed employment at a statutory minimum wage of agricultural labourers in the State under all circumstances. Whereas, in the GOI Draft, the wage rate may be specified by the Central Government thus diluting the provisions of the Act specified in the NAC draft.
4. In the NAC Draft the productive works were defined as works that contribute to the increase of production, the creation of durable assets, the preservation of the environment, or the improvement of the quality of life. The GOI has diluted it by focusing mainly on the creation of durable assets.
5. Unlike NAC, in the GOI Draft, muster rolls and other records are accessible to the public only after paying fee specified in the Scheme.
6. As per NAC Draft the rural areas cover Class B and C Municipalities. But In the GOI Draft, these municipalities are not considered as rural areas thus excluding these areas from the purview of the Act
7. In both the Drafts the employment guarantee is restricted to 100 days per household per year. This household approach marginalizes women in the field of employment. The GOI draft further narrows down the definition of "household" since nuclear families living together as a joint family are not to be treated as separate household, unless they have separate ration cards.
8. The NAC Draft gave an important role to Panchayat Raj Institutions (PRIs) in the planning and monitoring of the Employment Guarantee Programme. In the GOI Draft the role of PRIs has been considerably diluted. The role of Gram Panchayats and Gram Sabhas has also been reduced.
9. In the GOI Draft, it has been stated that the provisions of Schedule I and II are flexible and can be modified by the Central Government without an amendment of the Act, but the NAC Draft states that all these provisions were part of the Act and could not be

modified without an amendment of the Act.

10. Besides flexible Schedules, in the GOI Draft there is a tendency to give maximum power to the Central Government, which weakens the bargaining power of the labourers with the State authorities.
11. In NAC Draft, it is said that identification of preferred works (by State Council) shall be based on economic, social and environmental benefits contributing to social equity and their ability to create permanent assets. But in GOI Draft, creation of durable assets and strengthening the livelihood resources base of the rural poor shall be an important objective of the Scheme.
12. The NAC Draft says that it shall be lawful for the State Government to direct that certain category of works may be taken up in areas other than rural areas. But the GOI Draft says that the works shall be directed only in rural areas.
13. In NAC, the authority empowered to fix the scheduled rate by the State Government is subject to the approval of the State Council whereas in GOI the rate shall be fixed only in consultation with the State Council.
14. In NAC Draft, the travel and living allowances when the work place is beyond 5 kms. shall be provided as per programme rules. Whereas in GOI Draft, the allowance shall be only 10% of daily wage.
15. As per NAC, there is no restriction against eligibility for unemployment allowance to an applicant who has not been provided with work within 15 days. In GOI the unemployment allowance is subject to such terms and conditions that shall be prescribed by the State Government.
16. In NAC Draft, compensation in the event of death shall be made as per Workmen Compensation Act. In GOI this compensation on death or permanent disability shall cover Rs. 10,000 or the amount specified by the Central Government.
17. In NAC the disqualification period of an applicant from applying for work or receiving unemployment allowance is for 15 days. In GOI this period shall be for three months. The disqualification applies to those who do not report for work within 15 days of being notified, or remain absent continuously for more than a week.
18. In NAC draft, it has been stated that at least 50% of the funds disbursed for implementation of projects shall be allocated to the Gram Panchayat. The GOI Draft says that the Programme Officer may allot at least 50% of the works in terms of cost under Scheme to be implemented through Gram Panchayat. There is no mention of funds.
19. As per NAC Draft the unemployment allowance shall be half of the material costs, administrative charges, and ex-gratia payments. In GOI Draft, the unemployment allowance shall be 1/4th of the material cost and administrative expenses, which may be determined by the Central Government.
20. The NAC draft further says that the state governments shall come under excessive financial burden due to the draft revised by the GOI. In the MoRD draft, state government is expected to pay for: (1) the "overhead" costs of the Employment Guarantee Programme, (2) 25% of cost materials and (3) the unemployment allowance. This is excessive, given that most state governments are bankrupt. The core Employment Guarantee Programme must be certainly funded.

The Scheduled Tribes and Forest Dwellers (Recognition of Forest Rights) Act 2005

Bird's Eye View

This document is a proposed Act in the form of a Bill drafted by the Central Government of India. It is likely to be introduced in the Budget Session of the Parliament. Once passed by the Parliament the Bill will be called "The Scheduled Tribes and Forest Dwellers (Recognition of Forest Rights) Act 2005. This Act will fulfill the promises made by the UPA Government in its Common Minimum Programme CMP).

