

The Right to Work in theory and in practice: A Case study of the NREGA, India

- Kaustav¹

1. On Rights:

Development of people's rights in a representative democracy like India's is a complex historical process or, to borrow a term from Polanyi, proceeds through a 'double movement'². At the very beginning we could distinguish between two kinds of rights – rights which are customary and those which are legal (in the context of the modern nation state). The rights we are discussing in this paper are legal rights i.e. rights which are enforceable by the institutions of the state. Usually, such rights are enshrined first from above in the most progressive form and mostly remain on paper (e.g. in the constitution), until, assertions of these rights by people from below establishes them in practice. Assertions of this nature involve popular insistence on the application of rights as well as protecting one's rights, often paradoxically vis-a-vis the very state and government, which might have enacted them in the first place. The source of the paradox is the difference between rights in law and theory and rights in practice which in some ways is the defining characteristic of Indian democracy. From the broader historical perspective of Polanyi, guaranteeing a right from above is considered one movement, then their

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² Polanyi, in Chapter 11 of *The Great Transformation* (1944) explains the double movement as "For a century the dynamics of modern society was governed by a double movement: the market expanded continuously but this movement was met by a countermovement checking the expansion in definite directions." Polanyi uses the term double movement in the context of the self-regulating market (the first movement) and the self-protecting society (the counter movement). I use his idea of the double movement to conceptualise rights in theory and in practice.

assertions from below constitutes the second movement. It is people's assertion of the right counterposed against the state that creates the zig-zag of double movements in history. We study the right to work in India through a case study of the NREGA from the point of view of such a double movement.

2. A Brief history of the Evolution of the Right To Work:

The right to work is a relatively modern concept. In ancient times, manual labour was considered degrading and was often forced upon people by the rulers. For example the ancient Greeks and Romans considered all forms of manual labour (both paid and unpaid) a degrading activity. It was associated with slavery or unfreedom. There are instances in history where people were even punished by making them do public works³. Its traces are unfortunately not only present, but far too visible in the Brahminical tradition of modern India where intellectual work is glorified and manual work degraded.

It was in the French Constitution of 1793 that the right to work, by being able to chose a job freely without losing dignity, is recognized as a right. This culminated in the Constitution of 1848 from which time the right to work slowly starts gaining acceptability. Some claim it was one of the clear social characteristics of the 'bourgeois revolution' and nascent capitalism signifying the end of the feudal era. It was in 1948, that the newly born United Nations universalized the concept by recognizing the right to work as a human right⁴.

³ Polanyi refers to concentration factories in the 17th century where the state forcefully interned people.

⁴ Article 23 of the Universal Declaration of Human Rights (UDHR):

- i. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
- ii. Everyone who works has the right to just and favourable remuneration ensuring himself and his family an existence worthy of human dignity, and supplemented if necessary by other means of social protection.

The capsuled history outlined above also provides the background to some very interesting debates that have occurred within economic theory around the right to work. We will focus on the debates within economic theory regarding rights in general and the right to work in particular. A well known approach to rights within economic theory is the social choice framework (Sen, UNDP). The rights based approach to development is an outcome of such views. If we consider the historical specificity of our times, then wage work appears as the established means of earning income. Thus the right to work under capitalism would mean that one has the right to live, mostly, according to rules set by capitalists and moderated by the state. Hunter gatherer societies of course had a different context and their right to hunt, gather food, fish etc would define their right to live under self-employment. Thus the right to work needs to be conceptualized in its specific historical setting and not in the abstract. In doing so we begin to contextualize the right to work vis-à-vis the state, the market and society situated in specific historical time.

After two decades in 1966, two international treaties, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) were approved by the General Assembly of the United Nations. In 1976 both covenants came into force.

Article 6:

- i. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
- ii. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7:

- i. Remuneration which provides all workers, as a minimum, with a decent living for themselves and their families in accordance with the provisions of the present Covenant.

The Right to Work, State and the Market

The working class partly wrested the right to vote in 1867 with the Reform Act in Britain which made way for the electoral system⁵. By the end of the 1880s universal male suffrage had been achieved. However, Marx had argued that the right of the working class to vote would turn out to be incompatible with private ownership of property because it would lead from ‘political to social emancipation’. This tension he thought would push towards the social ownership of all means of production. This tension between the state, the market and workers would largely revolve around the extraction of surplus. In the context of capitalism, Marx had analysed how labour was formally “free” but gradually subject to subsumption under capital⁶.

[...].. *the essential points in this **formal subsumption of labour under capital** are:*

1) that the worker confronts the capitalist, who possesses money, as the proprietor of his own person and therefore of his own labour capacity, and as the seller of the temporary use of the latter. Thus both meet as commodity owners, as seller and buyer, and thus as formally free persons, between whom in fact no other relation exists than that of buyer and seller, no other politically or socially fixed relation of domination and subordination;

*2) (something which is implied by the first relation — for otherwise the worker would not have to sell his labour capacity) that the **objective conditions of his labour** (raw material, instruments of labour and therefore also means of subsistence during labour) belong, completely or at least in part, not to him but to the buyer and consumer of his labour, therefore themselves confront him as capital. The more completely these conditions of labour confront him as the property of another, the more completely is the relation of capital and wage labour present formally, hence the more complete the formal subsumption of labour under capital.*

⁵ See Bhaduri, *The Political Economy of Social Democracy*, 1993 for a detailed analysis of this aspect.

