

**Rights-based Legal Guarantee as Development Policy:
A Discussion on the Mahatma Gandhi National Rural Employment Guarantee Act
(MGNREGA)**



CONTENTS

List of Abbreviations	4
Abstract.....	5
1 Introduction.....	7
2. Rights, Law and Development.....	8
3. The MGNREGA Design.....	8
4. Early trends and Outcomes	11
5. Reasons for the effectiveness of the legal framework.....	23
6. Paradoxes of the Rights-based Design of MGNREGA	32
7. Policy Innovations.....	46
8. Way Ahead	56
9. MGNREGA: Some issues that may be considered for Right based development programmes.....	65
10. Legal instruments for Human Development Goals.	70
Annexures.....	71

List of Abbreviations

1. CAG: Comptroller and Auditor General
2. CEGC: Central Employment Guarantee Council
3. DPAP: Drought Prone Areas Programme
4. DPC: District Programme Coordinator
5. EAS: Employment Assurance Scheme
6. FIR: First Information Report
7. GOI: Government of India
8. GP: Gram Panchayat
9. GRS: Gram Rozgar Sahayak
10. GS: Gram Sabha
11. ICDS: Integrated Child Development Scheme
12. ICT: Information and Communication Technology
13. IEC: Information Education and Communication
14. IP: Intermediate Panchayat
15. IT: Information Technology
16. MDGs: Millennium Development Goals
17. MGNREGA: Mahatma Gandhi National Rural Employment Guarantee Act
18. MIS: Management Information System
19. NFFWP: National Food For Work Programme
20. NGO: Non Government Organization
21. NRLM: National Rural Livelihood Mission
22. NRHM: National Rural Health Mission
23. OBCs: Other Backward Classes
24. PMGSY: Pradhan Mantri Grameen Sadak Yojana
25. PRIs: Panchayati Raj Institutions
26. PO: Programme Officer
27. PSU: Public Sector Undertaking
28. RSBY: Rashtriya Swasthya Bima Yojana
29. SCs: Scheduled Castes
30. SEGC: State Employment Guarantee Council
31. SGRY: Sampoorna Grameen Rozgar Yojana
32. SHGs: Self Help Groups
33. SSA: Sarv Shiksha Abhiyaan
34. STs: Scheduled Tribes
35. UPA: United Progressive Alliance
36. WEP: Wage Employment Programme
37. ZP: Zila Parishad

Rights-based Legal Guarantee as Development Policy: A discussion of the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA)

Amita Sharma¹

Abstract

The paper seeks to critically examine Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) as a Rights-based legal framework for guaranteeing a basic livelihood security to rural households. The main concern of the paper is to examine the legal design and policy innovations and the extent to which they facilitate the fulfillment of the objectives of the Act. The issues discussed in the context of MGNREGA as a Rights based law may be pertinent to policy formulation in other development contexts.

In examining the Rights-based framework of MGNREGA, the following questions arise:

- a. What Rights are being recognized?*
- b. What are the processes for realizing them? Are these feasible?*
- c. What obligations are created by such processes upon the State and the citizen?*
- d. What are the challenges to the administrative systems in implementing programmes governed by legal frameworks?*
- e. What kind of negotiations are possible to balance the mandatory nature of law and the flexibility desired of a development programme.*

The discussion of MGNREGA in terms of its design and key factors that constrain and facilitate the achievement of its objectives engages with these questions, suggesting possibilities of reviewing some aspects of the Act as well as hoping to offer insights to similar policy exercises.

MGNREGA belongs to a long history of wage employment programmes. The most significant features of the MGNREGA are that it creates a Rights-based framework and that it is a law. Backed by political will and adequate budget resources from the Government of India, the implementation of the Act has yielded encouraging results, despite uneven performance across the country. Initial studies vindicate its effect in augmenting employment, increasing wage earnings, stemming distress migration, enhancing productivity and promoting equity, specially gender equity. This Act for unskilled manual labour is ushering in a new era of technology and financial inclusion for rural communities. MGNREGA, designed primarily as a social safety net has the potential to transform rural India into a more productive, equitable, connected society.

MGNREGA is located in the policy response of the Indian Government to a situation of poverty and inequality, by focusing on inclusive growth. There has also been a growing policy engagement with the Rights regime witnessed by the formulation of Rights based laws as policy instruments. The Right to

¹ Amita Sharma is a 1981 batch officer of the Indian Administrative Service officer. She is currently Joint Secretary, Mahatma Gandhi National Rural Employment Guarantee Act at the Ministry of Rural Development, Government of India. These are the personal views of the author. Research assistance from Neelakshi Mann, Nilay Ranjan Ashutosh Gupta, Consultants with the Ministry of Rural Development is gratefully acknowledged.

Information Act, the Forest Rights Act 2009, and recently the Right to Education Act 2009 with the Food Security Bill (in the offing) are examples of the shift from a policy based on the perception of development as a welfare activity of the Government to a policy that recognizes basic development needs as rights of the citizens, compelling commitment of resources by the Government, even challenging some of its existing systems. MGNREGA came in this context of radicalization of State policy, foregrounding its obligation as a law.

MGNREGA works because it is a law backed by political will and it has excited the political imagination of the State. It is driven at the Centre by the political support of the UPA Government in power. The impetus behind the Act is the leading partner of the coalition- the Congress, supported by all parties that formed the coalition.

Built on the pivotal authority of the local bodies, the Act strengthens grass-root democratic processes. The Act engages with Rights- based processes that challenge existing systems and relationships. Transparency and public accountability are integral to it, expressed through social audits, proactive disclosures and free access to all records. Conforming to legal provisions on such requirements provides an opportunity for Governance reform and to re-define the State not just as Government but as inclusive of civil society.

Administering a demand- based programme has spawned a number of policy and practice innovations like labour budget, inter- sectoral convergence, interactive ICT for data management and citizen feed back, and various ways of social mobilisation

The Act poses several significant questions and its Rights –based approach has the courage to invoke and attempt to negotiate a set of paradoxes, emanating from historical legacies of social inequality and hierarchical dependencies. Exercising rights, making choices, wresting entitlements from entrenched systems requires capabilities and most wage seekers lack these. How can they avail of the rights invested in them by the Act? There are no simple solutions. But the discourse of Rights and the search for appropriate instruments for historically disempowered groups to articulate them vis-vis established structures may well prove to be radical shifts in the very understanding and functioning of conventional government structures, besides giving agency to marginalised sections of society. The Act also provokes the question -can a social safety net also become an impetus to economic development? Its implementation is an answer in affirmation. The right to employment has a bi-focal implication: work that helps earn wages and creates durable productive assets. MGNREGA works focus on natural resource regeneration and so augment productivity. They have to be executed manually and so enhance wage security. Typically, MGNREGA works have ranged from digging ponds, small bunds, land development, afforestation, often requiring repeated activity on the same work. Green jobs under NREGA make it an exemplar model of adaptation to climate change. Evidence of the suitability of the choice of work in terms of ecological-contextual needs and its usefulness is emerging. There is a need to quantify the environment services of the rural poor rendered under this Act.

The way ahead is to (a) build capacity of the system to deliver a legal guarantee (b) develop capabilities of the people to demand rights and hold the Government accountable (c) revisit the Act to make it an instrument for more sustainable development.

1. Introduction

MGNREGA was enacted on 7th September 2005 as “ *An Act 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*”

The objectives of MGNREGA can be understood as:

- a) Providing wage employment opportunities
- b) Creating sustainable rural livelihoods through regeneration of the natural resource base i.e. augmenting productivity and supporting creation of durable assets
- c) Strengthening rural governance through decentralisation and processes of transparency and accountability

The permissible works under the Act as per Schedule I in order of priority include (i) water conservation and water harvesting;(ii) drought proofing (including afforestation and tree plantation); (iii) irrigation canals including micro and minor irrigation works; (iv) provision of irrigation facility, horticulture plantation and land development facilities to land owned by households belonging to the Schedule Castes and Schedule Tribes or below poverty line families or to beneficiaries of land reforms or to the beneficiaries under the Indira Awas Yojana of Government of India or that of the small farmers or marginal farmers as defined in the Agriculture Debt Waiver and Debt Relief Scheme, 2008.; (v) renovation of traditional water bodies including desilting of tanks; (vi) land development; (vii) flood control and protection works including drainage in water logged areas; (viii) rural connectivity to provide all-weather access; and (ix) any other work which may be notified by the Central Government in consultation with the State Government. Recently the Ministry has notified the construction of Village and Block level Knowledge Centres (Bharat Nirman Rajiv Gandhi Sewa Kendras)as a permissible work.

The Act was notified in a phased manner with 200 districts in the first phase being notified on 2nd February 2006, followed by another 130 from April 2007, and by the remaining districts with effect from April 1, 2008. The Act is now effective in the rural areas of the entire country, covering 619 districts. The phased implementation was based on a criteria of backwardness formulated by the Planning Commission² that used a mix of demographic, social and economic indices. These included the percentage of scheduled tribes and scheduled castes’ population, agricultural productivity and the prevalent notified minimum wages for agricultural labourers in the State. Districts were ranked on this. This ranking was used to select 150 districts for the National Food For Work Programme(NFFWP) introduced in 2004. These districts were part of the first

² Report of the Task Force: Identification of Districts for Wage & Self Employment Programmes: Planning Commission, May 2003

phase 200 districts notified under NREGA. The districts taken up in the first phase were selected, not serially, but State wise so that all States get representation. Significant in this identification is that the first phase two hundred districts were dominantly tribal, low productivity districts. Almost 50% of the DPAP³ districts were included indicating that the perception of MGNREGA was clearly oriented towards rain-fed areas as the geography of poverty and the socio- economically weak groups as the sociology of poverty.

2. Rights, Law and Development

The paper seeks to examine MGNREGA as a Rights-based legal framework for guaranteeing a basic livelihood security to rural households. The main concern of the paper is to analyse the legal design and policy innovations and the extent to which they facilitate the fulfillment of the objectives of the Act. The discussion raises some issues that may be pertinent to Rights-based laws promoting development goals.

In examining the Rights-based framework of MGNREGA, the following questions arise:

- a. What Rights are being recognized?
- b. What are the processes for realizing them? Are these feasible?
- c. What obligations are created by such processes upon the State and the citizen?
- d. What are the challenges to the administrative systems in implementing programmes governed by legal frameworks?
- e. What kind of negotiations are possible to balance the mandatory nature of law and the flexibility desired of a development programme, specially in a federal structure and a context marked by enormous socio-economic diversities and asymmetry of resources?
- f. Is it possible for rights to be guaranteed in isolation from each other?

The discussion of MGNREGA in terms of its design and key factors that constrain and facilitate the achievement of its objectives engages with these questions, suggesting possibilities of reviewing some aspects of the Act as well as hoping to offer insights to similar policy exercises.

3. The MGNREGA Design.

MGNREGA belongs to a long history of wage employment programmes. The most significant features of the MGNREGA are that it creates a Rights -based framework and that it is a law. Its main instruments for articulating a Rights-based approach are: (i) documents like Job Cards that are the workers' documents for asserting his rights. (ii) exercise of choice by workers, (iii) time -limits for fulfilling guarantees by the Government, (iv) social Audits (v) compensation/penalties.

³ Drought Prone Areas Programme (DPAP) is the earliest area development programme launched by the Central Government in 1973-74 to tackle the special problems faced by those fragile areas which are constantly affected by severe drought conditions. Presently, 961 blocks of 180 districts in 16 States are covered under the programme.

The process of application of work is the basic premise for assertion of rights. Wage seekers have the right to apply for registration in their local gram panchayats, if they want to be eligible for seeking employment under the Act. Their registration entitles them to receive Job Cards. Job Card is the basic instrument to demand work and is also the worker's record of rights. For availing of employment under MGNREGA, the Job Card holder has to submit a written application for employment to the Gram Panchayat(GP) or to the Programme Officer (PO) at the Block level, specifying the period for which employment is sought. This right to ask for employment as and when needed is acknowledged through a dated receipt issued by the village based local body or the Gram Panchayat (GP) or the PO. This initiates the guarantee process in response to the demand. The right to receive employment is guaranteed through time-lines: fifteen days to allocate employment, fifteen days to make payments. The third set of prescriptions relate to safeguards against violations of rights: unemployment allowance to the worker in case of delayed employment allocation that the State Government pays, and Rs. 1,000 (\$22) as fine on those who violate the Act. Rights under the Act are further safeguarded through social audits and proactive disclosure.

The Rights-based design of MGNREGA has a genesis in the preceding wage employment programmes. This is shown in Annexure I, II and III.

Almost all the Rights-related features of MGNREGA were inherited from previous wage employment programmes but were given the force of law under MGNREGA. The interesting point, however, is that the National Food For Work Programme⁴ (NFFWP) that was implemented as a precursor to MGNREGA in 150 backward districts⁵ did not have a Rights- based design. It also did not assign a principal role to local bodies, nor posit a decentralized planning process. In fact, it waived the role PRI's had even in Sampoorna Grameen Rozgar Yojana⁶ (SGRY) the other wage programme operating then. Nor was its primary focus employment generation. It was a programme for works related to natural resource management. So MGNREGA inherited a number of elements from previous programmes. But its immediate precursor NFFWP shared only a few critical elements with it like the choice of works. This was an opportunity lost. Had the MGNREGA design specially its Rights based instruments been tried out in NFFWP, several problems and dilemmas that emerge now would

⁴ The NFFWP was implemented in the year 2003 to provide additional resources apart from the resources available under the Sampoorna Grameen Rozgar Yojana (SGRY) to 150 most backward districts of the country so that generation of supplementary wage employment and providing of foodsecurity through creation of need based economic, social and community assets in these districts is further intensified.

⁵ The NFFWP was initially implemented in 150 most backward districts of the country as identified by the Planning Commission in consultation with the Ministry of Rural Development

⁶ The Sampoorna Gramin Rozgar Yojana was launched to provide a greater thrust to additional wage employment, infrastructural development and food security in the rural areas. The Employment Assurance Scheme (EAS), (the only additional wage employment Scheme for rural areas), the Jawahar Gram Samridhi Yojana (JGSY) (a rural infrastructure development Scheme) were merged into one Scheme, launched SGRY was launched w.e.f 25th September, 2001.

have been encountered then and perhaps been re-conceptualised or modified where needed. Alternatively, some of the complex challenges inherent in the Rights- based design and decentralized planning may have been acknowledged, and intensive capacity building on those processes may have been undertaken as preparatory to MGNREGA, possibly with the condition that the Act would be notified only where suitable capacity building was evidenced as a commitment of the State to legal rights and obligations. The 'incentive' to the State then would be the transition from a finite budget to an open- ended, demand-based budget- an opportunity, in fact, of strengthening the natural resource base of rural livelihood and offering a major guaranteed social safety net to the rural poor. However, MGNREGA departed from its immediate antecedent programmes, both SGRY and NFFWP and harked back to a much earlier Employment Assurance Scheme⁷. The EAS was implemented in all the rural blocks of the country and it shared primary features with MGNREGA including demand for work, provision of 100 days employment, nature of works. The implementation of EAS put forth certain challenges as reported by the Programme Evaluation Organization of Planning Commission. These related to planning, record maintenance, monitoring, fund release and utilization. The physical and financial performance of EAS indicated inconsistent fund utilization from one financial year to another. Factors responsible, according to the Planning Commission, included non-availability of state share fund in time, non-disbursal of funds according to entitlement from the districts to blocks and non-receipt of utilization certificates. Some of these limitations were addressed in MGNREGA, for instance, potential wage seekers, users of assets, were involved in the planning of projects. Gram Sabhas⁸(GS) were vested with the task of preparing shelf of projects. Social Audits and proactive disclosure were introduced as legal provisions . MGNREGA made the demand factor a conscious strategy as a Right to obtain employment. Financial obligations both of the Centre and the State are part of the legal framework. The MGNREGA guidelines also detail operational and administrative modalities of implementation seeking to address the limitations of the earlier wage employment programmes, placing great emphasis, for example on planning processes, and MIS for improving data management.

⁷ The Employment Assurance Scheme was launched on 2nd October, 1993 for implementation in 1778 identified backward blocks of different States. The block selected were in the drought prone areas, desert areas, tribal areas and hilly areas. Later, the scheme was extended to the remaining blocks of the country in phased manner. At present, the scheme is being implement in all the rural blocks of the country. The programme has been restructured later. the primary objective of the EAS is to provide gainful employment during the lean agricultural season in manual work to all able bodied adults in rural areas who are in need and desirous of work, but cannot find it.

⁸ The Gram Sabha is the foundation of decentralized governance by ensuring elected representatives are directly and regularly accountable to the people. Meetings of the Gram Sabha are convened to ensure the development of the people through their participation and mutual co-operation. The annual budget and the development schemes for the village are placed before the Gram Sabha for consideration and approval.

The earlier Maharashtra Employment Guarantee Scheme(MEGS)⁹ is the fore-runner of MGNREGA. Beginning as a programme, in 1965 and then moving on to becoming a Law in 1979. The EGS guaranteed that every adult who wanted a job in rural areas would be given one, provided that the person was willing to do unskilled manual work on a piece-rate basis. The piece-rates were fixed so that an average person working diligently for 7 hours a day would earn a wage equal to the minimum wage prescribed for agricultural labour for the concerned zone, under the Minimum Wages Act. To obtain employment under the scheme, individuals had to register with the local village authority, and provide a ‘demand for work’. The local EGS representative (called the Tahsildar) was then obliged to provide work within 15 days of receiving the demand for work. Failure to provide employment within this period entitled the person to an unemployment allowance. Participants were provided with certain on-site amenities. The MEGS has now given way to MGNREGA in Maharashtra.

Thus the design constituents of MGNREGA were inherited from earlier wage employment programmes. However, since *the conditions for implementing the Rights- based processes of the Act were not necessarily universally or equally present*, the implementation of the schemes under the Act, immediately with its notification, became the testing and training ground. Inevitably, ‘violations’ to the legal provisions of the Act sprung forth arousing considerable commentary.

It is premature to assess the design and the process of implementation. Observations made in this paper need to be read, with the qualifier-it is too early to say so. What has been discussed is what appears as a potential positive trend, or a constraint at this particular stage of implementation. Since there is considerable dynamism in the policy environment of the Act and in its programme implementation, the issues discussed here will need to be re-visited.

4. Early trends and Outcomes

The Act, in its four breathless years of rapid expansion from 200 to 619 districts, has given evidence of positive outcomes, even while its performance across the country has been unequal. It is pertinent to look at outcomes and trends because they prompt the questions discussed here-what factors have been facilitating and what not. Outcomes need to be viewed as processes set in motion, as the Act is demand- based and there are no pre-determined targets that it can be measured against. Some early trends are discussed below.

⁹ For further details, Programme Evaluation Organization: Joint Evaluation Report on Employment Guarantee Scheme of Maharashtra, 1980. PEO Study No. 113

4.1 Augmenting Employment

(i) Unskilled Labour

The rationale for the Act stated in the bill had been augmenting employment as compared to the earlier wage employment programmes (WEP). SGRY generated approximately 0.82 billion persondays all over the country. SGRY and NFFWP together generated 1.13 billion persondays. MGNREG when it covered the entire country in 2008-09 generated 2.16 billion persondays and in 2009-10 has generated 2.45 billion persondays (upto February). The Scheme has provided employment to around 50 million households.

(ii) Skilled Labour

MGNREGA has opened opportunities for large scale employment of skilled manpower at block/village levels in rural areas through large scale deployment of mates, engineers, village assistants, accountants, IT personnel, for example, at the GP level: 0.23 million Gram Rozgar Sahayaks were appointed, at the Block level, 22063 technical assistants, about 5000 accountants and 6056 computer assistants. Employment opportunities for the educated and skilled are being promoted both directly within the administrative system of NREG and indirectly in the form of business avenues opened up by MGNREGA in postal network, financial and ICT services.

4.2 Enhancing Income

There has been an increase in minimum wages for agricultural labourers in most States. Wages under NREGA were linked to minimum wages for agricultural laborers, in the beginning. Since the Centre bore the entire cost of wages, the enhanced wage costs were at Central expense. The average wage rate rose from Rs 65 (\$1.4) per day to Rs 90 (\$ 2) per day from 2006 to 2010 (upto February) (Annexure IV).