The document consists of 8 pages and four chapters. The document says that the objectives of the proposed Bill are to record and recognize the rights of Scheduled Tribes and Forest Dwellers on forestlands, which were not verified, recorded and recognized during consolidation of forests and settlements under colonial period as well as after the independence of India. It further says that the proposed Act also seeks to endowing title on holders of leases and pattas on forest lands and on those in possession of pre-1980 encroachment on forest lands.

The document also talks about endowing title to land and homesteads to residents of forest villages and other old habitations on forestlands.

The First Chapter of the document is titled 'Preliminary'. Here it is said that Act will be applicable to the whole of India except Jammu and Kashmir and shall come into force on the date notified by the Central Government in the Official Gazette. The chapter also gives meanings of some of the important words contained in the proposed Act and says that these meanings will apply likewise unless required differently in other context.. It says:

- "Rights," means individual and/or community title to the land or minor forest produce. Such title shall be inheritable but not alienable.
- "Pattas and Leases" means temporary or permanent leases on forestland granted by the competent authorities.
- "Entitlements" means access to land or minor forest produce but not the ownership of the land and they can avail the profit obtained from the land produce including concessions and privileges.
- "Forest land " means forest of any description including village forests, protected forests, reserved forests, protected areas including national parks and wild life sanctuaries.
- "Verification" means the process of verification of rights as provided for in Chapter III of the proposed Act.
- words and expressions used in this Act but not defined shall have the same meanings as defined in the Indian Forest Act, Forest (Conservation) Act, Wildlife Protection Act .
- Any reference in this Act to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is not in force, be interpreted as a reference to the corresponding law, if any, in force in that area.

Chapter II of this document is about "Rights of Tribals and Poor Forest Dwellers".

The document says the title shall be endowed under following conditions:

1. in respect of forest areas notified as 'deemed Reserved Forests' without observing the due process of settlement as provided in Forests Acts provided that these pertain to:
 - tribal areas, or affect a whole cross section of rural/poor in non-tribal areas;
 - the claimants are in possession of the 'disputed land';

- the claimants was in possession of the disputed land when the notification declaring 'deemed reserved forests' was issued;
- 2. wherever the process of settlement is over and notification under Section 20 of the Indian Forest Act, 1927 (or corresponding section of the relevant Act) has been issued but there is prima facie evidence that the process of forest settlement has been vitiated by incomplete or incorrect records / maps or lack of information to the affected persons, as prescribed by law, and similarly the title shall be granted under such conditions when the settlement is over but the notification is yet to be issued, provided that in the first case the claimants are in possession of the 'disputed land' and in second case the claimant was also in possession of the same land when the notification showing Government intention to declare reserved forest was issued under Section 4 of the Indian Forest Act, 1927 (or corresponding section of the relevant Act) and his rights were not commuted or extinguished in accordance with due process of law;
- 3. in all the cases of pattas, leases, grants of any description or nomenclature involving forest land whether by intention, omission, oversight or accident, provided the assignees continue to be in possession of the land;
- 4. where pattas, leases, grants of any description or nomenclature have been given by the Government to Scheduled Tribes and rural poor either individually or collectively, but inter departmental disputes have affected the endowment of rights of the lessees, provided the assignees continue to be in possession of the land;
- 5. where leases of any description or nomenclature of a period prior to October 25, 1980, which were granted to the Scheduled Tribes or to other rural poor for agro-forestry, tree plantation or alike but could not be renewed, despite the State /UT government's intention to do so, due to enactment of the Forest (Conservation) Act, 1980;
- 6. where land and homesteads in all forest villages or old habitations on forest land and the said village and old habitation shall be converted into a revenue village, in cases where all tribals and rural poor who are in possession of and cultivating the land and where the state/UT government have passed orders to regularize such encroachment or cultivation, provided the said forest village and old habitation, the said possession and cultivation were in existence prior to 1980 and the assignees or their heirs continue to be in possession of the land and homesteads and the area in possession and cultivation to be regularized shall not exceed the limit permissible under ceiling laws;
- 7. communal property rights shall be recognized and endowed on pre-agricultural 'Primitive Tribal Groups' and shifting cultivators, who, under no circumstances are to be treated as 'encroachers' on their ancestral lands; FAO's practice of classifying shifting cultivation lands as 'forest fallows' shall be adopted instead of classifying their customary lands as 'forest'. A forest governance system for these lands shall be evolved to enable combining their livelihood uses with maintaining ecosystem integrity;
- 8. All families of tribal and rural poor who will not be eligible for endowment of rights under provisions of this Act shall be rehabilitated in original position of rehabilitation through granting them heritable but inalienable conditional pattas through a Community Managed Forest Conservation Programme by Gram Sabhas under Panchayats (Extension to the Scheduled Areas) Act (PESA) 1996 and permitting

them to practice agro-forestry operations pursuant to their protecting mutually demarcated forest areas.