⁶ See Marx, *Economic Manuscripts of 1861-63, Formal and Real Subsumption of Labour under Capital: Transitional Forms*

As yet there is no difference in the mode of production itself. The labour process continues exactly as it did before — from the technological point of view — only as a labour process now subordinated to capital.

Thus, Marx had pointed to the unequal form of exchange, apparently ‘voluntary’ in the labour market, between worker and capitalist as the basis of exploitation under capitalism. The reserve army of labour or masses of unemployed workers kept a check on the bargaining power of labour vis-à-vis capital. Thus the state’s job was to let the market operate and to do so it required to effectively enforce private property rights. Perhaps, economic liberalization has its foundations here.

The Great Depression and the devastation caused by the World Wars gave way to a different problem amongst the advanced capitalist countries of the world. The market left on its own could not keep the show going without the active intervention of the state. Ideas that the state needs to act in mitigating unemployment to put capitalism back on track became attractive and Keynes’ theory was accepted more easily in this situation. Already, the Soviet Union had explicitly recognized the right to work. Thus the spectre of communism and the Cold War that followed gave further impetus to Keynesianism and the formation of ‘welfare states’, which would pursue public policies to achieve full employment through the doctrine of aggregate demand. The UN declarations and covenants of the post World War II years were influenced by the competition between the two political systems⁷.

Until roughly the Great Depression of the 1930s, the right of the individual to employment under capitalism was considered entirely in the context of a market economy. In changed circumstances, especially the

⁷ See Bhaduri (2005), Joblessness for an exposition of the competition between the two systems and its effects on economic theory and policy.

full employment policies of the Soviet Union, it was now considered the State's responsibility to maintain high employment. The concept of the welfare state which came about during the post World War II years impacted the right to work. The tension between an individual's right to work moderated by the need of the market and the state's responsibility to maintain high employment created a fundamental division. Not surprisingly, it is also reflected in modern economic theory. In the simplest form, mainstream economic orthodoxy theorizes by constructing the utility-disutility framework involving income and leisure as substitutable commodities. Thus unemployment occurs because lazy people (read poor unemployed masses) do not wish to work at the market clearing wage rate. This fact is buttressed by theoretical formulations like Lucas' labour supply function⁸ where intertemporal choice between leisure and income make unemployment a voluntary 'rational choice'. The Phillips curve⁹ which depicts a trade off between unemployment and inflation was used by economists like Friedman (1968) to argue for a natural rate of unemployment¹⁰ and hence provide the theoretical ammunition for arguments against a full employment society.

It should be clarified that the right to work had been conceptualized primarily as a market phenomenon. However, public policy interventions to increase employment give rise to a fundamental tension between workers and capitalists over time because lower unemployment, higher wages and more bargaining power for workers and unions sustained through public policy make capitalists wary of such rights¹¹. The

⁸ See Lucas (1981), *Studies in Business Cycle Theory*.

⁹ See Phillips (1958), *The Relationship between Unemployment and the Rate of Change of Money Wages in the United Kingdom 1861–1957*, *Economica*.

¹⁰ It is worth noting the usage of the term 'natural' specially by the right wing amongst economists. It is used in the social Darwinist sense of there being competition in society and hence there were bound to be losers – in this context the unemployed. Hence the competition in the market would throw up a perfect solution with a few people naturally being unemployable at all points of time. The construction of workers as shirkers, i.e. workers prefer to be lazy and not work, have a similar lineage in economic theory.

¹¹ See Kalecki (1943) for Political Aspects of Full Employment, where he underlines this tension.

Keynesian policy presumed an element of class neutrality on the part of the state in so far as the demand management was shown to help both workers to expand their wage bill and capitalists their profits, with the total size of national income expanding with demand. Nevertheless, non-Keynesians opposed such policies because it disturbs the working of the market by strengthening workers' bargaining power, which in turn they argued would retard profitability and growth. On the other hand, this type of policy by stimulating aggregate demand from higher wages might lead to a higher wage-led growth (Bhaduri and Marglin, 1990). The debate within economic theory largely focused on these two formulations – profit led and wage led and various mixes between the market and the state.