4.3 Effective targeting of disadvantaged groups:

Trends from previous years show, it is the poorest of the poor and the most vulnerable groups who seek employment under the programme. The MGNREGA has been designed to allow women equity in both access to work and in the payment of wages. Women workforce participation has surpassed the statutory minimum requirement of 33 per cent and the trends indicate an increase in the participation rate at the national level. Annexure V indicates an interesting situation where women workforce participation is high irrespective of the literacy levels of women. The participation rate of women in FY 2009-10, at the national level is 50%. This suggests the potential of NREGA as a *local* employment strategy for supplementing household income. It also suggests that the MGNREGA's design that has no *pre-conditions makes it eminently usable as a quick work choice* by women and SC/ST groups. The design waives pre-requisite skills for being eligible for work. The only requirement is being willing to do 'unskilled manual labour' This self targeting, with no criteria of poverty or employment, and with the flexibility to drop in

and drop out makes it easy for women to participate. Equal wages between men and women have been a major incentive to women to work. In addition, work site facilities now increasingly visible, also encourage women participation.

'togetherness makes things work...'-Women on NREGA worksites

The National Rural Employment Guarantee Scheme (NREGS) has turned out to be a 'ladies only' affair in Kuttichal panchayat, near Kattakkada, in Kerala. Of the 2,500 job cards distributed in the panchayat, as many as 2,152 have been to women.

The GP Panchayat president was worried because the unskilled work under the programme involved hard and heavy labour, which he supposed was beyond the capability of these women who had applied for a job card.

"It is the togetherness that makes things work. The hard work is drowned in the fun. They talk a lot, laugh a lot and share secrets. Many of them have said they are doing this for the first time in their lives," said CDS chairperson of the area Sreelatha.

"Most of the women who applied for job cards, more than even 90 percent of them, were housewives who had not done physical labour before. Until NREGS happened, I am sure most of them had not even ventured beyond their neighbourhood," Chandran said.

On an average, five to six NREG works - digging of trenches and drains, revival of dead ponds, creation of fire-lines around tribal settlements - have already been taken up in all the 13 wards of the panchayat.

Source: Indian Express

Independent studies point towards positive trends and women empowerment as a result of MGNREGA. Studies in Orissa, Madhya Pradesh, Chattisgarh and Tamil Nadu by National Federation of India Women (NFIW)¹⁰, New Delhi state: "One of the most important observations is the emergence of women's identity and their empowerment with the coming of NREGA as an economic opportunity provider. Respondents in all the states have been found to be very optimistic about the importance of NREGA in their lives. Rajnandgaon district stands out distinctively in this regard as 93 per cent respondents said to have taken the decision to work on their own. Women workers in all the districts have also been found to be taking their wages directly. Another aspect of understanding NREGA and women's assertion is the

¹⁰ A Study on Socio-economic Empowerment of Women under NREGA: National Federation for Indian Women, August 2008

growing contribution of women workers to the sources of their households' livelihood. In Cuddalore it was 81 per cent and 96 per cent in Rajnandgaon who said to have spent their earnings from NREGA on food and consumer goods. On the whole there is also good percentage of workers who were found to be spending on children's education and a small number, who also claim to spend on offsetting debts.

Other studies by National Institute of Rural Development¹¹ (NIRD), and other institutions indicate that women workers are getting empowered through MGNREGA as visible in the form of growing contributions to household expenditure, bearing cost of children's education and healthcare. Women have also started to appear more actively in the rural public sphere as they take up their work and responsibilities. There is a general trend of low migration in the areas where assessment was carried out and workers have started to repay their debts.”

The study conducted by NIRD in the States of Tamil Nadu, Madhya Pradesh, Orissa, Gujarat, Rajasthan, Uttar Pradesh and Chhattisgarh. Among the factors that motivate women to participate in Mahatma Gandhi NREGA are the availability of work locally, choice of work, work on demand, easy working conditions vis-à-vis the other hazardous options opted before the Act, abolition of contractors, regularity and predictability of working hours, less chances of exploitation, the works are socially acceptable and dignified, Mahatma Gandhi NREGA provides statutory minimum wage, decrease in caste and community based issues, easy access to locally available credit, respect for widows, reduction in risks associated with migration as migration has reduced and reduced humiliation and embarrassment for demanding work.

Women collectives and consolidation of savings

The women work participation for the state of Kerala is 87%. NREGA has catalysed links with earlier institutions that sought to empower women, for example with Kudumbashree and Self Help Groups (SHGs) of women. It is not new for Kudumbashree to provide help in managing and monitoring public works. For example, in Kerala, when roads are being laid, Kudumbashree women are used to supervise the teams of labor on site and Kudumbashree will also provide a couple of women on site to help prepare midday meals of labor. In the case of NREGS projects the mates' for immediate management and supervision of the work come from Kudumbashree.

NREGA has also helped in increasing the saving of women. In the year 2008-9 the savings were Rs. 67.50 crore (\$14.97 million) which has increased upto Rs. 115.52 crore (\$ 25.61 million).

Source: State Government

MGNREGA is an example of the difference made to a household by the source through which the income flows in. If it is through the women, it enhances opportunities for their children and so has positive inter-generational change effects.

Women Augment Family Income

India's rural employment guarantee scheme in Tripura is giving women the opportunity to earn. The government scheme has proved to be a breather for the women in a state where two-thirds of the population is still below the poverty line.

Ever since the NREGA schemes have been implemented in their locality, the women have been able to augment their family incomes. The male folk of the village move to nearby towns in search of jobs, where they can earn between Rs 120 to Rs 150 per day on an average. Lack of job opportunities for women in the area has made them remain at home.

If NREGA schemes are meant for enhancement of family income for women in Purba Barjala village, for the tribal women belonging to Tripuri tribe in Chargharia, a village under the Tripura Tribal Areas Autonomous District Council (TTAADC), earnings under NREGA project are crucial for their living.

Be it for an increase in the family income or a crucial tool for living, Tripura engages a substantial number of women in NREGA projects as compared to other northeastern states. In some pockets like Jirania and Dukli blocks, participation of women in NREGA works is amazing.

Also, the state has moved for multi-cropping agriculture practices instead of traditional single cropping, which also keeps the men busy in fields, giving women more opportunities to avail of NREGA.

Another reason is, perhaps, women feel safe at the work place in a better socio-economic environment, the minister adds. Stating that participation of women is highly encouraging.

Source: Ratna Bharali Talukdar, OneWorld South Asia

The workforce participation of SC/STs is 49% in the current FY (Annexure VI). Findings of professional institutions from the field studies corroborate that the marginalized have a high workforce participation. The Indian Institute of Management (IIM) Lucknow¹² in its study in Uttar Pradesh notes that 85.3 % of the beneficiaries (out of the sample coverage) belong to Below Poverty Line category, of these, 50% belong to SCs, 44.5 % belong to OBCs. Institute of Human Development in its study found that 90% of the beneficiaries in Bihar (out of the sample coverage) belonged to SCs/OBCs. Similarly, in Jharkhand, STs, SCs, and OBCs constituted about 95 % of the beneficiaries, and in terms of land category, more than 90% of the beneficiaries belonged to the landless and to households with upto to 2.5 acres of land. Therefore, the scheme is well- targeted in the sense of reaching to the most disadvantaged and deserving households. The findings are also supported by the Administrative Staff College of India(ASCI) and IIM Ahmedabad in their studies of Andhra Pradesh, Gujarat and West Bengal¹³.

4.4 Stemming Migration

Findings of independent studies indicate that with the implementation of MGNREGA out-migration from villages has gone down. According to a study conducted by Disha, Ahmedabad in FY 2009-10¹⁴ in districts Narmada, Dang, Banaskantha, Dahod, Sabarkantha and Panch Mahals in Gujarat.

Dungarpur and Updaipur in Rajasthan, Jhabua and Dhar in Madhya Pradesh and Nandurabar and Dhule in Maharashtra, migration from tribal areas has substantially declined due to MGNREGA. The study points that 1605 persons were migrating from these 938 families for employment. The number has declined to 682 post-MGNREGA. These families have received 70 to 100 days in a year. According to a study conducted by the Indian Institute of Management¹⁵, Bangalore, in Raichur and Gulbarga Districts in Karnataka, Adilabad and Anantapur districts in Andhra Pradesh, 98% of the families surveyed did not migrate from the villages for work. The Centre for Science and Environment and Institute of Human Development support findings on the reduction in migration.¹⁶

^{8&9&10} Detailed study reports can be reviewed at <http://www.nrega.net>

¹⁴ Mistry, Paulomee & Jaswal, Anshuman: Will NREGA Ensure Security Against Hunger ? ; A Summary Report, Disha Ahmedabad

¹⁵ Sastry, Trilochan, *NREGA Surveys in Anantapur, Raichur and Gulbarga*, Indian Institute Management, Bangalore, (July, August 2006)

¹⁶ Detailed study reports can be reviewed at <http://www.nrega.net>

India's Job Guarantee Act Emerging as Ray of Hope in Global Meltdown

Madvi Madka, district Dantewada, Chhattisgarh state in has one thing in common with business tycoons across the globe - he is part of the construction sector that has been crippled by the global meltdown. Madka is a farmer and a daily-wage earner. He feeds his family of five by selling forest and agricultural produce in his remote village of Chingawaram. But this income is enough for only four months of the year. For the rest of the year, Madka travels to the city to work as a casual construction worker to supplement his income. Over the past year, however, Madka could not find work in the cities nearby. He does not know what has led to this sudden turn of fortunes, but he is not alone.

In India, home to about 320 million people living on less than one dollar a day, the global economic crisis has affected not only the formal sector, but has also impacted the country's huge informal economy. Among the newly unemployed are many migrant workers, who earn their daily income through casual jobs. But Madka and his family have found a safety net in the form of the National Rural Employment Guarantee Act (NREGA) of the Government of India, popularly known as the job guarantee Act. NREGA is different from previous employment programmes in that it legally binds the government to provide employment for up to 100 days a year to those who demand it.

From an awareness raising programme conducted in his village with support from the United Nations Development Programme (UNDP), Madka learned about his right to work under NREGA. "At the meeting I learned that through the NREGA I could get daily wages from the government to develop my own land," said Madka. Receiving Rs.7,300 (approx \$155) against a plan he submitted, Madka constructed a pond on his plot of land. Today, the pond not only waters his field to grow vegetables; it is also used for rearing fish, providing him with an extra income.

Source: UNDP with feedback from District Administration, Dantewada

4.5 Augmenting Productivity

The immediacy of social safety net processes, as given in the Act, oft appear to be at variance with preconditions for creating durable asset and may not necessarily 'strengthen the livelihood resource base.'-the avowed objective of the Act in the preamble. The Act poses the significant question: Can a social safety net also become an impetus to economic development? MGNREGA is an answer in affirmation. The right to employment has a bi-focal lens: work that helps earn wages *and* creates durable productive assets. MGNREGA works focus on natural resource regeneration and so augment productivity. They have to be executed manually and so enhance wage security. Typically, MGNREGA works have ranged from digging ponds, small bunds, land development, afforestation, often requiring

repeated activity on the same work. Evidence of the suitability of the choice of work in terms of ecological-contextual needs and its usefulness is emerging. “An Assessment of the Performance of The National Rural Employment Guarantee Programme in Terms of its Potential for Creation of Natural Wealth in India’s Villages” by the Centre for Science and Environment¹⁷ (CSE), New Delhi conducted in Orissa (Nuapada) and Madhya Pradesh (Sidhi) during Jan-March’08 attempts to observe the impact of assets by looking mainly at the perceptions of the people about the long term impacts of the Act on their livelihood. The study validates that assets created under MGNREGA have been conducive to the geographical-ecological environment, have been useful and have contributed towards natural resource regeneration. 78.6% of the respondents agreed that MGNREGA had led to increased water availability and a positive impact on agriculture in the district through improved access to irrigation. This has led to crop diversity and farmers have been able to switch from mono crop to dual crops. There has also been an increase in the net irrigated area in sample districts; around 55% of the respondents together report an increase of 371.6 acres (150.4 hectares) area under crops. The study notes that in Sidhi, with a dominantly hilly terrain and significant forest cover, the problem of proper management of water resources and lack of opportunity for the poor to access underground water sources has also been addressed by MGNREGA. Post MGNREGA, with the construction of ponds and tanks as well as wells on SC, ST land, irrigation facilities have shown a marked improvement. Maintenance of old structures has been carried out under MGNREGA. The owner of these well often lends water to others in the village for a small fee. This has increased the income for these households and the problems of drinking water scarcity have become a thing of the past. CSE also notes that MGNREGA gives an opportunity for employment within the village and stems distress migration. In the study sample, migration has reduced by around 60% due to availability of work under MGNREGA.

ASCI too, in its study in Andhra Pradesh points out that Anantpur districts has noted an increase in ground water. Similar reports are coming in from several other districts, notably in Madhya Pradesh, Rajasthan, Tamil Nadu, Andhra Pradesh, Kerala where local innovations have emerged for converging NREG works with other development works.

¹⁷ Creation and quality assessment of assets, process of work selection and conformity with local needs, environment regeneration, development potential of assets.: Report prepared for the Ministry of Rural Development, Government of India, September 2008

The study by the Indian School of Women's Studies Development¹⁸ (ISWSD) conducted in Karnataka (Bidar, Davangere) Kerala (Pallakad, Wayanad), Uttar Pradesh (Mirzapur, Gorakhpur) and Jharkhand(Godda, Saraikela Kharsawa) suggests that works under MGNREGA have stabilized existing cropping cycles through the timely provision of water as well as increased the gross cropped area by retaining enough soil moisture and irrigation water for a second (or even third) crop.

Increase in Agriculture Productivity and Income

NREGS works have enhanced productivity and created job opportunities in Saidaour Village, in Jewagi Taluka, under Gulbarga District. There is an irrigation tank in the village to provide irrigation facilities in 500 hectares of land. However, with the passage of time, another 200 hectares of land downstream got waterlogged due to the seepage of water from the tank. The Gram Panchayat did not have any funds at their disposal for taking up cleaning, desilting and widening of the existing small drains. NREGS provided an opportunity to the villagers. The work of an earthen drain was taken up with a project cost of \$12,000. The completion of the project, led to reclaiming of 200 hectares of land, which was brought under cultivation gradually. A conservative estimate for agriculture income is around Rs. 5000 (\$111) per hectare of dryland. Thus, the project contributed to an increase in income of the village by around \$ 22, 000.

Source: State Government

Maintenance is provided for under the existing Guidelines of MGNREGA, not just for work done under MGNREGA but for similar works done under other schemes. MGNREGA has become a very important instrument for maintaining a large number of public assets wearing off for want of repair. Work on public land foregrounds the question of rights to resources. The labour of the landless poor earns them wages but does it create rights to use the benefits generated from their labour. NREGA is actually showing a way, providing an opportunity to redeem the tragedy of the commons.

An ecological act is the best description of MGNREGA as it designates a balance between human action and natural resources creating a sustainable economic security through green jobs.

MGNREGA has also been able to contribute to ecological restoration through its design. According to findings of a pilot study conducted by the Indian Institute of Science, Bangalore in Chitradurga district of

¹⁸ -“Impact Of National Rural Emploment Guarantee Scheme On The Living And Working Conditions Of Women In Rural India” : ISWSD, June 2006

Karnataka, there is an increase in groundwater level, increase in water percolation, improvement in soil fertility leading to improved land productivity. In addition to this the findings also suggest a reduction in water vulnerability and livelihood vulnerability in these areas. The study indicates that NREGA has some built-in limitations (only employment focus, activities not implemented according to a plan, spatially or time-wise, disconnected and scattered implementation of activities), but still many of the NREGA activities have the potential to provide environmental services, conserve and enhance natural resources (soil, water, grass and forest resources). There is a need to identify such fail proof activities which improve the soil, water, grass and forest resources, even without micro-plans or watershed plans. Investment on NREGA activities, given the scale and importance, should lead to sustained flow of benefits such as employment, income, water supply, food and grass production.

Such research may suggest that MGNREGA works need to be seen as contributing to sustainable development not necessarily as an income that creates its own stimulus for growth but as a job that can be available at all times and that also regenerates environmental resources and opens opportunities for long term development processes. Rights are not just as what individuals want as basic survival needs, but as what is owed by human beings to the environment that they draw upon to fulfill their basic needs. Such ecological restoration is a process that gets fulfilled, almost automatically by the very nature of MGNREGA works.

Under MGNREGA, some State governments are working to develop plans with a focus on afforestation and eco-restoration.

Convergence Initiatives

Andhra Pradesh has developed a detailed process for identification and design of convergence activities. Several training programmes and video-conferences are organized to orient the functionaries on the concept of convergence. Convergence includes, comprehensive land development programmes where bush clearance, land leveling, irrigation is taken up under MGNREGS and drilling and setting up of pump sets is taken through the land development programme. Under the State Horticulture Mission technical knowledge, saplings are provided, under MGNREGS the land of small and marginal farmers are taken up.

Kerala has developed a plan for convergence with a focus on natural resource management and eco-restoration. The initiatives stress on overexploited, critical and semi-critical artificial recharge of ground water, renovation of irrigation projects under MGNREGA, desilting, and large projects of eco restoration of major rivers.

Gujarat has initiated convergence between water resource department, environment and forests department and agriculture department and MGNREGA. The important activities undertaken are rainwater harvesting, dug wells, group irrigation wells, vermin-compost, lift irrigation and agriculture activities.

Uttar Pradesh undertook a massive plantation drive in the drought prone area of Bundelkhand as part of a convergence initiative with MGNREGA.

Chhattisgarh has under taken convergence initiatives for optimizing the irrigation capacity of all the major, medium and minor projects through construction of field channels, correction of system deficiencies and drains. Most of the districts are taking up works on water resource schemes.

Madhya Pradesh has started convergence of Kapil Dhara sub scheme of MGNREGS with different schemes/provisions of other line departments (agriculture, horticulture) and private entities (such as banks). This facilitates an increase in agriculture productivity. Banks are willing to provide loans as the asset is not moveable. Through the additional finances the beneficiary

4.6 Expanding Connectivity

MGNREGA is improving rural connectivity in many ways

- i) **Rural roads.** Fair weather roads are connecting those hinterland areas left out of larger rural network programmes like PMGSY. This has been particularly beneficial for linking scattered tribal hamlets. The basic earth work done under MGNREGA is also being used in many places to provide the base for firmer lasting roads through convergence with PMGSY. Roads internal to the village along with side drains are also being taken up. This is a critical link with markets, schools, and health services.

Connecting Remote Villages

In Karnataka, village-like habitation, traditionally called 'tanda', are often isolated and cut off from the nearby markets, schools or hospitals. These isolated settlements are in majority inhabited by the Lamani Scheduled Caste. Under NREGS, the 500 families living in Basavana Tanda are now for the first time connected by road to the capital of the district, Gulbarga, situated 25 kilometers away. A 4 kilometer road had to be built on a challenging terrain, which made the work more labour intensive. This road has proved to be a lifeline to the 500 families living in the village.

Source: State Government

- ii) **Financial Inclusion.** Access to finance by the poor and vulnerable groups is a prerequisite for poverty reduction and social cohesion. This has to become an integral part of our efforts to promote inclusive growth. In fact, providing access to finance is a form of empowerment of the vulnerable groups. Financial inclusion denotes delivery of financial services at an affordable cost to the vast sections of the disadvantaged and low-income groups. The various financial services include credit, savings, insurance and payments and remittance facilities.¹⁹ At present 88 million accounts opened in Banks and post offices for NREGA workers makes this the largest financial inclusion of the rural poor. Wages are disbursed through these accounts. These accounts have encouraged thrift and saving among some of the poorest families.

