PLANNING COMMISSION

Sub: **Right to Work: Observations on the Note based on Cabinet Committee's Deliberations.**

The Cabinet Committee on Right to Work had desired after its last meeting on 18.4.1990, that a Note setting out the outcome of its deliberations may be prepared for the consideration of the Cabinet, also bringing out the financial implications of implementing a guarantée scheme under the Right to Work. The Note based on the deliberations of the Cabinet Committee and also incorporating the financial implications is sent herewith.

The Planning Commission took this opportunity to examine certain important aspects relating to the operationalisation of the Right to Work in the context of the total approach to employment in the Eighth Five Year Plan. The views of the Commission on these issues are submitted below for the consideration of the Cabinet:

(i) The Commission would like to reiterate its view, expressed in its earlier Note to the Cabinet Committee and also incorporated in the Note prepared on the basis of Cabinet Committee's deliberations, that the only effective way to realise the Right to Work is to tackle the problems of unemployment and underemployment through a full employment strategy of development. Therefore, a guarantee scheme which may be necessary in the short run has also to be seen as a part of and dovetailed into this strategy. For this purpose, a large portion of the resources allocated for guarantee should be utilised for employment intensive investment activities (such as low cost housing, low cost markets, irrigation, land levelling and water conservation).

(ii) A good part of the resources utilised for guarantee should be complementary to the plan programmes. Yet it needs to be pointed out that a substantial magnitude of resources, additional to what is being envisaged in the Plan to achieve a 5.5 per cent rate of GDP growth, would be necessary for implementing the guarantee. The savings rate evisaged in the Approach document, which is higher than the current level, will itself call for curtailing of non-plan expenditures (including on salaries, dearness allowances, etc.). In short, savings on current expenditures including on subsidies, is vital in addition to raising extra resources.

(iii) The rate of savings and inflow of foreign funds envisaged in the Approach document together would be adequate to generate a GDP growth of 5.5 per cent. On this assumption a progressive acceleration in the rate of employment generation will be feasible in the Eighth Plan. But this built-up will not be adequate to liquidate the problem of unemployment at least in the next ten years. The guarantee scheme is required precisely to make up this deficiency over and above the Employment expected to be generated in the development process through the Plan investments. The resources for this purpose will thus have to be additionally mobilised, over and above what is envisaged in the Approach document.

(iv) For mobilising additional resources for the guarantee, it would be necessary to resort to special cesses/levies as in the Maharashtra Employment Guarantee Scheme. Since the works under the Guarantee will be executed at the decentralised level and would primarily be of benefit to the local community, it should also be possible to mobilise a certain amount of funds through local contributions. This would call for prior consultations with State Governments related to their share of the cost of implementing the scheme to which a reference has been made in the attached note.

(v) Efforts will also have to be made to see that a significant part of the Guarantee programme is directed towards creation of assets that yield returns and to the extent this is done, it should be possible to utilise bank finance for this purpose.

(vi) So far as the implementation of the guarantee programme is concerned, the Commission is of the view that there should not be any departmental bifurcation between rural and urban work guarantee programme. Some institutional arrangements will have to be devised at the Centre as well as in the States to ensure that the work guarantee programme is viewed and conducted as a comprehensive programme taking due cognisance of the rural-urban continuum and utilisation of the urban educated unemployed in the programmes under the guarantee for meeting minimum needs and for providing supportive and technical services in local level planning in rural areas.

23 May, 1990

SECRET

RIGHT TO WORK: APPROACH, CONSTITUTIONAL AMENDMENT, LEGISLATION ON WORK GUARANTEE AND FINANCIAL IMPLICATIONS

[Note based on the deliberations of the Cabinet Committee]

A Cabinet Committee on Right to Work was constituted under the Chairmanship of Prof. Madhu Dandavate, Minister of Finance *vide* Government of India, Cabinet Secretariat communication No. 11/2/1/89-Cab. dated the 8th December, 1989. The Committee considered various aspects relating to the operationalisation of Government's commitment to Right to Work. Its deliberations were facilitated by papers on the subject prepared by Planning Commission. Department of Rural Development, Ministry of Urban Development, Ministry of Labour and Ministry of Law.