There is however a direct approach which consists of the state leading the way by guaranteeing the right to work for all individual citizens. This is what was attempted in a rudimentary way in the NREGA for the rural population. This however is different from the Keynesian program in two distinct ways – creation of productive assets (not unproductive employment only for generating demand) and decentralization of decision making regarding the kind of works to be undertaken. The right to work conceived in this way can become a tool in the hands of the workers in increasing their wages, creating productive assets for their local situation and most importantly decentralisation of decision making – all of which contributes to increasing the bargaining strength of the poorest and most vulnerable workers vis-a- vis the employers. In principle, the right to work under NREGA could be a transformative right to bring about deep changes in the power structure of the rural society. In practice, the potency of the NREGA would depend on various workers' struggles to sustain these rights. As already mentioned, the gap between rights in theory and rights in practice is a defining feature of Indian democracy and the NREGA turns out to be no exception.

The Right to Work, State and the Society

One might begin with three views or formulations of ‘society’ in which rights under capitalism operate. One is Gramsci’s notion of a ‘civil society’, the second is Polanyi’s idea of ‘active society’¹² and third is Mohanty’s idea of a ‘creative society’. All these ideas of society are grounded in historical specificities of capitalism – Fascism (Gramsci), successful market capitalism (Polanyi) and post-colonial capitalist development (Mohanty). Against the backdrop of Fascist repression, Gramsci’s civil society was set in the context of the growth of trade unions, mass education, political parties and other voluntary associations etc. which came into being towards the end of the 19th century in US and Europe. In this view, civil society is marked on the one hand by class struggles vis-à-vis the state, and on the other it can also collaborate with the state to contain class struggles. Polanyi’s ‘active society’ on the other hand is on contradictory terms vis-à-vis the market. This concept might be illustrated by the following examples - working class movements to shorten the working day, the Chartist movement to extend political rights, political party formation etc. Thus this active society has its own distinct existence while advancing other political formations. For both Gramsci and Polanyi, however, ‘society’ exists in an institutional space between the state and the market within capitalism. Mohanty’s¹³ notion of a creative society is born out of the anti-colonial struggles and has acquired some new features due to decades of people’s movements. The movements for self-determination be that of nations or oppressed identities have given rise to an impetus for reconstitution of society and rights from below. These three notions of society all deal with historical specificities of capitalism and can be a useful aid to

¹² See Burawoy (2003) for an exposition of Marxist notions of society.

¹³ See Mohanty (2008) for an exposition on creative society and rights as political affirmations.

understand the rights discourse. The specific case of the NREGA as the right to work in India can be contextualized in this historical setting.

3. NREGA and the Right to Work:

Set in the context of a historical process, a double movement led ultimately to the enactment of the NREGA. To recapitulate this historical process briefly, the Communists were the first to raise issues pertaining to workers' rights in independent India. The specific demand for the right to work was raised by socialists in the 1960's and was later picked up by the Jan Sangh in its program. The years of drought in Maharashtra in the mid 70 led to the Employment Guarantee Scheme in 1979. However the Maharashtra model was a scheme not a legal right and did not have any limit to the number of days that employment could be provided. It was much later in 2004-05 that the right to work, as it now is, came to be formulated and was the basis for a campaign which demanded its immediate enactment once the UPA came to power in 2004. The NREGA in its present form came about mostly as a result of electoral populism outlined in the Common Minimum Program of the first UPA government, but its subsequent vitality would depend not on the pious pronouncements of those in Government but on the strength of people's movements. Peoples movement identifies and corrects faultlines, in design and implementation.

At the level of theoretical design, the NREGA is a rights based approach where work is provided on demand. This aspect relies on the **principle of self-selection** – people who want to do hard manual labour at minimum wages will demand and be given work by the state. This route of the NREGA is fundamentally different from the top-down approaches to rural development which has been there in the past. This opens up a distinct

possibility of democratization or decentralisation at the grassroots especially among the rural poor who can now demand the right to do unskilled manual labour at legally stipulated minimum wages. Further they can now have a say in the decision making process of selection of works – a break from the past where the developmental administration or the vote seeking politicians decided what kind of asset was to be built. This is aimed at achieving a model of sustainable community development keeping in mind local needs for planning and at the same time providing some succor to unemployed rural workers in lean seasons.

Yet the law differed from the theoretical design. The National Rural Employment Guarantee Bill was tabled in parliament and passed in the last week of August, 2005, with some of the amendments that mass organizations, academics, activists and journalists who formed an integral part of the nationwide peoples campaign for Employment Guarantee¹⁴. The National Rural Employment Guarantee Act, 2005 promises *“to provide for the enhancement of livelihood security of the households in rural areas of the country by providing at least one hundred days of guaranteed wage employment in every financial year to every household whose adult members volunteer to do unskilled manual work and for matters connected therewith or incidental thereto.”* NREGA became operational on 2nd February, 2006 and first covered 200 of the most backward districts, then 330 and now all 620 districts of the country.

But what still remains a most disappointing fact is that this employment guarantee is to be provided to rural households, and not individuals.

¹⁴ The central slogan of the campaign for a full fledged employment guarantee act was *“Har Haath Ko Kaam Do, Kaam Ka Pura Daam Do”* (We Demand work for every individual at proper wages, meaning the wage in accordance with the Minimum Wages Act 1948). This reflected the spirit of the individual-entitlement approach which was to define the NREGA. Also the campaigners managed to stall a switch-off clause, using of the BPL-APL criterion to select households (this would violate the principle of self-selection) among others.