¹⁹ Report of the Committee on Financial Inclusion, RBI

iii) **ICT in rural areas.** There have been several thrusts to ICT expansion in rural areas through MGNREGA. The sheer magnitude of the programme compels use of ICT. Mahatma Gandhi NREGA has been able to put in place an ICT enabled Management Information System (MIS), which is one of the largest online databases for a public programme and has been adjudged the best Government web-site for the year 2009-2010. A web enabled MIS www.nrega.nic.in has been developed. This makes data transparent and available in public domain to be equally accessed by all. It includes separate pages for approximately 250,000 Gram Panchayats, 6467 Blocks, 619 Districts and 34 States & UTs. All Job cards and Muster Rolls are being uploaded on the NREGA website. Currently 100 million Job Cards and more than 30 million Muster Rolls have been made available so far. The ICT infrastructure at the Block level has strengthened and currently 92% Block offices have of computers and 55% have internet connectivity at Block level. States have been permitted to extend ICT facilities to the GP levels to make the new proposed Village Knowledge Resource Centres ICT enabled and to facilitate citizen use of ICT for accessing information and asserting rights. Towards this end, MGNREGA has in recent years been most proactive in promoting ICT innovations including bio-metrics and low cost hand –held devices, IT kiosks, ATMs all of which improve the delivery of service to rural poor

Backed by financial resources, propelled by a legal guarantee pulsating towards yet unreached areas, MGNREGA is emerging as an accelerated strategy for connecting the rural poor and rural areas with highways of opportunities

Mobile phones in Orissa

It's a state-of-the-art mobile phone. It is blue tooth customized and GPRS enabled, which means one can use the Internet on the mobile phone. A fingerprint scanner-cum-printer is connected to the phone. It is used to enroll beneficiaries, as well as to make payments. Zero Mass Foundation, a not-for-profit company in Mumbai, is the business correspondent for Orissa's pilot project which started in November 2009. The foundation hires representatives in villages, whom they call customer service providers. Each beneficiary also has an identity card called the sbi tiny card. This carries details of the beneficiary, along with the zero security number, a unique id, which acts as the first level of identity proof. To ensure no malpractice, the device is voice enabled. It records the beneficiaries' voices in it. But this is only during enrolment. Voice verification during transaction is not done but if there is a need, the option exists.

Usually, the junior engineer at the work site concerned sends weekly bills to the panchayats, along with the work schedule. The schedule lists the quantum of work and the due wages. The sarpanch and the customer service provider issue a cheque to the nearest sbi branch, along with a copy of the work schedule and the wages due. The branch credits the amount mentioned into the beneficiary's account, which automatically gets transferred to the Zero Mass Foundation's account. The foundation then transfers the money to the customer service provider who withdraws it and makes the payment. Cost though is a deterrent and the reason the pilot project was restricted to 986 panchayats in Ganjam, Gajapati and Mayurbhanj districts, and one panchayat each in Bhadrak and Jajpur districts. The pilot was planned in 1,000 gram panchayats in 10 districts. SBI pays Rs 2,000 (\$44) per customer service provider to the foundation. About 700 of them are active. The Foundation keeps Rs 500 (\$11) towards its cost and gives the rest to the service provider. Then there is the customized device, which costs Rs 25,000 (\$546). The service provider makes a down payment of Rs 5,000 (109\$) for the device to the Foundation; the rest is deducted in 36 easy installments from the service provider's salary.

5. Reasons for the effectiveness of the legal framework

Since most design elements of MGNREGA have been gleaned from previous wage employment programmes, the question that arises is what makes them effective now in a way that they were not before? To what extent are the reasons related to the design itself, and what is owed to the context in which the design itself operates?

There is a triadic structure in the design: the processes through which the workers exercise their rights, the process through which the government guarantees, and the process through which the government facilitates the exercise of workers' rights. The first is fraught with challenges and difficult to enforce, mainly because the

instruments of rights are not easily negotiated by the workers and because they underscore the unequal relationship between the worker and the institutional system and the tensions internal to the delivery system that further constrains the acknowledgement of workers' Rights. This is discussed further in a subsequent sections of the paper.

The second and the third aspects of the design have resulted in compelling the delivery system to implement the schemes under the law and to strive toward the fulfillment of its objectives. The reason for discussing the Rights-based design is to foreground two critical factors in the analysis of MGNREGA. One, the fact that despite several dilemmas of the Rights-design, the *recognition of the force of law* has compelled *Government to act. Government has recognized 'Rights' not just as workers' demands, nor as just a sequence of procedures, but essentially as a need of workers have that the Government is obliged to fulfill.* Two, the law creates space for innovation, flexibility and decentralized operation enabling states to deal with several problematic issues discussed above, locally, and these local innovations have been the basis for its effectiveness. In fact, local innovation has been the main offspring of the legal design and the vehicle for its vibrancy. Care should be taken not to over-ride local choices and priorities, determine micro details, regulate and over-prescribe procedures. The manner in which the policy context has contributed to the effectiveness of the Act and the manner in which the legal design itself has facilitated positive trends are discussed below.

5.1 Policy Context

i) Socio -Economic Context

Poverty in India, declined from 36% in 1993/94 to 28% in 2004/05²⁰. However, close to 300 million people still live in deep poverty at less than a dollar a day²¹. Unemployment and out of labour force days of rural agricultural labourers is 104 days (76 days for male & 141 days for female)²². Extensive erosion of natural resource base over the last fifty years have resulted some of the worst natural disasters adversely impacting agricultural productivity & employment opportunities thereof. Growing poverty and unemployment have lead to fragmentation of land and increase in number of agriculture labourers. Agriculture labour increased significantly from a level of 7.08 million during the period 1881 to 121 million during 2008. At the same, there has been an increase in the percentage of operational holdings under small and marginal farmers. The percentage of operational land holdings under Small and Marginal Farmers has gone up from 70% in 1971 to 82% in 2001.

The policy response to a situation of poverty and inequality has focused on inclusive growth. The architecture of inclusive growth is defined by prioritizing key result areas through major programmes

²⁰ NSS Survey 2004-05 using Uniform Recall Period Consumption

²¹ Plan panel's estimation 2004-05

²² Report on conditions of work and promotion of livelihoods in the Unorganised sector: National Commission for Enterprises in the Unorganized Sector, Government of India

aiming at time bound delivery of outcomes, viz. Infrastructure through Bharat Nirman²³, human resource development through Sarv Shiksha Abhiyaan (SSA)²⁴, National Rural Health Mission (NRHM)²⁵ and livelihood through MGNREGA. There has also been a greater concern for social security measures.²⁶ There has also been a growing policy engagement with the Rights regime witnessed by the formulation of Rights based laws as policy instruments. The Right to Information Act, the Forest Rights Act 2009, and recently the Right to Education Act 2009 with the Food Security Bill (in the offing) are examples of the shift from a policy based on the perception of development as a welfare activity of the Government to a policy that recognizes basic development needs as rights of the citizens, a compelling commitment of resources of the Government, even challenging some of its existing systems.

MGNREGA came in this context of radicalization of State policy, foregrounding its obligation *as a law*.

ii) Political Context

MGNREGA works because it is a law backed by political will and it has excited the political imagination of the State. It is driven at the Centre by the political support of the UPA Government in power. The impetus behind the Act is the leading partner of the coalition- the Congress, supported by all parties that formed the coalition. With its thrust on employment provided locally, and its large scale, direct reaching out to the poor, the Act enjoys high priority in the Central Government's agenda. The political support to the Act was regardless of the fact that the party in power in the State was different from the one in the Centre. Public association of State's political leadership with the scheme under the Act gave much needed support to the scheme for its implementation in the State. Over time, it is interesting to note, that the Act started to garner political support from States where this had initially not been so forth coming. The reason for this was that it was an Act that guaranteed rights to the rural poor- a critical political constituency

²³ Bharat Nirman is a time-bound plan for rural infrastructure by the Government of India in partnership with State Governments and Panchayat Raj Institutions 2005-2009

²⁴ Sarva Shiksha Abhiyan (SSA) is Government of India's flagship programme for achievement of Universalization of Elementary Education (UEE) in a time bound manner, as mandated by 86th amendment to the Constitution of India making free and compulsory Education to the Children of 6-14 years age group, a Fundamental Right. The programme seeks to open new schools in those habitations which do not have schooling facilities and strengthen existing school infrastructure through provision of additional class rooms, toilets, drinking water, maintenance grant and school improvement grants

²⁵ The Government of India launched the National Rural Health Mission to carry out necessary architectural correction in the basic health care delivery system. The key functionary of this program, Accredited Social Health Activist (ASHA), a voluntary worker, incorporates all the good qualities of previous similar functionaries in various programs

²⁶ National Commission for Enterprises in the Unorganized Sector (NCEUS), Rashtriya Swastha Bima Yojana (RSBY)

5.2 Design related factors.

i) Framework of Law

The very fact that the programme is governed by law, has made it different from other wage employment programmes. It does instill a sense, no matter how nascent, *that there is a law* and therefore, work must be provided to the local labour that may be in need of it, even if it is difficult to conform to all the prescribed procedures of then. The continuous repetition of statutory procedures, despite the fact that they are not necessarily followed, does underscore the necessity of providing employment under MGNREGA and that not providing employment would be evidence of State's neglect of law, and not of the absence of demand for work by people. The sense of legal compulsion also steers action at the Central level. The effect of the authority of law and its design has been elaborated in this section.

ii. Decentralisation

a) Decision making space to States

The design of law encourages State Governments to make schemes under the Act. In other words, the Act is a broad overarching framework which lays down a set of non-negotiable features in the main body of the Act and the schedules. States are to formulate schemes that incorporate these features. The schemes are to be the instruments for the Act. The State can also make its own Act, incorporating the features of MGNREGA. Therefore, the design of the Act places the onus and ownership on the states. Further, and even more important, it leaves decisions and control with the State, even while funds for implementation are from the Centre.

b) District as the unit of administration

The district makes for a feasible and effective unit of implementation with the District Programme Coordinator (the District Collector, mostly; the Chief Executive Officer of the District Panchayat, in some cases) responsible for the guarantee being implemented. The coordination powers of the District Collector backed by resources and administrative authority has helped in providing a unifying leadership at the district level.

c) Role of local bodies

The local bodies, Panchayati Raj Institutions (PRIs)²⁷ have a principal role in planning, implementation and monitoring. This is specially important at the village level, where the local body, the Gram Panchayat has the unique advantage of being located in the local village community as well as being the main institutional outreach of rural development. At least fifty per cent. of the works in terms of cost under the Scheme should be implemented through the Gram Panchayats. In most major States

²⁷ The **Panchayat Raj** is a South Asian political system. "Panchayat" literally means assembly (*yat*) of five (*panch*) wise and respected elders chosen and accepted by the village community.

almost 90% works are being executed by the Gram Panchayats. Under MGNREGA, funds, functions and functionaries have been given to Gram Panchayats. In FY 2008-09 the average funds available per Gram Panchayat were Rs. 15 lakh (\$33,000), for MGNREGA works; the average expenditure per Gram Panchayat was Rs. 11 lakh (\$24,000).²⁸ This was a 90% increase over the amount a GP received in the previous WEP's

5.3 Financial support

i) Central share in financial assistance:

The pattern of Central assistance as laid down in the law, is a major incentive to states to implement the programme. The Centre picks up 90% of the cost, and in addition hundred percent of administrative expenses upto the permissible limit, for implementing the Act.

ii) Demand- based financial assistance:

The budget is based on the principle of demand. An initial budget provision is made, but the initial budget is open to augmentation according to the labour demand that may rise. A demand- based budget has been a transition from fixed allocation based budgets. This has inspired confidence in implementing a programme on a large scale and meeting cost increases in case labour participation is higher than originally estimated. States can negotiate the size of Central assistance with the Centre upon principles of labour demand.

iii) Labour Budgets:

Finance interlocks the State and the Centre in a crucial relationship as the guarantee to be upheld by the State depends on the financial support by the Centre. To ensure smooth fund flow to districts, labour budgets (LB) prepared by districts are discussed with an empowered committee headed by the Secretary Rural Development with Rural Development Secretaries to assess fund requirements for estimated labour demand and shelf of projects needed to meet that demand. The labour budget projections are on the MGNREG website so that all labour and work estimates at the village level can be viewed in public domain. Works proposed to be taken up are indicated, village wise, with estimated outcomes in terms of person days and physical benefits with details of wage and material costs. Thus, village level planning is sought to be aggregated as the basis of fund demand in a transparent way. The LB estimates are only tentative premises for the initial release of central assistance, as up front funding, for six months, and are not fixed limits of budget allocation, either containing demand or being released automatically, without demand. As the work season progresses and the actual trends of demand emerge, Central assistance is released based on those trends as well the trends in the previous working seasons. The Guidelines provide

²⁸ Figures from Government of India website <http://www.nrega.nic.in>

that a cushion at the district or GP level be maintained by releasing additional funds when 60% are spent, so that at least 40% is available as liquidity to meet labour demands.

iv) State Funds:

To give greater flexibility to States to respond to the fund requirements of districts, States have been encouraged to set up State funds to be managed by an authorized agency(like a registered society), so that Central assistance can be released into the state funds to be then further released to districts in accordance with their demand. This has the advantage of freeing districts from approaching the centre for incremental funds; it also gives the State Government a pivotal role in managing the scheme. With decentralisation of fund management to States, financial rules are under formulation to lay down a normative framework to balance fiscal prudence with prompt transfers in anticipation of labour demand.

v) Commitment of Budget Resources

The legal guarantee has compelled the commitment of financial resources to the programme. Earlier wage employment programmes that sought to guarantee were constrained by the lack of budget funds, and, so instead of a legal guarantee, assurances alone could be offered. It is possible that the confidence of the Government to commit funds was inspired by a higher growth rate of economy; but the significant point here is that even when the economy slowed down as a result of the global meltdown, the budget support to MGNREGA did not diminish. The budget support is Rs. 40,100 crore (\$ 8.77 billion) for 2010-1011 which maintains the budget provision of Rs 39,100 crore (\$8.55 billion)for 2009-2010. The budget support to wage employment programmes before MGNREGA was the highest in the year 2005-2006 when SGRY and NFFWP were both under implementation, SGRY in all the districts and NFFWP alongwith it in 150 districts. The cash component was Rs. 10,000 crore (\$2.19 billion) and the food grain was worth Rs 4,500 crore (\$984.9 million) making the total budget outlay Rs 14,500 crore (\$3.17 billion) with an opening balance of Rs. 4674 crore (\$1.02 billion), it made the total funds available Rs. 19,173 crore (\$4.2 billion) for the year 2005-2006 which was the transition year from earlier wage employment programmes to MGNREGA. This is based on the cost at which wages were paid to the workers. The Ministry of Food and Public Distribution was however paid on economic cost and if that is taken into consideration, the total cost would go up by Rs. 1,344 crore (\$294.15 million) to make it Rs. 20,517 crore (\$4.5 billion)from Rs. 19,173 (\$4.2 billion) crore. With the entire country under MGNREGA cover, the Central budget resources available in 2010 were Rs. 49000 crore. (\$10.72 billion) (budget provision and spill over from previous year) The rate of increase is between 139% to 156%. Thus, average outflow per district has gone up to Rs. 81 crore (\$ 17.73 million) under MGNREGA from Rs. 31 crore (\$6.79 million) under erstwhile SGRY and NFFWP.

vi) Self –Targeting, demand- based strategy

The Act is universally applicable to anyone who demands work under it. The only eligibility criteria is local residence in a GP. The worker may apply at any time of the year for any number of days upto the guaranteed employment of a hundred days in a year. The budget for providing such employment has to be made available to implementing agencies. This reduces space for long- winded bureaucratic procedures of identification, verification, certification and selection-much of which can be vulnerable to rent-seeking. The universal guarantee without pre-determined quantitative and qualitative targets and with a demand-based budget support steer the programme benefits away from rationing as well as from arbitrary ‘cut-off’ lines that tend to exclude some of the most needy persons/groups.

5.4 Administrative Support

A law that operates at highly decentralized levels requires strengthening administrative support systems. This has been factored into the legal design itself in many ways. The Centre has the power to determine administrative expenses which it has to fund fully. Currently, the permissible administrative expense is fixed at 6% of the total cost of the scheme. States can incur upto 6 % on their administrative costs. This includes personnel and processes like monitoring, training, IEC, social audits, MIS. Using this provision, the Centre has directed States to augment technical support to the programme at all levels. Dedicated personnel has to be deployed for managing critical programme components like ICT, social audits, works, grievance redressal at the block, district and state levels. Each Gram Panchayat has to have a dedicated assistant (*gram rozgar sahayak*). Besides the additional personnel right down to the gram panchayat, States have been advised to establish technical networks with professional institutions for resource support to their multifarious tasks. The Act mandates the State to delegate administrative and financial resources to the district programme coordinator- responsible for ensuring the proper implementation of the Act. The Central Government can modify the permissible limits of administrative expenses according to requirements. This is a very critical component of the legal design as it anticipates considerable increase in the demands on the administrative system and factors it in as a legal obligation of the Government.

5.5 Transparency and Accountability

Transparency has been mandated in the Act through documents and processes.

- i. Chief among the documents is the Job Card issued to the worker and expected to be in his/her custody as a Record of Rights. All data on employment demanded and received and wages earned is recorded there in.
- ii. In terms of processes, there are atleast three ways in which the Right to information (RTI) has been integrated with MGNREGA. One, the Act itself mandates that all information be proactively placed

in public domain. Two, any information demanded be given, free of cost. Three, social audits by the village assembly (gram sabha) which go beyond the RTI to fix accountability and seek correctives.

- iii. The Comptroller and Auditor General (CAG) is also responsible for auditing the schemes.
- iv. A significant measure for infusing transparency in MGNREGA transactions has been through the amendment in the schedule of the Act to make wage payments through MGNREG workers' institutional accounts mandatory. 88 million such accounts have been opened in Banks and post offices. Almost 80% of the wages of the workers is disbursed through their accounts²⁹.
- v. A Central Employment Council has been set up as a statutory mechanism for monitoring the law and reviewing critical processes like social audits and grievance redressal. The Council creates a structure for transparency and public accountability within the Ministry.
- vi. All such measures mandated by the Act have placed it under constant public gaze and at the centre of a loud public debate and dissonance. Conversely, such relentless scrutiny was the result of *enacting a law* for wage employment with large public investments expected to impact poor rural households.

5.6 The design strengths are summed up below

- i) Design Strengths that motivate the wage seeker are
 - a) Self targeting, with no specific eligibility criteria
 - b) No pre-requisite skill
 - c) Work provisioning is responsive to labour demand. Work may be availed of at any time of the year, dependent upon the worker's needs
 - d) Local employment, as work is to be provided within five kilometers of the radius of the place of residence.
 - e) Flexibility of working hours as workers may drop in and drop out
 - f) Assured wage rates and wages
 - g) Wages through institutional accounts.
 - h) Job Card as a Record of Rights of workers in workers' custody with the data on work and wages
 - i) Bi-focal lens: work helps earn wages and create productive assets. Natural resource regeneration addresses causes of chronic poverty: water, fodder, land
 - j) Works category permits both individual benefits and public assets

²⁹ Figures from the Government of India Website <http://www.nrega.nic.in>

ii) The design strengths compelling the Government to act are as follows

- a) Legal framework
- b) Adequate budget resources. The budget support is Rs. 401 billion for 2010-1011
- c) Rapid universal scale
- d) Budget on demand where National and State budgets have to match the needs of the district Labour Budget
- e) Substantial cost of employment funded by Centre.
- f) Decentralisation: Funds, functions, functionaries to local bodies specially gram panchayats.
- g) Untied funds that the district plans according to their context within overall legal norms
- h) Decentralised operations supported by additional administrative support systems borne on Central budget.
- i) Incentive-disincentive structure: Central assistance is for providing employment. Unemployment allowance in case States fail to provide employment is at State cost

5.7 To sum up, MGNREGA is emerging as a powerful policy platform that synergises multiple inputs and multi-layered processes towards basic development goals, *inter alia*

- a) Creating Green Jobs (economic & ecological security)
- b) Enhancing economic security and opportunities
- c) Augmenting water resources and water use efficiency
- d) Enabling ecological restoration
- e) Enabling planned convergence with programmes of water resources, afforestation, agricultural productivity & sustainable development
- f) Strengthening food security
- g) Augmenting energy security
- h) Strategy for adaptation to adverse effects of climate change
- i) Strengthening democratic processes, grass roots institutions

6. Paradoxes of the Rights-based Design of MGNREGA

There are various factors pushing the MGNREGA towards a certain course to respond to the needs of rural families in search of work. However, there are also certain design aspects that are difficult to implement. This is most conspicuous in some of the processes and instruments of rights. The Rights-based framework of the law is one of its significant features but it poses the maximum challenges in its realization. First,

because Rights can be ordained but their actualization is not the result of ordains, but of the capacity of the people and the administrative system to enforce them. Further, Rights do not stay confined to a space that can be carved out and protected from their more raw environment. They pervade processes embedded in history and context. Inevitably, the design elements of Rights encounters paradoxes that emanate from a larger system in which it operates. This historical perspective is necessary for a proper diagnosis of the many problems that persist in MGNREGA. Some of the aspects of the Rights framework are discussed below.

6.1 The instrument for enforcing the law are schemes to be designed by the State under section 4 and the two schedules of the law. Section 4 states that

Every State Government shall, within six months from the date of commencement of the Act, by notification, make a Scheme for providing not less than one hundred days of guaranteed employment in a financial year to every household in the rural areas covered under the Scheme whose adult members by application, volunteer to do unskilled manual work subject to the conditions laid down by of under this Act and in the Scheme.