2. The Committee recognised that there were two broad aspects of this subject. One related to the approach and scope for generation of work and its operational implications; and the other related to the Constitutional and legal framework.

3. The Cabinet Committee constituted a sub-committee under the Chairmanship of Shri L.C. Jain, Member, Planning Commission, to go into the approach and modalities and prepare drafts of a Constitutional Amendment for Right to Work and of a legislation defining the restrictions, scope and extent of the Right. The report of the Sub-Committee alongwith the drafts of the Constitutional Amendment and the Right to Work Bill prepared by the Ministry of Law, were then considered by the Cabinet Committee.

4. The present Report outlines presents the approach to Right to Work as broadly endoresed by the Cabinet Committee (Section I); suggestions on the extent, scope and restrictions as would be provided in the legislation (Section II), and, some important related policy issues deliberated upon by the Committee (Section III). Broad estimates of the finacial requirements of a Work Guarantee programme for the current year as well as indication of its financial requirements for the entire Eighth Plan period, have been made by the Planning Commission, as directed by the Cabinet Committee and are presented in Section IV. The Committee's suggestions for further action are presented in Section V.

I. APPROACH

5. The overall approach to the concept of Right to Work will be that of creating conditions for the people to find productive work in the process of development. For, the

only sustainable approach for fulfilling the Right to Work is to tackle the problem of unemployment and underemployment, rural and urban, through a full employment strategy of planned development that generates maximum self- and wage employment opportunities. It is broadly estimated that a rate of growth of employment of around 3 per cent per year would have to be achieved during the 1990's in order to meet the objective of near full-employment by 2000 AD. Such a rate of employment growth should be feaible with a restructuring of the investment and growth pattern in favour of more labour-using productive sectors.

6. The goal of full employment ensuring stable, sustained and gainful work to all through a restructuring of planned growth should be set for achievement over the years. However, the inclusion of Right to Work as Fundamental Right in the Constitution would make it incumbent upon the Government to provide employment to the residuary categories of persons who would still be unemployed or underemployed during the transection period. It would, therefore, be necessary to make provision for special employment progrmmes to take care of such persons seeking work.

7. There are such programmes already in operation in rural areas, and to a limited extent, in urban areas. In the changed context of work guarantee, these programmes would need to be thoroughly restructured. Their orientation has to shift from **expenditure** to **investment** and the employment in

such programmes has to be productivity oriented. The special focus would be on increasing the production capacity and sustainability of the natural resources such as land and water, ecological restoration, meeting social infrastructure and improvement of quality of life.

8. It is to be recognised and ensured that the need for special programmes to guarantee work declines over the years, as the execution of an employment-intensive strategy of planned development should leave a progressively smaller number of persons requiring work under such programmes.

9. Operationally, the inclusion of Right to Work in the Constitution will generate demand and pressures for employment, of unprecendented proportions on the entire system of governance from the centre upto the remotest village. The administrative arrangements from the Centre upto the village will need to be streamlined and oriented for this task. Furthermore, in view of the highly diverse nature of unemployment and underemployment situation and very high local variations in the requirements and suitability of different kinds of works, the programmes would need to be formulated as well as implemented on a decentralised basis.

10. The operational needs will require that there has to be an effective institution at the village/town levels, that is, an elected local body (Panchayat/Nagar Palika) in position for the Right to Work to be put into operation on a sustained basis. It is important that the responsibility of

planning and implementation of works under the guarantee is entrusted to these bodies as they have to bear the brunt of day to day operation and have to satsify those seeking work. To enable them to discharge their operational obligations effectively, the local bodies will have to be endowed with adequate supporting resources including planning and technical services to formulate comprehensive area plans of village, town or district Panchayats.

11. In order to ensure that the works are fully integrated into the development plans of the area and to minimise inefficiency and wastages that result from vertical departmental line of command, it will be necessary to eliminate departmental segmentation. Likewise, it would also be necessary to ensure that devolution of funds at different levels down to the Panchayats is largely on an untied basis, with minimum of guidelines and directions from above. Such an arrangement will facilitate the use of resources allocated for work guarantee parogramme towards locally relevant works in an investment-oriented rather than expenditure-oriented manner as also create conditions in which contributions by local communities can be enhanced. It will also raise the productivity of the on-going programmes and facilitate use of bank credit on a larger scale.