What this means in other words is that our policy-makers have (implicitly or explicitly) assumed a unitary household model and have tended to direct resources principally at male household heads in the rural economy. The household approach instead of the individual-entitlement approach has been one of the serious drawbacks of the current act, excluding a large majority of the labour force from their legitimate rights. Further a full fledged employment guarantee would imply that it would be applicable to both rural and urban areas. At the same time, NREGA has no urban employment guarantee. Also financial decentralisation¹⁵, i.e. panchayat level decision making with regards to financial allocation is currently absent in this act. Further, the nature of works that can be undertaken under NREGA are such that disabled and old people cannot avail of this opportunity. These limitations restrict the scope of the Act compared to its original intention visualized by the campaign.

However, the flaws in the NREGA can be distinguished as belonging to two types - those that arise during the process of implementation and those which arise from the very way NREGA was designed. Design faults are in the formulation of the program which takes place at the top (first movement). Faults in implementation come to the fore when peoples' rights are asserted from below (second movement). The two are however interwoven in a historical process and often reinforce one another. This often makes the two different nature of faults appear as part of the same historical process and often are not distinguishable by observation. It also gives rise to the suspicion that the design faults are at times deliberate, so that the process of implementation can be easily corrupted. The conceptual separation that we have outlined is often such that upon observation it seems to contain both. This is precisely the feature of a

¹⁵ See Bhaduri (2005) for a detailed exposition on decentralisation of finance at the panchayat level and also possible channels of rural credit.

double movement, because, only when the law is implemented do rights take actual shape. The other feature is that often we observe what is surface level phenomenon, e.g. corruption, but fail to look below the surface for structural reasons causing it. Most observers of NREGA point to the level of corruption and hence the policy prescription that follows is one of proper implementation. What we want to explore instead is that whether these are faults of designs or of implementation? In the working of a double movement, these two features often are observed together but the conceptual separation is often not effected. We attempt to do this below.

Faultlines by process:

| NREGA (Processes) | Faultlines |
|------------------------------|--|
| Job card Application | <ul style="list-style-type: none"> • BPL criterion, Voters ID, Other lists are used to reject applications whereas the Act is clear that anybody who wants to work be given a job card • Female Headed Households are often denied job cards • Joint family were being registered in the first phase but this anomaly has subsequently been undergoing rectification • Money being charged |
| Job card Distribution | <ul style="list-style-type: none"> • In some places being given on “quota” basis – the quota preference could be for same caste, religion or party |
| Application for Work | <ul style="list-style-type: none"> • No receipts being given • Not coming through Gram Sabha, some places being ordered from above (DC level) |
| Worksite facilities | <ul style="list-style-type: none"> • No crèche, drinking water, first aid, shade • Machines being used |

| | | |
|--|--------------------------------|--|
| Wages | Task Rates, Daily Rates | <ul style="list-style-type: none"> • Task rates much below Min. wage (workers have been paid as low as Rs.10) • Daily wage paid is also lower than minimum wages at places |
| | Measurement, DSOR | <ul style="list-style-type: none"> • Measurement not made in front of workers • Engineers are too few in number to be going to all sites on a weekly basis. |
| | Payments | <ul style="list-style-type: none"> • Payments not made on time. Delay in payments even after money has reached panchayat level |
| Muster rolls | | <ul style="list-style-type: none"> • Not available at worksite and offices |
| Unemployment Allowance | | <ul style="list-style-type: none"> • Receipt for work application not given. Panchayat sevaks/mantris not trained • Being denied even with receipt |
| List of Works | | <ul style="list-style-type: none"> • Too much focus on roads and big ponds instead of creating productive assets which meet local needs |
| Awareness | District Administration | <ul style="list-style-type: none"> • Mindset is that of previous schemes which required top-down approach. Not being able to let go and let people demand job cards, work etc. |
| | Block Administration | <ul style="list-style-type: none"> • Complex situation because NREGA alters their local power equations |
| | People | <ul style="list-style-type: none"> • Not aware of the demand-driven nature of the act |
| Transparency, Accountability And Social Audit | | <ul style="list-style-type: none"> • Administration (mainly at the Block level) obstructing people's right to information. • Not willing to be present at Jan Sunwais |

The severe shortcomings of NREGA across the country with regards to expectations and outcome lead us to ask the following questions: Is the