Chapter III of this document presents Procedure for Verification of Claims. The document says that in order to verify the claims following disputed settlement or lack of settlements, pattas, and leases and for regularization of encroachments on forestlands a Local Committee shall be established consisting of following members:

- a) Sarpanch / Dy. Sarpanch who will be the Chairperson of the committee. In case of Group Gram Panchayat, a member of Gram Panchayat of the concerned village, and in case of forest settlements not coming under Gram Panchayat, a locally accepted Mukhiya will be the Chairperson respectively.
- b) Two knowledgeable village elders or senior citizen (at least one being woman).
- c) Talathi or Patwari representing the Revenue Department will be the secretary of the Committee.
- d) The forest / Beat guard.

The document also states that in cases where the claimant is not satisfied with the decision of the Local Committee, he or she will have every right to present his or her views to the Block or Taluka level Review Committee established by the District Level Committee for this purpose consisting of member of Zila Parishad, member of Panchayat Samiti, Naib-Tehsilder representing Revenue Department, Assistant Tribal Welfare Officer or Asst. Project Officer (ITDP), and Range Forest Officer.

The document further says that all the decisions taken by the Local Committee and by the Block Level Review Committee will be forwarded for the final ratification to the District Level Committee appointed by District Collector and consisting of Dy. Collector, Asst. Divisional Forest Officer, Asst, Project Officer nominated by the Tribal Commissioner. The District Level Committee then shall forward their proposals to the State Government, which will forward together all the proposals of various district committees to the Central Government for approval within a maximum period of one year.

In this chapter the document also deals with the following procedures to be followed by these Committees:

- a) It is necessary to examine all claims pertaining to disputed claims arising out of defective forest settlements, pattas, leases granted, conversion of forest villages and settlements and subsisting encroachments including the claims over individual as well as collective communal ownership. This will also include the claims over forest products from surrounding forest based on customary use and/or use permitted by either Princely State/ Zamindari regime. All these will be done within the purview of the guidelines of the Government of India of 18/9/1990, 3/2/2004 and 5/2/2005. The claims of shifting cultivators and pre-agricultural communities should be addressed within such a framework.
- b) The committees should ensure that all concerned claimants are informed of the examination of their claims. The committees should also ensure that all claimants have the opportunity to make their claims in their language and the weaker sections of the community are spared the time and expense of travel. They should ensure that all claimants are covered and every person is given an opportunity to be heard.. Verification of claims shall be done in the Gram Shabha of the village specially called by the Local Committee held to ensure participation of

the community.

- c) The committees should ensure timetable giving the dates and time of meeting of the Gram Sabha in order to select two village elders or senior citizens to act as members of the committee, for the Local Committee to invite claims supported by evidence and to verify the claims and present their findings which should be prepared and publicized in advance within a fixed time.
- d) An inspector and an area manager should be appointed to ensure that the programme is conducted in a disciplined and regulated manner to enhance the local women and men's participation.
- e) Traditional methods of publicity in the local language must be used to inform the people about the programme of deciding the eligibility of claims. Field staff of rural development, social welfare, ICDS, etc should be involved in disseminating information about the process, particularly to village women through their organization such as SHGs and Mahila Mandal,
- f) Information of the task of the committee, its aims, objectives, and procedure should be made available in the village square, Gram Panchayat office of all villages, Panchayat Samiti, Tehsil office, ICDS, health and education department staff including the remote settlements and un-surveyed villages uncovered by the PRI structure.
- g) On receipt of the complete application of the concerned claimant in Gram Sabha, all claims should be verified in the presence of the assembly in a subsequent Gram Sabha specially called for the purpose.
- h) The Local Committee will give its findings in writing to the claimants in the Gram Sabha.
- i) All appeals will be heard by the Block Review Committee or District Committee as the case may be after 2 weeks notice to the appellant.