12. It is, therefore, imperative that the institutional arrangements at various levels are completed under a time bound programme to enable efficient implementation of Right to Work.

II. CONSTITUTIONAL AND LEGAL PROVISIONS

13. Right to Work could be included in the list of Fundamental Rights with suitable proviso regarding reasonable restrictions, as it would not be feasible, particularly, at the present stage of the development of the economy to guarantee right to work to every individual according to his/her qualifications, choice and preference.

14. Though the principle of guaranteeing work through special programmes is accepted, it is not considered feasible to guarantee employment to every individual according to his or her qualifications, choice and preferences, for the reasons of uncertainty of the availability of such work, and more importantly, of the economic and administrative capacity of the government at the present stage of development of the country. This will have to be taken congnisance of in the manner in which the Right to Work is included in the Fundamental Rights. That is, the Right to Work would be Constitutionally guaranteed only with certain reasonable restrictions which will be spelt out in the legislation to be enacted for this purpose.

15. It is, therefore, considered essential that along with the introduction of Constitutional Amendment to include Right to Work among Fundamental Rights, legislation is also adopted setting out the main parameters of the programmes for work guarantee, such as the nature of work, scope of the

programme, wages and compensation payable, and procedures for demanding and offering of work and authorities responsible for providing work. In other words, the legislation is to specify conditions and restrictions and manner under which the Right to Work could presently be guaranteed. The draft Constitutional (Amendment) Bill and the Draft Right to Work Bill, as prepared by the Ministry of Law, are placed as Annexures I and II to this Note.

16. The Right to Work Bill basically spells out the specifics of Work Guarantee Programme drawing upon the provisions and experience of the Employment Guarantee Scheme of Maharashtra and other relevant material. The following provisions have been suggested by the Committee on various aspects of the programme.

(i) **Eligibility**: All adults citizens who are 18 years of age, but have not reached the age of 60 years, will be eligible for work. There was a suggestion that no upper limit needs to be fixed. However, it was considered preferable to have social security rather than provision of work for those 60 years and above.

(ii) **Nature of Work**: The work to be guaranteed under the programme will be basically manual, unskilled type and the participants will have no choice of work. This is considered necessary as it is not feasible to guarantee to an individual work according to his/her qualifications and preference. While the provision does not exclude any individual from the programme, it is presumed that the really needy and poor would opt for it, and it is that group that needs to be covered, in the first instance, on a priority basis. While other kinds of jobs - skilled and technical - would also be created in the schemes/works carried out under the programme, such jobs will not be offered as a part of the guarantee. Choice of actual works and activities may be left to the States and local authorities to be designated by the State Government. These would depend on the circumstances and needs of the local area. But, with a view to maximising employment potential of resources used, it is necessary to ensure that the works undertaken have a reasonably high wage ratio relative to materials.

(iii) **Location of Work:** The location of work shall ordinarily be within the jurisdiction of the local authority designated for the implementation of the guarantee scheme. The State Governemnt may, however, specify the criteria to govern exigencies where work could be given only outside the jurisdiciton of these authorities.[*]

(iv) **Wage** : Wages paid to the workers will be the same as the minimum wages for agricultural labourers/unskilled workers for that State/region fixed under the Minimum Wages Act, 1948.

(v) **Compensation** : If work cannot be provided, as per guarantee, an allowance equal to one-third of the minimum wage subject to a minimum of Rs.5 will be payable.[*] However, the compensation will not be payable in circumstances beyond human control, like floods and other natural calamities.

(vi) **Procedure for application and provision of work**: In order to avail of work under the scheme an individual will get his/her name registered with the designated authority, who will have to provide work within 30 days of such application.[*] The applicant would have to give a declaration that he/she will work continuously for atleast 25 days. If a person fails to work continuously for 25 days when work has been offered, he shall not be eligible to get work or compensation under the scheme for such periods as may be specified.