NREGA a case of fault of design or a case of faulty implementation? These are the two basic issues that need to be highlighted in the specific context of the NREGA. Fault of design could be traced to issues of governance, democracy and decentralisation and can be due to the top-down model of developmentalism that informs the Indian state's 'from above approach' to eradication of poverty, unemployment etc. Faulty implementation is generally a process related issue which implies that some corrective administrative measures would lead us to the desired outcome. However, these two sets of issues might not be mutually exclusive – e.g. the unwillingness on the part of the administration to disseminate information about the demand driven nature of this act can be symptomatic of both. Awareness about rights can upset the top-down nature of Developmentalism and thus there is less incentive on the part of DCs, BDOs, panchayat sevaks to disseminate information about the NREGA. There is a percentage of funds (from the NREGA budget) allocated to the developmental administration to carry out such awareness campaigns, which by and large is left unused. This is both a case of faulty implementation and a fault of design. This top-down approach however, is curbed by assertion of rights by affected groups/people and can be looked upon as approaches 'from below'. 'From below approaches' can and do help in solving issues of faulty implementation and altering faults of design. These faultlines can be best observed if we concentrate on two crucial issues with respect to the right to work – corruption and wages.

Corruption:

Faulty implementation

Government spending on public works is best understood in the Indian context by introducing the concept of corruption/leakage. Leakage or

corruption implies that only a fraction of the entire amount of government expenditure is effectively used. This occurs, in the NREGA, because there is asymmetric information between the workers and the state hiring them regarding their rights. Hence it becomes easy for middlemen to extract rents – resulting in lower wages reaching the rural workers. There are different ways in which asymmetric information can lead to fraud under any public work program (in this case the NREGA): All/some of the names on muster rolls are bogus (someone else claimed wages from the government and the names on the muster rolls are correct, but the days of work and/or wages recorded are false)

In other words the lower the value of leakage, the higher will be the wage reaching the hands of the workers. Even with leakage the government investment will lead to higher output. In this context it must be remembered that the NREGA aims to guarantee 100 days of employment to every household at legally stipulated wages. This employment is non-farm employment and the wages received by workers would be the social wage provided to them to overcome distress. A major component of wages will be consumed during the lean seasons thereby leading to an increase in consumption for the poorest households. Corruption thus results in lower wages reaching the hands of the workers and effectively curtails the demand generation component of the right to work. Peoples' vigilance leads to such corruption to be exposed and as one would imagine to a better implementation. However, when we look at the clauses in the design of the NREGA, we find that there are in-built disincentives for exposing corruption.

Faults of Design in dealing with corruption:

The government's method of dealing with corruption is contained in Clause 27, Chapter VI of the NREGA – which basically advocates

withdrawal of the scheme from any area where complaints of corruption are reported. This kills any incentive for the workers to report corruption since the program itself might get stopped and whatever employment was being given would stop. This clause is an example of throwing the baby with the bathwater and in effect will not stop corruption but end up punishing people for being vigilant about public funds. Thus checking corruption or making higher wages reach the hands of the rural poor is not exactly the priority by design. However, most commentators of corruption in public wage programs often overlook this fact. This is one example of how through faulty design, the state can grant a partial right. However, assertions from below actually end up in correcting faulty implementation and result in higher wages reaching workers. We now turn to the intrinsic component of any public wage work program – wages, to see the double movement in greater detail.

Wages:

Faulty implementation

Most workers surveyed (in the states of Jharkhand, West Bengal, Chattisgarh) could not say how their wage was calculated. Most of them reported receiving a wage which was lesser than the state minimum wage. Almost everywhere, wage payments are delayed. Even in places where workers received wages they could not say what their entitlements regarding wages were under NREGA. A major reason why workers receive lower than minimum wages after having worked on NREGA sites is the task based system of public works programs. A task based system instead of a daily wage system is one where workers are paid for the specified task instead of by attendance (daily wage). Thus if one can't complete the specified task, one gets lower wages. There is another way of looking at this problem. The problem lies in the quantum of work

defined as “task” and the corresponding rates applied to each such task. The difference in wages actually received by workers at worksites which pay by task rates is explained by the local administration by relying on the ‘workers being shirkers’ argument. Through a concrete case study (please see Appendix) with the District Schedule of Rates (2005-2006) in Palamu, Jharkhand we show that even with the measurements by the administration the workers are getting lesser than the official rate.

Faults of Design with respect to NREGA wages:

One of the main reasons why workers donot know how they have been paid is that on the worksite measurements are rarely made in front of the workers. The engineer reaches once in a while to take his measurements without informing the workers. The mates at the worksite record the information about the amount of work done by each worker/workgroups in dairies/pieces of paper not in the muster roll. Later in the offices these informations are entered and payments made according to the “measurements” made by engineers. We show below how workers get lower wages by faulty design.