Schedule I of the Act gives Minimum Features of a Rural Employment Guarantee Scheme to be incorporated by the State in their Scheme. Whereas Schedule II lists conditions for Guaranteed Rural Employment under a Scheme and Minimum Entitlements of Labourers.

The objective and non- negotiable processes of law are given in the main body of law. The two schedules of the law describe the operational instruments and conditions to facilitate the objective of the main body of law. The main body of law can only be changed through Parliament. The schedules can be changed by the Ministry and after change be submitted to Parliament for information. This relationship between the main body of law and the schedules is critical to the design of the law. If this relationship is not fully appreciated then the balance between different components within the legal design tends to get lost. Its interpretation acquires asymmetries of emphases and the relationship between operational and substantive components gets blurred. The operational instruments detailed in schedules should be seen as implementation options that can be reviewed based upon implementation experience, rather than rigid conditionalities for exercising rights.

The objective of law is unambiguously stated ‘providing atleast one hundred days of guaranteed wage employment to every household whose adult members *volunteer* to do unskilled manual work’ The emphasis is clearly on providing work. The objective also clearly foregrounds Government’s guarantee to provide work up to at least hundred days. However, the word ‘volunteer’ has been linked in Schedule Two with an application process in which there is a sequencing of steps. In Schedule Two, work provisioning is after the wage seeker submits an application. This sequencing makes the guarantee conditional to a choice. Instruments to assert such a choice, however, generate paradoxes. This is because although a legal process of demanding rights has been designed, delivery systems, social hierarchies and power relations have not

changed much since the earlier wage employment programmes. As a result, limited capabilities and existing hierarchies can tend to restrain the assertion and acknowledgement of Rights.

6.2 Under MGNREGA the instruments of Rights are based on applications by the work seekers: application for job cards, written applications for work and demanding rights require capabilities. Basic instruments for exercising Rights in MGNREGA depend on the ability of the worker to read and write. However, most workers engaged in MGNREGA are non-literate as most studies profiling MGNREGA workers show. This leads to a situation where workers if they had to write out work applications or even read the job cards would depend on someone literate to do so. This opens a niche where the 'writer' may dominate the Rights. Such *procedural conditionalities* if they govern the exercise of rights by non-literate workers to fulfill on their own create a paradox.

6.3 A critical set of assumptions that the legal instruments make are about the workers capacity to organize and negotiate on equal terms with an overpowering unequal system with which they have a subordinate dependency relationship. It is assumed that the worker is able to wrest her legal rights in case a system denies it. This is why crucial to the Act are the provisions of social audit by gram sabhas, payment of unemployment allowance, grievance redressal in seven days and penalties in case of default. These are instruments for *enforcing the Rights* in case the system that is the guarantor of Rights fails to do so. This is a complex situation, latent with conflict and varies among States according to the States' socio-economic context. If workers were organized they would be able to wrest their entitlements if a system were not to acknowledge them. But lack of organization makes it difficult to do so.

6.4 If the Rights-based approach has to be followed, the State would have to first create awareness of rights. The condition that makes the law effective lies outside the law, and depends again on the initiative of the state. But unless people are able to demand, just making a law that gives them that right does not yield the desired result.

These paradoxes are inevitable, given the historical situation. A discourse of rights creates the breach in this historical condition, and like all discourses it seeks to compel action to change the existing situation. The process for such a change however is slow and uneven. In the transition phase, there is a need to re-think the design of legal instruments for exercising rights that can be easily used by the overwhelming majority of non-literate, unorganized workers.

6.5 The right of the worker to demand and receive work is guaranteed not just by the allocation of work in fifteen days but also by the unemployment allowance to be paid in case work is not allocated in fifteen days. Similarly, worker rights are protected by guaranteeing payment within fifteen days, else compensation. There are considerable difficulties here. The unemployment allowance is actually a worker's right, but because it

has to be paid by the State, it tends to be perceived as a penalty on the State for failure to provide work on time. This also highlights the problems inherent in balancing the functions of a 'Rights' guaranteeing agency. The same agency is responsible for providing work at the Centre's cost, as well as for an unemployment allowance if it fails to do so, *but at its own cost*.

6.6 There is a similar issue with wage payment. Wage payment beyond fifteen days attracts compensation. In order to infuse transparency in wage payments, wages are to be paid through the workers' accounts in banks or post-offices. However, for various reasons, such as delays in measurements, limited capacity and outreach of the financial service network, there are delays in wage disbursements. MGNREGA despite being a law continues to be haunted by the legacy of precedent wage employment. The focus is on opening works, but not, as the law demands on perceiving the works as instrument of a legal guarantee to ensure that workers earn their wages. Work without payment on time compromises the rationale for opening the works and the functioning of the Act as a social safety net.

These problems suggest the need for an independent adjudicating agency. In law the implementation and enforcement functions have to be separated.

6.7 The wage rate policy also raises a number of issues that reflect the way in which the Act can be steered towards being (or not being) an effective social safety net. Section 6(1) gives the Centre the power to notify a wage rate, notwithstanding anything contained in the minimum wages Act. The Section states:

Notwithstanding anything in the Minimum Wages Act 1948, the Central Government may, vby notification, specify the wage rate for the purpose of this Act:

Provided that the difference of wages may be specified by different areas

Provided further that the wage rate specified from time to time under any such notification shall not be at a rate less than sixty rupees per day.

In other words, the Centre can notify a wage rate other than the minimum wages for agricultural labourers. Wage rates for MGNREGA were notified by the Centre in January 2009, using its power under section 6(1). The existing minimum wages for agricultural labourers in the States were notified as wage rates for MGNREGA. However, in 2010 the Centre decided that it would agree to wage rate revisions by the State if they were upto Rs 100 per day but not beyond that, thus limiting its wage rate liabilities upto a cap of Rs 100 per day. States with wage rates notified above Rs 100 per-day by the Centre on January 2009 were retained at that level. This decision effectively delinked minimum wages for agricultural wages from MGNREGA wage rates. The wage rate is seen as a cap . The wage rate is to be indexed with the cost of living to be a real wage rate of Rs 100. However, the wage rate to be paid is based on task performed. The issues here are not easy to resolve. The Act states that under no circumstance will a worker be paid less than the wage rate. This

is not easy because the rates are linked with tasks. Further, should the wage rate be a cap or linked with productivity when schedule of rates determine the wage to be paid? How effective can a social safety net be if what it guarantees is less than the minimum wages?

6.8 The objective of the Act is enhancement of livelihood security by encompassing both immediate social security relief and long term strengthening of livelihood resources through natural resource regeneration and creation of durable assets.

Strengthening resource livelihood and creating durable assets require careful integrated planning of many inputs. How can they all be twined into an employment guarantee? This issue is not easy to address within the legal framework. Its key features often pull in opposite directions. The main elements of the design underscore the functioning of the Act as a social safety net. This is why work must be provided within fifteen days of demand-a conditionality required to ensure that the social safety net is effective. But it may not always be possible to provide sustainable, productive work within this time limit. The need to provide work should, as the Act's fifteen day stipulate, gain precedence over the search for sustainable productive work, if a choice has to be forced.

6.9 How would NREGA compare with a conditional cash transfer programme? It is premised on rights and entitlements. But the exercise of those rights have a condition, the willingness to do unskilled manual labour. The wages to be earned are dependent on the task done. So there are conditionalities. There is a conditional relationship between the workers rights to work and of the wages earned. Further there is an immediate conditional relationship: labour input, work out-turn and wage earned. But there is no conditional relationship between the work performed and the expected outcome of that work. There is no condition that incentivizes the workers to use MGNREGA as an opportunity to move beyond MGNREGA to improve his/her equality of life. There is no obligation on the worker to complete the work engaged on. Workers can drop in and drop out which is in keeping with their right to chose to work when they want, but this tend to contribute to a high rate of incomplete works. The conditionalities apply to labour commitment, not to productivity or durability of work done.

6.10 . Significant to the Act are provisions regarding transparency and accountability, intrinsic to its design as a social safety net. However, efforts to promote transparency and public accountability encounter some dilemmas of delivery systems. All the powers are vested in the same agency, muting checks and balances. Thus, the GP receives applications for employment, issues dated receipts, to bind itself to allocate work within fifteen days as well as to payment of unemployment allowance in case it cannot. The guaranteeing agency is the same as the implementing agency. The implementing agency then has little incentive to give

evidence of its guarantee as that can then be invoked against it for paying unemployment allowance.

Should the agency issuing the guarantee be separate from the one that has to fulfill it?

Not only is the GP both guarantor and the implementer, and so controls the documents related to them, it also controls the systems and processes to which it is accountable. This is most apparent in the system of social audit. The gram sabha is expected to audit the Gram Panchayat, but the gram sabha is convened by the gram Panchayat. Social audit can be a powerful instrument for transparency and accountability only if the community is powerful enough to compel the public body to render accounts and to compel action on its findings. In the arrangements prescribed by the Act, the gram sabha that is the social audit body is dependent on the body it has to audit to even be invoked. Not surprising the social audit process tends to be compromised because of the unequal relation between the GP and the gram sabha. Inevitably civil society organizations have demanded social audits that are transparent and truly audit the work done and for that purpose, they want to participate in the social audits of the gram sabha. This has led to a debate on who has the right to social audit. This has been interpreted in two conflicting ways. One, that the gram sabha alone has the Right to audit and gram sabha only means the local community that is the local electorate in a gram panchayat. As such individuals/organizations not on the electorate are not part of the gram sabha and so cannot participate in the social audit. This has been the view point mainly of State Government officials and of the Gram Panchayat sarpanches and functionaries, i.e the delivery system. This interpretation is supported by the Act, as the Act invests the authority of social audit only on the gram sabha. The argument of civil society organizations is that anyone should be allowed to social audit, whether part of the local community or not. *Legally*, this is not the provision in the Act. Further, social audit is an audit with an elaborate enquiry into records, and legal consequences that may involve grievance redressal and penalties. Therefore *administratively* the Right to social audit will have to be entrusted to an agency that is also legally definable. The gram sabha is legally definable and is a legal entity and is the universe in which the law operates- and so to that extent is the primary stake holder whose rights are guaranteed by the Act. There is no legal definition of a civil society organization, so who will be auditing? Will any and every one, irrespective of any qualifying attributes be permitted to social audit? This may be possible for RTI that only asks information to be provided, but not for a social audit as it is an in depth engagement with the implementing agencies and beneficiaries, with record scrutiny and interrogation. Further it is conducted as a collective public event, not as an individual enterprise. It is administratively not possible to allow anyone to demand a social audit as and when they want and invoke an assembly.

On the other hand, the argument of civil society organizations is that the social audit is an open audit, where anyone can participate. The social audit may be done by gram sabhas but that social audit is open to

participation by anyone (i.e. not of the local community) who wishes to and this participation should be on the same terms as members of the gram sabha. There appears merit in this argument as widening the scope of participants in a social audit conducted by the gram sabha can only enhance its transparency.

Recognising this, schedule I was amended to facilitate participation of people from outside in social audits. However, this 'outside' participation is limited to giving information to the social audit committee in the scrutiny process prior to the social audit, but during the social audit meeting of the gram sabha in which the findings are to be discussed people from outside can only participate as observers, i.e. they would not have the Right to ask, opine or question or discuss issues they feel ought to be discussed. This does tend to mute outside participation. Such a position is based on a legalistic understanding of the Act, where those who are not part of the gram sabha do not have the Right to participate in a gram sabha and do social audit.

The contention of the social activists that social audit by the gram sabha does not preclude participation of those outside the gram sabha to be accepted will require an amendment in the Act (section 17) to the effect that the social audit of the gram sabha will be open to public participation. This will retain the primary authority of the gram sabha but will not exclude others and so be a more transparent process.

The need for enlarging the scope of participation in the gram sabha for social audit is manifest if one considers the current status of the gram sabha. There is a contradiction between its constitutionally and legally mandated *authority* and its identity in a real context. Constitutionally, the gram sabha is the bedrock of local self government, and within the Act, the ground of its principles of participatory planning, transparency and public accountability. In reality it is an 'imagined community', conspicuously absent and non-functioning. The village community is not homogenous; on the contrary, it is highly stratified- socially and economically. Its presence as a 'local community' is largely spatially determined and designated formally mainly on a combination of geo-territorial and administrative factors. Within this broad physical space, are heterogeneous groups. Caste is an important determinant here, expressing itself not only as social identity and bonding but also often, as the pattern of residence and work. Within shared social identities are divisions and conflict of interests. So where is the community except for an administrative-territorial presence? Such a spatial identity has the potential of a community, but is not really community in a full sense. A community comes into being when there is a sharing of a common agenda. Its vitality depends upon its ability to communicate, to negotiate differences on increasingly equal terms and to evolve solutions and to identify with common public issues. Such a concept has also to recognize that both public agendas and private interests (that often influence public agendas) change and with that the contours of a community. Community remains a fluid process seeded with common interests, fraught with conflict and the struggle to place communication in a public domain. By no

measure is it a static entity. Such an understanding of community makes the gram sabha a complex structure that has to be created, rather than a given homogenous 'always already there' collectivity.

If understood as the entire local resident village community coterminous with the electorate it remains amorphous and fails to become an assembly. If it does acquire the occasional character of an assembly, it lacks collective will. Its internal divisions and the over riding power of the gram panchayat create a void, despite its physical presence. Meetings of such gram sabhas and 'decisions' by it indicate the creation of a structure without agency. This is aggravated when such a structure is manipulated by the gram panchayat to endorse its decisions. In the case of MGNREGA workers, this danger is real as the workers lack capabilities and are unorganized, lack economic resources and are often on the bottom of social hierarchy. A simplistic understanding of the gram sabha underlies MGNREGA and has the following consequences:

- i. It leads to its subordination to the gram panchayat
- ii. It subverts the Rights of the workers to hold the gram panchayat accountable into dependency upon it
- iii. It fails to nuance realistically the terms of participation of those whose interests and Rights are at stake.

This is where the social activist argument that social audit should mean an audit open to anyone who wants to participate in it makes sense. This openness allows the intervention of persons who may have the will and capability to mobilize the workers, to activate the gram sabha, to interrogate and analyse information and evaluate the performance of the scheme and seek redressal for grievances. Such a catalyst may help create a community in the form of a common interest group of workers. The gram sabha will acquire agency because of such social mobilization, organization and articulation of issues. Capacity building of society is possible only through such direct interventions of relatively more empowered agencies in the affairs of those relatively deprived rather than through 'trainings' and IEC materials. MGNREGA is a major opportunity for such interventions and all restrictive definitions of participation should be reviewed.

Conflicts have often occurred between civil society organizations and local GP members and Government functionaries in the formers initiative of social audit because of the difference in the interpretation between the two sides on who has the right to social audit. Such conflicts provoke the question: What is the State? What is civil society? Is the gram sabha a cordoned off sub-set of one of these or of both? Does it derive its identity from the Government or is it an autonomous societal space shaped by the will of people and people's groups?

The State cannot imply just the Government, and specially not where the form of government is a democracy. Civil society and Government are both included in the term state. Civil Society also cannot mean just non government organizations. In a democracy it includes the Government. In a democracy, civil society and Government are intimately related. Government of the people by the people and for the people. Civil society is

the larger term and Government a sub -set of it. This is why the Government is accountable to the people and people's institutions- whether the gram sabha or the parliament. This understanding is mostly lost sight of. Government becomes equated with State, civil society with an NGO or a people from outside the Government. The two terms become mutually exclusive. Government as State becomes the dominant term and civil society the lesser one. Gram Sabha moves out of the openness of societal space to becoming a derivative sub set of local self- Government predetermined by the will of the Government to be invoked by Government orders. Should the gram sabha be an instrument for creating participation on Government terms? Instead, should not the Act allow people wishing to hold Government accountable to want to mobilize local people into a gram sabha that asserts the terms of workers for whom the Government is supposed to be working? The difficulty with social audits in MGNREGA is the result of the conceptual exclusion of civil society from State and of investing functional meaning to the gram sabha in a way that makes it a sub- set of the gram panchayat.

6.11 The legal design for its effectiveness depends upon the capacity and structure of institutions that are to take decisions about the use of resources guaranteed under the Act. Rights under the Act that are bestowed on the workers create corresponding obligations on the institutions that have to ensue the fulfillment of those rights. But these institutions also have rights *vis a vis* each other. These Rights have to be honoured internally, like a supply chain of rights and obligations. This is vital and a breach in this will dislocate the guarantee of Rights to workers, the origin of the chain.

i. What are these internal institutional Rights? And the corresponding obligations that depend on these Rights

Three features of this structural network are evident. First, the functions are the heaviest at the bottom/ GP level and the leanest at the top-Ministry level. But the control of funds on which the entire guarantee rests is inverse to the distribution of functions, resting maximally with the Centre and then at each lower level, with the GP having the least control over and access to funds. Second, there are often concurrent powers that remain unreconciled, for example, the gram sabha recommends works but the GP determines priorities. The State Employment Guarantee Council can also decide 'preferred works'. The deciding power on the labour budget that funds the work recommendations is with the district Panchayat. Third, there is an intricate network of dependencies. This has to work smoothly and efficiently for the guarantee to workers to be ensured. Does the existing system have the capacity to work in such a well coordinated manner?

Table of Rights and dependent obligations

Table I

Level	Institution	Rights	Obligations
Village	Gram Sabha	Decide projects Do social Audit	Function actively as a gram sabha, demand its rights to do so
Village Cluster	Gram Panchayat	Consolidate recommendations of works by Gram Sabha into a the village Development Plan Implement atleast 50% of approved works Receive proportionate funds for it	Receive applications from job cards, verify and issue job cards Receive work applications , allot work within 15 day, pay within 15 days Convene gram sabha, facilitate social audi
Block	Programme officer's office Intermediate Panchayat	Consolidate GP plans into a Block Plan Receive funds	Receive work applications and allot work Dispose grievances in 7 days, Proactive disclosure
District	District Programme Coordinator District Panchayat	Consolidate Block Plans into the district plan and make a labour budget Receive funds	Ensure that the guarantee is upheld Dispose grievances Proactive disclosure
State	Department of Rural Development State Council	Make schemes under Law Set up State Council Receive funds from the Centre State Council: Determine preferred works Monitor and evaluate	Fund 25% of material cost, pay unemployment allowance, Impose penalties, Delegate powers to the DPC for implementing schemes under law, Make Rules for grievance redressal, accounting, Proactive disclosure
Centre	Ministry of Rural Development Central Council	To amend law Make rules on National Fund, and Council and on manner of release of funds Central Council Monitor evaluate, review, collect statistics,	Fund 100% of cost of wages, 75% of material 100% of administrative expenses, release Central funds on time to implementing agencies Proactive disclosure,

This leads to encountering the dilemma of delivering rights through a system where the delivery of rights is expected to be the process of strengthening the delivery system: Building capacity of gram sabhas and PRIs at the same time as guaranteeing and auditing Rights is like cooking in a vessel that is still on the potters wheel.

- ii. The most challenging role in the institutional delivery system is of the PRIs, specially of the Gram Panchayat. They are pivotal to MGNREGA. But GPs exist in a hierarchical system. They are dependent on the decisions of levels above. Functions are shared vertically, and although all the tasks of

MGNREGA rest squarely on the GP, the DPC is responsible for the guarantee and the GP on whose actions the fulfillment of the guarantee depends is, one link in a long chain. Labour budgets have to be prepared through participatory planning involving gram sabhas, PRIs, and the Block/district officials and sufficient technical expertise, forecasting and matching labour demand and works, keeping in mind their seasonality, sufficient potential to generate employment, technical feasibility and durability of assets, keeping within the permissible list of works. The fifteen day limit of guaranteed employment through the instrumentality of labour intensive works is possible only if this planning and fund release from the district to the implementing agencies to support that planning is ensured by the district administration. This requires institutional coordination and high skills for planning in advance.