(vii) **Legislation and Responsibility for Implementation**

The basic responsibility for the implementation of Work Guarantee will be that of the State Governments. Therefore, a legislation by the States rather than by the Centre would be preferable. There could, however, be a Central legislation if a consensus emerged to that effect. The Central legislation should, however, provide sufficient flexibility for State Governments to determine and notify various details connected with the implementation of the guarantee. For this purpose, the State Governments will frame a scheme following the enactment of the Central law, specifying the authorities, procedures and rules for the implementation of the work guarantee scheme. The State Governments will appoint local committees consisting of official/non-official local members, to review and monitor the scheme. Adequate provisions for audit will also have to be made.

{Note: [*] Modifications in the present draft Bill suggested}

III. POLICY ISSUES

17. Besides the aspects which are to be incorporated in the legislation, there are certain policy issues relating to resources availability, phased coverage, cost sharing, rural-urban differences, and funding and institutional arrangements, which require consideration. The following suggestions have emerged from the deliberation of the Cabinet Committee.

(i) **Selectivity**: Recognising the resource and and organisational constraints, the guarantee programme may have to be introduced in a phased manner, while the on-going rural and urban employment programmes, as such or restructured, continue throughout the country. To begin with, certain areas could be selected on the criteria of backwardness and high incidence of poverty and unemployment. Similarly for practical reasons, it was suggested that in urban areas the programme could be limited to the towns upto a population of 20,000 within the larger geographical areas selected for implementation of the guarantee programme from time to time. It, however, needs to be examined whether such an approach would be legally sustainable. While introducing an employment guarantee programme as such in selected areas should not be objectionable, a view was expressed that such restriction may not be considered "reasonable" once Right to Work' becomes a Fundamental Right.

(ii) **Funding**:

(a) At present, under the Jawahar Rozgar Yojana (JRY), 80 per cent of the funds are provided by the Central Government and 20 per cent by the States. To the extent of the current funding, the sharing of funds to be provided for the guarantee programme may have to be same as in JRY. However, for the additional funds required, particularly when the resource requirements become much larger, with the coverage of the guarantee getting extended to all areas, the possibility of increasing the share of the States and also of mobilising local contribution would have to be explored. For such sharing in the future, alternative combinations, 50:50 or 60:40 were suggested. It was also emphasised that efforts to raise 5-10 per cent from local contributions should be made. Special levies, at the State and Local level, as in the case of Maharashtra Employment Guarantee Scheme, should also be considered to fund the scheme.

(b) Another related issue is whether the government of India will reimburse on an open-ended basis the actual expenditure undertaken by States on account of the guarantee programme, or whether the States would be required to undertake the guarantee scheme within a fixed allocation from the Centre. A fixed budget allocation system is followed for JRY as was the case for the RLEGP scheme earlier. This arrangement may be continued for the guarantee scheme as well. But this will need to be discussed in advance with the State Governments.

(c) Under the guarantee programme minimum wages as notified in a State/region will be paid. Some States have much higher wages than the national average. To the extent that they reflect relative prosperity of these States, the need for an employment guarantee scheme may be limited. The consideration of inter-State equity, however, warrants that subsidisation of better-off States at the cost of poorer ones should be avoided. Also, it is necessary to maximise employment generation out of the limited resources. In view of these considerations, the question of central assistance to meet the cost of the programme in regions with relatively high minimum wages may need examination. The provision of central assistance only upto a ceiling of wage rates and requiring the State Governments to provide fully for the extra cost of higher wages may be considered. An alternative would be to ask for a higher share of contribution for the programme as a whole from States where the notified minimum wage is significantly higher than the national average. Also, if there are upward revisions in minimum wages during the year, the States may be required to bear the additional cost.

(d) All Central funds for the Work Guarantee Programme will be routed through the State governments. At present, State-wise allocations are made on the basis of the percentage of poor in a State to the poor in all States. This criterion may continue for the guarantee scheme as well. If, however, the guarantee is limited to certain selected areas, it would have to be examined whether the allocations would be on the basis of the number of poor in the whole State, or the percentage of the poor in the selected areas in a State to the total number of poor in all the selected areas in all the States. Since area-wise estimates of poverty on a comparable basis are not available at present, the allocations to States may continue to be on the basis of the percentage of poor in a State to all the poor in the country, even in the case of the guarantee being limited to selected areas.