Case Study¹⁶: Pond excavation(50’ x 50’ x 15’) Village-Ghanghri, Panchayat- Naudiha, Block- Manatu, Dist:- Palamu (Detailed tables in Appendix)

Workers received less than what is due even under the DSOR. The reason for this gap can be a lack of awareness amongst illiterate workers. The workers have their own system of measurements but can’t argue

¹⁶ I am deeply indebted to Lalit Mehta for painstakingly explaining the schedule of rates to me and Avijit Sharma for compiling this case study from our field visits together in Palamau. Lalit Mehta was later murdered on 14th May, 2008 a night before he was to undertake a social audit of the NREGA in that district. According to local people a complex network of interests of politicians, contractors and police were responsible for his muder (see EPW, March 21, 2009 for details).

with the measurements entered by the Junior engineer. Also the mate is the one who makes the direct payment to the workers. Workers are often abused or even beaten up by mates/contractors when they ask for higher wages than what they receive. The awareness levels of workers about what exactly they are supposed to get is complicated further by the fact that the payment is made to workgroup leaders (usually male), who then distributes the wages to the team members. A major reason for women workers getting lower rates can be found because of the disadvantage they face structurally even in the type of work they can do.

Work groups, Task rates vis-à-vis women workers: Since women generally do the work of lifting (not digging) they have dependence on the number of men in the group. If we see the composition of each group we can have an idea that how the group which has the least number of males ends up getting the lowest rates. This is a structural logic enforced from above because there is more or less strict segregation of tasks on a worksite.

Group 5 has 4 members one male one female and two children. The man was digging and the other three were lifting the earth and dumping it outside. The group got Rs. 60 per member. Of course with more children working, the task done by the group is lesser than other groups. Group 1 has the maximum number of men and gets the maximum rates Rs 72.85. Compare with Group 3, there are 3 women one child and only one man who had to do the digging. The kind of work here was the digging of a pond, the more the number of men the more the group gets. This is an issue of concern precisely because a revise of schedule will have to ensure that women are not discriminated on basis of works and wages.

The task rate under NREGA is such that workers often get lower than minimum wages for a full days work. Can this be a fault of

implementation or a fault of design? The state instead of revising the schedule of rates has been trying to put a cap on wages. This is clear if one sees the Act and guidelines. The NREGA contains a clause which can if notified bring down the wages on government programs to a flat national floor of Rs. 60. At present the state minimum wages are paid to workers and in most states it is higher than Rs. 60. In effect there can be a across the board wage cut if this clause is operationalised.

Thus what on observation looks like faulty implementation turns out to be a fault of design on deeper enquiry. This aspect is precisely because the NREGA is a non-neutral program. It can be potentially biased in favour of workers and this is the reason why design faults are introduced so as to curtail the worker bias of such an act.

5. Certain prerequisites for effectiveness of NREGA:

Since we are looking at the right to work as political affirmations especially by workers, it becomes imperative to see how they can do it best. Nothing can replace an organized workers union when it comes to wresting workers rights from the state. The first NREGA workers Union was formed by Disha Gujarat¹⁷ and their struggles can be the beginning of an alternative. The workers of course would need a union if they are to articulate their political rights vis-à-vis employers, in this case the state. But this form of expressing and wresting rights may not always be the form that the right to work takes.

We can see two distinct forms that have evolved. One, is the more individualised route – few people who have access to government and given their position can influence policy making; e.g. introducing clauses

¹⁷ I am grateful to Paulomee (General Secretary of the NREGA Workers Union) for making me aware of this fact and providing me with details of the working of such an union.

in operational guidelines, highlighting anomalies to concerned departments in national/state capitals etc. The other route is the assertion from below which leads to awareness of rights in the longer run. Further examples with regard to unemployment allowance – a right that is to be provided to the worker in case she demands and doesn't get employment under NREGA in 15 days was first claimed in Badwani (by the Jagrut Adivasi Dalit Sangathan). A few false police cases and a determined struggle that followed ensured that this right was wrested by the workers from the state. Between October to December 2006, 1574 adivasi members of JADS (1001 of Pati block and 573 Pansemal block) were paid unemployment allowance for a period of one month. Total payments made were to the tune of Rs 4,75,386. People from 8 vilages of Pati block (Tapar, Piparkund, Amlī - Piparkund, Ban, Kandra, Limbi, Kalakhet, Ubadagad) and 5 villages of Pansemal block (Malgaon, Jaliapani, Umarbaida, Karanpura, Bhatki) were paid unemployment allowances¹⁸. In Badwani, especially people in Pati Block, today are more aware of their rights under NREGA and can correct some issues of faulty implementation.

On the other hand in Palamau, district Manatu, activists of the Vikas Sahyog Kendra have been involved in helping local people know their rights and also be active participants in issues of transparency and accountability of public funds. *“Bahut din ke sangharsh ka baad hamar haque hamar aaj milalau. Hamni sab chha mahina se ladai karat rahlin. Kahan kahan nahi galain hamni sab apan haque ke khatir!”* (After a long struggle we won our right today. We had been fighting for it for the last 6 months. We tried everything!) said Sahodari Devi, a NREGA job seeker from Jerua village of Manika Block (Latehar district, Jharkhand)¹⁹. Sahodari received an amount of Rs. 1620 as unemployment allowance on

¹⁸ Personal communication from Madhuri, (JADS), Badwani, Madhya Pradesh.

¹⁹ Personal communication from Byomkesh, Jharkhand.