- iii. The Act also rests on the premise that the GPs have the capacity to implement a legal guarantee with time limits of fifteen days; that they have the basic infrastructure, trained personnel and capabilities to understand the conditionalities of law and are prepared to handle its time bound pressures. It also assumes that grass root democracy has matured sufficiently and that gram sabhas can actively hold not just the sarpanches they elect, but all the government machinery accountable. There is also the more idealistic assumption that a sarpanch will convene a gram sabha to be subjected to scrutiny.
- iv. There are conflicts between different institutional authorities and responsibilities which makes coordination a difficult task and fixing accountability even more difficult. Section 13 makes the PRIs principal authorities for planning implementation and monitoring. But at the district level, the DPC is responsible for the legal guarantee. Section 14 makes everyone accountable to the DPC so that the DPC can coordinate all agencies and resources to ensure that the guarantee is fulfilled in time. The PO, the other critical officer at the block level is also accountable to the DPC. Yet the DPC's authority is tied and limited in some ways and his role is subordinate to the District Panchayat. While this is in keeping with section 13, it does complicate the role and power of the DPC in section 14. The PRIs are the principal authorities but have the powers but the DPC has the responsibility of guaranteeing. There is nothing in the Act that gives him the authority to ensure that the principal authorities discharge their responsibilities towards fulfilling the guarantee. This leads to a situation where powers and responsibilities get wedged between institutions and this diffuses the authority to enforce a legal guarantee. Besides the complexities of institutional inter-relations, existing social relations are ridden with inequalities, that make the assertion of rights by marginalized groups difficult.
- v. There are issues that rise on account of the federal structure of the Government, between the Centre and the State. There are considerable differences among States that affect their implementation of the programme. There are however certain standardised prescriptions of the law governing the programme

that does not quite factor in these variations. For instance, the nature of works related mainly to soil and water conservation severely limits the working season in hilly, snow-bound regions. Their snow-bound periods are when they need supplementary employment but the nature of works does not support this. The nature of works also limits employment provisioning during heavy rains. What happens if there are employment demands during such seasons? For inter-regional variations to not affect the honouring of the guarantee, Centre-State consultation becomes very critical. The scope of works may have to be enlarged by the Centre in consultation with States. Or there may be a need to reconcile different legal stipulations that govern work provisioning. For example, Section 7 gives the States power to make rules governing the payment of unemployment allowance which some States interpret as giving them the power to exclude such seasons (rains, snow) when work is not possible from the purview of unemployment allowance.

Section 7 of the Act states

Subject to such terms and conditions of eligibility as may be prescribed by the State Government and subject to the provisions of this Act and the Schemes and the economic capacity of the State Government, the unemployment allowance payable under sub section (1) shall be paid to the applicants of a household subject to the entitlement of the household at such rate as may be specified by the State Government, by notification, in consultation with the State Council

Further that *The State Government may prescribe the procedure for payment of unemployment allowance under this Act.*

But this has to be read with schedule II that gives the workers the right to apply for work as and when they chose. The two stipulations need reconciliation so that the power exercised by the State under specific sections and the rights based provisions of the Act are harmonised. The Act gives enormous autonomy to the State to make projects, determine rules and make arrangements necessary to enforce the law. The Centre does from time to time issue advisories that suggest critical administrative arrangements. However, States have to work within their overall administrative culture and systems. This often restrains them from taking full advantage of the resources placed with them. Uneven performance of the law among States/ regions has also to do with the inter-regional variations that make the law particularly appropriate for certain parts of the country (the geography and sociology of poverty) as well as with State specific historical legacies and based on them their contemporary policies.

The Centre has to negotiate these variations(regional and administrative) with care to the provisions of the law and the federal structure of Government. There is a growing pressure to develop more rules and

guidelines and standardize norms. This needs to be done with caution and with State consultations so as not to undermine the inherent decentralised creative space for local action which is the vital energy of the Act

- vi. In a programme without statutory backing, funded by the Centre, the Centre normally acquires operational control through a set of conditions whose fulfillment can be insisted upon by getting linked with financial releases. In MGNREGA, the programme is implemented under a law, the issue of operational control by the Centre becomes problematised for several reasons. How does the Centre get the State to conform to the legal norms? Or to take action against defaulters? Section 27 gives the Centre power to suspend funds . The Section states that

The Central Government may on receipt of any complaint regarding the issue of improper utilization of funds granted under this Act in respect of any Scheme, if prima facie satisfied that there is a case, cause an investigation into the complaint by any agency designated by it and if necessary, order stoppage of release of funds to the Scheme and institute appropriate remedial measures for its proper implementation within a reasonable period of time.

But it needs to be remembered that the object of Central assistance is the work and wages of people who have worked as manual labour. In case the delivery system defaults, should the Centre rein in fund releases? Would this not be a double indemnity to the poor? To be deprived of the resources legally guaranteed because the delivery system has already violated their rights under the law? If a law is violated, it does not automatically imply that funds intended for the end beneficiaries be withheld. It normally implies that there be stronger, independent expeditious and effective authorities for dealing with violations, punishing and redressing grievances. Lack of such mechanisms should not dislocate the discussion towards simplistic solutions like fund suspension, that erode the rationale of the law, orient penalties towards the victims of the breach of law, and still do not necessarily correct the defective system.

If the same systems exist after MGNREGA as it did prior to it: administratively and socially and if these are not transformed will they be able to enforce laws that transform social relations and administrative structures. Or is the law expected to transform the system?

- vii. It is hoped that a law with penalties would be able to coerce existing systemic and individual resistances to conform to the legal mandates. Laws aim at changing, intervening, shaping human action by restraining or promoting certain forms of behaviour. This they do through their enforcement mechanism. The enforcement mechanism punishes breaches and restrains deviant action. In a scenario of nearly 50 million families spread across more than half a million villages, does MGNREGA have a prompt free and

easily accessible legal mechanism that can be used by those whose Rights have been violated. There are dilemmas in enforcing laws that support development processes and are promotional in nature rather than regulatory and prohibitive. Very stringent and deterrent penalties may discourage the kind of proactive and supportive role that the State is expected to play to deliver the benefits under the Act. There will be more litigation than development. At the same time, there would have to be a fair system for grievance redressal and enforcement of legal Rights. How does one strike the Right balance between an internally responsive system and an independent agency so that the development orientation of the Act is fostered and willful default is taken to task? This issue has not found a satisfactory solution so far. Under the Act, those responsible for its implementation are also responsible for adjudicating on grievances that arise from its implementation. This can be fraught with complications, as dissatisfaction with those implementing the programme may not easily be heard and redressed. The Act requires State Governments to formulate Grievance Redressal Rules. The Schedule of the Act has been amended to lay down a framework for this. However, only 11 states formulated these rules. This does not help contain breach of law nor has it found expression as penal action against defaulters. The penalty for violation is itself both mild and difficult to enforce. A fine of Rs. 1,000 is to be imposed for violating the Rights of the poor for whom availing of the opportunity to earn under the Act or being denied it makes all the critical difference. Not only is the amount not deterrent, the process of enquiry and fixing responsibility within the administrative rules itself gets protracted. What happens if after the penalty is 'imposed the defaulter defaults again?

To address some of these issues an Ombudsman scheme has been formulated. The recent order directing State Governments to set up district ombudsman will create an independent grievance enquiry authority empowered to direct the State Government to redress and penalize as well as to file FIR against defaulters. But the Ombudsman does not have judicial powers. Its efficacy needs to be seen. The existence of an Ombudsman will however, generate greater awareness among people of their rights. There will be an uneasy transition period, with the administrative system responding as if it were dealing with a programme and the somewhat ruthless relentless logic of law that will judge and award penalties, regardless of administrative constraints. This may have the effect of tightening the administrative systems and accelerating decisions that recognise the inexorable demands of a time- bound guarantee as for example, staff deployment, fund release, record maintenance and inspections.

viii. If penalties are to be made swift, stringent and deterrent it may have the effect of restraining development action by creating insecurities and leading to over- emphasis on legalistic procedural requirements. If the local administration has to be hauled up for all kinds of defaults- substantive and

procedural, it may inhibit their more proactive reaching out to the worker. At present the State is being blamed for the workers' lack of awareness. Strictly, legally, the State could slide back and say –let them demand the way the Act wants. The obligation is upon the workers, not upon the State to generate demand. The actual need of workers can be rejected because of clerical shortcomings in the procedure. The very insistence on a *procedure* of Rights can result in a suppression of Rights - the fate of many Rights ordained by law.

This is the central dilemma. If an Act is promotional, and not a regulatory law, it depends upon the State acquiring the role of a stimulator, an educator. This is a moral obligation. This can be encouraged. It cannot be dictated and regulated.

To sum up, some of the conceptual premises and historical assumptions in the legal design generate mutual tensions between some of its critical processes. The Right to basic livelihood is as basic as the right to life as lack of essential resources can thwart the right to life. If this is recognized then the obligation is upon the State to guarantee it. The State may do this through policies that create opportunities(infrastructure, services resource distribution) and capabilities(education, health, skills). The right to exercise an option to avail of the guarantee offered by the State may vest with the individual. But the obligation of the state to create basic conditions for the exercise of Rights is *prior to* and *not contingent* upon the exercise of choice by the individual.

Some of the concepts and procedures in the design create implementation aporias and tensions. There is a need to understand and evolve feasible alternatives to deliver the intent of law. These alternative processes should emerge from a study of both the problems and the best practices on the field. There is an urgent need to review the instruments of articulation of the rights by observing what works and what can work in different contexts, what guarantees rights best and finally, what kind of rights should be guaranteed.

7. Policy Innovations.

Policies innovations have evolved in the effort to give effect to the provisions of the law. The provisions of law need to be often correlated to form an operational strategy. Rules or guidelines have to be formulated to convert the legal mandates into operational measures. Often there are elisions between a set of legal requirements that need to be filled and connected and this is a space for interpreting and fleshing out the law. The policies that emerge from these interpretive spaces have critical significance as they steer implementation and govern the use of resources. In the real world of practice, these policies framed in the interstice of the legal framework create the contours and complexion of legal provisions, shape its delivery mechanism and convert theoretical prescriptions into a development programme. The strengths of MGNREGA design

emerge best when we look at the way in which it balances room for flexibility with insistence on a normative framework. In fact, what makes it work as law is the way it allows local solutions to meet the requirements of local prescripts. Such innovations are emerging as the instruments of recognizing the Rights framework. There is a need to watch what is happening in the field, learn from there and evolve Rights-based instruments more in keeping with ground realities. It has been useful to start with guidelines and to slowly refine, modify them in response to emerging needs, incorporating workable innovations from the field extending what works into schedules of the Act or rules. The impatient insistence from some quarters to convert NREG guidelines into Rules tends to be premature advice not fully appreciating the dynamic creative nature of MGNREGA. The Act gains its strength from the ground and needs to evolve Rules that are practical and facilitate Rights-based processes rather than rigid prescriptions that may be difficult for the rural poor to conform to. There is an interesting situation here. Where ever MGNREGA has been vigorously implemented, it has been the result of innovative methods locally evolved in response to the challenges of a context. The instruments of the Rights design may not have been used in the way intended by the workers, but the pressure of law has resulted in policy and local field innovations to find solutions to many implementation challenges of the Act. The following sections discuss these.

7.1 State action as employment trigger

State action has not necessarily been consequent to a preceding exercise of rights by workers, through a formal articulation of demand. If the State were to wait for the procedural sequence of application first, it is unlikely that any work would start and what ever would, might be even more sporadic and ad-hoc, the main reasons for this being lack of organization of workers in addition to lack of functional literacy that inhibits their access to information about their Rights. Therefore, although theoretically, worker demand should trigger State action; practically, State action has triggered the realization of worker's Rights. State's proactive action includes social mobilization drives to disseminate awareness of the Act. Interestingly enough, when the draft National MGNREGA guidelines were discussed internally, the issue was that since the Act is demand-based and the State is expected to respond *only* if the workers' exercise their choice to demand, why should the State be expected to raise demand? Much has been written about the need to generate awareness among the workers. This is seen to be the States responsibility. Those who have been invested with rights to demand from the State are now dependent on them for educating them

about their rights so that they can then demand them, and if need be enforce them against the State. This ironically enough, reverses the relationship between the citizens' controlling powers through their rights and State's accountability, and in a way we slide back into the patronizing role of the State-at its best paternalistic welfarist and at its worst, indifferent and selective about the information it gives- for example where would be the incentive to give information about timelines of work allocations, unemployment allowance, social audits and penalties? Not surprising that basic legal documents like dated receipts are generally not issued, or issued when the work is actually allocated. So despite, the legal logic of rights to *be demanded of the state*, what has made MGNREGA work has been administrative arrangements of the state in working towards *realizing Rights*.

7.2. Opening works on a large scale:

The most effective way in which NREG has been implemented has been by opening works in advance. The best way to mobilize potential work seekers has been to open a large number of works so that a tangible benefit is seen to be on the ground. It is true that as a result, an 'employment' led programme on field appears like previous 'work' led programme, spawning complaints about the 'Rights' approach missing. But such an impression fails to understand and analyse the complex relation between the workers' capacity to access information and formally articulate choices and the State's role as *both* prime mover and facilitator creating opportunities for the community and a provider accountable to the community. Rights have been understood here as obligations of a welfare democratic State to create conditions of work and provide some basic social security. Wherever the State Government has interpreted its role in these terms, it has taken charge of MGNREGA and *planned* its implementation through a mix of strategies. Chief among the strategies for workers' mobilisation and awareness generation about MGNREGA has been opening works in every GP/village. This has been the chief means through which the *need* of employment has been fulfilled even if not formally articulated through the legally prescribed instruments. Rights have been understood *as need and not just as demand*.

7.3 Focus on deprived groups MGNREGA is by design open to those who volunteer. Theoretically, this makes it difficult to quantify and target a likely population size that should avail of MGNREGA benefits. However, States have evolved ways of assessing some basic minimum numbers that would indicate adequate reaching out to those in need of work. The list of families below poverty line, identification of SC/ST families have been some ways in which some states have tried to assess whether those likely to seek work under MGNREGA have been able to do so. This identification of and targeting of BPL/SC/ST families has been encouraged by the specific provision in schedule one of the Act permitting work to be taken up on the land of these groups.

7.4 Work site innovations.

The Act aims to strengthen the wage security of rural households. Just applying for work and obtaining a dated receipt for it and even just the allocation of work is not enough. It requires administrative decisions about worksite management. The way that this can be done is indicated briefly in the law. Schedule of rates (SORs) for tasks are to be formulated in a way that a person working for the time fixed should be able to earn the wage rate. However, evolving systems to enable earning of wage rates depends on National guidelines, administrative decisions of different State Governments and local district innovations. A few instances are cited here. The National Guidelines advise undertaking Work Time and Motion studies to formulate realistic Schedule of Rates(SOR) for different tasks suitable to labour intensive works in different geo-morphological conditions. Various State Governments have conducted Work Time Motion studies to revise task rates and these have tended to augment wage earnings. Ways to improve work management and so work earnings have also been attempted through training local persons as work-site mates. This has been specially effective where women were trained as work -site mates to measure and calculate(using calculators) work done. Even fifth grade passed women with just bare literacy skills could be trained to work as mates in some districts. Working groups were disaggregated into small teams of four to make individual work transparent and measurable. This led to the weeding of non –workers, more efficient work execution, transparent measurement and consequently, increase in wages. The mate model was incorporated in the National guidelines and inter-State exposure visits were encouraged to disseminate it in other districts. Work- site demonstrations to educate the workers on how a work was to be executed and measured and what quantum of work out-turn would earn the wage rate has been introduced in some districts. This sets transparent norms and bench -marks for workers to know how much work they have to do to earn the wage rate and it makes the measurement transparent.

7.4 Strengthening the natural resource base of livelihood:

The Act envisages strengthening resource livelihood and the creation of durable assets. The search for ways of doing this has led to significant policy innovations

i. *Link with farm work:*

To augment agricultural productivity, MGNREGA work can be taken up on the individual land of small and marginal farmers. This is in addition to the present provision of work on the individual land of SC/ST/BPL families.

ii. *Convergence:*

One way in which productive activities have been encouraged has been through the formulation of guidelines for convergence of MGNREGA with other development programmes. The principles of

convergence have been shaped within the processes of the Law. The key principle is projectisation of works by bundling inputs. MGNREGA offers a good base for planned convergence of investments. MGNREGA is beginning to give evidence of multiplier effects in terms of increased consumption expenditure, food and water security; environmental security and has begun to address issues of energy security. To accelerate this multiplier effect and to make MGNREGA works the basis of sustainable development, inter sectoral convergence with MGNREGA as base is necessary. Initial work on convergence of MGNREGA with other development programmes has started. Guidelines on convergence have been issued as broad framework building on district innovations and discussions with concerned Ministries, specially Forest and Environment, water resources, agriculture, and watershed and PMGSY programmes that have a close affinity with NREG works. There are broadly at least half a dozen forms of convergence that have been initiated. Primary earth work under MGNREGA can be firmed up under another programme like roads under PMGSY, tanks and check bunds under irrigation schemes. Second, convergence may be spatially, because NREG makes adequate resources available, it can meet gaps that may persist under other programmes, such as plantation and afforestation programmes. Third, an integrated project approach may be taken wherein different activities are undertaken under different programmes such as watershed, or horticulture. Fourth, value addition may be done through other development programmes to primary work under NREG, such as fisheries in NREG tanks, vermicomposting, mushroom cultivation, sericulture on land developed, irrigated and planted under MGNREGA; specially individual lands taken up under MGNREGA.

- iii. In view of the inter-sectorality of MGNREGA and the need to create durable assets, the Ministry developed and disseminated Guidelines for convergence of MGNREGA with different Schemes and specific programmes viz. Indian Council of Agricultural Research, National Afforestation Programme and other schemes of the Ministry of Forest & Environment, Schemes of the Ministry of Water Resources, PMGSY (Department of Rural Development), SGSY (Department of Rural Development), Watershed Development Programmes (Department of Land Resources, Ministry of Rural Development) , Ministry of Agriculture and Fisheries and schemes of Ministry of Agriculture.
- iv. 150 pilot districts in 23 states have been identified. For monitoring of the convergence pilots in these districts professional institutions have been being enlisted. Professional agencies have been including the National Institute of Rural Development(NIRD) are involved in concurrently appraising the convergence projects

7.5 Use of ICT:

The Act prescribes proactive disclosure and making information available in public domain. Of all the measures, the most effective so far has been the web enabled MIS, www.nrega.nic.in, which places all data in public domain. ICT in fact has been used as a democratic platform for tracking processes and outcomes. It systematizes a vast swathe of field functionaries, officials, local bodies and workers via a coherent centralized workflow engine spanning the entire country. It spans 31 states (89% coverage), 568 Districts (94.5% coverage), 232,000 GPs and 555,302 villages (92.5% coverage). Tight coupling of inputs eliminates arbitrary entries. The MIS software can work off line. The software can be customized to local requirements by modifying or adding features to it. It also allows local language options.³⁰

The NREG MIS is a house-hold data base that records all details of employment demand, work done, amount earned, days worked. Funds can be tracked from the point of Central approval to village level expenditure, the amounts held at different levels can be seen, the outcomes of expenditure as wages, material, works can be clearly seen. Job cards, and muster rolls, asset registers are on the web site. The web site architecture is based on the processes of the Act. So it is possible to track a job card number through the muster roll to its account through which wages have been paid. The website reveals by processing the basic data entry automatically all the defaults, aberrations, delays. A list of 'gaps' and breach of guarantees that it shows for example includes (a) Village wise names of persons who have registered but not received job cards, who have applied for works but not received work allocations within fifteen days, who have worked but not received payments within fifteen days, whether muster roll names are of those who have job cards.

Participatory in its construction, the web based MIS has been evolving through user feed back. Recently, a local language enabled sound and icon based ICT kiosk model has been developed for workers to use the system and exercise their Rights on their own. This will de-mediate their demand process and their access to information. Workers acquire agency through simple ICT methods and this also separates the work guaranteeing agency from the application receiving process.

Efforts are on to deepen the ICT infrastructure upto the Gram Panchayat level. This simple ICT penetration will trigger off innovations at the grass root helping workers to assert their Rights and hold implementation agencies accountable.

7.6. Knowledge Resource Centres:

Implementation experience has shown that transparency in processes needs proper infrastructure. If the MGNREGA website is the virtual architecture for it, there is an even greater need for a place at the village

³⁰ Figures from the Government of India Website, <http://www.nrega.nic.in>

level where workers can apply, records be maintained and proper meetings and consultations take place. Most GP lack such infrastructure. Records get wrapped up in sarpanch or secretary's houses for want of proper buildings. There are hardly any walls to even display the information that should be put up as part of proactive disclosure. So physical infrastructure is necessary for a transparent transaction of Rights where obligations have to be fulfilled in a time bound manner there is a penalty for default and the relationship between the parties involved is unequal. This is being facilitated by including among permissible works the construction of Knowledge Resource Centres at the Gram Panchayat and Block levels, aiming at providing infrastructure resource support for citizen- centring of MGNREGA processes.