IV. FINANCIAL IMPLICATIONS OF WORK GUARANTEE FOR 1990-91

18. Several estimates of the requirements of funds for national employment guarantee schemes for the rural and urban areas have been worked out in the various proposals by the Department of Rural development and Ministry of Urban Development in the past few months. The Planning Commission had also worked out such estimates in the Note on Right to Work presented to the Cabinet Committee. Taking these

estimates and other relevant material into account, an attempt is made here to work out the broad magnitude of financial requirements of the guarantee programme during 1990-91.

19. For working out these estimates, it is assumed that work will have to be provided to any individual in the age-group 18-59 for any day he or she offers for work. In the first instance, therefore, we estimate the likely requirements of persondays of work that would need to be generated under the guarantee on the basis of following parameters :

(i) the estimated number of persondays of unemployment during the year 1990-91;

(ii) the proportion of the persondays under (i) that would actually be offered for employment; and

20. It has often been argued that since the programme would primarily be meant for the poor population, we should use poverty figures instead of unemployment figures for estimation. But since the programme aims at guaranteeing employment, the persons available and willing to offer themselves for work would be a more direct basis for estimating the requirement of employment generation than the population below the poverty line. The possibility of the

employed poor turning out and unemployed non-poor not turning out for work is not ruled out. It may also be mentioned that exercises using either of the two bases - poverty or unemployment - have been observed to result in more or less similar estimates.

21. We have, therefore, used the estimates of unemployment for 1990-91 arrived by the following procedure :

(a) estimating daily status unemployment as on April 1, 1990, by applying the rates revealed by NSS for 1987-88 to the estimated population on that date; [In this exercise, the daily status unemployment rate for rural areas for 1987-88 has been adjusted by adding the employment generated under NREP, RLEGP and Maharashtra EGS to the recorded unemployment. In other words, unemployment rate has been computed for situation as if these programmes did not exist.]

(b) adding to it the persondays of addition in the labour force during the year (rate of growth of labour force has been estimated to be 1.57 per cent per annum in the rural and 4.03 per cent in urban areas); and

(c) subtracting from it the additional employment likely to be generated in the normal course of development. An overall growth of employment of 1.75 per cent - 1 per cent for rural areas and 3.75 per cent for urban areas - has been assumed in line with the trends observed in the recent past.

(d) The estimates of total persondays of unemployment on the above basis had to be made for the age group 15-59, as separate information is not available for 18-59 age group to which Work Guarantee programme is to be aplicable. It is estimated that the age group 15-18 accounts for around one-eighth of the total unemployment. We have, therefore, scaled the above estimates downwards by a factor of 0.125, to arrive at the aggregate persondays of unemployment in the age-group 18-59.

22. For estimating of the persondays likely to be actually offered for work, the following assumptions have been made :

(a) educated viz. matriculates and above, constituting 35 per cent of the unemployed in rural and 50 per cent of the unemployed in the urban areas are not likely to offer themselves for work under the programme;

(b) certain other conditions such as availability for work continuously for 25 days at a stretch may also restrict certain under-employed persons, particularly the self-employed, to offer for work for all the days of their unemployment; and

(c) on the other hand, a certain number of persons, otherwise employed in low earning activities or not otherwise in the labour force, may offer themselves for work due to better wages and assured work.

23. On the basis of these assumptions and using a measure of judgement, a turn-out ratio of 60 per cent for rural areas and 50 per cent for urban areas has been fixed for working out the total requirements of employment generation in rural and urban areas. This exercise yields an estimate of 2059 million persondays of employment generation requirements for the rural and 746 million persondays for the urban areas for the year 1990-91.