4th chapter also deals with the Nature of Evidence to be presented before the Local or Block Committees.

The Act says that it is necessary to clarify and verify the evidence that may be used to decide the period of land occupation. A POR can not be considered as a proof of the claim or otherwise, an assessment of ground realities as they existed at the relevant time is necessary and is possible by a verification of natural and situational evidence of the subsisting claim. Since a variety of oral and documentary evidence establishing the claim period can be regarded as proof of the claim, the Committee can accept documentary evidence from any Government or Semi-Government source, documentation of a reputed institution including survey maps, findings gathered by more than 3 members of the committee from a spot verification, resolution of the Gram Sabha, evidences of neighbouring cultivators and of senior citizens of the villages, an affidavit submitted in the village assembly by the claimant.

The Act further says that it is important for the Committee while deciding the eligible cases to keep in mind that the claimant should fulfill all other conditions laid down in the respective Government decisions in that regard. In case the eligibility criteria for claimants are not in consonance with those in MoEF's 1990 guidelines, the provisions of the 1990 orders shall prevail. And if the respective State Government has not passed any specific orders concerning other eligibility criteria, the other criteria laid down by MoEF shall be adopted.

The document, however, says that while deciding on the claim, the Village Level Committee should pay attention to the following guidelines:

- a) all claims where the claimant has government or semi-government or other relevant documentary evidence in support should be accepted;
- b) in case the claimant does not have the documentary evidence but the Gram Sabha on the basis of other relevant evidence is of the opinion that the claim is legitimate, such claims should be carefully examined by the Local Committee; and benefit of doubt should be given to the claimant. Local Committees decisions should be by simple majority.
- c) If the claimant does not have relevant document in support and the Gram Sabha has also rejected his or her claim, then such claim should be examined by the Local Committee and should specifically be referred to the Review Committee;
- d) all claims that are upheld within the purview of the guidelines laid down by the Government of India in its order dated 18/9/1990 and 5/2/2004 should be forwarded to the State Government for appropriate action.

The document also says that in order to expedite the procedure of examination of claims and to keep the process simple, preplanned publicity and training workshops must be organized by the District Committee with assistance of knowledgeable NGOs at the taluka level for all the members of all the concerned Committees. A separate session should be held for NGOs, CBOs, Activists and Journalists. The Grama Sabha should be held after the programme is planned and announced.

Chapter IV of this document gives the following miscellaneous points to be considered while deciding the claims:

- 1) It says that the verification of Rights and Resolution of all conflicts related to forest lands, disputes resulting from defective settlements, leases, pattas, etc. completing settlements where all these have still not been undertaken, regularization of pre 1980 encroachments and conversion of all forest villages and other older settlements into revenue villages shall be completed within one year from the passage of this Act and proposals be forwarded to the Ministry of Environment and Forest
- 2) The endowment of Rights and Entitlements shall be done in such a manner as to avoid honey combing of the forests.
- 3) The Requirements of Net Present Value and Compensatory Afforestation for diversion of forestland shall not be required for the endowment of rights and entitlements under this Act.
- 4) The endowment of Rights may be made conditional to the right holders being assigned responsibility to undertake afforestation activities of degraded lands and protection of forestland in the vicinity of their endowments.
- 5) The Ministry of Tribal Affairs shall be designated as the Nodal Agency for implementation of this Act.

The Communal Crimes Act, 2004

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Bird's Eye View

This document is in the form of a proposal to the Union Government for consideration and enacting a law on similar lines. The document consists of 32 pages and has a preamble and 28 chapters.

In its preamble the document says that the groups mentioned under the title realized the need to draft "The Communal Crime Act, 2004" for following reasons:

1. Communal riots have been taking place in the country with alarming speed causing large scale destruction of human lives including women and children and their livelihood, displacement of people, destruction of civil and public properties, increasing violence including sexual violence against women, making children orphans and causing mental trauma to them, threatening the right to life and livelihood, bringing misery and indignation particularly to the minority communities.
2. Various Commissions of Enquiry have been set up from time to time to find out the reasons leading to riots. These Commissions have found that in most of the cases the police and Civil Authorities were responsible for the destruction and loss of lives and properties. Ironically, the findings and the recommendations made by these Commissions to the Government have largely been ignored by successive governments and have not been used in legal proceedings as the Commissions of Enquiry Act has limited powers and jurisdiction.
3. Non-cooperative attitude of the Magistracy and the police force to the victims of communal crimes. Either barring them from registering FIRs or registering them improperly.
4. A growing tendency of communalizing the State machinery and of making hate speeches and communally oriented writings.
5. Failure of the criminal justice system to prosecute the culprits.
6. Desiring that the victims of communal riots and other incidents be provided rehabilitation, compensation and social security expeditiously.