7.7 Door- step financial services for rural areas.

Efforts are on to expand the business correspondent model to unbanked areas. Efforts are also on to introduce biometrics through hand held devices for enabling an end to end solution for workers from marking their application, and attendance to payment. Accounts based payments have also encountered problems the main reason being the inadequate reach of institutional network and insufficient resources in the existing rural branches. These issues are being addressed through business correspondent models. The significant implication here is that it is the implementation of a Rights based Act that mandates transparency in its transactions and under which almost 70% (Rs. 20000 crore or \$ 4.4 billion in 08-09) is spent on wages that has fore-grounded the inadequacy of the rural outreach of financial services and given an impetus to new forms of financial services.

Bank at your doorstep

Technology is helping public sector banks find customers in rural India. This is part of the Centre's efforts to include villages in the organized financial system; to ensure they are not cheated of their wages. Pilots show promise

Source: Down to Earth, CSE, New Delhi

Technology plays a crucial role in making banking services available to the rural poor. And banks are exploring options. To begin with, the Reserve Bank of India (RBI) has permitted banks to use intermediaries such as cooperatives or microfinance institutions to provide services in places banks cannot reach. These intermediaries, called business correspondents, could also be retired bank or government employees, or not-for-profit companies registered under the Companies Act. The rule is: hire and train correspondents in basic financial services and provide them with the required technology to complete transactions.

Biometric ATM experts in Cuddalore

Niranjana Ramesh: The authentication leaves no scope for fraud because no one except the beneficiary can withdraw money. "My wife gets to decide when to withdraw and how to spend her earnings. She has saved over Rs 2,000 (\$43.67)," said Mahalingam. "Earlier, she would bring home all her MGNREGA earnings to me," he added. The ATM operates in Tamil, but for the elderly and the unlettered, help is at hand. Sudha, a resident with a school-leaving certificate to her credit, manages the atm and helps people withdraw their earnings. The panchayat has also employed a resident who collects weekly workers' list and their due wages from the worksite, and deposits cash with the bank. The bank, SBI, sends its staff to the village to put in cash in the machines.

Periyakanganankuppam was one of the five village panchayats in Cuddalore district chosen for the biometric ATM pilot. The pilot was launched in November 2008, but one village was excluded because it did not have wireless access. Two others dropped out because the bank failed to process applications for saving accounts in time for the pilot. "We did not have enough staff," said K Venugopal, branch manager of Cuddalore SBI. During the pilot the Cuddalore block administration paid Rs 12.25 lakh (\$27,000) through 675 bank accounts in these two panchayats. Rs 6.05 lakh (\$ 13,000) was paid as cash to non-account holders. The Rural Tele-Banking Initiative under iit Madras provided the technology. And, Periyakanganankuppam, with 445 account holders, and Pathirikuppam, with 230 account holders, successfully completed the pilot in May last year. The plan is to upscale the project to all 145 villages in the Cuddalore block. With a successful pilot in Tamil Nadu, the SBI is experimenting with a different technology in Orissa.

Source: State Government

Smart cards in Rajasthan

Makkhan Lal, 29, cheerfully walks about Fatuhi and Khatlabana villages in Sriganganagar district with a smart card reading device. An undergraduate looking for work earlier, there is a new confidence in his gait. Lal is the district's first business correspondent. He transacts with 1,400 daily wagers whom the bank has issued biometric smart cards, and earns about Rs 3,000 (\$ 66) per month. The smart cards, which resemble debit cards, contain information such as name, age, address, account details and fingerprint impressions of the beneficiary. There is also his or her digital photograph embossed on the card. When Lal reaches a village he first activates the machine so that the smart card can be inserted. The device, imported from the US, requires a fingerprint to verify the beneficiary. "Since labour often alters fingerprint impressions, an option for all 10 fingerprints exists. Some of us also carry Vaseline for extreme cases," Lal said. After verification, Lal hands over the cash. The machine prints two receipts; Lal keeps one, gives the other to the beneficiary. The information is relayed to the bank through the smart card reading device. Transactions can range up to Rs 20,000 (\$437) and as a rule smart card holders cannot conduct direct transactions with the bank, the Oriental Bank of Commerce in this case. In keeping with rbi guidelines, the bank has hired Financial Information Network and Operations (FINO), a not-for-profit company in Mumbai, to issue smart cards and hire business correspondents.

The incentive for business correspondents of course lies in the one time fee of Rs 4.50 (10 cents) for every smart card issued, which the bank bears. The bank also pays the correspondent a monthly stipend of Rs 1,000 (\$22) , plus half a rupee for every transaction. Since Lal's recruitment in August 2009, FINO has hired 25 business correspondents who are serving 20,000 beneficiaries.

While the smart card device is available on rent for Rs 9,000 (\$196.5) each year, each smart card costs Rs 112 (\$2.45). The bank bears these costs. RBI reimburses Rs 50 (\$1) per smart card to the bank. Under the pilot, which started in August 2009, the bank has issued smart cards to MGNREGA beneficiaries in 13 of the 20 branches they have in the district. The advantages are obvious. The bank's reach has expanded because of the business correspondents, and transaction time is saved.

7.8. Professional Institutional Network:

Because of the large scale, decentralized nature of programme implementation, coupled with its multi-disciplinary nature, the strategy for monitoring and evaluating MGNREGA at the Central level has been through creating professional networks. The Centre has initiated a Professional Institutional Network (PIN) which comprises top professional institutions like Indian Institutes of Management, Indian Institutes of Technology, Agriculture universities, leading administrative and research institutions Administrative Staff College of India(ASCI), Indian Institute of Public Administration (IIPA), Indian Institute of Forest Management (IIFM), Centre For Development Alternatives. Affiliated to specific States, each professional Institution, is expected to work as a resource support system with a problem solving approach through a process of field appraisal, diagnosis, and suggested remedial action. This system has the advantage of relating problem analysis with possible solutions, assessing what factors work positively to promote the Act's objectives, and to document and share insights and practices for cross learning.

7.9. Dialogic process of policy.

The law gives space to multiple actors often in conflict. These conflicts are legitimate assertions of different interpretations of the Act and the way it should be implemented to express its Rights- based processes and widen the possibilities of its transparency and public accountability. It is the recognition of plural actors and the heterogeneity of circumstances and therefore diversity of possibilities that has guided the Centre's role in facilitating cross learning to evolve locally rooted initiatives, broadly guided by national norms. The Centre has therefore adopted a participatory and consensual approach involving continuous dialogue with State Governments. The Central Employment Guarantee Council is an institutional mechanism for such a dialogue among different stakeholders. A recent example of this is the setting up of six working groups by the Ministry headed by Council members, with representatives from civil society, professional institutions, State Governments to discuss and recommend reform on various policy and operational aspects of the Act.

The Ministry of Rural Development has set up six working groups comprising experts and Government representative to address a range of issues of the kind discussed here. These working groups relate to (i) Planning and work execution (ii) Transparency and accountability (iii) wages (iv) Need of special groups and equity (v) works on individual land and convergence (vi) capacity building. This is a testimony to the creative, self reflexive dynamic nature of MGNREGA.

Without this dialogic approach, and the Centre's 'balancing Act' the MGNREGA would become a rigid centrally assisted scheme.

7.10. Law as opportunity for Governance reform.

A legal framework for programme implementation and its constant scrutiny has compelled a constant review and refinement of policies critical to improving delivery systems. As indicated here, there are many legal mandates in the Act whose compliance and fulfillment require the presence of certain conditions in terms of individual and institutional capabilities, systemic capacities and structural. The implementation of law has fore-grounded these gaps and directed action towards them. To cite some examples:

- a. An independent Directorate for social audit in some States (Andhra Pradesh, Rajasthan)
- b. Devolution of greater financial sanction limits to GPs (Madhya Pradesh, Karnataka)
- c. Amendment in the State Panchayat Act to make PRIs accountable for their action under MGNREGA (Tamil Nadu)
- d. Strengthening village planning in local councils through greater women participation (Meghalaya)
- e. Involvement of self-help groups for workers' facilitation (Kerala, Andhra Pradesh)
- f. Grievance redressal rules in some States
- g. ICT enabled help line for citizen access (UP, Orissa)
- h. Setting up Ombudsman (in process in all States)

A law is effective first, as an instrument for governance rather than just an instrument for individual assertion of rights. The latter without the former would lead to delay and procrastination in action for fulfilling those demands. Laws for assertion of rights by citizens compel governance reform.

7.11 Thus, to summarise, factors responsible for the serious attention that focuses on NREGA are mainly:

- a. It is a law. That makes all the difference to the inherited design
- b. The law puts the State under obligation to provide employment in the form of unskilled manual labour if it were needed, recognizing the Right to demand work.
- c. The law is backed by budget resources responsive to development needs rather than finite predetermined inflexible budget allocations that restricts needs.
- d. Political will and political contestations pushed NREGA to deliver.
- e. Even if penalties prescribed may not have been invoked quite as much as needed for many defaults, the possibility that they can be invoked, has been a strong propellant for implementation.
- f. Policy innovations that the legal design stimulates make MGNREGA a dynamic law responding to challenges of implementation.

8. Way Ahead

The way ahead needs to address issues related to (a) building capacity of the system to deliver a legal guarantee (b) developing capabilities of the people to demand Rights and hold the Government accountable (c) revisiting the Act to make it an instrument for more sustainable development

8.1 Building capacity of the system to deliver a legal guarantee:

The rapid expansion of the outreach of the Act has revealed existing gaps in the system. Some of these need immediate attention because they relate to the capacity of the system to deliver a legal guarantee.

i. Building capacity of PRIs and other institutional agencies.

Foremost is the need to build the capacity of the Panchayati Raj Institutions (PRIs). Physical infrastructure of the GP has to be strengthened and be made ICT enabled. Human resources at the GP level have to be strengthened. With an Act to enforce, the GP has to become a mini-secretariat, with a strong contingent of staff trained in the tasks to be performed. While implementing the Act is itself a process of learning and an opportunity of growing, the capacity of the PRIs needs to be constantly formally developed both in terms of generic skills and professional resource support.

Similarly, other institutional agencies need to be oriented towards the administrative requirements of a demand based law. Professional support at each level has to be strengthened to increase efficiency and dedication to the multifarious issues that implementing the Act throws up. While numerous trainings are held, the process and quality of training needs much improvement

ii. Fund Management:

A critical aspect of implementation that needs review is the fund management and budget release process. The budget is demand-based. There are difficulties on both demand and supply side in assessing and capturing demand as well as in prompt provisioning of it. The difficulty is in formal articulation of demand and in estimation of employment required. Planning appropriate works is just as difficult. Works have to be appropriate both in terms of seasonality of labour, and the time of the year. Besides circumstantial exigencies can aggravate labour demand. This makes the formulation of the labour budget a challenge. The labour budget can provide a broad framework for planning fund requirements and fund release. But the fund release principles and mechanism will have to factor in its inherent character of approximations (rather than accurate fore-castings) and the fluidity of labour and work situation. In addition, implementation gaps do not adequately capture demand and generate the full hundred days of work or the maximum that may be needed. Anticipated demand and actual performance in such a scenario are reflections of limitations in planning and implementation capacity rather than of latent labour demand and often very urgent need for work.

However, these limitations in planning and implementation create problems in financial resource assessment and release. The labour budget mechanism creates a framework of agreement for central assistance. But the budget release process remains tied to the methods of an allocation based budget. Instruments are evolved and refined in the light of experience to introduce some parameters that 'fix' financial requirements and convert an open-ended, fluctuating, labour demand into finite predictable units on which the funds can then be released. However, the instruments as suggested do not easily lend themselves to such an exercise. As a result, the actual release gets affected by a number of factors. These factors may relate to documents such as utilization certificates, audit reports. Or there may be a difference of perception about ways of evaluating labour demand and performance trends that can lead to a situation where fund release gets affected in a way that inhibits work provisioning. If a district generates a certain measure of employment during a certain period, it is assumed that that is a representative pace and it determines the volume of employment that it will generate incrementally. Funds to be released get determined by that. This means that funds are getting determined by the capacity of implementation(a target programme approach) rather than by the potential demand, which would be needed in a Rights -based approach. After all, it is perfectly possible that a district may have a huge spurt of demand towards a certain period of the year, quite different from its precedent demand pattern. But if its claim to funds is tempered down by what it has done before, it will artificially suppress demand. In a normal course, programme funds are released in two tranches because the budget allocations are fixed not just for the programme but also for States/ districts. But the lack of such fixed allocations and the dynamics of labour demand, tends to fragment budget releases for MNNREGA despite the fact that it is a law. Further, Labour season also overlaps two fiscal years. There is a need to ensure sufficient liquidity with implementing agencies. In principle at least 40% should remain as cushion to meet demand. But the problem again is ascertaining the quantum of demand anticipated. Various criteria for striking a feasible balance between past trends and future projections have been evolved over the implementation period. But there is a need to refine them further in the light of experience gained. There is also the concern of the Finance Ministry that opening balances in a new financial year should not exceed 10% of the budget available. This is prudential finance for fixed target programmes. But it may not be a practical arrangement for MGNREGA as the peak working season spills over two financial years, and fund transfer to the village level takes nearly forty five days. It becomes necessary to keep atleast two months estimated expenditure with the implementing agencies for them to meet labour demand at its peak season, which is also the transiting period from one fiscal

to another. *The opening balance* concept relevant to a conventional fixed allocation programme, needs to be modified towards the concept of a *mandatory upfront funding* to meet the time bound guarantee of the Act. Availability of adequate funds *in advance* is a pre-requisite to acknowledging demand and opening works. Otherwise there is a suppression of demand. The scale and volume of employment generation is directly related to the quantum of funds made available not just to the district but right down to the gram panchayat, where the work has to be provided.

MGNREGA fund management should be reviewed. The Act actually provides for the National Employment Guarantee Fund (NEGF). This could be an opportunity for creating a new institutional mechanism for holding fund and fund release. However, the NEGF has really not yet leveraged in this manner. Institutional imagination is needed to make the NEGF a vehicle for holding and transferring funds committed to a legal guarantee.

iii. Financial Services:

With the statutory provision of wage payments through Banks/Posts accounts it is now necessary to strengthen the infrastructure of the banks and post offices in terms of personnel and ICT so that financial inclusion of the poorest people is accelerated.

iv. Technology potential:

ICT has immense potential for business process re engineering and empowerment. The MGNREGA website MIS nrega.nic.in captures all such data, but they are post transaction entries and the transaction are located elsewhere. So the possibility of data and the transaction not matching entirely can never be ruled out. Effort is on to make the MIS real time transaction based. This is being considered through the use of bio metrics. Simple interface technologies using bio metrics can enable all stages of transactions of workers' rights from registration, to issue of job cards work applications, issue of dated receipts, work allocation and delay in it if any, statement of unemployment allowances that may accrue. The same system can be used for recording work site processes such as attendance, measurements and payments. Technology to facilitate direct access to workers to register their Rights, claim entitlements and log their claims in public domain can help them acquire agency and slowly de-mediate their assertion of rights from the large tribe of 'writers' that characterize public work. It can also slowly disjunct the agency that registers demands from the one that is legally bound to act on the demands. To that extent, ICT enabled systems can make it possible for Rights to be inscribed and recorded through a relatively transparent and public mechanism. This will also help in equipping them with documents like dated receipts to press their claims for redressal. Such ICT pilots have been initiated in a few states for

field testing. What these do throw up is that worker-friendly interface technologies can be developed. How can they be managed? Can SHGs be used for this? Or workers organizations? Can Gram Rozgar sahayaks or mates be trained? Where will it be located to be both linked with the GP but also have functional autonomy as a citizen centric transaction service? The new Village Knowledge Resource Centres have been conceptualized with this function. While NREGA is coming forward with resource support for this, connectivity remains an issue. NREGA is hastening the impetus to extend necessary support to ICT infrastructure to the village level. ICT plans for this need to keep pace.

v. Creating more inclusive fora for community participation

MGNREGA has stimulated for the first time, serious debate on social audit that holds the potential for further reform in this vital process of making Government accountable. However, space within law has to be delineated to allow wide public participation, beyond restrictive definitions of gram sabha.

8.2 Building capacity of workers to articulate and demand their rights

The discourse and insistence on 'demand; by workers and its acknowledgement through dated receipts has initiated an intense discussion on how this can be made possible, given the limitations of workers' formal skills and informal bargaining capacities. Ability to formally articulate demands and participate informed gram sabhas are possible only through development of functional literacy among the workers. This will be, atleast the first step towards acquiring capabilities to negotiate with the context themselves, rather than depending on an external mediation. Instead of the conventional adult education literacy strategies, innovative measures are needed to induce basic literacy skills in the workers so that they can script and interpret their opportunities and Rights. The Adult Education Programme of the Government should primarily target the MGNREGA workers. The real evaluation of the adult education initiative should be whether NREG workers can write their applications and read their records like job-cards, muster rolls and passbooks and can use their literacy skills for more informed social audits.

8.3 Leveraging MGNREGA for sustainable development

- i. A central concern to be addressed is the productive use of MGNREGA resources so that MGNREGA is able to fulfill its guarantee to strengthen the livelihood resource base of rural households and its objective to create durable assets. During drought in parts of the country, there is a demand that MGNREGA increase the number of days of work. MGNREGA runs the risk of mutating into an 'instant relief' grammar. The real relevance of MGNREGA is that it can lead to mitigating drought

and flood and other natural disorders if works under MGNREGA are properly planned and executed. Proper works planning is the key to prompt response to immediate employment demand and the basis of sustainable livelihood. There is a need to integrate planning abilities and appropriate technologies with the planning process prescribed in the Act. Bottom up and top down dichotomies need to dissolve into a more synthesized participatory process. Districts are required to formulate five year district perspective plans through participatory processes as well as technical support from experts. Various models of participatory planning for sustainable development have emerged. MGNREGA provides an opportunity to learn from them.

- ii. The typology of works enables meeting both short term needs and longer term sustainable development issues, as it lists desired outcomes of activities rather than specific works classification: water conservation, drought proofing, flood proofing, minor irrigation, land development. Legally, this allows a sweeping range of works that can be taken up to achieve the outcomes prioritized in the Act. This allows enormous flexibility in selection and convergence of a wide variety of works. This aspect of MGNREGA needs greater attention.
- iii. Quantification of environmental services by the rural poor through the green jobs that MGNREGA permits has been initiated on a small pilot basis. This will not only assess the impact of MGNREGA works as an adaptation strategy to climate change, but they may also help build their case for co-benefits of environment services rendered through carbon credit. Such quantification studies need to be mainstreamed into regular programme tracking through appropriate institutional networks, at a regional level. Moreover, their methodologies and the lessons yielded should not be confined to academic debates but must be forged into instruments of community learning and conscientisation. This can be done through participatory methods of 'on site' appraisals, where the work undertaken becomes a kind of a rural lab. Sophisticated quantification studies need to make this move towards the local community of workers and the local bodies whose decisions and actions affect and are affected by climate change.
- iv. Convergence should be effected in the plans made for the district and the pooling together of financial and technical resources so that existing public investments are optimally used and the focus can clearly be on development outcomes rather than on just discreet schematic input targets. Other programmes will gain through additional resources available under MGNREGA as untied fund for local planning and use, to be flexibly dovetailed with their objectives. Even while spatial convergence through works has been initiated, in some measure 'human' convergence by co-inciding multiple investments in the same person needs greater efforts. This is possible as NREG workers constitute an identifiable group

with unique ID numbers and job cards with a data base on the MGNREGA website. MGNREGA workers should be chosen on priority under programmes like SGSY for formation into self- help groups, skill development and placement programmes. Adult education programmes and health programmes should specifically target them.