24. The cost of generating one personday of employment in the current programmes like JRY has been worked out to be about Rs.30 with a 50:50 wage material ratio. In a recent estimate, the Department of Rural Development has worked out the weight average minimum wage to be Rs.20 and with the wage material ratio of 50:50, the cost per unit in 1990-91 will be Rs.40 per persondays. On that basis, **the total cost of generating the required employment in the rural areas, for the full year in 1990-91, will be Rs. 8236 crores, inclusive of the provisions of JRY and MEGS.**

25. For the **urban areas**, the average wage rate has been assumed somewhat higher at Rs.25, and wage material ratio at 40:60 and on that basis, the cost of generating one personday of employment has been estimated at Rs.62.50. **The total cost for creation of the required employment of 746 million persondays thus works out to be Rs.4663 crores for the full year 1990-91.**

26. **The total financial requirements for guaranteeing employment to everyone for all the days he or she would offer for work is estimated to be about Rs. 12900 crores for the rural and urban areas together for 1990-91.** The actual requirements in 1990-91 would, however, be lower insofar as these estimates relate to the whole year and the guarantee programme may become effective only after some time.

27. Using the same methodology as used for 1990-91 but assuming a progressive acceleration in the rate of employment

growth in the general development process, (starting with 1.75% in 1990-91 to increase to 3% in 1994-95), The requirements of funds for the special Work Guarantee Programme for the subsequent years of the Eighth Plan have also been estimated. The estimates for each of the five years of the Plan are given below:

Year	Rs.crores
1990-91	12900
1991-92	13500
1992-93	13500
1993-94	13100
1994-95	12000

The total requirements for operating the guarantee over the Plan period are thus estimated at around Rs. 65000 crores; at the unit cost and prices of 1990-91. Actual requirements may differ from the estimated depending on (i) normal growth rate of employment which is contingent upon the restructuring of growth and institutional reorganisation to raise effectiveness of public outlays and (ii) the proportion of the unemployed days actually offered for work, which may be higher than assumed (60% for rural and 50% for urban areas.), if the differences between statutory minimum wages and actual market wages are persistently large.

28. For the year 1990-91, a provision of Rs.2600 crores (Rs.2100 Central and Rs. 500 States share) has been made for Jawahar Rozgar Yojana (JRY). Another Rs. 40 crores are provided in the Central Plan for wage employment under Nehru Rozgar Yojana (NRY) and another Rs.40 crores are expected to be the share of the States. In the States, Employment Guarantee Scheme of Maharashtra is the only special wage employment programme of any major significance for which the State Government has made a provision for Rs. 180 crores in 1990-91. There are some other Central Programmes with major wage employment component such as DPAP, DDP etc. the outlays for all of which (including the States´share) for the current year total up to around Rs. 600 crores.

29. Our estimates of requirements of employment generation include the employment likely to be generated under the on-going wage employment programmes. Therefore our estimates of financial requirements are inclusive of the provisions under these programmes, which total up to about Rs.3650 crores. Still another over Rs.9000 crores would need to be additionally mobilised for operating the all-India Work Guarantee programme for the full year. The actual requirements would, however, be lower as indicated earlier, as the programme would, in fact, be now operating for less than the full year. If the programme could be introduced only during the second half of the year, the provision required in addition to what is available for the on-going programmes, may be around Rs. 4500 crores. But in subsequent

years, provision would need to be made for the entire 12 months period. It needs to be noted, therefore, that though the outlay required would decline (with a constant outlay per manday) in successive years due to faster growth of employment, generally in the economy, the programme as such would claim a significant share of plan resources from year to year and for the Plan period as a whole.

V. FURTHER ACTION SUGGESTED

30. The Cabinet Committee decided that its report stating the approach, proposed draft Constitutional Amendment and Work Guarantee Legislation may be submitted to the Cabinet for its consideration/approval. It also decided that the estimates of the total size of financial requirements for implementation of the guarantee scheme under Right to Work should also be placed before the Cabinet as a part of the proposals.

31. The Committee also suggested that :

(i) the Constitutional Amendment and the Model Bill after they are considered and approved by the Cabinet, may be considered in a meeting of All Party Parliamentary Committee;

(ii) these may then be placed before the National Development Council to evolve the required consensus to include Right to Work among the

Fundamental Rights and get the States to pass the legislation on the Work Guarantee Programme in a time bound manner; and

(iii) since the State Governments will have the basic responsibility of implementation of the guarantee programme and will have to meet an increasing share of funding requirements, there should be a dialogue with the States, with every effort being made to secure their acceptance and commitment to the programme.