The chapter I of the document enlists the following preliminaries:

1. The preamble shall be read as an aid to the interpretation of this Act.
2. This Act shall be called the "Communal Crimes Act, 2004".
3. It shall come into force on notification in the Official Gazette.
4. It shall extend to the whole of territory of the Republic of India.

Chapter II of the document gives the definitions of the words like "Group", "Communal", "Communal Group", and "Media" and says that the words and the expressions not herein defined will have the same meanings as contained in the code of Criminal Procedure, 1973, the Indian Penal Code, 1860, and the General Clauses Act, 1987.

The document in chapter III mentions about what all actions generally come under "Communal Crimes". Some of the actions mentioned are:

1. any act or omission which amounts to an offence under Indian Penal Code (IPC) committed on account of victim's religious, racial, ethnic, culture, language or regional identity resulting in loss of life, destruction of properties, promoting disharmony, enmity, and ill-will among different communities;
2. any public speech, or any article written, or any audio or video recording, or any educational materials ridiculing or denigrating a particular group or aimed at ill will towards that group or deliberately disseminating false and malicious information about a particular group;

3. imposing measures intended to deprive any group of their rights in law, to impose economic and social boycott on a particular group;
4. forcible eviction or enforced migration or torture of a group;
5. all forms of individual or collective sexual violence and intimidation against members of a group;
6. causing, instigating, participating in, encouraging, and supporting a communal riot;
7. use of religious and cultural symbols as well as weapons to intimidate, assault, or to terrorize any member of a particular group, also advocating, participating, and instigating in disrespect to demolition of a religious structure or place;
8. Discrimination by any party against an individual or community in a manner that interferes with the right to freedom of information and freedom of movement, and right to livelihood and life.

(In fact the list is very wide touching almost all the actions taken as communal acts.)

The document describes in chapters IV, V, VI and VII the acts committed by members of various professions that come under "Communal Crimes". The document says that it shall be an offence or communal crime for a member belonging to Police Force, or Paramilitary Force, or Armed Force, or all Civil Authorities to participate, encourage in, or deliberately fail to take effective measures to prevent the planning and execution of a communal crime, or do not register FIRs, or threaten, or intimidate the victims of communal crime, or take side with the offenders in a communal crime.

Chapter V also says that it shall be an offence for any media person or any individual or group to write, publish, broadcast or telecast any information or report relating to a group or in respect to a communal crime that is patently false or known to be false, or distorted or exaggerated, which likely to result in commission of a communal crime. The document says that the Act will be applicable in cases of misreporting, exaggerating, or mischievous broadcast, distorting facts, spreading rumors etc. Under such cases the Head of the Media Service and the proprietor shall be held liable and the Trial Court may suspend or cancel the press registration and license of the offending media service.

The document further says that it shall be an offence for any person in the medical profession to discriminate, or refuse to treat, or to prepare a false or misleading document in respect of a member of a group on account of her or his membership. And for any advocate it shall also be considered as an offence if he or she prepares any false or misleading document, or advises, or instigates to submit false evidence, or refuses to provide legal aid to the communal victim or act in partisan and unprofessional ways.

In chapter VIII the document states that for the purpose of this Act, an organization can only be termed as a Communal Group if it is listed in the Schedule, or it operates under the same name as of the Scheduled organization. The Central Government may exercise its power to remove from, or to add in, or amend the Scheduled if required. It also talks about the process of enlistment, addition, removal etc in the Official Gazette, detoxification of communal group, offence related to communal group membership and fund raising for a communal group under the same category.

The document mentions Externment Provisions in chapter IX. It says that externment is applicable under such cases where the court is satisfied

upon a complaint or a police report that a person is likely to commit an offence under this Act. And the court may direct this person by order indicating the ground to keep away himself or herself from such area and not to return there before the stipulated period mentioned in the order. Failure to abide by the conditions imposed, the person can be arrested by the court. On acquiring a special permission from the court the person can return to the place for temporary period under some specific conditions.