- v. Social security schemes for health and life insurance like RSVY, Janashri Beema Yojana have been extended to MGNREG workers. This opportunity should be fully tapped to enhance the social security cover to workers. Persons from Tribal groups who have benefited under the Forest dwellers Act that gives rights to forest dwelling families to work on their lands should be encouraged to ask for work on their land under MGNREGA that should then also be linked with other schemes of agriculture and income generation. Such convergences will add value both to NREG works and workers, by adding the dimensions of technical quality and good planning, skill building and income generation through linkages with other programmes.
- vi. Increase in funds, and extension in the scope and scale of the programme will necessitate change in the nature of works and employment because the capacity of the current list of works executed by unskilled manual labour to generate employment will be very limited. The list of works has to be expanded. This implies a consideration of new works which may be within the existing law, or may require amendment in the Act. Within the existing provision, new works may be at the unskilled manual level but related to infrastructure, such as rural housing, school-buildings, playgrounds. Such discussions have been afoot. Unskilled manual labour may also include social services like sanitation, mid-day meals. All this can be considered within the present scope of the Act.
- vii. However, MGNREGA has the potential for sustainable development and it may be worthwhile considering implications of going beyond *unskilled* labour. The big question is whether MGNREGA should remain a guarantee of unskilled hard labour? There are reasons that it is not desirable to limit the instrumentality of employment to unskilled manual labour. With the large investments that the Act will require, the issue will be whether such investments should not be used for more sustainable employment opportunities stimulating both growth and equity. *Confining MGNREGA to unskilled manual labour will only be a means to coping with poverty, not of ameliorating it.* Unskilled manual labour was meant to make it self- targeting so that only the very poor would seek work as a last resort. Limitation of choice to only unskilled work, ironically, undercuts the principle of rights, inclusion, and equity, as the legal design of work does not make the terms of inclusion equitable. It offers bottom-of -the scale tasks with no chance of upgradation of skills to those with least opportunities. The unemployed and deprived will continue to be engaged in conditions of work that despite a legal

guarantee and considerable financial resources perpetuate their lack of opportunities and capabilities. This will further reduce their ability to access any other opportunity of employment that lifts them out of intergenerational deprivation. Meanwhile, those with historical advantages will continue to access higher employment opportunities adding value to their skill and knowledge. A safety net creates the possibility of immediate relief but is not designed to address issues of the *quality of equity*. *Quality and equality of opportunity* are necessary conditions for any serious commitment to securing livelihood. If MGNREGA continues in the way it is, as unskilled manual labour with large funds, and a quick fifteen day time-bound, work allocation, it tends to become a major employer in the market. Even without a guarantee incentivizing the choice of unskilled labour, exigencies of poverty often force skilled artisans to stone-crushing. De-skilling rural work force will run counter to the need for value addition in the employability of the work force. All the more reason for the Act to be sensitive to the needs of sustainable employment, so that its direct intervention in the market develops skills relevant to market demand as well enables higher bargaining powers among the workers. This will create a design of sustainable employment that backed by a legal guarantee and budget support is also a safety net.

Including skilled manual work will help in value adding to the productivity of works undertaken and directly impact individual income. It will help the rural economy in transiting from a vulnerable base of casual unskilled labour to one of skill and self reliance, making rural employment truly a growth engine. By creating more tangible, measurable services/ assets the chances of leakages and mismanagement are reduced. By making the money already being infused into the rural areas in the hands of the poorest resources for furthering their economic and social development, the rural poor get a chance of transiting from wage earners to an income earning self-reliant community.

Thus, both on the ground of large financial resource investment as well as the need to move from mere wage employment to sustainable employment, there is a case for a need to enlarge the basket of employment to include skilled manual work as well. For this the Act could be amended. The word unskilled as qualifying adjective should be removed to describe labour, opening the way to skilled manual labour. This diversification of work will encourage value-addition, like processing, to farm activities as well as encourage non-farm activities like handlooms, handicrafts and other artisan works. It will open a whole range of opportunities even as manual labour for developing skills and knowledge. Skill development in specified economically relevant activities could be taken up and a stipend for 100 days could be paid to the trainee. The guarantee, then, would both improve employment and employability. Non-farm work force like rural artisans and technicians will gain in this. Training stipends can be paid as wages so that even the 'unskilled labour' develop relevant skills and are able to

access better employment opportunities-independent of government guarantee. This would integrate a range of productive works in a guarantee band instead of a superimposed grammar of convergence, which given government structures is not easy. Such diversification of rural employment, as a result of a design modification will be the real stimulus to economic growth, rather than just increase in financial outlays.

The time is ripe for leveraging MGNREGA into a rural employment guarantee mission backed by law. The way forward for MGNREGA is to become what the country needs-a guarantee for rural employment that is sustainable and leads away from poverty

What is needed is institutional imagination to implement schemes under a law. Presently, the implementation structures are the same as for any other programme. A law for employment is bound to be multi- disciplinary and inter- sectoral and will encounter problems unless an institutional mechanism empowered to deal with this intersectorality is set up. MGNREGA is presently confined to being a scheme of the RD Department and despite location in the PRIs encounters problems of coordination between PRIs and district administration structures. Even obvious linkages with MRD schemes like watershed and SGSY are difficult to effect because the law gets confined to a scheme. This is deleterious both as development process and as law. It obstructs tapping optimally the productive potential of MGNREGA, in the name of legal norms; yet, at the same time legal mandates are overlooked just to use the MGNREGA funds for works that the district or the state decide must be done. These inconsistencies reflect structural limitations to use and enforce a law for employment. For MGNREGA to evolve into such a law, an institutional mechanism that spans different agencies and sectors is needed. Institutional opportunities are presenting themselves, such as the skill building mission and the national livelihood mission. An over-arching authority can be conceived of with representatives from organizations (Ministries, Financial institutions,) that run schemes (rather than just works) notified under the law. The law would then mandate that the applicants registered under law would given work according to their demand in ongoing projects. Such projects would give priority to the demand of registered workers but would be able to employ unregistered as well because without that it is difficult to ensure completion of projects. The current situation of discreet unskilled activities would transform into skilled productive resources.

- viii. The National Rural Livelihood Mission (NRLM) offers an institutional opportunity to consider. The current structural problem is that both a law - MGNREGA as well as an implementation mechanism- a mission (NRLM) get restricted to a scheme. In the case of MGNREGA, a law and a scheme both become one, although the Act does give conceptual and operational flexibility to

distinguish between the two. The Act refers to the schemes to be made under the law by State Governments that should incorporate the non-negotiable features of the two schedules. However, what has happened is that the broad processes indicated have alone gone in to define the scheme under the Act. It should be possible to have diverse schemes under the law that adhere to a statutory framework but address the problem of poverty in specific contexts through context specific processes. This would allow easier integration of NREG resources with other development initiatives. It would take NREG away from its somewhat stand alone status and locate it in the local context make local development needs the focus of planning and integration, rather than a programme that can draw funds. This would be more cost effective and a more organic 'bottom- up' way of convergent district planning rather than sectoral guidelines issues from Central Ministries on convergence and integrated planning, that by the very nature of separate structural identities make the process difficult. In other words, convergence takes place in local spaces. Development action tends to be driven by facility and quantum of financial assistance available. MGNREGA in this sense tends to be the focus of local decisions. But its potential gets limited by its excessive procedural detail and by its confinement to 'unskilled' manual labour. Both these limitations of MGNREGA need to be transcended as they may tend to 'regress' local choices to what can be done under MGNREGA, making MGNREGA a 'whole' of which others seek to become subsets. It is only if MGNREGA opens up to allowing different schemes of poverty alleviation to come under its broad umbrella can such a relationship between a national Act and local schemes as subsets be a liberating one.

NRLM seeks to support self employment through credit linked schemes and training, including placement linked training. But it is inevitably, dependent on several factors outside its design and resources (market, financial institutions,) It's processes will need time to evolve and ground themselves. If MGNREGA workers were organized and brought under skill development initiatives and if their accounts that have been opened under MGNREGA for their wages were leveraged for financial literacy and a range of financial services, their wage earnings, thrift, skill development with credit planning could become the basis of diversifying their livelihood opportunities. This could be one way through which the wage earning guarantee under MGNREGA could provide the basic security in the interim period as the NREG workers explore opportunities structured to move them towards self employment.

Wage employment with legal backing is assured of funds but its scope of employment is limited and it only helps in coping with poverty not getting out of it. NRLM with the potential for facilitating pathways out of poverty without the compelling force of law may not get the guaranteed resource support. NRLM also runs the risk of an overall structural mechanism (a mission) getting reduced to a

schematic format, in which case both the structural mechanism and the schemes under it will lose the much desired flexibility- one basic rationale for moving into an NRLM mode.

The structural way out of these limitations is that MGNREGA without the qualifying 'unskilled' should be the law for which NRLM should be the policy instrument for evolving implementation mechanisms for a number schemes of employment and employability (developing employment capabilities) inclusive of unskilled labour and skill development and organization into collectives for thrift and micro credit activities. Just as with MGNREGA, Government guarantee intervened in the market and raised wages for unskilled labour, perhaps the same may be expected for skilled labour if it gets MGNREGA backing and the rural poor will access not just jobs but acquire the power and capability to bargain for jobs.

One apprehension that gets in the way of liberalizing the MGNREGA is that this will make impossible demands on financial resources. Although not confined to specific groups like below poverty line, or specific areas, like tribal/ low productivity areas, and open to anyone who demands, the check on budget requirement currently is through the stipulation of unskilled labour intensive work, that in a way keeps it self targeting.

Financial commitment is the backbone of a legal guarantee that seeks to strengthen livelihood opportunities. The suggestion is that it should be possible to calibrate eligibility categories for different forms of skilled work in an inverse relationship with economic capacity. Schedule one para one lists permissible forms of works, in which specific individual benefits are restricted to specific categories of families, SC/ST/ BPL/Small and marginal farmers. Similarly, specific forms of skill development could be listed and this facility could be made available to BPL families who have already done hundred days of unskilled manual labour. This will marry the skill development and group targeting of the NRLM with the legal guarantee of MGNREGA, making the targeting under skill development programmes a lot more effective, and value adding to the employability of the NREG workers, who could then be organized into SHGs and woven into the micro- credit programmes.

9. MGNREGA: Some issues that may be considered for Right -based development programmes

There are significant lessons that emerge from MGNREGA for Rights-based development programmes.

- i. Development programmes aiming at basic entitlements like livelihood acquire force if grounded in the framework of a Rights- based Law. A law belongs to the people and not to the Government. The Government is itself subordinate to law. The normal hierarchical relationship between the Government as provider and public as recipient begins to get displaced with the public acquiring legally guaranteed Rights and so expecting a certain behaviour and demanding a certain action from

the Government that cannot be easily ignored by the Government. Space for open engagement and critique and active intervention by civil society organizations, media, citizens is created by the very fact of there being a law. Moving from a programme approach to a law helps in creating a more democratic base for a development process. The Government- the custodian of resources and their delivery- by enacting a law of this kind, makes itself accountable for its action to the public. It is this self- subordination to public scrutiny, implied by the promulgation of this law that propels the delivery system, despite the many procedural lapses. A Rights-based law, like MGNREGA, then pushes for a change in the way Government systems work by reducing dichotomies between demand and supply, signifying the maturing of democracy in which the term 'State' does not just mean Government but people and Government.

- ii. A legal framework is necessary to create an implementation design that is influenced by citizen entitlements. Even while the actual instruments used for asserting rights require constant review and refinement to be sensitive to the context of use and user capability, as in MGNREGA's case, conferring the status of legal rights on basic human needs is the essential condition for development.
- iii. The acknowledgement of citizens' rights in the form of the Right to demand, has the effect of dissolving a 'delivery centre' managed by a bureaucracy which provides facilities according to predetermined norms and so ends up excluding a fair measure of needs that do not fall within those norms, to a 'service' approach where the services are flexibly structured to meet the rights demanded. This is why MGNREGA stipulates that work be given when workers demand, rather than be allotted when work is available. A similar approach is necessary for programmes aiming at basic education, health and food security. In fact, had a Rights -based law for basic education, health and food security preceded that on livelihood security, the latter would have worked more effectively. The absence of a Rights-based approach in these programmes is reflected in the fact that while there is a suggestion that NREG labourers work for constructing Anganwadi centres, there is little concern about extending the Anganwadi services to the worksites. Such ironic discrepancy between 'need' and 'service' could be dissolved if the Anganwadi could get away from a brick and mortar centre fixation to providing child care services where there is a demand, as in the case of NREG worksites. Why should the Anganwadi 'centre' governed by its location and time exclude the poorest infants on NREG worksites. This is because the parents' right to work is accepted by NREG but not the child's right to nutrition and care by ICDS. This is also because a supply side grammar creates a Centre where people have to go; a Rights based approach demands a service where people's needs are most intensely expressed. A similar discrepancy exists between 'centre' based adult education

programmes and the needs of the non literates. The adult education programme expects non literates to come to their centres to get literate through their primers. The majority of non literates are the poor unorganized labour that comes to work under MGNREGA. Their persistent non literacy suggests that the centre excludes them. If the centre approach could be dissolved and the workers' work and work site become the pedagogic tools, functional literacy would be the consequence of workers work engagements; not an extraneous 'extra curricular' choice.

- iv. Citizens may have the right to demand but generally conditions for the fulfillment of rights must be obligatory on the State without the demand for them. For example, security of life does not depend upon a demand for it. Health, education and livelihood are basic entitlements, not optional capabilities. Therefore, conditions for their realization must be created by the State without demands by the citizens for them. Demanding a right is really an indication of a gap in the system, the failure to provide a service.
- v. Rights-based frame-work gains through institutional mechanisms for decentralization, because decentralization facilitates direct accountability for outcomes of decisions taken. Also, because decentralisation widens stakeholder participation. Local conflicts and contestations are an index of this growing space for asserting Rights. But there is an equal necessity to clearly delineate structural integration of different institutions, with a unitary point of overall power and accountability to take over riding decisions to enforce the law. Structural imagination is needed for legal reform. This is a major challenge.
- vi. Assured budget commitments are important for implementing schemes to ensure Rights. However, just a large budget commitment is not enough. There are several issues, here. One, the design and procedure of fund transfer is critical and how this seeks to manage a balance between efficiency with accountability, financial support with discipline, local freedom with central regulation.
- vii. Legal frameworks should permit operational flexibility. Procedural matters should not be confused with rights or with the substantive content of law. Procedures should be flexible; end-goals non-negotiable. Objectives and norms should be broadly stated but the processes should be allowed to evolve through local contexts. Effective practices should be studied and woven back into law, as far as possible. Solutions emerging in the contested spaces of local action under MGNREGA are analysed and included in the State and often in the National policy. Emerging innovative practices should be shared among States and analysed to yield core principles that can work best across States. *The osmotic process of local innovation and policy and law is a unique feature of MGNREGA.* It enables the normative framework to be both regulatory and responsive to the

dynamic changing situation on the ground, unlike many laws that tend to become rigid and so exclude the possibility of dealing with the new or differential or unforeseen situations on the ground.

- viii. Development laws create dilemmas of Rights and responsibilities. Rights are availed of only if the supply system is strong and responsive and creates conditions for their fulfillment. Rights that are guaranteed through a law should be independent of factors that cannot be controlled by the law. In other words, the conditions for the fulfillment of Rights should be included in the guarantee.
- ix. Recognition of development as a right implies both the fulfillment of necessary conditions for a right to be realized, in a normal way as well as the right to demand consciously, in case such conditions fail to get created or access to them is constrained. Laws should be seen as opportunities for making administrative systems strong and accountable. The Act is embedded in the system that exists. The implementation process of the Act is a sub-set of that system. The issue is can a sub-set of a system compel the entire system to change? That is exactly what we are asking the Act to do. And in asking that we are not asking MGNREGA to conform to its own design, we are asking the entire system to function as a mature, capable, enlightened, and empowered democracy. This is not a small ambition. MGNREGA then becomes an intervention that seeks to re-create a given system by challenging it. MGNREGA is to be seen as dialectical process that, despite the assumptions of its design, does not just rest on prior platforms, but also exposes a number of serious gaps in precedent development processes. The programme on the ground cannot be a simple direct outcome of its legal premises, but is instead the occasion and the instrument of making those premises strong and real. This is its historical significance, its radical edge. Therefore those who look for a neatly linear diagram of execution to mirror image a legal script are dismayed. They need to see the opportunities that are opening because of the way in which its design is perceived, interpreted and used in different ways across the country, blending local creativity with a national legal framework. Development laws should allow a collaborative policy making through space to multiple stakeholders and corresponding procedural flexibility. This is fraught with conflict. But this conflict becomes the means of forcing issues and co-creating change. This can hold the potential of transforming governance.
- x. Strong and independent grievance redressal mechanisms are to be integral to the design. The issue is what ought to be their nature? Administrative bodies with powers to decide and direct but not really to coerce, and so really exercising a moral force? Or should they be judicial with powers of a court to summon, award judgments and punish?

- xi. There appears a need to distinguish between basic rights and rights that evolve from those basic rights. Basic rights should be entirely the state's obligation to ensure and safeguard and should not depend on any formal demand by citizens. These would include, the Right to life, food, basic health and education.
- xii. A law guaranteeing rights should be grounded firmly on the basis of the concept of equality. This makes the *quality of opportunity* offered a significant issue. Laws promoting development cannot be static but must be constantly reviewed so that they move towards greater equitable opportunities. The problematic issues are: what decides 'basic' and what above basic. The way these issues are decided determines the way equity is determined. They also decide issues of quality. Most debate is around where the bar should be-dividing the basic from the additional. This raises questions like right to what? Can a right be a right if it is unequally enjoyed because the conditions and capabilities for its realization are unequal? Rights make sense because they are based on the concept of equality of entitlements. But the conditions and capabilities for exercising rights are unequal. So the question is how can laws create equitable and qualitative conditions for ensuring basic entitlements? There is also the need to think of a kind of 'mother Right/Rights (fundamental Rights, perhaps) that need to be universally guaranteed in the same measure and quality. Education, and health(inclusive of food, and water and basic health care) would be the most basic, as a number of other entitlements and capability functions would follow from these endowments, such as the ability to work and earn, to incrementally improve one's skills and quality of life. These should be guaranteed by laws for giving everyone an equal opportunity and equal capability set. Special laws could then be framed for residual sections of population, unable to use equal opportunities of education and health for securing certain other needs- such as basic income. These should aim at providing assistance in a way that is not just protectionist but promotional that brings disadvantaged people upto acceptable standards of living. The idea should be universal equality and not sub-sets of equality because these perpetuate and increase inequality.

The other problem is the tendency, for historical and pragmatic reasons, to make a law to fix a sub-system that depends on a larger system that, however, remains precluded from legal frame. The failure or des-functionality of certain policies or laws or institutions has sometimes led to trying to fix a part of the system. This may provide temporary relief/ improvement but in the long run create greater problems. Policies devoid of a longer term perspective or de- linked from their necessary environment lead to waste of resources both human and financial. Examples are aplenty: Literacy campaigns

without universal school education, wage employment without sustainable work, expansion of medical facilities without food nutrition, safe water and education.

Rights-based frameworks are radical because rights are not conferred incrementally. Rights cannot be fractured into sequential bits, because that is financially and humanly management convenient. This violates the ideals of equity and quality. There is a case for fewer programmes, fewer laws but comprehensive in scope to cover a sufficient range of necessarily related inputs that create conditions that guarantee basic rights. It would be more pragmatic to proceed towards a Rights-based law through programmes focusing on improving governance policies and implementations systems and move to law so that the system is prepared for it.

10. Legal instruments for Human Development Goals.

It would be extremely useful to make comparative assessments of the difference in the achievements of related human development goals because of a shift to Rights-based laws as development policy instruments. Basic literacy, food security,(in process) and livelihood have come under legal guarantees. Their targeted population is more or less the same- the rural poor, specially disadvantaged groups- women, SC/ST, unorganized labour, marginal farmers, pastoral communities, socially disadvantaged, or/and economically vulnerable. They would now have *a concerted guarantee* of basic rights, taking care of their immediate and medium term needs. These basic guarantees create positive synergies in multiplying mutual benefits and sustaining these vulnerable groups within the fold of a basic social security cover that should then enable and accelerate their development process. There is now a situation where MGNREGA has been in operation for four years as a wage security guarantee without these other correlated rights but now there is a situation where livelihood security can form a league with other basic human rights recently legislated/under consideration for legislation. What is the impact on basic human development goals of transiting from a regime of development programmes to a regime of legally guaranteeing an enlarged scope of basic rights? What are the implications in this transition on larger surrounding policy instruments? There is a major opportunity to study this through a professional inter-disciplinary, global knowledge network.