7 February 2009, on the occasion of a Lok Adalat on NREGA held in Latehar. Altogether 78 labourers (including Sahodari) from two villages, namely Jerua and Kope, received a sum of Rs. 1,38 lakhs as unemployment allowance. Often the local nexus of power gets unsettled when such public hearings are organized or social audits expose the embezzlement of public funds. This can result in false cases, beatings and sometimes like in the case of Lalit Mehta – death. There are of course different instruments used by groups/people to secure these rights vis-à-vis the NREGA – e.g. Gheraos, locking up block/panchayat offices, Dharnas, Jan Sunwais etc.

A study of instruments will invariably lead us to the question of violence as a binary to non-violence. This is important because the India polity in its struggle for rights has been influenced by both Gandhian instruments and armed movements. Our enquiry allows us to contextualize the circumstances in which movements/assertions of democratic rights cross the border – from non-violence to violence and vice versa. Broadly, we can outline three kinds of context with regards to assertions by people vis-à-vis rights guaranteed by the state. One, in areas where the state is absent to protect rights; second, the state is present but rent-seekers/middlemen step in to guarantee rights albeit at a price and third, the party in power uses the state apparatus for patronage.

These different contexts and responses will probably give us a clue as to why a certain instrument is used and why it is effective in the working of the NREGA. The frame proposed above could help in comparing and contrasting the various issues and explore the possibilities of the way ahead. The critical enquiry hopes to address a crucial question in the context of the NREGA – Can some people (albeit with good intentions) promote and ensure the right to work or is the right to work going to be shaped and wrested through various working class struggles?

6. Some positive social impacts of peoples' assertions:

The double movement with regard to NREGA has been slowly effecting some changes in rural India. The most prominent effect has been that the minimum wages have gone up. This is largely due to the fact that the central government is paying the wage bill so there is ample incentive for the state governments to revise the minimum wages. Now this has put a upward pressure on agricultural wages as is clear from the table below.

Table: Wages before and after NREGA

| Block | Nature of work | Before-NREGA (2004-05) | | After-NREGA (2008-09) | |
|-----------------|-------------------------|--|--------|--|--------|
| | | Male | Female | Male | Female |
| Dhamtari | Agricultural activities | 50-60 | 25-45 | 80-100 | 50-65 |
| Nagri | Agricultural activities | 60-80 | 30-40 | 90-120 | 50-60 |
| Tokapal | Agricultural activities | 40-60 | 20-30 | 80-100 | 40-50 |
| Bastar | Agricultural activities | 30-50 | 20-25 | 60-100 | 40-50 |
| Malkangiri | Agricultural activities | 40-50 | 20-30 | 70-90 | 60-70 |
| Korkunda | Agricultural activities | 30-40 | 20-30 | 60 | 40-50 |
| Goundia | Agricultural activities | 60 | 40 | 80 | 60 |
| Sadar Dhenkanal | Agricultural activities | 70 | 50 | 100 | 70 |
| Murhu | Agricultural activities | 60-80 | 30-35 | 80-100 | 50 |
| Khunti | Agricultural activities | 70-80 | 50-60 | 90-100 | 60 |
| Dumri | Agricultural activities | 30-40 | 20-30 | 50-60 | 40-50 |
| Raidih | Agricultural activities | 60-70 | 40-50 | 80-100 | 70 |
| Kaddam | Agricultural activities | 50-100 | 25-40 | 120 | 70 |
| Sirpur | Agricultural activities | 70-80 (150 per day for ploughing with animals) | 50-60 | 100-120 (300 per day for ploughing with animals) | 60-80 |

Source: Author's Survey Data 2009-10

This upward pressure on rural wages has given rise to two distinct trends. One, workers are finding it better to stay back instead of migrating because better income at home. In Mahel, (Khunti District, Jharkhand), the incidence of out-migration was extremely high prior to implementation of NREGA. At least one member from each household migrated to different places like Punjab and Haryana for manual work. In

Gumla, villagers went to places like Punjab and Haryana to work as long-term workers in agriculture. They used to earn Rs. 1800 per month in addition to two meals per day. With the commencement of NREGA works, which has ensured employment in their native place, the incidence of out-migration has come down. The income earned through NREGA works and the savings which they accumulated by working as migrant labourers in far away places was invested for increasing paddy yield. Further, the impetus for improving the crop yield came from the fact that they now have to depend on crop cultivation more than when they were migrating out.