In chapter X the document indicates some preventive measures against communal crime. The document says that a District Magistrate, or a sub-Divisional Magistrate, or any other Executive Magistrate, or any Police Officer, or a Deputy Superintendent of Police may on receiving information and after some inquiries if finds that a person or a group residing in his or her jurisdiction is likely to commit an offence under this Act declare such area to be an area prone to communal crimes and may take necessary preventive steps as per the schemes specified in the Official Gazette by the respective State Government for keeping peace and harmony in the area.

In chapter XI the procedures of conducting the prosecution of a case is mentioned.. Followings are the conduct of prosecution:

1. The State Government on recommendation of the District Magistrate shall prepare a panel of eminent advocates for each district as well as a panel of Public Prosecutors in consultation with Director of Prosecution for conducting cases in the court.
2. The District Magistrate and the Director of Prosecution in charge shall review the performance of Special Public Prosecutors at least twice a year.
3. If the Government is not satisfied with their performance, it can exercise its power to de-notify the Prosecutor.
4. If it seems necessary or if so desired by the victim of communal crimes, an eminent senior advocate can be engaged for conducting cases in the court.

The document also says in this chapter that every information relating to communal crimes under this Act given orally, or written or by e-mail must be reduced to writing in a book by an officer in charge of a police station and be read over to the informant and be duly signed by him. A copy of the statement must be given to the informant at free of cost. If an officer in charge refuses to record the information, the victim has every right to approach the Superintendent of Police

The document further says that whenever an officer receives information regarding any communal crime he or she will immediately visit the place of occurrence, investigate the situation, take necessary actions to handle the situation and submit a detailed report to the State Government.

In this chapter the document also refers to all the allowances that are entitled to the victims of communal riot, his or her dependent and witnesses while proceeding the case.

In chapter XIV the document deals with the Mandatory Duties of the State Government. The document says that the State Government shall take the following measures as per the Central Government rules for effective implementation of this Act:

1. setting up of relief camp for the victims at State expense and providing immediate police protection to the victims and their properties;
2. Providing adequate legal aid to enable the victims to avail themselves

of justice;

3. providing maintenance expenses to the victims as well as to the witnesses during investigation and trial under this Act;
4. setting up committees for periodic survey of the working of the provisions of this Act;
5. the Central Government shall take steps as may be necessary to coordinate the measures taken by the State Governments, and also by notification in the Official Gazette may make rules for carrying out the purposes of this Act and every rule under this Act shall be laid before each House of Parliament for any modification or agreement;
6. failure to perform a mandatory duty under this chapter shall be an offense under this Act and be punishable as such.

In chapters XV and XVI the document talks about the constitution of Statutory Authority under the name of "Communal Crime Prevention Authority" and its power under this Act.

The document says that the "Communal Crime Prevention Authority" shall be constituted by the Central Government for each State having one member each being appointed by the Central Government and the State Government. The chairman, who has to be a former judge of the High Court or Supreme Court, appointed by the Central Government in consultation of the Chief Justice of respective High Court.

The document states that the Statutory Authority shall have the following powers to exercise:

1. It shall have power and authority to direct the State Government or any official entrusted with duty under this Act to enforce and implement the provisions of this Act promptly and effectively;
2. It shall have further power to entertain any complaint of any victim of any communal crime and make any appropriate direction or order as well as grant any temporary injunction or interim orders. All the directions of the Authority shall be final except by a challenge under Article 226 or 227 of the Constitution of India.
3. Failure and refusal of an official to carry out the orders or the directions directed by the Authority without proper cause shall be considered a communal crime.

Chapter XVII of the document talks about the financial transactions and says, it shall be an offence for any person to engage in any financial transaction including the soliciting or collecting of cash or contribution in kind, the giving of funds or contribution in kind, to be used or is likely to be used in the abetting, instigating or commission of a communal crime.

The document also talks about collective fine. Chapter XVIII says amongst other things that if after an inquiry in the prescribed manner, the State Government is satisfied that the inhabitants of an area are concerned in, or abetting the commission of, any offence punishable under this Act, or harboring persons concerned in the commission of such offence or failing to render all assistance in their power to discover or apprehend the offender or offenders or suppressing material evidence of the commission of such offence, the State Government may, by notification in the Official Gazette. The notification for collective fine should be made by announcing through beating of drums in the area or in other manners the State Government may deem fit. It further says that the aggrieved party may, within the prescribed period, file a petition before the state government for exemption or modification of fine. No fee shall be charged for this. The petition of collecting fine payable by any party (including a Hindu undivided family)

may be recovered in the manner provided by the Code of Criminal Procedure, 1973.