ANNEXURES

ANNEXURE I: Salient Features of MGNREGA and EAS			
Provision	Provision under NREGA	Process under Scheme	Process under NREGA
<p>Employment</p> <ul style="list-style-type: none"> 100 days of unskilled manual work on employment during agriculture lean season Stress Assurance extends to men and women over 18 years and below 60 years Two adults per family While providing employment preference is given to Scheduled Castes/Scheduled Tribes and parents of Child Labour withdrawn from hazardous occupations who are BPL Employment should be provided within 15 days of seeking work 	<ul style="list-style-type: none"> (i) 100 days of guaranteed employment per household. (ii) 1/3rd reservation for women 	<ul style="list-style-type: none"> (i) Registration and issue of family card (ii) Work will be provided within the area of the block where the persons resided, if employment is not available in the Panchayat (iii) For seeking employment, needy persons will have to apply in writing to the local panchayat in the prescribed format (iv) Employment should be provided within 15 days else unemployment allowance to be given by state 	<ul style="list-style-type: none"> (i) Registration and issue of fJob card (ii) Work will be provided within the a 5 kms radius of the Panchayat or 10% extra allowance for conveyance (iii) For seeking employment registered persons will have to apply in writing to the local panchayat in the prescribed format
<p>Planning & Works</p> <ul style="list-style-type: none"> The District Collector will obtain from implementing agencies by October every year their Blockwise plans List of works finalized by ZPs in consultation with MPs In the absence of elected bodies, a committee comprising of local MPs/MLAs and other elected representatives would be constituted ZPs may spend upto 15% on maintenance of assets Wage material ratio will be 60:40 New works will not be opened, if employment potential is available through plan and non plan works already in progress and assurance can be fulfilled through these works The BDO may however open new works under the scheme even if only 10 persons demand employment, ensuring work taken up is completed in 30 days Works under the Scheme should be taken up during the lean agricultural lean season. States will specify the lean season in the concerned districts Priority should be given to watershed development works (40%), minor irrigation tanks etc(20%), link roads(20%), primary school buildings, building for Anganwadi(20%) 	<ul style="list-style-type: none"> (i) List of works finalized and prioritized by Gram Panchayats. Additional works may be suggested by Intermediate Panchayats. (ii) Wage material ratio will be 60:40 (iii) New works may be opened if there are atleast 5 persons demanding employment 	<p>Works finalized by ZPs and MPs.</p>	<p>Shelf of projects prepared by GS, forwarded to GP for approval. Forwarded to programme, intermediate panchayat and district panchayat for approval</p>

ANNEXURE I: Salient Features of MGNREGA and EA				
Provision	Institution(s) under Scheme	Institutions under NREGA	Document(s) under Scheme	Document under NREGA
<p>Employment</p> <ul style="list-style-type: none"> 100 days of unskilled manual work on employment during agriculture lean season Stress on employment during agriculture lean season Assurance extends to men and women over 18 years and below 60 years Two adults per family While providing employment preference is given to Scheduled Castes/Scheduled Tribes and parents of Child Labour withdrawn from hazardous occupations who are BPL Employment should be provided within 15 days of seeking work 	Zila Parishads	Gram Panchayats (Programme Officer may receive demand for work)	GP to maintain employment register	GP to maintain Job Card Register, Employment Register, Application Register
<p>Planning & Works</p> <ul style="list-style-type: none"> The District Collector will obtain from implementing agencies by October every year their Blockwise plans List of works finalized by ZPs in consultation with MPs In the absence of elected bodies, a committee comprising of local MPs/MLAs and other elected representatives would be constituted ZPs may spend upto 15% on maintenance of assets Wage material ratio will be 60:40 New works will not be opened, if employment potential is available through plan and non plan works already in progress and assurance can be fulfilled through these works The BDO may however open new works under the scheme even if only 10 persons demand employment, ensuring work taken up is completed in 30 days Works under the Scheme should be taken up during the lean agricultural lean season. States will specify the lean season in the concerned districts Priority should be given to watershed development works (40%), minor irrigation tanks etc(20%), link roads(20%), primary school buildings, building for Anganwadi(20%) 	ZPs	GPs, GS, I.P. District Panchayats	Annual Action Plan	Annual Action Plan, Labour Budget, Shelf of Works

Provision	Provision under NREGA	Process under Scheme	Process under NREGA
Implementing Agencies	Atleast 50% of the works to be implemented by GPs		
Record Maintenance			
Wages Minimum agricultural wages for unskilled labour As per prescribed specifications/output in terms of quantity of work to be turned out by an unskilled labour for 8 hrs/day A part of the wages may be paid as food grains not exceeding 2kg per manday and not exceeding 50% of wage in cost Wages paid at worksites in the presence of local persons	(i) Minimum NREGA wages delinked from agricultural wages (ii) Wages paid based on Schedule of Rates/output (iii) Wages paid in 100% cash (iv) Wages paid through bank and post office accounts	(i) Wages will be paid at worksites (ii) No specification on measurements of works in Guidelines	(i) Wages paid directly to bank/P.O accounts (ii) Measurement norms specified in guidelines
Funds · Cost sharing 80:20 basis Incase of UTs, entire funds will be given by Centre · 70% of the funds to Panchayat Samiti and 30% to · Allocation based on index of backwardness · 80% of the funds will be released as per normal procedure · 20% will be as incentive	(i) Cost sharing 90:10 (ii) Allocation of recourse based on labour budget	Blocks categorized as A,B,C for the release of funds.Flow of funds from districts to blocks in proportion with rural population	Allocation as per demand projected through labour budgets
Transparency & Accountability · List of works will be published and Gram Sabhas will be informed Work output should be displayed on a board on the work site before work is started No contractors	(i) Proactive disclosure (including availability of records at GP and in public domain) (ii) Social Audit (iii) Grievance Redressal/Penalty (iv) No contractors and machinery		(i) Social Audits (ii) Redressal Mechanisms including helplines and complaints
Monitoring & Evaluation Inspections & minimum number of field visits as prescribed by State Coordination committee at state, district and block level. Members may include prominent elected representatives and NGOs Vigilance squads constituted by Divisional Commissioners		Inspections, reporting, evaluations	Inspections, reporting, evaluations

Provision	Institution(s) under Scheme	Institutions under NREGA	Document(s) under Scheme	Document under NREGA
Implementing Agencies	ZP, line departments	GPs, ZPs, IAs, PSU's, Cooperatives, NGOs, SHGs, line departments		
Record Maintenance	ZP, line departments, executing agency	PRIs, line departments, executing agency	Muster Rolls, Asset Register by implementing agencies, other documents as being maintained by implementing agency, Employment Register	Muster Rolls by implementing agencies (GPs and agencies other than GPs), remaining records by GPs, Asset Register, Employment Register, Measurement Book
Wages	Implementing Agencies	Banks & Post offices	Muster Rolls and other documents as being maintained by implementing agency	Measurement Book, Muster Rolls
Minimum agricultural wages for unskilled labour				
As per prescribed specifications/output in terms of quantity of work to be turned out by an unskilled labour for 8 hrs/day				
A part of the wages may be paid as food grains not exceeding 2kg per manday and not exceeding 50% of wage in cost				
Wages paid at worksites in the presence of local persons				
Funds	Panchayat Samiti and District	State, District, Blocks, GP	Atleast 50% utilization for demand of second installment	Atleast 60% utilization for demand of second installment
· Cost sharing 80:20 basis				
Incase of UTs, entire funds will be given by Centre				
· 70% of the funds to Panchayat Samiti and 30% to				
· Allocation based on index of backwardness				
· 80% of the funds will be released as per normal procedure				
· 20% will be as incentive				
Transparency & Accountability		Gram Sabhas for social audit, states, districts and blocks for proactive disclosure and grievance redressal		Findings of social audits, complaints
· List of works will be published and Gram Sabhas will be informed				
Work output should be displayed on a board on the work site before work is started				
No contractors				
Monitoring & Evaluation	Coordination committee at state, district and block level, Planning Commission	Independent Agencies, Districts, States, Blocks, CEGC, SEGC	Progress Reports based on proformas	Monthly Progress Reports, Quarterly Progress Reports, MIS, Annual Progress Reports, Reviews
· Inspections & minimum number of field visits as prescribed by State				
Coordination committee at state, district and block level. Members may include prominent elected representatives and NGOs				
Vigilance squads constituted by Divisional Commissioners				

ANNEXURE II: Salient Features of NFFWP

Provision	Process under Scheme	Institution(s) under Scheme	Document(s) under Scheme
Employment - All rural poor who are in need of wage employment and desire to do manual and unskilled work	Supply driven		
Planning & Works Shelf of works to be prepared Focus on works relating to water conservation, drought proofing (including afforestation/tree plantation), land development. Flood control/ protection (including drainage in waterlogged areas), rural connectivity similar activity may be included provided the basic parameter of the Scheme are maintained	A five-year "Perspective Plan" is to be prepared for each district, with Block- and Panchayat-wise details of works to be undertaken. The Ministry will approve the Perspective Plan which has to be prepared in consultation with the PRIs, local MPs and MLA	PRIs, MPs, MLAs	Five-year Perspective Plan for the district and shelf of works, Block-wise and GP wise
Wages Wages paid shall not be less than minimum wage Foodgrains are provided free of cost to the states @ 5 kg per person/day. States are supposed to cover transportation costs, handling charges and taxes. At least 25% in cash. Higher wages of 10% to skilled labour Wages shall not be less than minimum wages (Rural Standard Rate of Schedules) to be published Wages paid on a fixed day every week	Executing agency to pay the wage (including foodgrains)	Village Panchayat, implementing agency, any agency appointed by the state government.	Muster Rolls and other documents as being maintained by implementing agency
Funds Allocation of resources among the districts will be on the basis of % of each district in the total allocation of these districts under SGRY		DRDAs/District Panchayats/implementing agencies	
Implementing Agencies		PRIs, reputed NGOS, other state and central govt.	
Record Maintenance	Each District shall maintain complete inventory of the assets created under the programme giving details of the date of the start and the date of completion of the project, cost involved, benefits obtained, employment generated and other relevant particulars	Executing Agency	Asset Register, Muster rolls shall be maintained for every work separately, showing the details of wages paid to workers and foodgrains distributed. The muster roll is also supposed to record the number of SC/ST workers, female workers and others, Employment
Transparency & Accountability In case the executing agency does not pay minimum wages, the District Panchayat/Intermediate Panchayat shall withhold further release of funds Ban on contractors and labour displacing machinery Proactive Disclosure Social Audit	(i) Muster rolls shall be made available to public for scrutiny and a copy of the same be made available on demand on nominal price. (ii) For works taken up by the Village Panchayats, copies of muster rolls duly certified by the Panchayat Sarpanch shall be		Report of the committee
Monitoring Monitoring committee of the villagers of the area belonging to the locality/village where the work is undertaken to monitor the progress and quality while work is in progress. Inspections	(i) The work cannot be started unless the monitoring committee has been formed. The committee would be apprised by the implementing agency about the estimate of the work, time-frame and quality (ii) Inspections of works 10% (district level), 2% (state level)	Districts, States, Panchayats	Monthly Progress Reports, Quarterly Progress Reports, Annual Progress Reports

Provision	Process under Scheme	Institution(s) under Scheme	Document(s) under Scheme
<p>Employment</p> <p>The primary objective of the Scheme is to provide additional wage employment in all rural areas and thereby provide food security and improve nutritional levels</p> <p>Rural poor who are in need of wage employment and desire to do manual and unskilled work in and around his village/habitat</p> <p>Preference shall be given to agricultural wage earners, non-agricultural unskilled wage earners, marginal farmers, women, members of SC/ST and parents of child labour withdrawn from hazardous occupations, parents of handicapped children or adult children of handicapped parents</p> <p>30% reservation for women</p>	Supply driven	PRIs	
<p>Planning & Works</p> <p>Shelf of works to be prepared</p> <p>Labour intensive works</p> <p>Works of soil and moisture conservation, minor irrigation, rejuvenation of drinking water sources and augmentation of ground water, traditional water harvesting structures, desiltation of village tanks/ponds etc. and schemes on Watershed development, rural link roads, farm roads linking agricultural fields, drainage works and afforestation. As well as assets such as schools, kitchen sheds for schools, dispensaries, community centers, Panchayat Ghars, development of hats (markets) etc.</p> <p>Works that may be taken up for the benefit of identified individuals belonging to SCs/STs were, development of allotted land in the case of allottees of ceiling surplus land, Bhoodan land, Government land include development of allotted land in the case of allottees of ceiling surplus land, Bhoodan land, Government. land, social forestry works, such as fuelwood and fodder plantations on the private lands belonging to SCs/STs, agri-horticulture, floriculture, horticulture plantation on the private lands belonging to SCs/STs below poverty line, work sheds or infrastructure for any self-employment programme, open Irrigation Wells/Bore-wells for irrigation, pond excavation/re-excavation with primary support for pisciculture and other sustainable income generating assets</p>	(i) Each Zilla Parishad/DRDA, Intermediate Level and Village Panchayat shall independently prepare and approve, before the beginning of each financial year, an Annual Action Plan equivalent in value of about 125 per cent of its share of funds allocated in the preceding year (ii) PAn should be discussed by GS and approved	ZPs/DRDAs/IPs	Annual Action Plan
<p>Wages</p> <p>Wages are paid in foodgrains & cash</p> <p>Foodgrains are provided @ 5 kg per person/day</p> <p>Wages shall not be less than minimum wages</p> <p>Wages paid on a fixed day every week</p>	Executing agency to pay the wage	Executing agency	Muster Rolls and other documents as being maintained by implementing agency
<p>Funds</p> <p>Funds & foodgrains allocated on the basis of proportion of rural poor in state or other criteria as decided by Central Government</p> <p>District level, the allocation of funds and foodgrains will be made on the index of backwardness</p> <p>Cost sharing Centre: State-75:25 basis. In the case of UTs the Centre to provide entire (100%) funds and foodgrains under the Scheme.</p> <p>State Government will bear the cost of transportation</p>	Foodgrains provided by Centre	ZPs, IPs	

Provision	Process under Scheme	Institution(s) under Scheme	Document(s) under Scheme
5% of the funds and foodgrains will be retained in the Ministry for utilisation in the areas of acute distress arising out of natural calamities or for taking up preventive measures in the chronically drought or flood affected rural areas.			
50 (GP): 30 (ZP): 20(District) proportion of funds and foodgrains			
22.5% of the annual allocation (inclusive of foodgrains) under the First Stream of the SGRY both at the District and the Block levels shall be earmarked for individual beneficiary schemes of SC/ST families living below			
Minimum 50% of the allocation to the Village Panchayat (inclusive of foodgrains) shall be earmarked for the creation of need based village infrastructure in SC/ST habitations/wards under the second stream of the			
Implementing Agencies	50% allocation to village panchayats	department, corporation of the State Government, Panchayati Raj Institutions (PRIs) at all three levels or well reputed NGOs as approved by the Zilla Parishad/DRDA, SHGs	
Record Maintenance	Each District shall maintain complete inventory of the assets created under the programme giving details of the date of the start and the date of completion of the project, cost involved, benefits obtained, employment generated and other relevant particulars	Executing agency including Panchayat Samiti, Zila Parishad, DRDA	Asset Register, Muster rolls shall be maintained for every work separately, showing the details of wages paid to workers and foodgrains distributed. The muster roll is also supposed to record the number of SC/ST workers, female workers and others, employment register
Transparency & Accountability	(i) Zilla Parishad/DRDAs shall publicise and inform Gram Panchayats details of works to ensure transparency, accountability and social control. (ii) Gram Panchayats should place these details before the respective Gram Sabhas.		
Incase the executing agency does not pay minimum wages, the Zila Parishad/ Panchayat Shall withhold further release of funds			
Ban on contractors Social Audit			
Monitoring	The executing agencies may utilize one person from among the beneficiaries group as animator/leader/facilitator in maintenance of muster rolls, payment of wages, monitoring of quality of works	ZP/DRDA, Panchayat Samities, other executing agencies	Monthly and Annual Progress Reports
In spections			
Vigilance & Monitoring Committees at the State, District & Panchayat Samiti level Evaluation Studies			

Annexure VI: Participation of Marginalized group (FY 2009-10 upto Jan, 2010)

S. No.	State	%age of SC participation	%age of ST participation	%age of women participation
1	Andhra Pradesh	25.10	14.38	58.13
2	Arunachal Pradesh	0.00	98.71	25.04
3	Assam	11.95	32.14	26.79
4	Bihar	46.71	2.20	35.17
5	Chhattisgarh	15.43	38.83	48.25
6	Gujarat	16.47	37.38	40.39
7	Haryana	56.02	0.00	29.79
8	Himachal Pradesh	33.64	9.04	44.63
9	Jammu & Kashmir	6.22	25.45	5.90
10	Jharkhand	15.35	43.00	34.55
11	Karnataka	17.60	9.04	45.03
12	Kerala	16.71	6.82	87.38
13	Madhya Pradesh	19.13	43.58	43.15
14	Maharashtra	20.95	39.12	40.16
15	Manipur	1.02	77.06	44.50
16	Meghalaya	0.72	95.33	45.90
17	Mizoram	0.00	99.86	29.48
18	Nagaland	0.00	100.00	40.95
19	Orissa	19.24	37.27	36.18
20	Punjab	79.26	0.00	27.39
21	Rajasthan	26.76	22.29	65.99
22	Sikkim	8.78	43.88	45.87
23	Tamil Nadu	55.90	2.35	78.81
24	Tripura	18.15	42.37	40.56
25	Uttar Pradesh	55.03	1.83	23.16
26	Uttranchal	26.94	3.78	39.71
27	West Bengal	36.70	14.17	31.69
28	Andaman & Nicobar	0.00	6.47	41.51
29	Dadra & Nager Haveli	0.00	100.00	86.21
30	Daman & Diu	NR	NR	NR
31	Goa	22.67	21.51	40.70
32	Lakshwadweep	0.00	100.00	37.59
33	Pondicherry	45.94	0.00	74.19
34	Chandigarh	NR	NR	NR
	TOTAL	29.76	21.74	48.84

Annexure V

	STATE	Female Sex Ratio	Female Literacy Ratio	Women participation rate 2008-09 under NREGA	Women participation rate 2009-10 under NREGA
1	Kerala	106	88	85	87
2	Mizoram	92	86	37	29
3	Himachal Pradesh	99	68	39	45
4	Maharashtra	96	68	46	40
5	Tamil Nadu	99	65	80	79
6	Tripura	95	65	51	41
7	Punjab	89	64	25	27
8	Nagaland	92	62	37	41
9	Sikkim	88	61	38	46
10	Manipur	97	60	46	45
11	Meghalaya	97	60	41	46
12	Uttranchl	101	60	37	40
13	West Bengal	95	60	27	32
14	Gujarat	95	59	43	40
15	Karnataka	98	57	50	45
16	Assam	94	56	27	27
17	Haryana	87	56	31	30
18	Chhattisgarh	100	52	47	48
19	Andhra Pradesh	98	51	58	58
20	Orissa	99	51	38	36
21	Madhya Pradesh	93	50	43	43
22	Arunachal Pradesh	91	44	26	25
23	Rajasthan	93	44	67	66
24	Uttar Pradesh	90	43	18	23
25	Jharkhand	96	39	29	35
26	Bihar	93	34	30	35

ANNEXURE IV: Wage rate (from pre NREGA to post NREGA)

S.No.	State	Minimum wages for Agricultural Labourer (2005-06) Pre NREGA	Minimum wages for Agricultural Labourers as on 1st Dec, 2008	Current Notified wages under Section 6.1 for NREGA
1	Andhra Pradesh	80	80	100
2	Arunachal Pradesh	55-57	65-67	80
3	Assam	62	79.6	100
4	Bihar	68	81	100
5	Chhattisgarh	58.73	72.23	100
6	Gujarat	50	100	100
7	Haryana	95.13	141.02	141.02
8	Himachal Pradesh	70	100	100
9	Jammu & Kashmir	66	70	100
10	Jharkhand	73	86.4	99
11	Karnataka	62.5	82	100
12	Kerala	125	125	125
13	Madhya Pradesh	58.83	91	100
14	Maharashtra	47	66-72	66-72
15	Manipur	66	81.4	81.4
16	Meghalaya	70	70	100
17	Mizoram	91	91	110
18	Nagaland	66	100	100
19	Orissa	55	70	90
20	Punjab	85-101	93-103	100
21	Rajasthan	73	100	100
22	Sikkim	85	100	100
23	Tamil Nadu	80	80	100
24	Tripura	60	85	100
25	Uttar Pradesh	58	100	100
26	Uttranchal	73	73	100
27	West Bengal	67.42	75	100
28	Goa		103	110
29	Andaman & Nicobar		130-139	130-139
30	Pondicherry		80	80
31	Dadar and Nager Haveli		108.02	108.2
32	Daman & Diu		102	102
33	Lakshwadweep		115	115
34	Chandigarh		140	140