Second, given lesser migration there is a difficulty being faced by farmers to get agricultural labourers. A report (amongst many others) carried by the Indian Express (9/5/2008) succinctly captures this dynamics. Migrant labour from Uttar Pradesh and Bihar have been playing a crucial role in Punjab's agrarian success story. The report points out that in 2006, around 4.21 lakh migrant workers came from these two states alone. The report quotes figures from a study done by Punjab Agricultural University, Ludhiana which calculated that in 2008 the figures could have reduced to 2.5 lakhs. With lesser hands, the prosperous farmers in Punjab were going to face a problem with the harvest. The Punjab farmers were paying around Rs. 70-80 while the promised NREGA wage would be Rs. 100 a day which was cited by the farmers as the reason for lesser labour. But the same report points out that while the MSP for wheat had been increased from Rs. 850 to Rs. 1000 per quintal (in 2008), the farmers reduced the wage for loading and packing from 80 paise per sack to 40 paise per sack. What stands out clearly is that before the NREGA, farmers were paying workers abysmally low wages – a fact which the finance minister, Manpreet Badal, endorsed by saying *“For a long time, the prosperous Punjabi farmer took these people for a ride.”* What is clear is that NREGA has finally (in

60 years) put the lowest level of workers in a better bargaining situation than ever before.

The most positive outcome of the struggles around the NREGA have been the deepening of democracy through jan sunwais (public hearings) and social audits. Various organizations across the country which have been an integral part of the campaign for a full fledged right to work have been carrying out these struggles at the ground level (e.g. PBKMS, West Bengal, JADS, Madhya Pradesh. VSK, Jharkhand etc.). Such popular assertions have resulted in a few advances especially with regard to the democratization of the rural population. The most important amongst them is the participation of people in the development of their local areas. Never before did people have the right to demand from the government a proper audit of the money spent in their names. This process is carried out through social audits and jan sunwais undertaken by local groups. The administration of course is loathe to such developments and usually try their level best to curtail such democratic aspirations of people. Through this emerges the defining aspect of the double movement – the assertions to protect one’s rights lead to the right taking concrete shape while being implemented on the ground.

Concluding observations:

The right to work in the Indian context is an ongoing struggle. In some instances the assertions of people to gain these rights have created a complex double movement with various possibilities. In this respect, there are some basic components that the state has to undertake if it wants to actualize the right to work.

One is to deal with the phenomenon of corruption. The easiest way of reducing corruption is to ensure that wages to be paid in front of workers and entered in muster rolls. Also information of work and names of workers and wages paid should be publically displayed. Public transparency at worksites and the participation of workers will go a long way in democratising worksites and lowering the value of leakage. Gram sabhas, Jan sunwais and social audits are also an effective guarantee against corruption and would ultimately help in deepening democracy by raising consciousness regarding rights. The government should actively encourage such processes instead of blocking them, by leaving the initiative to the bureaucracy.

Finally, without effective financial decentralisation at the panchayat level this act will degenerate into wasteful expenditure. This in effect will rob the NREGA of being a full fledged right to productive work. The barrier to this provision is often the State itself, especially when it cites corruption as the reason for not granting financial autonomy to local bodies. Yet, devolution of power is anathema to any Centralised state or even political parties. However, for the right to work to lead to productive employment and become effective this is a precondition. So far there is little evidence, despite available legal provisions (Amendment 73 and Article 243), that either the Centre or the State Governments wish to move in this direction without people asserting their rights.

Appendix:

Case Study: Pond excavation(50' x 50' x 15') Village-Ghanghri, Panchayat-Naudiha, Block- Manatu, Dist:- Palamu

District schedule of wages(work as unit):

- 110 cubic feet of soft soil earth excavation work = Rs. 73
- 100 cubic feet of hard soil earth excavation work = Rs. 73
- 90 cubic feet of hard moorum soil earth excavation work = Rs. 73 (rate used in estimates)
- 25 cubic feet of soft rock earth excavation work = Rs. 73

District schedule of wages(wage as unit):

- 100 cubic feet of soft soil earth excavation work = Rs. 66.36
- 100 cubic feet of hard soil earth excavation work = Rs. 73
- 100 cubic feet of hard moorum soil earth excavation work = Rs. 81.11
- 100 cubic feet of soft rock earth excavation work = Rs. 292

Table: Case study of wages under NREGA

| Work group. no. | No. of workers. | No. of male workers | No. of female workers | No. of days work done | Units(in 100 cubic ft.) of work done | Wages to be paid(as per estimate: 100 cft=Rs 81.11) | Wages actually paid to each work-group (as per: 100 cft=Rs 60) | Daily Wages per person to be paid(as per estimate: 100 cft=Rs 81.11) | Daily Wages actually paid(as per: 100 cft=Rs 60) |
|-----------------|-----------------|---------------------|-----------------------|-----------------------|--------------------------------------|--|--|---|--|
| 1. | 4 | 3 | 1 | 7 | 34 | 2758 | 2040 | 92.07 | 72.85 |
| 2. | 4 | 2 | 2 | 3 | 10.2 | 827 | 612 | 68.91 | 51 |
| 3. | 5 | 1 +1(child) | 3 | 6 | 12 | 973 | 720 | 32.43 | 24 |
| 4. | 3 | 2 | 1 | 10 | 33 | 2677 | 1980 | 89.23 | 66 |
| 5. | 4 | 1 | 1 + 2(child) | 3 | 12 | 973 | 720 | 81.08 | 60 |

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