Chapter XIX deals with punishment on committing communal crime.

In this chapter the document says that all communal crimes are cognizable and bail-able only by the Special Court constituted under section 22.

The document says that under this Act any person or persons convicted of committing communal crimes resulting in death of any person shall be punished with rigorous imprisonment for life including fine ranging up to ten times the value of property loss during riots, and in case of property loss be punished with rigorous imprisonment ranging up to 20 years including fine ten times the value of the property loss. The punishment for committing all other communal crimes as defined in section 2 shall be rigorous imprisonment for a period ranging up to life imprisonment but not less than seven years and a fine up to Rs. 10 lakhs or the value of the property loss whichever is greater.

Chapter XX of this document mention the ways the compensations are made to the victims of communal crimes. The victims are compensated in the following manners:

1. the victims shall be compensated by the State Government to the extent to which they have suffered within 8 weeks of the commission of the communal crime;
2. it is the mandatory duty of the State Government to expeditiously establish relief camps immediately after the commitment of any communal crimes in which people have lost their shelter or are afraid of returning there, extending full security and all facilities prescribed for internal refugees by the United Nations, and providing with monthly stipend, or wage work;
3. the State Government will make every effort to create a conducive environment for the early return of the victims to their secured and rebuilt, or original shelter;
4. the High Court may appoint a Commissioner for the assessment of loss of life and property and on the basis of his or her report the Central Government shall compensate the bereaved families, the injured persons, and those who suffered financial damages;
5. the Central Government will direct the Reserve Bank to direct both National and Private banks to extend soft loans to enable the survivors to rebuilt their destroyed shelters and livelihood.

The document in the chapters XXI, XXII, and XIII underlines the functions of Commission of Enquiry, Investigation by an Agency, and Special Courts respectively.

The document says that the Commission of Enquiry Act 1952 shall be applied in respect of any allegation to the commission of communal crime. It also says the Commission shall be considered as a Court within the limit of the Contempt of Court Act. The entire report of the Commission including its findings and recommendations shall be binding on the State Government and shall be implemented by the State Government forthwith. A Court trying an offence under the Bill if finds that the investigation of the case has not been done in proper, unbiased and professional manner may direct that the investigation will be entrusted to any other investigation agency, including the CBI.

The document further says that the State Government shall constitute in consultation with the Chief Justice of the respective High Court the Special Courts of Sessions to try the cases under this Bill and shall try all offences

under this Bill. Trials shall be conducted on a day- to-day basis. In case of the conviction by the Special Court, the accused shall not be entitled to bail during the period of Appeal in any higher forum. The Special Court may grant bail to the accused after being satisfied that the said accused will not commit any communal crime after being enlarged on bail. The Special Court shall Suo Moto or otherwise cancel the bail or send the accused to the appropriate custody if any complaint is lodged against him of committing any communal crime while he is on bail.

Chapter XXIV deals with the directions by the Central Government says that all the concerned authorities are bound to carry out the directions regarding enforcement of the law and order issued by the Central Government. And the Authorities shall also submit to the central Government a list of names and addresses of individuals and organizations promoting disharmony and engaging themselves in communal crimes.

The document in XXVth chapter mentions the need of appointment of a Commissioner says that Commissioner may be appointed by the Central Government in order to ascertain the perpetrator of communal crimes and of destruction of the property and loss of life, in case the State Government fails to do so.

In chapter XXVII, the document says that a person convicted under this Bill will not be eligible for any public office under Central and State Governments, or local Government, or any public or semi- public organization or institution. It also says that the convicted person will be barred from contesting and canvassing elections for a period of 10 years. Followings are some miscellaneous points mentioned by the document in its XXVIII chapter.

These points are:

1. The provisions of section 360 of the code and the provisions of the Probation of Offenders Act, 1958 shall not be apply to any accused above the age of eighteen years under this Act;
2. The police ensure immediate videography of the place of communal crime.
3. If the communal violence does not stop in the district within 48 hours, it is derived that the senior most police officer and the senior inspectors of the area failed to discharge their duties.
4. All the offences punishable under this Act shall be cognizable and non-bailable.
5. This Bill will be supplemented to the normal laws of the land and will not derogate or replace them.
6. In case of conflict of interest between this Bill and other laws, the provision of this Bill will prevail to the extent of such conflict.

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